



Draft Public Health (Tobacco) Regulation 2022
Regulatory Impact Statement

REGULATORY IMPACT STATEMENT

TITLE OF REGULATORY PROPOSAL:

**Draft Public Health (Tobacco) Regulation
2022**

PROPONENT:

NSW Ministry of Health

RESPONSIBLE MINISTER:

Minister for Health

RELEVANT ACT:

Public Health (Tobacco) Act 2008

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1. Purpose of this regulatory impact statement

This regulatory impact statement serves two purposes associated with the draft Public Health (Tobacco) Regulation 2022 (Draft Regulation):

- 1) to meet the requirements of the Subordinate Legislation Act 1989 in terms of a regulatory impact statement (RIS); and
- 2) to serve as a Better Regulation Statement in accordance with the requirements of the Government's Guide to Better Regulation.

The Subordinate Legislation Act intends to ensure that regulations benefit the community and are reviewed periodically. To demonstrate that, the proponent agency must prepare and publish a RIS that articulates the objectives of the proposed regulation and considers a range of options to achieve those objectives. A RIS must also consider the economic and social costs of the proposed regulation with only that option which produces the greatest net benefit to the community being chosen.

The Guide to Better Regulation identifies seven principles that characterise good Regulation. The principles are:

- 1) the need for government action should be established,
- 2) the objective of government action should be clear,
- 3) the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options,
- 4) Government action should be effective and proportional,
- 5) consultation with business and the community should inform regulatory development
- 6) the simplification, repeal, reform or consolidation of existing regulation should be considered, and
- 7) regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

To demonstrate adherence to these principles when proposing a new regulation, the proponent agency must prepare a better regulation statement (BRS). A BRS must identify and justify compliance costs and show the action taken to minimise these costs. This RIS also serves as a BRS.

2. Consultation and Submissions on the RIS and Draft Regulation

The RIS and Draft Regulation will be provided to stakeholders and released for a period of 4 weeks for public consultation. The Ministry is keen to hear submissions on issues raised in this RIS as well as any other matter contained in the Draft Regulation.

Submissions on the proposed RIS and Draft Regulation can be made to:

Legal and Regulatory Services Branch
NSW Ministry of Health
Locked Mail Bag 2030
ST LEONARDS NSW 1590

Submissions may also be made via email to NSWH-LegalMail@health.nsw.gov.au

Submissions must be received by **17 June 2022**.

Individuals and organisations should be aware that generally submissions made in respect of the RIS and Draft Regulation may be made publicly available under the Government Information (Public Access) Act 2009. The Ministry of Health may also circulate submissions for further comment to other interested parties or may publish parts of the submissions. If you wish your submission (or any part of it) to remain confidential (subject to the Government Information (Public Access) Act), this should be clearly stated.

3. Approach taken in this Regulatory Impact Statement

The RIS considers the objectives of the Public Health (Tobacco) Act 2008 and the Draft Regulation and the costs and benefits of the Draft Regulation. The RIS also considers a number of alternatives to the Draft Regulation.

4. Draft Public Health (Tobacco) Regulation 2022

The Draft Regulation has provisions in relation to:

- the advertising on tobacco and e-cigarette packaging,
- the display of retail prices of tobacco products and e-cigarettes,
- the display of health warnings and other notices, and
- penalty infringement notice offences.

To a large extent the Draft Regulation recreates the provisions of the existing Public Health (Tobacco) Regulation 2016 (2016 regulation) subject to a number of minor changes:

- Ensuring that price boards are static and do not contain moving images and or cycle between prices and images,
- Providing an upper limit on the size of health warning signs,
- Setting a maximum of one point of sale sign, if certain conditions are met, and
- A number of new penalty infringement notice offences have been included in the Draft Regulation and the penalty amounts for most offences have been increased.

5. Objectives of the Public Health (Tobacco) Act 2008 and Draft Regulation

The Draft Regulation supports the Public Health (Tobacco) Act 2008 (Act) and has the same objectives as the Act. The objectives of the Act are set out in section 3 of the Act which provides:

(1) The object of this Act is to reduce the incidence of smoking and other consumption of tobacco products and non-tobacco smoking products, particularly by young people, in recognition of the fact that the consumption of those products adversely impacts on the health of the people of New South Wales and places a substantial burden on the State's health and financial resources.

