

Could a scheme for licensing smokers work in Australia?

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In a recent article in *PLOS Medicine*, Chapman argued for the mandatory introduction of a licensing system for adult smokers,¹ using age- and identity-verifying licences based on smart-card technology. Producing the licence would be a precondition to all cigarette purchases by adults who opted, after a 12-month phase-in period, to continue smoking. Retailers would be required to reconcile all stock purchased from wholesalers against a digital record of retail sales to licensed smokers. Together, these requirements would create a robust incentive for retailers to comply with laws that prohibit tobacco sales to children² and would enable creation of a database of smokers and their cigarette purchases. These data would be extremely valuable for improving understanding of smokers' behaviour and monitoring the effectiveness of smoking-cessation initiatives.

We agree with Chapman that a smokers licence could be an important next step for reducing smoking rates, but we differ about the optimal design features of such a scheme. In our view, a smoker licensing scheme needs to be as simple as possible and to focus on two clear goals:

- to reduce unacceptably high rates of unlawful tobacco sales to children and adolescents; and
- to make intelligent use of information about smokers' purchases to help adult smokers quit.

We evaluated the key design features of Chapman's proposal in terms of their relevance to achieving these objectives (Box). We would eliminate the non-core design features, resulting in a no-frills licence that would be easier to implement and administer, and easier to justify in light of the goals of the scheme. The non-core features described by Chapman included various licence categories based on a maximum purchase quota chosen by the smoker, a pre-licence test of the smoker's knowledge about smoking risks, and a financial incentive for surrendering a licence by quitting smoking.

Reducing unlawful tobacco sales to children

It is an offence in all states and territories to sell tobacco to people who are under 18 years of age. However, these laws are widely flouted. The 2010 National Drug Strategy Household Survey found that 2.5% of adolescents aged 12–17 years were daily smokers; another 1.3% smoked less frequently.⁹ While most adolescents obtained cigarettes from friends or relatives, 31% of the tobacco smoked by adolescents was purchased from retailers or directly over the internet.⁹ A 2011 survey of Australian secondary-school students aged 12–17 years found that 50% of 17-year-old smokers and 21% of 12-year-old smokers believed it was "easy" or "very easy" to purchase cigarettes

Summary

- In this article, we evaluate the possible advantages and disadvantages of a licensing scheme that would require adult smokers to verify their right to purchase tobacco products at point of sale using a smart-card licence.
- A survey of Australian secondary school students conducted in 2011 found that half of 17-year-old smokers and one-fifth of 12-year-old smokers believed it was "easy" or "very easy" to purchase cigarettes themselves. Reducing tobacco use by adolescents now is central to the future course of the current epidemic of tobacco-caused disease, since most current adult smokers began to smoke as adolescents — at a time when they were unable to purchase tobacco lawfully. The requirement for cigarette retailers to reconcile all stock purchased from wholesalers against a digital record of retail sales to licensed smokers would create a robust incentive for retailers to comply with laws that prohibit tobacco sales to children.
- Foreseeable objections to introducing a smokers licence need to be taken into account, but once we move beyond the "shock of the new", it is difficult to identify anything about a smokers licence that is particularly offensive or demeaning. A smoker licensing scheme deserves serious consideration for its potential to dramatically curtail retailers' violation of the law against selling tobacco to minors, to impose stricter accountability for sale of a uniquely harmful drug and to allow intelligent use of information about smokers' purchases to help smokers quit.

themselves.¹⁰ In an environment where nearly a third of tobacco smoked by adolescents is sourced through illegal sales by tobacco retailers, the requirement for retailers to verify that every pack sold is purchased by an adult is long overdue. Even if a smokers licence results in some increase in secondary purchasing by adults for children, the overall reduction in access by minors would be substantial and could eclipse any other single tobacco control measure currently under consideration.

In 2010, the average age for smoking initiation among people aged 14–19 years was 14.9 years.⁹ Reducing tobacco purchases by adolescents is central to the future course of the current epidemic of tobacco-caused disease, since most adult smokers began to smoke as children or adolescents, at a time when they were unable to purchase tobacco lawfully.

