

Enforcement of Tobacco Control Policies: Global Best Practices



Ministry of Health and Family Welfare
Government of India

Shoba John

HealthBridge

ENFORCEMENT OF TOBACCO CONTROL POLICIES: GLOBAL BEST PRACTICES

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HEALTHBRIDGE

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Disclaimer: The practices enlisted in this report have been reported by various international jurisdictions. Government of India, World Health Organization or HealthBridge is not responsible for any views or representations therein.

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FOREWORD

Tobacco use is the single largest cause of preventable death in the world today. Tobacco kills a third to half of all people who use it, on an average 15 years prematurely. Today tobacco use causes 1 in 10 deaths among adults worldwide - more than five million people a year and nearly one million of these will occur in India.

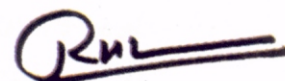
The estimates from the latest round of NFHS-3, 2006-07 indicate an increasing prevalence of tobacco consumption in India, with 57% males and 10.9% females reportedly consuming tobacco in some form or the other. Tobacco problem of India is more complex than probably any other country in the world because of the existence of a variety of forms of tobacco use.

India has been among the front runner countries to sign and ratify the WHO-Framework Convention on Tobacco Control (FCTC). A comprehensive Tobacco Control Act called "The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution") Act, 2003 has also been formulated encompassing most of the provisions of FCTC.

Further the Government of India has now launched the National Tobacco Control Program (NTCP) in the 11th Five Year Plan to implement the Anti-Tobacco Laws and bring about greater awareness about the ill-effects of tobacco consumption. The pilot phase has been launched in 18 Districts covering 9 States.

The enforcement of tobacco control laws to benefit the communities seems to be the next major challenge. The experience of other countries in enforcing the tobacco control policies would stand us in good stead in this endeavour. It would enable us in terms of learning the global best practices, avoiding pitfalls, and adapting the strategies to our context.

The compilation of international best practices in the enforcement of key tobacco control policies by HealthBridge will provide us a blueprint for successful implementation of tobacco control initiatives. I hope this compilation provides a strategic direction to all enforcement agencies, officers, civil society & media working to reduce tobacco's hazards.



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LIST OF ABBREVIATIONS

1. ACASH : Association for Consumers Action on Safety and Health
2. ACT : Aliança de Controle do Tabagismo
3. APS : Advertising, Promotions and Sponsorship
4. CFTFK : Campaign for Tobacco Free Kids
5. CNCT : Comité National Contre le Tabagisme
6. COTPA : Cigarettes and Other Tobacco Products Act, 2003
7. CPB : Consumer Protection Bureau
8. DGHS : Directorate General of Health Services
9. DVD : Digital Video Disc
10. EMRO : Eastern Mediterranean Regional Office(IUATLD)
11. FCTC : Framework Convention on Tobacco Control
12. GOI : Government of India
13. IUATLD : International Union Against Tuberculosis and Lung Diseases
14. LACORS : Local Authorities Coordinators of Regulatory Services
15. MOHFW : Ministry of Health and Family Welfare
16. NGOs : Non Governmental Organisations
17. OCT : Office of Tobacco Control
18. PAHO : Pan American Health Organisation
19. POS : Point of Sale
20. THPI : Thai Health Promotion Institute
21. TIOJ : Tobacco Institute of Japan
22. UNICEF : United Nations International Children's Education Fund
23. UK :United Kingdom
24. WHO :World Health Organization

INTRODUCTION

The tobacco epidemic is one of the major public health threats facing India today, with one million deaths predicted from tobacco-related illnesses by 2010. Comprehensive tobacco control policies and programme are required to rein in this epidemic.

The Government of India has already taken several steps to address the challenges caused by tobacco use. The Cigarettes and Other Tobacco Products Act, 2003 is a landmark policy effort in this direction. However, the enforcement and compliance with the law at the national and sub-national levels need to be undertaken in a concerted manner to achieve effective implementation.

This report presents international best practices in the implementation of evidence-based tobacco control measures and seeks to identify elements for effective policy enforcement that are applicable to India. The report focuses on global enforcement practices for four tobacco control measures that are significant to the implementation of the Indian tobacco control law: bans on tobacco advertising, promotion and sponsorship; bans on smoking in public and workplaces; packaging and labeling policies; and regulation of youth access to tobacco.

Towards this end, information was sought from forty national and sub-national jurisdictions through fifty five contact points. Nearly 30 jurisdictions provided information of diverse nature and extent across the four areas of study.

Among the jurisdictions that are included in this report, enforcement protocols seem to be the most developed, refined, and available with regard to smoke-free policies, followed closely by youth access regulations. Jurisdictions tend to combine the implementation of packaging and labeling regulations with the enforcement of youth access regulations or customs compliance. Fewer jurisdictions reported protocols for tobacco advertising bans. Several of the jurisdictions still require further time to process their protocols.

The report is organised into five Chapters:

Chapter 1 - Key Elements of Tobacco Control Policy Enforcement - provides a synthesis of the strategies that emerge from the case studies of best practices and are critical for the enforcement of all the tobacco control policies under discussion.

Chapters 2 to 5 provide a brief analysis of the best practices engaged by case study jurisdictions in enforcing ad bans, smoking bans, packaging laws, and youth access regulations respectively. Each of these issues is placed in the context of the FCTC obligations and the requirements under India's tobacco control laws. Each chapter also

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summarises the lessons learned across the experiences with regard to each policy area.

The report brings to light concrete steps to initiate, sustain, evaluate, and improve enforcement of tobacco control laws and policies. These range from firm legislative background, development of protocols, allocation of resources, capacity building of enforcement machinery, and political will to “enforce” enforcement.

The report also brings to light the need for prioritisation in enforcement - prioritising in terms of the issues of focus, practices to be adopted, and resource allocation.

Chapter-1

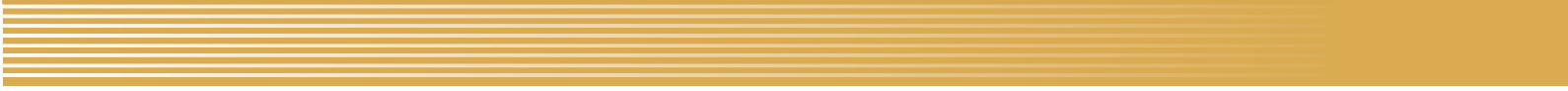
Key Elements of Tobacco Control Law Enforcement

Experiences of countries across the globe demonstrate that there are a number of key elements to successful tobacco control inspection and enforcement programs. Each of these elements is outlined in the chapters that follow and are summarized here.