(2) This Act aims to achieve that object by:

(a) regulating the packaging, advertising and display of tobacco products, non-tobacco smoking products and e-cigarettes, and

- (b) prohibiting the supply of tobacco products, non-tobacco smoking products, e-cigarettes and e-cigarette accessories to children, and
- (c) reducing the exposure of children to environmental tobacco smoke.

The Act recognises the overwhelming evidence that demonstrates that tobacco consumption is one of the major risk factors for cancer, stroke and heart disease in our community as well as contributing to a range of other serious medical conditions including emphysema, bronchial diseases and vascular disease. These conditions affect not only the individual suffering from the disease but also their families, carers and friends; their employers and the employers of those who are required to care for them; and the broader community through the supply of health and welfare services.

In relation to e-cigarettes, all Australian governments have agreed that protecting the health of children and young people underpins the policy and regulatory approach to e-cigarettes in Australia¹. E-cigarettes are marketed to appeal to young people, can provide a gateway to a lifetime of nicotine addiction, and cause direct harms to users. The World Health Organisation in its recent *Report on the global tobacco epidemic 2021: addressing new and emerging products*, stated that emerging products pose a new threat to tobacco control.

The objective of the Act and Draft Regulation is therefore to reduce the number of people in the community who use tobacco products by:

- reducing the visibility of tobacco products and e-cigarettes in the retail environment and thereby reversing the perception that these products are an everyday consumer good like milk, bread or newspapers,
- further restricting the promotion and marketing of tobacco products and e-cigarettes, particularly to children and young people, and
- restricting the exposure of children to environmental tobacco smoke.

5.1 The need for government action and the impact of tobacco and e-cigarette use

5.1.1 The cost of tobacco smoking

Tobacco smoking is a leading cause of chronic disease and premature death in New South Wales. It is a major risk factor for coronary heart disease, stroke, peripheral vascular disease, cancer and a range of other diseases and conditions.²

Since 2003, the rate of death attributable to smoking has declined in NSW.² In 2019, a total of 6,907 deaths were attributed to smoking in NSW (3,990 males and 2,917 females).² In

¹ Commonwealth Department of Health 2019, Policy and Regulatory approach to electronic cigarettes in Australia: <https://www.health.gov.au/sites/default/files/documents/2019/12/policy-and-regulatory-approach-to-electronic-cigarettes-e-cigarettes-in-australia-principles-that-underpin-the-current-policy-and-regulatory-approach-to-electronic-cigarettes-e-cigarettes-in-australia.pdf>

² Centre for Epidemiology and Evidence. HealthStats NSW. Sydney: NSW Ministry of Health Available at: <https://www.healthstats.nsw.gov.au/#/r/100816> Accessed: 07/02/2022

2019-20, a total of 60,192 hospitalisations were attributed to smoking in NSW, which was approximately 2.1% of all hospitalisations.²

In Australia, up to two-thirds of deaths in current smokers can be attributed to smoking.³ In 2015-16, there were 20,032 deaths from smoking-related causes in Australia and approximately 1.7 million smoking-related hospital inpatient episodes.⁴ The total cost of smoking in Australia was estimated at \$136.9 billion, with tangible costs of \$19.2 billion and of these \$6.8 billion were hospital costs.⁴ The intangible costs such as pain and suffering were estimated at \$117.7 billion.⁴

5.1.2 Smoking by children and young people

The teenage years are the most common time for taking up smoking.⁵ Early uptake is associated with heavier smoking and greater difficulty in quitting.⁵ Nicotine dependence is established rapidly among adolescents.⁶ Preventing young people from commencing smoking will reduce smoking-related deaths and illness and the associated long term costs.