The administration of a smart-card licence would require all tobacco retailers to be identified and licensed.¹¹ Four jurisdictions (South Australia, Western Australia, Tasmania and the Australian Capital Territory) already administer tobacco retail-licensing schemes. A retailers licence shares the goal of eliminating supply-side retailer violations, by

making compliance with age-based restrictions and other controls a condition of the licence to sell tobacco products. However, the requirement for adults to present a licence when purchasing tobacco is a demand-side response that would complement supply-side controls, since it would enable health departments to audit tobacco retailers at any time. Tobacco retailers subjected to audit would be required to provide a reconciliation between the stock of tobacco supplied to them by wholesalers and the electronic data trail of retail sales to licensed adults.

In order not to undermine the integrity of a point-of-sale licence verification scheme, Australia would be wise to follow the United States, which, for different reasons, has substantially curtailed internet and mail-order sales by making tobacco products non-mailable matter through the US Postal Service, with limited exceptions.¹² Non-US Postal Service carriers are permitted to accept internet orders for tobacco products and to send parcels containing tobacco, provided that the purchaser's identity is verified through an identity authentication database at the time the order is placed and an adult verifies his or her identity with photo identification at the time of signing to accept delivery.¹² In Australia, if mail-order and internet tobacco sales are permitted, they should be limited to adults in genuinely remote areas who present their smokers licence on collection. The integrity of these controls would be further enhanced by prohibiting direct, small-scale imports of tobacco products into Australia.

It has been estimated that in Australia in 2005, tobacco companies received over \$15 million from children, while retailers received \$9 million.¹³ The 2010 National Drug Strategy Household Survey found overwhelming support from the Australian public for stricter enforcement of laws against supplying minors (89% of those surveyed), and strong support for a licensing scheme for tobacco retailers (70%).⁹

Helping adult smokers to quit

Between 1985 and 2010, daily smoking rates among people aged 14 years or older halved from 30% to 15%. Despite this, there are still around 2.8 million daily smokers in Australia, and annual deaths from smoking continue to exceed deaths from alcohol and illicit drugs combined.¹⁴ Evidence shows that almost two-thirds of smokers regret their habit and wish they could quit.^{15,16} Could a smokers licence help them?

First, electronic monitoring of smokers' purchases will enable health authorities to detect patterns and variations in smokers' behaviour and to develop more sophisticated, individualised communications to assist smokers to quit. Second, it will enable rigorous evaluation of smoking cessation programs, ensuring that public health dollars are focused on evidence-based strategies that yield the best returns. Third, a smart-card licence will make it possible, for the first time, to gain a detailed understanding of smokers' purchasing behaviour in response to industry incentives such as retail price discounts. Incentive payments and price supports paid by tobacco manufacturers to retailers are a largely invisible form of tobacco promotion and remain untouched by any tobacco laws in Australia.^{17,18} In the US in 2010, these payments accounted for

\$6.5 billion — 81% of all tobacco advertising and promotional expenditure.^{19,20}

Objections to a smokers licence

“But it's a legal product”

One of the enduring achievements of the tobacco industry is that, despite four decades of tobacco control, there has been little disruption to the underlying cultural assumption that a product — even a product that was responsible for 100 million deaths in the 20th century and, if current trends persist, will be responsible by 2030 for 10 million deaths each year²¹ — should be traded on market principles. We agree with Chapman that this notion needs to be quashed.

That does not mean, however, that tobacco should be banned, as some have advocated.²² Prohibiting tobacco at the present time would be likely to encourage a black market. Calls for a ban on smoking, and other “endgame scenarios”, are a distraction from the next generation of tobacco control policies — the constraints on supply *and* demand — that need to remain the focus as we work towards achieving a daily smoking prevalence that is a fraction of the current rate.

