Selling tobacco anywhere, anytime harmful not helpful.

The greater the availability of tobacco, the more people smoke.
Background

Tobacco use remains an urgent health and social problem. Reform of the tobacco retail environment would help achieve the NSW Government’s policy goals. In the state plan, NSW 2021, the NSW Government has targets to lower smoking rates by 3% for non-Aboriginal people and 4% for Aboriginal people by 2015.\(^1\)

Under the National Partnership Agreement on Preventative Health, the Government has committed to reduce daily smoking among adults to 10% or lower by 2020.\(^2\)

The NSW Minister for Health has endorsed the National Tobacco Strategy 2012–2018, undertaking to consider further options for tobacco retailer licensing and to commission research on regulatory approaches to control the number and type of tobacco outlets.\(^2\)

Tobacco, a product that kills half its long-term users and is Australia’s leading cause of preventable death and disease, is startlingly easy to buy. Cigarettes are available ‘anywhere, anytime’ – a legacy of the time when society was ignorant of their dire health effects. There are few limits on who may sell tobacco, where and when they may sell, or the number of outlets selling tobacco.\(^3\)

There are more than five times as many places to buy tobacco in NSW as there are places to buy prescription medicines.

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\(^1\) There were 13,439 tobacco retailer notifications on the NSW Government Retailer Notification Scheme register at end June 2012. By extrapolating the results from an in-store audit of retailers in NSW, Cancer Council estimates the actual number of retailers was 9,597. See Fry R, et al. An audit of tobacco retailers in NSW. Sydney: Cancer Council NSW; 2013.

Cancer Council NSW examined the evidence relating to the retail environment and smoker behaviour, and conducted an audit of 1,739 tobacco outlets in NSW. Our findings show targeted reforms to the retail sector could make it easier for smokers to quit and remain quit, help stop young people taking up smoking and protect communities we have so far failed to protect.
How does the retail environment influence smoking?

Cancer Council NSW reviewed the literature regarding the relationship between the retail environment and smoking behaviour and found:

- evidence that high retail density and widespread distribution contribute to smoking, although there are some limitations to this evidence;³-⁸
- Australian and international evidence indicating tobacco outlet density is higher in disadvantaged communities;⁹-¹⁷
- international evidence that the presence of tobacco retailers near schools contributes to tobacco purchase and smoking prevalence in adolescents;¹⁰,¹³,¹⁸-²²
- some evidence that people trying to quit smoking are more likely to relapse if they live close to retailers selling tobacco;²³,²⁴
- evidence that convenience, route and impulse outlets (e.g. convenience stores, small grocers, petrol stations, bars, pubs and clubs) may disproportionately contribute to unplanned purchases by people not intending to smoke (such as quitters who relapse), or people smoking more than they intend;³,⁴
- consistent evidence that consuming alcohol, especially in social settings like bars and clubs, increases the amount of smoking, increases the likelihood of non-daily smokers smoking and undermines quit attempts;³,²⁵-²⁷ and
- strong evidence that removing point-of-sale displays will reduce retail cues to smoking.⁵,²⁸-³³ However, there is emerging evidence from NSW indicating it will not completely eliminate retail cues. The mere sight of a retail outlet, particularly tobacconists and liquor stores, prompts some smokers and quitters to think about smoking or buying cigarettes.³⁴ This highlights the potential public health benefits of policies to limit the number and/or type of tobacco outlets.
Tobacco retailing in NSW – Retailer Notification Scheme

The purpose of tobacco legislation in NSW is to reduce the incidence of smoking and the consumption of tobacco, particularly by young people. The *Public Health (Tobacco) Act 2008* (NSW), along with the *Public Health (Tobacco) Regulation 2009*, sets a number of conditions for the legal sale of tobacco and related products.

Under the Act, retailers are required to notify the NSW Ministry of Health via the Retailer Notification Scheme (RNS) before they engage in tobacco retailing. The purpose of the scheme is to inform the Ministry of Health about the number and location of tobacco retailers in NSW to support enforcement of the display ban and other retail laws.

The RNS is described as a ‘negative licensing’ scheme. This means retailers do not need to obtain a licence or meet any defined requirements prior to selling tobacco, but can be prohibited from selling if they repeatedly breach the conditions of sale.

Cancer Council NSW audit of tobacco retailers – what we found

Cancer Council NSW used the Retailer Notification Scheme to better understand the structure, density and distribution of the tobacco retail sector in NSW. We also used it to find out whether retailers were complying with the new laws under the *Public Health (Tobacco) Act 2008* (NSW) and to measure differences in cigarette prices between retailers.