In 2017, 6.4% of secondary school students aged 12-17 years were current tobacco smokers compared to 27.3% in 1984.⁷ A decline has been observed in current tobacco smoking in both male students (23.9% to 7.0%) and female students (30.8% to 5.7%) from 1984 to 2017.⁷ The proportion of students who had ever smoked has declined from 32.8% in 2005 to 16.0% in 2017.⁷ The percentage of school students who smoked in the past 7 days prior to the survey also fell from 8.4% in 2005 to 4.7% in 2017.⁷

5.1.3 E-cigarette use by young people

There has been an increase in the number of Australians using e-cigarettes since surveys began tracking prevalence. The highest users of e-cigarettes are young people. The NSW Population Health Survey showed that in 2019 to 2020, 21.4% of young people aged 16 to 24 years in NSW had used an e-cigarette at least once, and 4.5% were current users.⁸

³ Banks E, Joshy G, Weber MF, Liu B, Grenfell R, et al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC Medicine*, 2015; 13(1):38. Available from: <http://www.biomedcentral.com/1741-7015/13/38>

⁴ Tait R, Whetton S and Alsop S. Identifying the social costs of tobacco use in Australia in 2015/16. Perth: National Drug Research Institute, Curtin University; October 2019. Available from: <http://ndri.curtin.edu.au/NDRI/media/documents/publications/T273.pdf>. Accessed 07/02/2022.

⁵ U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.

⁶ Fiore MC, Baily WC, Cohen SJ, et al. *Treating tobacco use and dependence. Clinical Practice Guideline*. Rockville MD: US Department of Health and Human Services; 2000.

⁷ NSW School Students Health Behaviours Survey (SAPHaRI). Centre for Epidemiology and Evidence, NSW Ministry of Health. http://legacy.healthstats.nsw.gov.au/Indicator/beh_smostud_age/beh_smostud_his_comparison. Accessed 24/03/2022.

⁸ Centre for Epidemiology and Evidence. HealthStats NSW. Sydney: NSW Ministry of Health. Available at: <https://www.healthstats.nsw.gov.au/#/r/100038> Accessed: 24/03/2022

Data on teenage vaping from the NSW School Students Health Behaviours Survey 2017⁷ showed:

- 9.5% of students aged 12 to 15 years had ever used an e-cigarette
- 20.7% of students aged 16 to 17 years had ever used an e-cigarette.

E-cigarettes can contain harmful substances and expose users to chemicals and toxins such as formaldehyde, heavy metals and particulate matter.⁹ E-cigarettes often contain high levels of nicotine, and are often labelled incorrectly and contain nicotine, even when they are not labelled as such. Adolescence is a critical period for brain development and exposure to nicotine can have long-term physical and mental health consequences, impacting memory, attention and learning.¹⁰ Evidence also shows that people who vape are three times more likely to take up smoking than those who have not used e-cigarettes.¹¹

5.2 The objectives and overview of the proposed Draft Regulation

The Draft Regulation is intended to support the objectives and operation of the Act. An overview of the Draft Regulation is set out below.

Part 1 excludes certain items from the definition of an e-cigarette and e-cigarette advertisement as follows:

- An “authorised product” is excluded from the definition of an e-cigarette. An authorised product has the same meaning as the Act. It means a device or accessory that is a therapeutic good (as defined in the Commonwealth Therapeutic Goods Act 1989 (TGA)), registered in the Australian Register of Therapeutic Goods, or the subject of an approval or authority under section 19 of the TGA, or is supplied under a licence or authority in force under the Poisons and Therapeutic Goods Act 1966. This exclusion ensures that the restrictions in the Draft Regulation do not apply to approved therapeutic stop-smoking aids that are registered therapeutic goods or where there is an approval under the Poisons and Therapeutic Goods Act. Currently, there are no e-cigarette products that meet this requirement in NSW.
- a trademark or brand name on an e-cigarette package or a package in which an e-cigarette is sold does not constitute an e-cigarette advertisement. Under the Act, following changes made in 2015¹², e-cigarettes advertising is generally subject to the

⁹ NHMRC. CEO Statement on Electronic cigarettes. <https://www.nhmrc.gov.au/about-us/resources/ceo-statement-electronic-cigarettes#:~:text=E%2Dcigarettes%20are%20not%20likely,cancer%2Dcausing%20compounds%20when%20vaporised>. Accessed 24/03/2022

¹⁰ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

¹¹ Banks E, Beckwith K, Joshy G. Summary report on use of e-cigarettes and relation to smoking uptake and cessation, relevant to the Australian context. Commissioned Report for the Australian Government Department of Health, September 2020.