- **Develop comprehensive legislation** that includes few, if any, loopholes. All governments have the power to enforce the laws that exist, however, they must constantly assess the need to strengthen those laws and take action to do so, if necessary.
- **Provide a clear interpretation of the law to ensure understanding of legal requirements** on the part of businesses, the public, and inspectors and enforcers. Governments can provide guidelines to businesses via brochures, posters, instructional DVDs, the Internet, and similar means.
- **Develop inspection, investigation, and enforcement tools** such as, guidelines, protocols, and procedures for inspectors.
- **Ensure collaboration**, coordination, and information sharing among authorities charged with inspection.
- **Sensitize and train** inspection and enforcement personnel.
- **Sensitize the public** about the need for the law and gain public support for the new tobacco control policies. This can be done through media campaigns, brochures, web sites, and other means.
- **Engage** civil society not affiliated with the tobacco industry and elaborate a specific role for it in monitoring, reporting violations, and initiating legal action (where legally authorized) in the case of violation.
- **Establish a complaints procedure** to receive reports of violations and follow them up, for example through a complaint line.
- **Anticipate associated issues** (litter, noise) and strategies to handle them.
- **Bring media attention to violations** and seek early visible enforcement action.
- **Standardize enforcement procedures**, forms and records, systematic record-keeping, and tracking of compliance data.
- **Review and revise guidelines**, protocols and procedures as necessary to keep up with evasion tactics and questions and issues that arise/

Box1.1: Key Components of a Tobacco Control Enforcement Manual

- **What to inspect:** This means identifying what premises/things (for example, priority workplaces, public places, public transport, manufacturing and import facilities, retail facilities, newspapers, magazines, web sites, etc.) will be inspected proactively.
- **How inspections will be prioritized:** In order to maximise compliance and optimise resources, premises are to be prioritised for inspections based on criteria such as:
 - where it has been previously customary for people to smoke
 - where managers may not realise the applicability of the law to their premises
 - where compliance is apparently challenging
 - where management is likely to use exemptions in the law to their premises
 - which are open to substantial numbers of people
 - where there are no pre-existing voluntary controls
 - which are not usually visited by enforcement officers
- **How effectiveness and efficiency will be maximized:** this means incorporating inspections for tobacco control into other programmed inspections where legally possible and feasible. For example, smoke-free law. For example, inspections can be incorporated into health and safety, food safety, consumer safety, building control, and licensing inspections.
- **Who will inspect:** this means, where the law leaves room for the appointment of inspectors, determining which ministries or authorities at which levels of government will carry out inspections. For example, a range of agencies and authorities for inspection can be authorized to inspect within their respective realms of authority, such as health, environmental, workplace health and safety agencies customs, police.
- **What constitutes a violation:** this means elaborating legal duties and clearly indicating what constitutes a breach of the law.
- **What sanctions to apply:** Where the law provides discretion, this means establishing sanction imposition criteria. For example, sanctions may be based on:
 - scope and caused severity of the violation, potential for resulting harm
 - aggravating and/or mitigating circumstances
 - whether it is a first or repeat offence, or a continuing offence
 - degree of legal responsibility of the violator and its ability to assert control over the situation
- **How to record inspections and investigations:** this means developing inspection and investigation forms and checklists, providing guidance on evidence to be collected and how it should be preserved, and identifying where, how, and when to file inspection/investigation reports.
- **What follow-up is required:** this means establishing criteria against which to determine whether or not to re-inspect or re-investigate.
- **How fairness, consistency, and transparency in inspections and enforcement will be assured:** this means ensuring Proportionality- (of enforcement action to risks and costs), Consistency- (using similar approaches in similar circumstances to achieve similar ends) and Transparency (in conveying legal expectations, rational thereof, suggested remedial action, intention for formal enforcement action if any).

- 
- **Ensure sufficient legal and other staff** to review violations and ensure they are acted upon.
 - **Establish a mechanism for evaluating the effectiveness of the inspection and enforcement process.** For example, the number of inspections, number of cases taken forward, number successfully prosecuted, data trends, and results reporting, should all be tracked.

Chapter -2

Enforcement of Smoking Regulations

2.1. CONTEXT

This chapter addresses the enforcement of smoking regulations applicable to all enclosed public places, workplaces, and public transport at national and sub-national levels.

2.2. FCTC REQUIREMENTS

Article 8 of the FCTC requires Parties to the treaty to undertake legislative, executive, and administrative or other measures at appropriate jurisdictional levels to provide protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and other public places. Article 8 Guidelines unanimously adopted by Parties to interpret FCTC Article 8 as requiring Parties to protect all persons from second-hand smoke at these places.

2.3. STIPULATIONS UNDER INDIAN TOBACCO CONTROL LEGISLATION

The Cigarettes and Other Tobacco Products Act, 2003 (COTPA), the Indian law curbing smoking in public places, currently requires that all enclosed public places, public transport, and certain open public places where people gather for considerable time (such as open auditoriums, stadiums, railway stations, and bus shelters) be smoke-free and display no-smoking signs as in **Figure 2.1**.

Figure 2.1 Indian No-Smoking Signage



Nevertheless, highly restricted smoking areas are allowed in airports, hotels with 30 or more rooms, and restaurants having seating capacity of 30 persons or more. From 2 October 2008, all workplaces (other than those above exempted by the law) are also required to be smoke-free. The Prohibition of Smoking in Public Places Rules, 2008 identified the officers responsible for the enforcement of smoke-free places (**Annexure 2.1**).

Managers and owners of public places are required to display no-smoking signage at the entrance(s) of their establishments as well as at other conspicuous places inside. In the case of multi-storied hotels and restaurants, the signage is to be placed on each floor, including in the staircases and the lift entrances. In addition to the signage, they must also clearly indicate to whom complaints could be made when the regulations are violated. Under the Indian law, fines up to Rs. 200/- can be levied against smokers; in addition the manager/owner of the premises can be fined an amount equal to the total fine for the individual offences in that premises. The Government is currently considering increasing these fines.

Where smoking would continue to be permitted in designated smoking areas/spaces (airports, restaurants, and hotels), the smoking section is to be distinctly marked in both English and a locally applicable Indian language. The designated smoking area must be physically segregated by four floor-to-ceiling walls with negative air pressure maintained and separate ventilation to prevent non-smokers' exposure to second-hand smoke. The designated smoking areas are not to be located at the entrance or exit of the permitted premises, and non-smokers should not be required to pass through the smoking section to reach the non-smoking area. No service of any kind is allowed in the smoking area.

In the case of hotels with 30 or more rooms, the designated smoking rooms are to be limited to just one floor or wing and clearly separated by signs from the non-smoking rooms; they must also be separately ventilated to the outside of the building. Indian cities like Chandigarh and towns of Varnavasi in Tamil Nadu, Jhunjunu in Rajasthan and Chichgohan in Madhya Pradesh have made recent, concerted efforts to go completely smokefree.

The examples below highlight how some of the leading jurisdictions have approached their guidelines for inspectors and how they have addressed matters such as whom and what to inspect. These different experiences can be pieced together to form a cohesive set of guidelines at the appropriate time.