Using the list of notified retailers obtained under a Government Information (Public Access) request (formerly Freedom of Information), we randomly selected a sample of postcodes in urban and regional NSW and audited 1,739 retail outlets.

Almost 80% of outlets are convenience, route and impulse retailers (e.g. licensed premises, convenience stores, petrol stations and newsagents).

This is a striking finding as previous research suggests convenience, route and impulse retailers disproportionately contribute to purchases by ‘tipping point’ smokers (i.e. people not intending to smoke and attempting quitters who relapse).

The Retailer Notification Scheme does not provide accurate information about tobacco retailers in NSW.

Cancer Council NSW found retailers that were not included on the list of notified retailers and a large number of multiple listings and out-of-date retailer records.

We estimate there is one unlisted tobacco outlet for approximately every 13 listed outlets.

To estimate the ratio of unlisted to listed outlets, we compared the number of unlisted to listed outlets in randomly selected postcodes where at least one of the data collectors lived in the postcode.
Cancer Council NSW estimates NSW has about 9,597 tobacco outlets.

The list received from the Ministry of Health contained 13,439 retailer records. We extrapolated the results from the sample to estimate the number of active tobacco retailers in NSW, as of February 2013, is actually about 9,597.\(^{39}\)

One in four tobacco retailers did not comply with the legislation.

More than one in four audited tobacco retailers did not comply either because they had not notified under the Retailer Notification Scheme or because they failed to comply with in-store requirements, or both.

<table>
<thead>
<tr>
<th>Table 1: Observed breaches of tobacco retail legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of breach</strong></td>
</tr>
<tr>
<td>No ‘Smoking kills’ sign</td>
</tr>
<tr>
<td>Outlet selling tobacco but not listed with Ministry of Health</td>
</tr>
<tr>
<td>Displaying tobacco but not a specialist tobaccoonist</td>
</tr>
<tr>
<td>Displaying smoking accessories or non-tobacco smoking products but not a specialist tobaccoonist</td>
</tr>
<tr>
<td>More than one type of price display</td>
</tr>
<tr>
<td>Prices more than 2cm high and/or 1.5cm wide</td>
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<tr>
<td>Outlet advertising or promoting cigarettes</td>
</tr>
<tr>
<td>Specialist tobaccoonist displaying tobacco less than 2m away from a public facing opening</td>
</tr>
<tr>
<td>Non-compliant warning sign colour (identified from volunteer comments)</td>
</tr>
<tr>
<td><strong>Outlets with one or more observed breaches</strong></td>
</tr>
</tbody>
</table>

Unlisted retailers and those in disadvantaged areas were more likely to break retailing laws.

Retailers not listed under the Retailer Notification Scheme and those in disadvantaged postcodes were significantly more likely to breach in-store provisions.

Cigarettes were cheaper in areas with more young people and in disadvantaged areas.

Prices were cheaper, on average, in postcodes with a higher proportion of children in the population and in disadvantaged areas.

Some tobacco retailers are leaving the market.

Our audit showed 418 of the 2,279 notified retailers listed were either no longer selling tobacco or no longer at the stated address. However, it was not possible to quantify the number of retailers entering or exiting the market over the three years the RNS has been in place.
The solution

Selling tobacco ‘anywhere, anytime’ thwarts attempts to give up this powerfully addictive substance and makes it harder for the government to reduce smoking prevalence. The ubiquity of tobacco is out of step with other products that are legal, yet potentially lethal, such as alcohol.

Targeted reforms to the retail sector could support people more effectively to quit smoking, promote health in socially disadvantaged areas and protect children from tobacco.

Retail availability of tobacco is the weak link in tobacco control. Public health experts have proposed various strategies to limit supply, including limiting the number, type, location and/or opening hours of outlets. US states California and New York have developed ordinances for tobacco retail licensing.40,41

Public support for stronger regulation of tobacco retailing is high.

In a recent Cancer Council NSW community-based survey of 2,473 people, 79% of respondents supported policies requiring retailers to have a licence to sell tobacco products, in the same way that retailers need a licence to sell alcohol – higher levels of support than for point-of-sale display bans and plain packaging, which are already in place.42

The results of the 2009 NSW Smoking and Health Survey also indicate that the community is ready for tobacco retailer licensing, with 91% of adults supporting such regulation, including 88% of smokers.43

Regulation of other products

In NSW, there are many precedents for licensing systems for businesses that supply goods or services entailing varying degrees of risk.