¹² Amendments were made in the Public Health (Tobacco) Amendment (E-cigarettes) Act 2015

same strict restrictions that apply to tobacco advertising. However, it was recognised that there are differences between e-cigarettes and tobacco advertising. Accordingly, the Act allows regulations to be made exempting certain matters from the definition of an e-cigarette advertisement. As e-cigarettes are not subject to the Commonwealth plain packaging laws, clause 5 excludes trademarks and brand names from the definition of e-cigarette advertising.

Part 2 of the Draft Regulation relates to the packing, advertising and sale of tobacco and e-cigarettes products. Part 2 is aimed at:

- limiting the scope of tobacco and e-cigarette advertising in such a way that would appeal to children and young people,
- regulating the display of retail tobacco and e-cigarette prices, and
- ensuring that appropriate health warnings are on tobacco products that contain an advertisement.

Accordingly, clause 13 prohibits tobacco and e-cigarette products being packaged in a package that contains any statement alluding to sporting, sexual or business success, depicts holograms, people or cartoons or other scenes that appeal to children and young people. Clause 14 requires any tobacco product that does have an advertisement to also contain a health warning.

Part 2 also sets out the prescribed quantities of “illegal tobacco” (being tobacco without a health warning or tobacco not in its original packaging) that is deemed to be for sale for the purposes of sections 6(4) and 7(4) of the Act. Under sections 6(4) and 7(4), if quantities of illegal tobacco over the prescribed amount are found on a tobacco retailer’s premises, there is a deemed breach of sections 6 and 7 of the Act and an inspector can confiscate the tobacco product. The prescribed quantities are set at:

- 100 grams for tobacco products that are not in their original packaging in breach of section 6 of the Act, and
- 50 cigarettes or 50 grams of tobacco for tobacco products that do not have a health warning in breach of section 7 of the Act.

Clause 11 sets out the requirements for price tickets and price boards. These requirements are generally the same as the current Regulation.

It is recognised that consumers expect to be able to obtain information as to whether a retailer sells specific products and the prices of those products. Therefore clause 11 of the Draft Regulation prescribes certain types of tobacco and e-cigarette advertising that is permitted at the point of sale by allowing retailers to display a price ticket or single price board to give notice to customers about price. There are requirements in relation to price boards and price tickets that are generally the same as the current 2016 Regulation, except for the following:

- Clause 11(3) of the Draft Regulation provides that price boards must not contain moving images or texts. This means that price boards must be static and cannot cycle between prices and images.

Part 3 sets out the requirements on retailers to display health warnings and other notices.

Under Part 3 tobacco retailers are required to display, at the point of sale:

- a health warning regarding the dangers of tobacco products as set out in Schedule 1, and
- a notice regarding the fact that tobacco sales to minors are prohibited, as set out in Schedule 1.

Part 3 also sets out the notices, in Schedule 1 of the Draft Regulation, that must be displayed on a tobacco or e-cigarette vending machine.

In Part 3 there are two minor changes between the current Regulation and the Draft Regulation:

- in the Draft Regulation, the health warning sign at the point of sale must be at least 2000cm² in area but not more than 3,200 cm². The size requirement will ensure that the sign is sufficiently large enough to make customers aware of the health risks of smoking while also ensuring that the sign is not too large and being used as a promotion in relation to where tobacco products are sold, and
- the Draft Regulation will only permit up to one sign that states “tobacco sold at this cash register only” to be displayed in a retail premise. This change will ensure that retailers can still direct customers to where tobacco products are sold but will minimise the risk that multiple signage can be used as a form of advertising and promotion.

Part 4 sets out the manner in which notice of tobacco retailing must be given. Under the Act, a person must notify the Health Secretary prior to engaging in tobacco retailing¹³. Part 4 of the Draft Regulation requires that such notice be given via the Service NSW website at www.service.nsw.gov.au which provides for ease of notification.

Schedule 2 sets out the offences in the Act and Regulation that are penalty infringement notice offences, that is offences for which a penalty infringement notice (and on-the-spot fine) can be issued in lieu of a prosecution. Schedule 2 also sets out the fine amount that is payable in respect of the offences. In the Draft Regulation, most of the penalty infringement notice amounts have been increased from \$360 for an individual and \$1,800 for a corporation to \$1,110 for an individual and \$5,500 for a corporation, which is 10 per cent of the value of the maximum penalty. In addition, new offences have been made penalty notice offences, being a breach of sections 6(2),7(1) and 7(2) of the Act. Section 6(2) makes it an offence to sell cigarettes in a pack fewer than 20. Section 7(1) makes it an offence to pack a tobacco product into a package in which the product will be sold unless it is marked with a health warning, whilst section 7(2) makes it an offence to sell a tobacco product unless the packaging is marked with a health warning.