Figure 2.2: Logo of Smokefree Chandigarh Campaign

2.4. CASE STUDIES OF INTERNATIONAL BEST PRACTICES

A. Enforcement of Smoke-Free Policies at the National Level

1. EGYPT

Egypt introduced new tobacco control legislation in June 2007. This legislation requires the enforcement of 100% smoke-free policy in all public buildings, governmental workplaces, educational and health institutions, social and sports clubs, youth centres, and public transportation. Sanctions include fines and penalties to non-compliant institutions. Penalties and fines are levied against both those in charge of such institutions and the individuals who break the law.

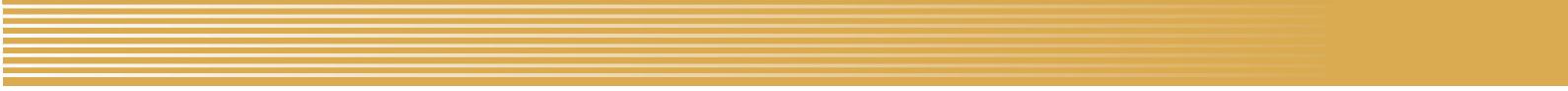
The law established a Directorate of Tobacco Control within the Ministry of Health that has an independent budget allocated for tobacco control activities and requires the collaboration of all Government departments concerned. The staff working for this directorate will be authorised to inspect smoke-free premises and the law will be fully enforced after the finalization of detailed by-laws¹.

2. England

England went smoke-free in all public places and enclosed and substantially enclosed workplaces (including in bars and pubs) on 1 July 2007. The Department of Health, in collaboration with Local Authority coordinators of Regulatory Services (LACORS) and the Chartered Institute of Environmental Health, developed guidance materials for local council regulatory officers and undertook training of the officers.

Guidance to enforcers includes a manual that details the background of the legislation, the enforcement approach, legislative requirements, enforcement agencies, inspections, operational procedures, data collection, and working with the media. This has been supplemented with on-going advice materials on dealing with emerging issues such as noise, litter, and smoke infiltration. A separate advisory has been provided to enforcers on dealing with special areas such as mental health units and prisons and provides best practices on providing information to the public and on signage.

Enforcers' training also includes media training to expand enforcement efforts. A sample media interview prompter is found in **Annexure-2.2**. There is also on going on-line training made available by Trading Standards Institute.



UK's Enforcement Approach suggests that the first step should be educational, advisory, and non-confrontational approach. If non-compliance is due to misunderstanding or lack of diligence, further information, advice, and guidance is provided. Where an un-cooperative or antagonistic attitude persists, then enforcement measures are pursued. A flow chart describing the enforcement action is found in **Annexure- 2.3**.

Inspections: England uses both proactive (i.e. to confirm compliance) and reactive (in response to complaints) inspections to ensure compliance. In the case of proactive inspections, England uses extended criteria to prioritise inspections, which is of relevance to jurisdictions in India in terms of optimising resources and enforcement outcomes. Visits are to be focussed on locations where:

- it has been previously customary for people to smoke;
- managers may not realise the applicability of the law to their premises;
- legislative proposals have been altered during the parliamentary process;
- compliance is apparently challenging (such as bars);
- management is likely to use exemptions in the law to their premises;
- substantial numbers of people gather;
- there are no pre-existing voluntary controls; and
- visits by enforcement officers are rare.

Enforcement guidance suggests that, over a period of time, an inspection programme could be developed that targets businesses most at risk of non-compliance based on

- confidence in the management;
- history of compliance; and
- complaints received from the Compliance line and other information sources

Linkages between Various Regulatory Authorities: Councils are required to treat information or intelligence from other regulatory bodies at par with that arising from the Smoke-free Compliance Line. A protocol of linkages between a variety of agencies and regulators is also being drawn up.

Funding Implementation: The UK Department of Health has made budget allocations towards the costs of implementation of the smoke-free legislation. This money is transferred to local councils for implementation purposes.

3. France

France introduced prohibitions on smoking in public places in February 2007. A significant strategy that helped with the French smoke-free implementation was the establishment of a working group that consisted of parliamentarians, government and

non governmental organisations, and trade unions representing workers in the hospitality sector. All of these groups worked together over a two year period to make France smoke-free. The role of the working group was to air concerns, clear myths, identify and address barriers to implementation, secure consensus among hospitality trade unions, isolate tobacco industry, and utilize the strengths and skills that existed in the trade unions.

The French experience identified the following key steps to successful smoke-free policy implementation²:

- a) Designate the authorities responsible for enforcement;
- b) Develop training for enforcement authorities;
- c) Provide material to businesses to enable successful enforcement (signage, guidance);
- d) Anticipate associated issues (litter, noise) and strategies to handle them;
- e) Show the political will to enforce;
- f) Apply model sanctions and expose the violations in the media;
- g) Conduct regular inspections; and
- h) Monitor regularly and communicate on progress and support for legislation.

4. Hong Kong

In 2006, a revised tobacco control law in Hong Kong extended no-smoking areas to the indoor areas of all workplaces including restaurant premises, bar, karaoke establishments, other public places, and markets.

Detailed guidance materials have been developed for restaurants, workplaces and schools which detail the responsibilities of managers and staff, the procedure to deal with smoking offences (as in **Annexure-2.4**), conducting staff training, removing ashtrays, prohibiting tobacco sales in restaurants, displaying signage, and encouraging staff who smoke to quit³. The Guide for Workplaces⁴ details the steps in implementing a smokefree workplace policy as detailed in **Annexure- 2.5**.

5. Republic of Ireland

The Republic of Ireland has 40 dedicated environmental health officers for tobacco control whose responsibilities include enforcing the smoke-free workplace legislation. In addition, 400 environmental health officers and a

Figure 2.3 Model “No Smoking” Signage- Ireland



further 100 inspectors from the Health and Safety Authority support these tobacco control efforts.

As a first step, guidance materials were provided to businesses (**Annexure-2.6**). As per Irish enforcement protocol, following inspection, either a warning is issued or prosecution recommended. A decision to recommend prosecution is based on the nature of offence, the history of offender, and the efforts made by the offender to comply with the legislation⁵.

Reporting Violation: The Office of Tobacco Control maintains and manages a telephone line for reporting non-compliance (Lo-Call Compliance Line). In the case of a violation, members of the public are required to first register their complaint with the responsible entity in the establishment where the offence took place. In the event of an unsatisfactory response, the complaint could be registered with the Lo-Call Compliance Line.

The manager or other person in charge of the premises is also required to keep a record of incidence of violations.

Evaluating Enforcement: Ireland undertook an evaluation of its enforcement efforts to inform its enforcement strategy and to improve compliance (measurements were taken at intervals of 1 month, 6 months, 9 months and one year). In addition to high compliance levels (94% at enclosed workplaces, 98% in pubs) reported after only one month of the legislation coming into effect), the evaluation also indicated change in attitude and behaviours, leading to an increase in non-smoking workplaces and benefits to worker health, along with increased patronage of restaurants and pubs⁶. All evaluation reports are published and available on the website of Office of Tobacco Control, Ireland⁷.