Loss of government revenue

The tobacco industry is likely to assert that a smokers licence will lead to widespread evasion of excise and goods and services tax by consumers, who will resort to small-scale, direct imports of tobacco products, rather than obtain a smokers licence. This claim seems implausible if a smokers licence is priced within reach of any adult who wants to obtain one. To minimise the risks of onselling and direct imports, it would be wise to charge no more than necessary for cost recovery under the scheme. The real savings will come from health care costs avoided by successful quitting. One option worth considering would be whether to completely waive the cost of the annual licence fee for smokers who were willing to disclose their mobile phone and email details to the licensing authority. This would create additional communication channels for smokers who agreed to benefit from carefully tailored smoking cessation support.

Big Brother

Requiring all smokers to present a licence, while tracking their cigarette purchases digitally, might be feasible in some countries, but will Australians tolerate it?

Australians' distrust of the Australia card proposal, in the pre-internet era, revolved principally around “function creep” — the fear that government-controlled personal information would subtly, over time and without consent, come to be used for an expanding set of purposes. In this century, Australians have embraced mobile devices, online banking, Facebook, Twitter and membership in voluntary rewards schemes that collect data on individual patterns of retail purchase. Flybuys, for example, collects data on patterns of purchasing of over 10 million cardholders.²³

By and large, Australians have opted for connectivity over data seclusion, relying on privacy laws and complaints schemes to guard against breaches of privacy. Australians

Evaluation of key design features of Chapman's smoker licensing scheme¹

Possible advantages	Possible disadvantages
Core features	
<i>Smart card licence: adults wishing to purchase tobacco products must present a smart-card licence at point of sale to electronically verify their age and identity*</i>	
<ul style="list-style-type: none"> Individual patterns of tobacco purchases traced; data used for individualised quitting support Data trail allows verification of whether all tobacco supplied to retailers was sold to adults Data trail allows better understanding of smokers' behaviour (eg, in response to retail price variations and discounts) Data trail allows detailed tracking of smokers' responses to smoking cessation programs and initiatives Data trail allows monitoring of the impact of cigarette price discounting by retailers Retail licensing controls extend accountability throughout the tobacco supply chain, from growers, dealers and manufacturers to retailers and adult smokers 	<ul style="list-style-type: none"> May cause some smokers to feel they are "registered addicts" and add to the stigmatisation of smokers Creates a historical database of adult smokers; recent activation of the licence implies current smoking. Privacy laws need to ensure data are protected and used only for authorised purposes Scheme would need to cover pipe tobacco, cigars and waterpipes or risk creating market distortions in favour of these products, all of which share a significant risk profile³⁻⁵
Non-core features	
<i>Licence categories: licence holders would self-select into one of several categories of smoking intensity; licences with a higher purchase limit would cost more</i>	
<ul style="list-style-type: none"> Pre-commitment to a daily maximum would highlight to smokers their actual consumption; may motivate some smokers to quit or reduce consumption Higher cost of licence with a higher consumption limit may encourage moderation 	<ul style="list-style-type: none"> Some may overcommit to avoid the risk of running out of cigarettes, to moderate the impact of limits on bulk purchases, or to acquire flexibility to purchase tobacco for other people (eg, non-licensed smokers)
<i>Purchase limits: licence holders could only purchase 2 weeks' supply at a time, based on their daily maximum</i>	
<ul style="list-style-type: none"> Limiting bulk purchases may create a disincentive to sharing cigarettes, and to the social marketing of tobacco use 	<ul style="list-style-type: none"> Some people (smokers and non-smokers) might choose a high licence category and onsell cigarettes in a way that undermines purchase limits
<i>Annual renewal of licence</i>	
<ul style="list-style-type: none"> Cost of renewal would not be trivial; this may encourage some smokers to quit Annual renewal would disproportionately affect people on low incomes (who smoke more and are more sensitive to price increases) 	<ul style="list-style-type: none"> Annual renewal fee is an additional economic barrier to purchasing cigarettes; this may encourage onselling and result in hidden consumption, undermining the value of data obtained at point of sale
<i>Licence surrender refund: smokers could permanently surrender their licence to receive a refund of all licence fees previously paid, with compound interest; after a 6-month "cooling off" period, the licence could not be taken up again</i>	
<ul style="list-style-type: none"> Refunding previous licence fees could provide a significant financial incentive to quit 	<ul style="list-style-type: none"> Smokers who relapse after licence surrender could not lawfully purchase tobacco at retail and may resort to direct imports, informal sales or the black market Smokers may strategically surrender their licence for a cash bonus, thereafter purchasing tobacco informally from other smokers (or non-smokers) who have a high licence limit The licensing scheme would not be self-funding if smokers could claim a refund of all licence fees previously paid
<i>Temporary licences available for purchase by international travellers verified as adults at ports of entry</i>	
	<ul style="list-style-type: none"> Adds to overall complexity
<i>Knowledge test: to qualify for a licence, adults must pass a knowledge test about the risks of smoking</i>	
<ul style="list-style-type: none"> Risk-minimising, self-exempting and rationalising beliefs are well recognised features of smoking behaviour.⁶ Most smokers know smoking is unhealthy, but are not well informed about the magnitude of their individual risk and the full range of possible harms. A pre-licence knowledge test may encourage some not to take up smoking; it also ensures that the decision to smoke is more informed 	<ul style="list-style-type: none"> Consistent with tobacco industry preferences, the knowledge test requirement frames tobacco use as a "risky choice by informed individuals", diverting attention away from the industry's conduct Shifts the focus away from supply-side controls (on tobacco manufacturers and retailers) to demand-side controls (on individuals) Could be used in legal proceedings to exempt the tobacco industry from liability for harm caused by its products, based on the smoker's "voluntary assumption of risk"^{7,8}
<i>Minimum purchasing age: over time, the minimum age for obtaining a licence to purchase tobacco might increase above 18 years</i>	
<ul style="list-style-type: none"> Adult smoking rates may fall significantly if the minimum age for eligibility for a licence is increased up to the age (eg, 23 years) after which it is unlikely that a person will take up smoking 	<ul style="list-style-type: none"> Adults who become addicted to smoking while still ineligible for a licence will be forced to purchase tobacco informally (eg, through onselling, direct imports)