¹³ Section 39 of the Public Health (Tobacco) Act

6. Alternatives to the Draft Regulation

A number of alternatives to the Draft Regulation have been considered, these are:

1. No regulation, and
2. Making the draft regulation in the same form as the 2016 Regulation.

6.1 Option 1 - No regulation

Under this option, there would be no regulations made under the Act. This would mean:

- The regulations would not prescribe a quantity of “illegal tobacco” for the purposes of sections 6(4) and 7(4) of the Act. This would frustrate the intention of Parliament as the deeming provisions in these sections would have no effect.
- There would be no restrictions on tobacco or e-cigarette packages including images that appeal to children and young people, such as cartoon characters and holograms.
- There would be no requirements on retailers to display a health warning and notice about sales to minors at the point of sale.
- The requirement in section 14 for a prescribed notice to be displayed on the front of any tobacco vending machine would be ineffective and there would be no requirement for retailers to display other public health messages, including the Quitline telephone number, at point of sale.
- There would be no restrictions on the display of retail prices for tobacco and other smoking products at point of sale such that those prices could be displayed in a manner that encourages greater consumption of tobacco products or their purchase and consumption by young people.
- The notification system for tobacco retailers, required by section 39 of the Act, would arguably be ineffective as notice must be given in accordance with the regulations.
- There would be no penalty infringement notice offences which would mean that all breaches of the Act would need to be pursued by way of a formal prosecution.

6.1.1 Evaluation of Option 1

Option 1 would render certain sections of the Act effectively inoperative (such as sections 6(4), 7(4) and 39) as there would be no regulations to give effect to these provisions. The lack of effective signage requirements would mean that smokers are not reminded of the dangers of smoking and how to get help if they want to quit. There would also be no regulations relating to advertising of tobacco or e-cigarette products.

This approach would not support the operation and objectives of the Act and is not supported. Lack of regulation in this area would introduce a lack of parity with other Australian jurisdictions and would not be consistent with NSW’s commitment to reduce exposure to tobacco, smoking rates, the uptake of smoking and the burden of smoking related illness.¹⁴

¹⁴ NSW Tobacco Strategy 2012-2021. Available at <https://www.health.nsw.gov.au/tobacco/Publications/tobacco-strategy-1221.pdf>. Accessed 24/03/2022

6.2 Option 2 - Making the Draft Regulation with no change from the 2016 Regulation

Under this option, there would be no change between the current 2016 Regulation and the Draft Regulation.

6.2.1 Evaluation of Option 2

Under Option 2, the Draft Regulation would be the same the 2016 Regulation, meaning:

- price boards will not need to be static and may contain moving images and or cycle between prices and images,
- there will be no upper limit on the size of health warning signs,
- retailers can display multiple point of sale signs, if certain conditions are met, and
- there will be no new penalty infringement notice offences and the penalty amount for most offences will not increase.

Option 2 is not supported because:

- The use of moving and non-static price boards can act as a promotion for tobacco and e-cigarette products, which is inconsistent with the objectives of the Act,
- The use of large health warning signs can be used to advertise or promote the sale of tobacco and e-cigarette products. This is not in line with the intention of the requirement to display health warning signs and is inconsistent with the objectives of the Act,
- Multiple signs can be displayed in a retail premise that state tobacco can be sold at this register, if certain conditions are met. These signs may act as an advertisement that tobacco is sold at a retail premise,
- Breaches of sections 6(2) and 7(1) and (2) of the Act (relating to selling tobacco individually or in a pack of less than 20 cigarettes and packing or selling a tobacco product with a health warning) could only be prosecuted in Court, resulting in a lack of flexibility in dealing with breaches and significant resources directed towards prosecution, and
- The on-the-spot fine payable for most penalty notice offences would remain at \$360 for an individual and \$1,800 for a corporation, rather than \$1,100 for an individual and \$5,500 for a corporation. The existing penalties are not considered to be sufficiently high to deter people from breaching the provisions or to reflect the seriousness of the offences.