6. Panama

Panama has put in place a comprehensive prohibition on smoking that covers all enclosed public places, private and enclosed workplaces, public transport, common areas of private buildings for commercial or domestic use and open and closed centres of sports. A significant feature of Panama's legislation is the budget allocation it makes for tobacco control to support the law's implementation.

Panama's law allows a range of sanctions ranging from fines, temporary suspension of activities, temporary or permanent closure of the establishment, and seizures when public health is at risk.

The National Police are entrusted with smoke-free enforcement responsibilities. The level of sanction imposed takes into account the risk created to health, the offender's economic capacity, the social repercussion of the offence, the benefit the sanctioned conduct may yield to the offender, whether the offender is a minor, and the offender's recidivism⁸.

7. Scotland (UK)

Scotland's Smokefree enforcement efforts include a combination of proactive inspections, guidance to businesses, public education, and cessation support.

Pre-ban media campaign: Scotland's enforcement strategy included a planned mass media component for public education about second-hand smoke and the law⁹. As part of the media strategy, the Government launched a paid advertisement campaign which showed the risk from passive smoking and the requirements and benefits of the law¹⁰. The adverts were widely shown before the prohibition on smoking came into effect on 26th March 2006. The campaign cost for this period, including production and media purchasing, was £413,000.

Guidance to Businesses and Public: A Brochure for Employers, Managers, or others in control of premises and was made available to businesses. This contained information on places where the law would apply, how to comply with the law, what to do if someone breaks the law, where to lodge a complaint, complaints telephone number, quit line number, sample smoke free policy for workplaces, and sample signage. Similarly, a leaflet for the general public in Scotland's 14 most-used languages (Hindi, Punjabi, and Urdu included) was prepared and widely disseminated¹¹. See **Annexure- 2.7**.

The display of signage in no-smoking premises is a critical requirement under the Scottish law. In particular, signage requirements for vehicles would be of specific interest in the Indian states.

"Signage for Vehicles

No-smoking signs should be displayed in or on any vehicles that are affected by the ban in such a way that the signs can be seen and read by persons who are in the vehicle, as well as persons approaching the vehicle in question. The reference to vehicles includes trains, buses, taxis, private hire cars, and any vessel, boat or hovercraft. There's no legal requirement on the size of these signs but they must:

- a. state that the vehicle is no-smoking and that it is an offence to smoke there or knowingly to permit smoking there;*
- b. display the international no-smoking symbol; and*
- c. display the holder of a particular post (e.g. the manager) to whom a complaint may be made by anyone who observes someone smoking".*

(Source: Enforcement Protocols. Scottish Government)¹²

Enforcement: 60 enforcement officers, including environmental health officers, licensing officers, and technical officers, are dedicated to smoke free enforcement in Scotland.

Offences: The Smoking, Health and Social Care (Scotland) Act 2005¹³ identifies four main offences with regard to smoking in public places, including:

- a) permitting others to smoke in no smoking premises;
- b) smoking in no-smoking premises;
- c) failing to display warning notices in no smoking premises; and
- d) failing, without reasonable cause, to give one's name and address on request by an enforcement officer.

Inspections: Inspections in Scotland are either proactive or reactive. A significant feature of the Scottish smoking law is its use of a combination of proactive inspection approaches. The three types of proactive inspections engaged are:

- a) Official inspection – whereby officers announce themselves and show identification to the manager of the inspected premises prior to assessing compliance;
- b) Covert – whereby officers assess compliance by observation, then announce themselves to the managers at the end of the period of surveillance; and
- c) Covert and leave – officers assess compliance, but wait until the following day to discuss their findings with the manager of the premise.

Scottish enforcement protocols lay down guidelines regarding prioritizing premises for inspection, suggesting the initial focus to be on premises:

- a. Which are open to substantive numbers of people;
- b. Where there is an absence of pre-existing self imposed smoking controls; or
- c. Where enforcement officers do not usually visit as part of their routine inspections under other legislation.

This is particularly helpful in overcoming potential human resource constraints in law enforcement by prioritizing premises that have maximum population coverage and/or face a higher risk of non-compliance.

The protocols suggest developing a risk-based inspection programme for premises and building increasing familiarity of the officers with the legal requirements based on factors such as:

1. Confidence in management;
2. History of compliance with the requirements; and
3. Number of complaints received from the Compliance Phone Line.

Cessation Support: In order to support those who wish to quit, Smokeline Scotland - a quitting helpline that runs from 12 noon to 12 midnight year round - was established and publicized. Help for quitting could also be sought by post or email.

8. Uruguay

Uruguay prohibited smoking in all enclosed public places, public and private workplaces, and places of common residence in 2006. A Presidential decree defined the inspection mechanism at various levels and dedicated fines collected for violations to smoking prevention activities. Repetitive breaches of the ban could lead to the closure of an establishment for 3 working days¹⁴.

B. Enforcement Protocols of Smoke-Free Policies at Sub-National Levels

1. Ballymoney Borough (UK – Northern Ireland)

Ballymoney Borough's Enforcement policy is guided by the following 4 key principles:

- a) Proportionality - of enforcement action to risks and costs;
- b) Consistency - using similar approaches in similar circumstances to achieve similar ends;
- c) Transparency - in conveying legal expectations, rational thereof, suggested remedial action, intention for formal enforcement action if any; and
- d) Targeting - of the enforcement programme based on population benefit and risk based approaches

As per the Enforcement Policy for the Smoking (Northern Ireland) Order 2006¹⁵,

- Inspections in the Borough are to be incorporated into other programmed inspections, such as those of health and safety inspections, food safety, consumer safety, building control and licensing. This approach draws on existing infrastructure, human resources, mechanisms and enforcement force, and avoiding significant additional enforcement expenses. It is therefore useful for resource-restrained settings.
- District councils engage Licensing Officers, Technical Officers, and Environmental Health Officers in addition to dedicated Smoke-free Enforcement officers for inspections.

- In addition to responding to complaints, the Borough reported two types of proactive inspections:
 - a) Official and open inspection – officers announce themselves and show identification, and
 - b) Covert – officers assess compliance by observation, then announce themselves.
- Penalties and fines are determined by the inspecting officer and include verbal or written warnings, fixed penalty notices, or reporting for prosecution.
- Penalties and fines can be applied to both the business and the individual.

2. California, United States

California was the first state in the United States of America and one of the first places in the world to go smoke-free in all public and workplaces, including in bars and restaurants, in 1995. On January 1, 2008, a revised law went into effect which prohibits smoking in cars when children younger than 18 are present.

Given its long-standing smoke-free status spanning more than a decade, the efforts in California present a unique glimpse to the long-term nature and impact of enforcement efforts.