* Could be implemented nationally under Commonwealth law, by states and territories acting together, or it could be trialled by individual states. Additional regulations, including a ban on online and mail-order tobacco sales, would be best implemented at Commonwealth level. Data security and privacy laws to protect data generated at point of sale could be implemented at either Commonwealth or state levels. ◆

seem to have few Big Brother fears about Medicare and the Pharmaceutical Benefits Scheme, although these are vast, national databases of the medical services we use and the drugs we are prescribed. As with other kinds of medical information, the data generated by a smokers licence should be rigorously protected under privacy and data security laws.

Stigma

Perhaps the most significant objection to a smokers licence is that it would exacerbate the stigmatisation of smokers.

Collin, in his article answering Chapman, fears that smokers would feel they were being treated like "registered addicts", and that, given the social gradient of smoking, a smokers licence would also amount to "censuring the poor".²⁴ He alludes to an important challenge for governments: tobacco control strategies have not been equally successful across all socioeconomic strata, and those who continue to smoke are more likely to have lower levels of education and income.⁹ This means that as smoking rates fall, all smoking-cessation interventions — especially those that aim to assist disadvantaged smokers — are at risk of

being framed as “targeting the poor”. There is room for debate about the point at which policies intended to reduce socioeconomic disparities in health, such as higher tobacco taxes, cease to further this objective, and simply exacerbate poverty.²⁵ On the other hand, if we want to make progress in reducing disparities in health, it is important not to point to the disparities themselves as grounds for doing nothing. It is also important for public health policies not to undermine the dignity of individuals, including those who wish to smoke. However, a smokers licence protects choice: it does not impose a smoke-free lifestyle on adults who cannot, or who choose not to, give up.