7. Costs and benefits of the Draft Regulation

7.1 Costs

The costs associated with the proposed regulation fall into 4 broad categories:

- i) Costs associated with restrictions on advertising (including restrictions on product displays and price displays),
- ii) Costs associated with displaying prescribed signs,
- iii) Costs associated with tobacco retailers notifying the Health Secretary of their existence, and
- iv) Other costs.

7.1.1 Costs associated with restrictions on advertising

The Draft Regulation includes a range of restrictions on the advertising of tobacco and e-cigarette products. These restrictions include:

- Restrictions on the wording and images that may be used on tobacco and e-cigarette packages (clause 13). This ensures that images that may be appealing to children (such as cartoon characters) may not be displayed on packets, and other words and images that may appeal to young people, such as those that allude to sexual or sporting success, may not be used on tobacco or e-cigarette packets or cartons,
- Providing that advertising on or within (i.e. not on the outside of the package) tobacco packages must contain the health warning set out in Schedule 1 (clause 14),
- Preventing the display of advertisements in registered clubs to the extent that the premises of a registered club is not a public place (clause 10), and
- Restrictions on the display of prices of tobacco or e-cigarette products (clause 11).

These restrictions impose costs on tobacco manufacturers and wholesalers by restricting their ability to promote their brands including by means of price competition and promotion and their ability to launch new product lines. However, it is noted that, in respect of tobacco products, these restrictions already apply to a large degree as a result of Commonwealth plain packaging laws and that therefore additional costs are not being imposed as a result of the Draft Regulation.

The Draft Regulation imposes costs on retailers by similarly preventing them from more aggressively promoting tobacco products via promoting aggressive price competition. It does this by restricting the display of retail prices (clause 11). These costs are largely unchanged in comparison to the existing Regulation.

It is not possible to quantify the extent to which these restrictions actually reduce the sale of tobacco products. However, it is clear that since restrictions were introduced in the Public Health (Tobacco) Regulation 1999 rates of smoking in the community have dropped significantly. In 2004, 24.7% of males and 20.6% of females were current smokers while in 2020 the equivalent figures are 16.0% and 10.8%.¹⁵ In 2002, 14.6% of secondary students were current smokers while in 2017 the figure is 6.4%.⁷ It is not possible to calculate what proportion of these decreases are due to the matters dealt with in the Regulation as they have been implemented as part of a comprehensive approach to tobacco control. This comprehensive approach includes: social marketing and education campaigns to prevent uptake of smoking; cessation support; regulation, including smoke-free environment regulation; compliance monitoring and enforcement strategies; complementary Commonwealth regulation and action such as advertising of tobacco products, tobacco plain packaging and tax excise.

¹⁵ Centre for Epidemiology and Evidence. HealthStats NSW. Sydney: NSW Ministry of Health Available at: <https://www.healthstats.nsw.gov.au/#/r/101645> Accessed: 24/03/2022

7.1.2 Costs associated with displaying prescribed signage

The costs associated with displaying prescribed signage are expected to be minimal and largely unchanged from the existing Regulation.

All prescribed signs are available from the NSW Ministry of Health at no charge by contacting Population Health Resources on 1300 655 957 or via email MOH-PopulationHealthResources@health.nsw.gov.au.

There will be a small cost to retailers in the time taken to initially put the signs up and replace any that become damaged. There will also be some opportunity cost associated with the inability to utilise any such space for other advertising. However, this is expected to be minimal as the sizes set by the Draft Regulation are not unduly burdensome and the time taken to put up the signs is expected to be minimal.

The mandatory display of signage at the point of sale is likely to impose a cost on business through lost sales and by discouraging purchases, for example the health warning notice must state **Smoking Kills Call the Quitline 137 848**. The signage regarding sales to minors is likely to have the dual effect of discouraging some young people from attempting to purchase tobacco products and secondly of constantly reminding retailers of the criminal nature of the offence and the very substantial penalties associated with it and thus assisting in deterring retailers from selling to minors. Any “costs” involved in lost potential sales to minors are not properly costs to consider as it is illegal to sell tobacco products and e-cigarettes to minors. It is noted that there has been a significant drop in the proportion of secondary school students that are current smokers, from 14.6% in 2002 to 6.4% in 2017.⁷ The reduction in smoking rates is likely to be as a result of the implementation of a comprehensive approach to tobacco control in NSW and at the Commonwealth level. It is difficult to establish what role one part of the approach contributed to the reduction in smoking rates.