Over the decade, smoke-free laws in the state have reportedly become largely self-enforcing with the social pressure created by the non-smokers encouraging people who smoke to only do so when and where it is permitted¹⁶. Therefore, most of the Californian implementation efforts currently focus on educating the public about the law and the science behind the law in order to sustain public awareness.

Figure 2.4 Educational Ad by California Department of Public Health



In some of the more rural communities, the health departments have employed enforcement officers who undertake a one-to-one public awareness campaign. The experience has been that they rarely confront situations that require them to issue any citations, though the laws do allow for citations to be issued.

In cities like Santa Monica, the businesses are cited (not the smoker). The city has established a complaint line at the health department that individuals may call to complain about a smoker or a business that is allowing smoking. The city law enforcement officers will then issue a citation to the business-owner based upon the complaint and visual confirmation that smoking is allowed. Visual confirmation does not need to be observing someone smoking but could be ashtrays on tables, absence of no-smoking signs, or the smell of tobacco smoke in the establishment.

**Box 2.1 Significant, Initial Sanctions for Improved Compliance:
California's Experience**

In 1998, when it became illegal to smoke in bars & taverns in California, the Occupational Health and Safety Division in the state (the office that enforces safety regulations for our labor force) stepped-in and cited a bar owner to the tune of US \$50,000 for non-compliance. Once this one-time citation was held up in court, most other bars that were non-compliant became compliant due to fear of the large fine.

Source: Richter C. California Department of Public Health.

3. Ontario, Canada

The Smoke-free Ontario Act prohibits smoking in all enclosed public and workplaces, including bars and restaurants. The province affords high priority to smoke-free enforcement in that it has allocated a nearly 60 million dollar budget for tobacco control enforcement, involving nearly 600 enforcement officers.

Provincial enforcement protocols elaborate the places included under the law, legal requirements for signage and smoking restrictions, steps for initial inspection at each place, and guidance to officers on inspecting controlled smoking areas where they are allowed by the law.

Collecting Enforcement Data: Ontario protocol involves the systematic collection of data on enforcement efforts and compliance levels. Officers record each inspection, compliance details, and action taken by the officer and the business in prescribed forms.

Enforcement agencies in Ontario have found compliance data to be extremely useful to track compliance by businesses and enforcement action by enforcement agencies.

It also helps them identify challenges in law enforcement and loopholes in the legislation itself, prompting strengthening amendments. Enforcement agencies also find it useful for identifying priorities, preparing plans, and allocating resources. Therefore, standardization of enforcement procedures, forms, and records followed by systematic record-keeping and tracking of data have been critical components of this enforcement strategy.

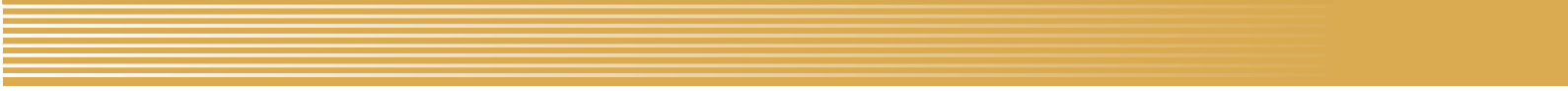
Proactive and Reactive Enforcement response: Ontario's enforcement team pursues a dual approach to enforcing its Smoke-free Act. On one hand, it initiates regular compliance checks at regulated premises. On the other, it responds to complaints from the public and undertakes enforcement checks. In facilitating the latter, the province widely promotes complaint lines and weblinks as part of its mass media and educational campaigns.

4. Ottawa County (Michigan, United States)

Enforcement in Ottawa County is done through the County's Health Department. The enforcement protocol is "self enforcing" and the officers largely respond to complaints. Initial response to complaints is carried out by phone or letter. Fines apply to both the business and the individual smoker. Fines start with a warning citation¹⁷.

2.5. Lessons Learned

1. Planned enforcement is a key component of successful enforcement. Key Components of the smoke-free enforcement process is found in **Annexure- 2.8**.
2. Preparing the population for the legislation and its enforcement through educational campaigns can be critical to the success of enforcement. It also helps to have smoke-free legislation in place that includes a specified budget allocation for implementation, as in Panama.
3. Guidance materials for businesses have been a key component of almost all the smoke-free enforcement efforts.
4. Early and visible sanctions can convey both political will and the commitment of the enforcers. It also can help overcome, to some extent, human resource shortages by projecting the machinery involved beyond the actual number of enforcers.
5. Requiring businesses and establishments to maintain a record of non-compliance that is handled by the manager or owner of the premises contributes towards compliance data collection by the enforcement agencies.

- 
6. A combination of proactive inspections and reactive complaint investigations make for a comprehensive approach to address compliance and complaints respectively.
 7. A combination of inspection methods ranging from an announced visit to unannounced observation and covert surveillance followed by formal feedback to the business can be engaged.
 8. Different jurisdictions have found ways to optimize human and financial resource management, such as prioritizing inspections (for example, in terms of population coverage and risk potential of premises), creating dedicated tobacco control policy enforcement officers at the Municipal level, and incorporating smoke-free inspections into existing proactive inspection programmes (such as health and safety inspections, food safety, consumer safety, and licensing), thus making the inspection programme more resource-efficient and sustainable.
 9. Dedicated tobacco control office at all national and sub-national levels lends focus to smoke-free efforts.
 10. Compliance lines are key to ensuring community reporting of offences.
 11. Given that effective smoke-free implementation leads to higher quit rates, quit lines and other support services to help people quit should be set up and widely promoted, particularly in conjunction with smoke-free media campaigns.
 12. Evaluating enforcement efforts lends direction to future enforcement planning and financial planning and identifies areas of law that require strengthening.

Appendix 2.1 Authorised Officers for Smokefree Enforcement in India

Sl. No.	Authorised Person	Description of Public Place
1	Inspectors of Central Excise/ Income Tax/ Sales Tax/ Health/ Transport	All public places within their jurisdictions
2	Station Master/ Asstt/ Station Master/ Station Head/ Station in charge	Railway and all its premises
3	All Gazetted Officers of State/ Central Government or equivalent rank and above in Autonomous Institutions/ PSUs	Government offices/ premises and offices of autonomous institutions and corporations
4	Director/ Medical Superintendent/ Medical Administrator	Government and Private Hospitals
5	Post Master and Above	Respective Post office in their jurisdictions
6	Head of the Institution/ HR Manager/ Head of Administration	Private offices/ workplaces
7	College School Headmaster/ Principal/ Teacher	Respective Educational Institutions
8	Lirbrarian/ Asstt Librarian/ Library in Charge/ Other Administration staff in Library	Library/ Reading Rooms
9	Airport Manager/ Officers of Airport Authority of India and Officers of all Scheduled airlines	Aiports
10	Director Public Health/ Director Health Services	All Public Places
11	In charge Administration in Central/ State Government	All Public Places
12	Nodal Officers/ Focal Points of Anti tobacco Cell at District and State Levels	All Public Places