The bottom line

Australia remains a leader in tobacco control, having recently implemented the *Tobacco Plain Packaging Act 2011* (Cwlth)^{26,27} and extended the *Tobacco Advertising Prohibition Act 1992* (Cwlth) to ban tobacco advertising on the internet or using telecommunications devices. Other priorities have been signalled by the National Preventative Health Taskforce.²⁸ They include:

- mandatory reporting of advertising and promotional expenditures by tobacco manufacturers;
- restrictions on price supports paid by tobacco manufacturers to tobacco retailers;
- the elimination of all duty-free allowances for tobacco; and
- restrictions on internet and mail-order tobacco sales.

There is evidence that the density of tobacco retailers in Australia is higher in areas of socioeconomic disadvantage,^{29,30} even after controlling for smoking prevalence.²⁹ Research also suggests an association between the proximity of tobacco outlets to schools and adolescent smoking.^{31,32} Creating legal mechanisms to give local councils greater control over the location and density of tobacco outlets is a priority for tobacco control³³ that could help to reduce an environmental contributor to socioeconomic health disparities.³⁴

Once we get beyond the “shock of the new”, it is difficult to identify anything about a smokers licence that is particularly offensive or demeaning, given what we know about smoking. The concept of a smokers licence balances the reality of mass demand for tobacco in Australia against the fact that smoking is highly addictive and leads to the premature death, by about two decades, of one in two long-term smokers.³⁵

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- 1 Chapman S. The case for a smoker's licence. *PLoS Med* 2012; 9: e1001342. <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001342> (accessed Jun 2013).
- 2 *Public Health (Tobacco) Act 2008* (NSW) ss. 22-25.
- 3 Baker F, Ainsworth SR, Dye JT, et al. Health risks associated with cigar smoking. *JAMA* 2000; 284: 735-740.
- 4 Henley SJ, Thun MJ, Chao A, Calle EE. Association between exclusive pipe smoking and mortality from cancer and other diseases. *J Natl Cancer Inst* 2004; 96: 853-861.
- 5 WHO Study Group on Tobacco Product Regulation (TobReg). Waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators. TobReg advisory note. Geneva: World Health Organization, 2005. http://www.who.int/tobacco/global_interaction/tobreg/waterpipe/en (accessed Jun 2013).
- 6 Oakes W, Chapman S, Borland R, et al. “Bulletproof skeptics in life's jungle”: which self-exempting beliefs about smoking most predict lack of progression towards quitting? *Prev Med* 2004; 39: 776-782.