7.1.3 Costs associated with notifications and applications to the Health Secretary

Section 39 of the Act provides that a person may not engage in tobacco retailing unless he or she has first notified the Health Secretary in the manner prescribed by the Regulations that he or she intends to engage in tobacco retailing.

In the absence of the Regulation prescribing the manner of notification there would be in practice no requirement to notify.

Clause 19 of the Draft Regulation provides that notification is to be done via the internet at the Service NSW website www.service.nsw.gov.au. There is no fee associated with a notification and the only cost associated is likely to be the time taken to complete the notification. This is estimated to be less than 15 minutes for the average user and for users with minimal computer skills it is estimated to take less than 30 minutes. The requirement to notify has been in existence since 2009 and so any costs will only occur in respect of new business or alterations to existing notifications, estimated to be up to 1000 per year.

7.1.4 Other costs

There are a range of other costs associated with the Draft Regulation. These costs include enforcement costs incurred by Public Health Units of Local Health Districts who undertake

investigative and enforcement activity, with legal and prosecutorial assistance provided by the NSW Ministry of Health's Legal Branch. The Ministry provides funding to support tobacco control activities carried out by the Public Health Units.

7.2 Benefits of the Draft Regulation

There are benefits from the Draft Regulation relating to strong public health policy.

The Draft Regulation places restrictions on the advertising of tobacco products and e-cigarettes, restrictions on the sale of such products to minors and requires tobacco retailers to display appropriate signage relating to the health impacts on smoking. The Draft Regulation minimises the risk that signage will be used as a means to promote the sale of tobacco and e-cigarette products. In addition, by increasing the on-the-spot-fine, the Draft Regulation more appropriately reflects the seriousness of breaches of the Act and Draft Regulation.

As noted earlier, tobacco smoking is a major cause of preventable death and results in large costs to the community through early death and costs to the health system. The Draft Regulation is one part of a comprehensive strategy and regulatory approach to reducing smoking rates and costs to the community. NSW Health and its partners also invest in tobacco control through the regulation of smoke-free environments via the Smoke-free Environment Act 2000, mass media prevention campaigns as well as a range of population-wide and targeted smoking cessation support programs. These interventions complement the Commonwealth Government's advertising, taxation, pricing and plain packaging policies. All components of this comprehensive strategy, including the Draft Regulation, assist in reducing the smoking rate which will in turn benefit the community through decreases of death and illness and reduced health costs that are borne by all members of the community.

8. Summary

The analysis in the RIS shows that the Draft Regulation is seen as imposing the greatest benefit to public health and the community while imposing minimal costs on businesses. These costs are largely unchanged from the existing Regulation and are outweighed via the benefits to the community that arise from controlling the sale and supply of tobacco and e-cigarette products for the benefit of public health.

Appendix A – Organisations to be consulted

AMA (NSW Branch)
Ampol
Asthma Foundation
Australian Association of Convenience Stores
Australian Hotels Association
Australian Retailers Association
BP
Cancer Council NSW
Cancer Institute NSW
ClubsNSW
Coles
CTC Tobacconists
Franchise Council of Australia
Freechoice Tobacconists
General Council of Small Business Australia
Heart Foundation – NSW Division
Health Consumers NSW
Health Services Union
IGA Supermarkets
Liquor Gaming and Racing NSW
Liquor Merchants Association
Lung Foundation Australia
Master Grocers Australia
Metro Petroleum (NSW)
Medical Services Committee
Newsagent Association of NSW
NSW Nurses and Midwives Association
NSW Office of Small Business
NSW Police
NSW Rural Doctors Network
Non-smokers Movement in Australia
Pharmacy Guild of Australia (NSW Branch)
Pharmaceutical Society of Australia (NSW Branch)
Restaurant and Caterers Association
Royal Australasian College of Physicians
Royal Australian College of General Practitioners (NSW)
Service Stations Association
Small Business NSW
SmokeMart
St Vincent's Health Network
Vending Machines Association
Statutory Health Corporations
United Workers Union
Woolworths