Annexure 2.2

England's Media Interview Prompter Sheet for Enforcers

Use the space below to write the **three main points** that you wish to convey in your interview

1

2

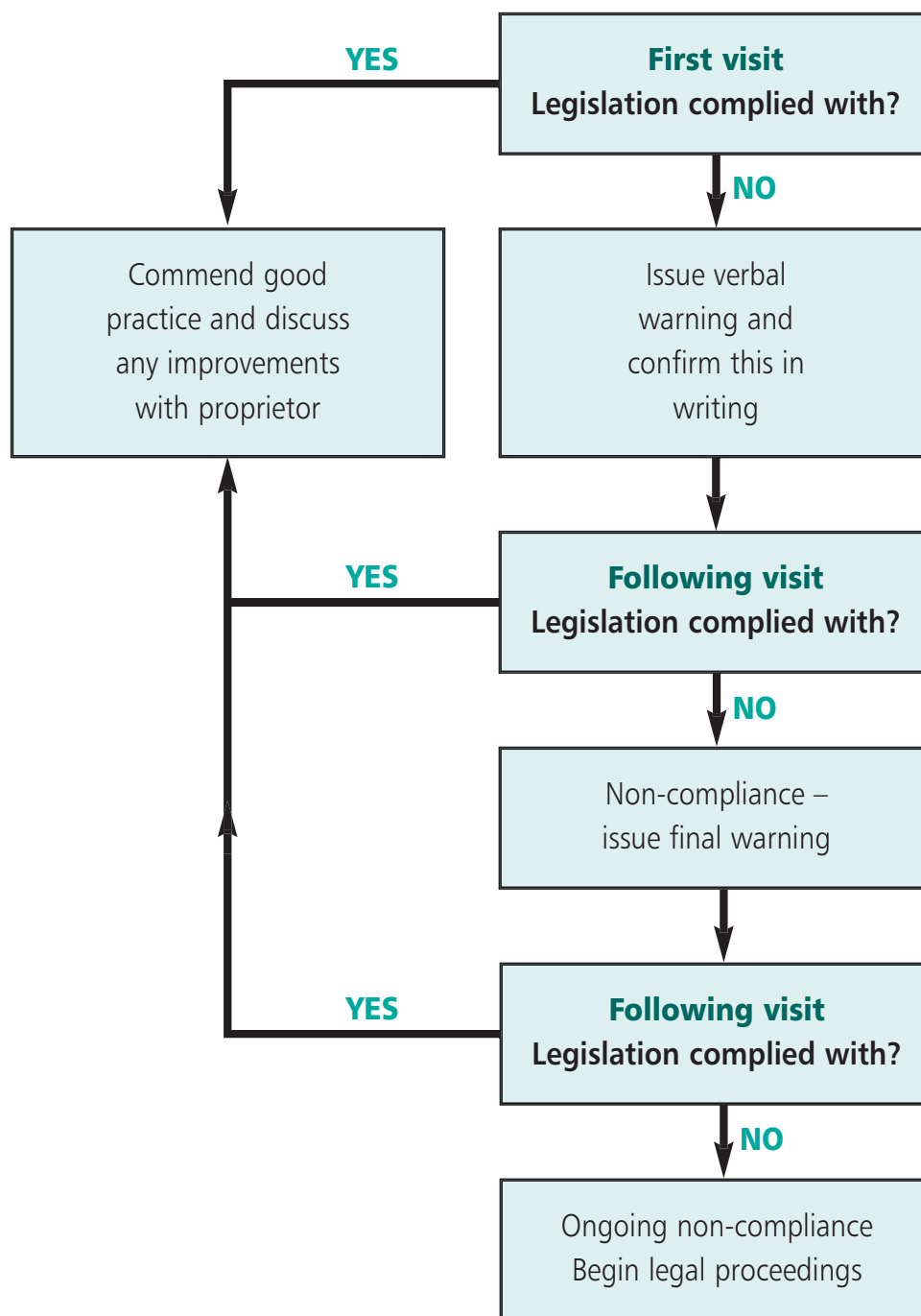
3

Write some **national statistics or evidence** in the space below

Write some **local statistics or evidence** in the space below

Write the **standard/corporate line** in the space below (to be used in every interview if possible)

Annexure-2.3
England's Smoke free Enforcement Flow Chart



Annexure-2.4

Excerpts from Hong Kong's Smoke-free Restaurant Implementation Guide for Restaurants

Procedures to handle smoking offences

Someone smokes in restaurant



Staff approach and request the smoker to stop smoking
Reminder:

- 1) To maintain a polite attitude
- 2) Explain to the smoker that as stipulated in the law, no smoking is allowed in restaurant.
- 3) Request the smoker extinguish the cigarette/ leave the restaurant.

Smoker extinguishes the cigarette/ leaves the restaurant



Successful intervention



Smoker is uncooperative



- 1) Remain firm and request again
- 2) Point out to the smoker clearly that smoking in statutory no smoking area is liable to a maximum fine of HK\$5,000



Smoker remains uncooperative

- 1) Call other staff for assistance
- 2) Call for police assistance if necessary

Annexure-2.5 Excerpts from Hong Kong's Smokefree Workplace Guide

3 Implementation Plan of a Smoke-free Workplace

3.4 Flow Chart of Setting Up a Smoke-free Workplace



Annexure-2.5
contd.



Annexure-2.6

Sample Page- Ireland's Guide for Employers and Managers

Procedure if a person smokes in contravention of the law prohibiting smoking in the workplace

1. Draw the person's attention to the "No Smoking" signs and advise that they are committing an offence by smoking on the premises.
2. Advise the person that it is also an offence for the occupier, manager and any other person for the time being in charge of the premises to permit anyone to smoke in contravention of the law.
3. Advise the person that the business has a smoke-free policy to ensure a safe working environment for staff and customers. And that under the policy staff are obliged to refuse service to customers who persist in smoking.
4. If the person continues to smoke immediately request that they leave the premises.
5. If the person refuses, implement normal procedure for antisocial/illegal behaviour in the premises.
6. Maintain an appropriate record of all such incidents and notify all staff of action taken.
7. In all cases where physical violence is threatened or encountered, notify and/or seek the assistance of the Gardaí.

Annexure-2.7
Scotland's Smoke Free Law Leaflet for the General Public



ENFORCEMENT OF TOBACCO CONTROL POLICIES

Global Best Practices

28

Sunday 26 March 2006 – clearing the air for a healthier Scotland.

On Sunday 26 March at 6am Scotland will become smoke-free. From that date, everyone in Scotland will have the right to work and socialise in a smoke-free environment. This leaflet explains what smoke-free will mean for you and what to expect when the ban starts.

Wherever you see this sign, you are protected by law from the harmful effects of passive smoking.