- 7 *Pou v British American Tobacco (New Zealand) Ltd*, High Court of New Zealand, Lang J, 3 May 2006, 346 and ff. Unsuccessful claim. <http://www.nzlii.org/nz/cases/NZHC/2006/451.html> (accessed Jul 2013).
- 8 *McTear v Imperial Tobacco Ltd* [2005] Scot CS C50H_69 (31 May 2005), [7175]-[7181]. http://www.bailii.org/scot/cases/ScotCS/2005/C50H_69.html (accessed Jun 2013).
- 9 Australian Institute of Health and Welfare. 2010 National Drug Strategy Household Survey report. Canberra: AIHW, 2011. (AIHW Cat. No. PHE 145; Drug Statistics Series No. 25.) <http://www.aihw.gov.au/publication-detail/?id=32212254712> (accessed Jun 2013).
- 10 White V, Barola E. Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2011. Report prepared for Drug Strategy Branch, Australian Government Department of Health and Ageing. <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/school11> (accessed Jun 2013).
- 11 The Allen Consulting Group. Licensing of tobacco retailers and wholesalers: desirability and best practice arrangements. December 2002. Report to the Commonwealth Department of Health and Ageing. <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-res-license> (accessed Jun 2013).
- 12 Prevent All Cigarette Trafficking Act of 2009 (PACT Act). PL. 111-154. <http://www.gpo.gov/fdsys/pkg/PLAW-111publ154/content-detail.html> (accessed Jun 2013).
- 13 National Preventative Health Taskforce. Australia: the healthiest country by 2020. Technical report 2. Tobacco control in Australia: making smoking history. Canberra: Commonwealth of Australia, 2009. <http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/tech-tobacco> (accessed Jun 2013).
- 14 Australian Institute of Health and Welfare. Australia's health 2012. Canberra: AIHW, 2012. (AIHW Cat. No. AUS 156; Australia's Health Series No. 13.) <http://www.aihw.gov.au/publication-detail/?id=10737422172> (accessed Jun 2013).
- 15 Centre for Epidemiology and Research. New South Wales Population Health Survey. 2008 Report on adult health. Sydney: NSW Department of Health, 2009. <http://www.health.nsw.gov.au/publichealth/surveys/hsa/08.asp> (accessed Jun 2013).
- 16 Fong GT, Hammond D, Laux FL, et al. The near-universal experience of regret among smokers in four countries: findings from the International Tobacco Control Policy Evaluation Survey. *Nicotine Tob Res* 2004; 6 Suppl 3: S341-S351.
- 17 McCarthy M, Scully M, Wakefield M. Price discounting of cigarettes in milk bars near secondary schools occurs more frequently in areas with greater socioeconomic disadvantage. *Aust N Z J Public Health* 2011; 35: 71-74.
- 18 Magnusson R. Using a legal and regulatory framework to identify and evaluate priorities for cancer prevention. *Public Health* 2011; 125: 854-875.
- 19 Federal Trade Commission. Cigarette report for 2009 and 2010. <http://www.ftc.gov/opa/2012/09/tobacco.shtml> (accessed Jun 2013).
- 20 Pierce JP, Gilmer TP, Lee L, et al. Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking. *Health Econ* 2005; 14: 1061-1071.
- 21 Peto R, Lopez AD. Future worldwide health effects of current smoking patterns. In: Koop CE, Pearson CE, Schwarz MR, editors. *Critical issues in global health*. San Francisco: Jossey-Bass, 2001: 154-161.
- 22 How do you sleep at night, Mr Blair [editorial]? *Lancet* 2003; 362: 1865.
- 23 Flybuys (Australia). Website. <https://www.flybuys.com.au/export/sites/default/flybuys/content/information/mediacentre/FlyBuysFastFacts.pdf> (accessed Jul 2013).
- 24 Collin J. The case against a smoker's licence. *PLoS Med* 2012; 9: e1001343.
- 25 Sugarman SD. A balanced tobacco control policy. *Am J Public Health* 2003; 93: 416-418.
- 26 Mitchell AD, Studdert DM. Plain packaging of tobacco products in Australia: a novel regulation faces legal challenge. *JAMA* 2012; 307: 261-262.
- 27 Currow DC, Dossaix A. Plain packaging for tobacco products. *BMJ* 2011; 343: d5693.
- 28 National Preventative Health Taskforce. Australia: the healthiest country by 2020. National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia, 2009. <http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap> (accessed Jun 2013).
- 29 Kite J, Rissel C, Greenaway M, Williams K. Tobacco outlet density and social disadvantage in New South Wales, Australia. *Tob Control* 2012; 14 Dec. [Epub ahead of print.] doi: 10.1136/tobaccocontrol-2012-050648.
- 30 Wood LJ, Pereira G, Middleton N, Foster S. Socioeconomic area disparities in tobacco retail outlet density: a Western Australian analysis. *Med J Aust* 2013; 198: 489-491.
- 31 Henriksen L, Feighery EC, Schleicher NC, et al. Is adolescent smoking related to density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med* 2008; 47: 210-214.
- 32 Perez DA, Grunseit AC, Rissel C, et al. Tobacco promotion 'below-the-line': exposure among adolescents and young adults in NSW, Australia. *BMC Public Health* 2012; 12: 429.
- 33 Miura M, Berman M, Dodds W. Tobacco retail licensing: local regulation of the number, location, and type of tobacco retail establishments in New York. Boston: Center for Public Health and Tobacco Policy at New York Law, October 2010. <http://www.tobaccopolicycenter.org/documents/Licensing%20Report%20UPDATED%205-4-12%20with%20cover%20template.pdf> (accessed Jun 2013).
- 34 Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health* 2013; 127: 333-338.
- 35 Jha P. Avoidable global cancer deaths and total deaths from smoking. *Nat Rev Cancer* 2009; 9: 655-664. □