Alcohol

Liquor licensing places limits on where, when and to whom alcohol may be sold, and community and social factors are considered during the application process. Applicants for a liquor licence in NSW must include a National Police Certificate, a community impact statement, a scaled plan of the proposed licensed premises, and a copy of the local council’s development consent or approval for the proposed premises.44 The licensee, service staff and security officers must hold Responsible Service of Alcohol certificates.45 Licence fees vary depending on the type of outlet; for a restaurant or small bar the application fee is $500.46

Once a licence is approved, licensees are subject to a ‘three strikes scheme’ whereby non-adherence to sale and supply laws may result in the licence being subject to conditions, suspended for up to 12 months, or cancelled; a licensee can also be disqualified for any period of time. Additionally, all licensees are required to report back to the licensing authority biennially in order to confirm the accuracy and currency of the database.47

Prescription medicines

To sell scheduled medicines in Australia, pharmacists must hold a pharmacy degree and maintain their registration or face severe penalties, including loss of registration and criminal prosecution if found to be selling some medicines without being presented with a valid doctor’s prescription.48

Equally, when a person is prescribed a medicine, the prescription specifies that the pharmacist can only release a limited supply. Patients requiring more must return to a doctor for a repeat prescription. This stands in stark contrast to tobacco – a product with no safe level of use – which any person can sell to any other person aged 18 or over.

Registration of a new pharmacy business in NSW incurs a fee of $500, plus an additional $300 inspection fee.49 Annual renewal of registration is $300. Registration of a change of address is $300, and a change of ownership $500.49
Addressing the retail availability of tobacco in NSW could accelerate declines in smoking prevalence, support people more effectively to quit smoking, promote health in socially disadvantaged areas, and protect children from tobacco.

**A taskforce for tobacco retail reform**

Cancer Council NSW recommends the NSW Minister for Health:

1. Convene a taskforce under the auspices of the Minister’s office to explore, evaluate and advise on policies for tobacco retail reform that will most effectively accelerate declines in smoking prevalence.

2. Require the taskforce to base their advice to the Minister on the best available evidence.

3. Include the following responsibilities among the taskforce’s terms of reference:
   - commission research to more closely assess the impact of retail distribution on smoking in the NSW context;
   - consult with the public and affected retail sub-sectors;
   - assess the potential for a positive licensing scheme, with associated conditions of licence and an annual fee, as a means to boost resources for monitoring and enforcement;
   - develop strategies to restrict the number, type and distribution of retail outlets; and
   - outline the essential elements of a regulatory scheme that would effectively address the impact of tobacco retail availability on smoking rates.

4. Appoint a maximum of nine members to the taskforce, including the chair, with expertise in:
   - tobacco control (one or two members);
   - public health, particularly preventive health in Aboriginal and disadvantaged communities (one or two members);
   - public health law and regulation (one member);
   - academic retail marketing research relevant to the terms of reference (one member); and
   - the retail sector (maximum of three members, chosen to reflect the diversity of the retail market).

5. Exclude from taskforce membership (but include in consultations) individuals and/or organisations that receive funding from tobacco companies or are directly affiliated with those companies.

6. Request the taskforce to report their findings within one year of being convened.

**Strengthening compliance with existing tobacco retail laws**

Cancer Council NSW recommends the NSW Ministry of Health:

7. Introduce systems to ensure notifications under the Retailer Notification Scheme are accurately collected and recorded, so as to provide up-to-date information about outlet address, changes in business ownership and whether the outlet continues to sell tobacco.

8. Provide a publicly accessible, searchable online database of all notified tobacco retailers in NSW.

9. Provide publicly accessible annual reports with quantitative measures of retailer monitoring, compliance, prosecutions and convictions for each Local Health District.

For more information about the evidence supporting tobacco retail reform or for more information on the Cancer Council NSW audit, visit www.canact.com.au/tobacco-retail
REFERENCES

1. NSW Government. NSW 2021: A plan to make NSW number one. Sydney: Department of Premier and Cabinet, NSW Government; 2011.
34. Burton S and Spanjaard D. An investigation of the impact of retail distribution on tobacco purchase and smoking, and on high-kilojoule food purchases - Draft report prepared for the Cancer Council NSW, School of Business, University of Western Sydney; 2012.
42. Cancer Council NSW. (2013); NSW Community Survey on Cancer Prevention.