These include an increased risk of lung cancer, heart disease and a variety of children's illnesses.



What the law means.

From 26 March, it will be illegal to smoke in most indoor places other than private homes. This includes restaurants, bars, cafes, hotels, theatres, bingo halls, church halls, sports centres, shopping centres, public transport, schools, hospitals and all clubs.

The law also covers almost all workplaces, including lorries and vans. Smoking indoors at work will no longer be allowed, including in any existing designated smoking rooms or areas. So, unless you carry out your job in your own or someone else's home, or in one of the few exempted premises, smoking indoors will be against the law. Employers can provide outdoor smoking shelters for their staff and customers, providing they comply with the law, but they don't have to.

What you can do.

All no-smoking premises must display no-smoking notices like the one shown here. If someone is smoking and you want to report it, the notice will tell you who to speak to (e.g. the owner or manager). If this doesn't resolve the problem, then you can call **0845 130 7250** to register your complaint. Calls will be charged at local rate. Local environmental health officers will follow up any such complaints.

clearing the air  **healthier
scotland**
SCOTTISH EXECUTIVE

2

Employers and managers of premises must take all reasonable precautions to ensure that employees, customers and visitors don't smoke in no-smoking premises. If you are an employer or manager yourself and you have not received the guidance pack about complying with the new law, call **0845 300 3488** or visit the website, **www.clearingtheairscotland.com**. The website also contains further information about the smoke-free law, including some frequently asked questions, the full list of no-smoking premises and the few exemptions which have been allowed.

Giving up smoking.

If you are a smoker and want to take this opportunity to try to give up, help is available from Smokeline on **0800 84 84 84**. Or you can contact your local GP or NHS Board for advice on quitting and the smoking cessation support available in your area.

Q. Why do we need this new law?

A. To protect people from the proven health risks of passive smoking, i.e. breathing second-hand tobacco smoke.

Q. Who will enforce the law?

A. The law will be enforced by local Environmental Health Officers, who will have the power to enter all no-smoking premises to make sure the law is being complied with. They will be able to issue fixed penalty fines to anyone who is committing, or has committed, an offence.

Q. What are the penalties for breaking the law?

A. Individuals who smoke in no-smoking premises could face a fixed penalty fine of £50. Refusal to pay or failure to pay could result in prosecution and a fine of up to £1,000. Those in control of no-smoking premises could be fined a fixed penalty of £200 either for allowing people to smoke in their premises or for failing to display warning notices. Refusal to pay or failure to pay could result in prosecution and a fine of up to £2,500.

Annexure-2.7 Scottish Leaflet continued....

Smoking – the facts.

More than 13,000 people die every year in Scotland from tobacco use – the equivalent of 250 people a week or 35 people a day.

Lung cancer kills more people than any other type of cancer.

9 out of 10 lung cancer deaths are caused by smoking.

In Scotland, it is estimated that around 1,000 people who have never smoked die every year from the effects of passive smoking.

It is estimated that a smoking ban will prevent 219 deaths a year from lung cancer and coronary heart disease and up to 187 deaths a year from stroke and respiratory diseases.

30 minutes exposure to passive smoking is enough to reduce coronary blood flow in healthy adults.

Long term exposure to passive smoking increases the risk of lung cancer by about 24%, coronary heart disease by about 25% and it causes a number of conditions in children.

Sources: UK Health Education Authority – Deaths in 1995; Cancer Research UK 2002; Scientific Committee on Smoking and Health 2004; University of Glasgow 2005; Health and Economic Research Unit, Aberdeen University, 2005; Journal of the American Medical Association 2001.

Alternative formats and community language versions of this document are available on request by telephoning 0131 244 5660.



SCOTTISH EXECUTIVE

4

Annexure-2.7 Scottish Leaflet continued....

Annexure- 2.8

Components of Smoke-free Environment Inspection/Enforcement Process

Campaign for Tobacco Free Kids Fact Sheet

Many jurisdictions are taking an important step in protecting their citizens from the harms of second-hand smoke by enacting smoke-free air laws. In order for these laws to be effective, persons responsible of the smoke-free facilities covered under the law and the public must be aware of the smoke-free law and appropriate inspection and enforcement mechanisms must be in place.

Ensuring Voluntary Compliance through Education and Information Sharing

Effective enforcement of smoke-free laws should focus first on encouraging voluntary compliance by making sure that the law is well understood and that all key parties (e.g., the public, business owners, enforcement agencies) are aware of the parameters of the law in order to enhance support and compliance from the outset. Key educational activities include:

- Educating the public by explaining the benefits and provisions of the smoke-free law, including information on when it will become effective. As part of the educational effort, smokers need to know where they can and cannot smoke and the public should be made aware of the right to protection from the hazards of second hand smoke.
- Informing persons responsible for implementing the smoke free policy in facilities covered under the law (e.g. public places, workplaces, and public transportation) of their responsibilities under the new law. Consequences for non-compliance also need to be clearly laid out.

Ensuring Compliance through Appropriate Inspection and Enforcement Mechanisms

Mechanisms to enforce the smoke free law must be developed and implemented. The following provides a brief overview of key elements to be considered when developing effective mechanisms for enforcing smoke free laws.

Key Inspection and Enforcement Components

1. Identify which agencies will be responsible for the inspection of places defined in the law as smoke-free and for enforcement of the law. Clearly define the role of the agency or agencies and determine how information will be communicated and duties coordinated among and/or within responsible agencies.
2. Define the behaviors or conditions that constitute an offence under the terms of the law.
For example, offences may include:
 - a) Smoking in no smoking premises;
 - b) Permitting others to smoke in no smoking premises;
 - c) Failing to display no smoking warning notices/signs in no smoking premises;
 - d) Allowing the placement of ashtrays or matchboxes in no smoking premises in a manner that facilitates smoking ; and

Annexure- 2.8 continued...

- e) Obstructing or failing to cooperate with an authorized officer engaged in inspection and/or enforcement activities.
- 3. Set criteria for determining how and how often businesses will be inspected. Inspections can be accomplished by adding items to existing, regular inspections or by implementing specific inspections to assess compliance with provisions of the smoke free law. Criteria for inspection could evolve over time as compliance rates change.

For example,

- a) Initial premises to be inspected could include:
 - Any place accessible to substantial numbers of people
 - Any place with no pre-existing self-imposed smoking regulations
 - Places not usually subject to routine inspections under other laws
 - Places identified through citizen or worker complaints
- b) Over time, inspections could evolve into “risk-based” inspections that factor in:
 - History of compliance with requirements based on prior inspections
 - Number of complaints received
- 4. Determine the types of inspections that will occur.

For example, types of inspections include:

- a) Proactive inspections (unannounced in advance) to confirm compliance
 - Officers announce themselves and show identification prior to assessing compliance within the premises
 - Officers assess compliance by observation within the premises and announce themselves and show identification at the end of the period of surveillance
 - Officers assess compliance by observation within the premises without announcing themselves and provide their findings to the manager of the premises on the following day (or a subsequent time). Notification of the inspection and results may be done through a letter or other mechanisms. This is particularly important when the safety of officers is a concern or when dealing with persons in inebriated stage.
- b) Reactive inspections in response to a complaint
 - Officers make an initial assessment of the validity of the complaint and respond with an in-person inspection of the premises in the case of seemingly valid complaints.
- 5. Establish penalties/fines for sanctioning non-compliance. Establish the sequence and timing of actions to be taken in response to a violation.

Annexure- 2.8 continued...

For example, penalties for sanctioning non-compliance could include:

- a) Verbal or written warning for first time offenders.
 - b) Minimum penalty/fine for violations imposed on the facility owner or manager. Penalties/fines may be set to increase for more serious or repeat offenses.
 - c) Minimum penalty/fine for violations imposed on the individual smoking. Penalties/fines may be set to increase for more serious or repeat offenses.
 - d) Additional penalties such as suspension or revocation of the facility license in the case of multiple violations.
6. Provide guidance to enforcement officers on how to assess compliance and develop supporting materials for use by inspection officers in conducting compliance checks.

For example, establish a standard observational checklist to use when assessing compliance. The checklist should include a list of violations which the officer will assess during an inspection. It may also include options to assess potential problems with compliance such as lack of tobacco signage, presence of ashtrays, the lack of management policies and procedures to implement the law, staff awareness, etc.

Enforcement officers should be trained to utilize the checklist when conducting assessments and apply the appropriate warning and/or penalty.

7. Establish a mechanism for workers or citizens to make complaints and determine the criteria for investigating complaints. Identify the agency(s) to receive, assess, and respond to complaints. A centralized complaint system ensures a consistent response and allows the jurisdiction to monitor patterns of complaints. Educate the general public about how to report a violation of the smoke free law.

For example, set up a hotline number or website to receive citizen complaints and refer such complaints to the inspection/enforcement agency for action. This is very important to help those who do not want to complain to the business at the time of non-compliance or will wish to be anonymous. It would also help some employees to 'blow the whistle' on businesses that are not complying.

Chapter - 3

Enforcement of Tobacco Advertising, Promotion, and Sponsorship Regulations

3.1 CONTEXT

Regulations on tobacco advertising, promotion, and sponsorship (APS) need to address all media and platforms at all times, while enforcement efforts need to cover all aspects of APS for maximum impact on reducing tobacco use. Most of the jurisdictions included in this chapter have managed to ban most forms of direct and indirect advertising across media. Enforcement measures in these countries are therefore currently focused on extending the ban to displays of tobacco products and promotional materials at the point-of-sale.


This situation is similar to the Indian scenario, wherein direct and indirect advertising is prohibited in most media, with the exemption of product display and advertising at the point-of-sale. Advertising at point-of-sale is restricted to a display board that lists the tobacco products on sale at the store while tobacco products themselves are required to be stacked away from public view.

A handful of jurisdictions, such as Australia and the United Kingdom, have extended their regulations on advertising to the internet and mail order - as these now constitute a significant global retail and marketing environment for the tobacco industry.

A few of the reported jurisdictions do not yet have comprehensive advertising bans. These jurisdictions have been included in this chapter with a view to informing India's future legislative planning and enforcement through learning from the insufficiencies of these measures to reduce demand for tobacco.

3.2 FCTC OBLIGATIONS

The FCTC requires all Parties to undertake a comprehensive ban on tobacco advertising, promotion, and sponsorship within five years of ratifying the treaty. The ban must include cross-border advertising originating within a Party's territory. The definitions of advertising, promotion, and sponsorship are broad and include indirect as well as direct forms. Countries with constitutional constraints are required to restrict advertising, promotion, and sponsorship, including cross-border advertising, in a manner consistent with their constitutional principles. The Parties also agree to consider a protocol to



elaborate on the cross-border provisions, for example the technical and legal aspects of preventing or blocking advertising on the internet and satellite television.

3.3 STIPULATIONS UNDER INDIAN TOBACCO CONTROL LEGISLATION

The Cigarettes and Other Tobacco Products Act of 2003 prohibits both direct and indirect tobacco advertising, including tobacco sponsorship. The exception to the rule is point-of-sale advertising and advertising on the pack.

Rules under the Act detail specific indirect forms of advertising that are prohibited, including brand stretching, display of tobacco products, and the promotion of tobacco use and products in movies and television telecasts. The Rules also restrict point-of-sale advertising to listing the type of tobacco products on sale - with a text warning and within prescribed size. The advert is not be backlit or illuminated. Brand pack shots, brand names, and promotional messages are also prohibited on the tobacco adverts at points-of-sale. Under the Act, a national-level Screening Committee has been set up with powers to take track violations of the prohibition on tobacco advertisements. Similar committees are being set up at the sub-national levels to initiate action against local offences, to improve compliance and increase outreach.

Additionally, the Cable Television Networks (Amendment) Act, 2000, under Rule 7, prohibits direct and indirect advertisement of cigarettes and other tobacco products. Amendment to this Rule on 9 August 2006 further extends the prohibition to any direct or indirect references, promotional phrases, colours, lay out, presentations, or situations typically associated with tobacco products.

3.4 CASE STUDIES OF INTERNATIONAL BEST PRACTICES

1. Bangladesh: Engaging NGOs and Media in Reporting; and Mobile Courts in Law Enforcement

Bangladesh has prohibited all direct tobacco advertising and several indirect forms. Bangladesh law uniquely provides for mobile courts and multi-sectoral task forces at the district level to track advertising regulation violations¹⁸. Mobile courts are a unique feature of the judicial systems in several South Asian countries, including India, where they are set up in order to quicken the dispensation of justice in non-criminal cases. They typically involve a magistrate and police officer(s), who have the power to implement the law ‘on the spot’.

In Bangladesh, NGOs are involved in monitoring the law throughout the country. They regularly send information on law violations to local government (district commissioners or the Tobacco Nodal Officers) and ask them to call out a mobile court when violations

are noted. If the local officials fail to respond, the media is used to attract the attention of higher authorities. A national alliance of tobacco control organisations- Bangladesh Anti Tobacco Alliance- also supports efforts to mobilise and sensitise the enforcers.

The mobile courts are alerted when an illegal billboard or signboard is witnessed, or a billiards shop which has advertisements over the tables, or a restaurant with cigarette insignia displayed inside. The courts enter the premises and inform the manager (or whomever in charge) of the law that has been violated by the display of tobacco advertising. The magistrate records the violation and a fine is levied. The manager pays the fine and signs a confirmation.

In the earlier days of enforcement, the mobile courts ordered the tearing down of tobacco advertisement billboards and signage using bulldozers or blackening them, usually in the presence of the media. The use of bulldozers in early days accentuated the seriousness of these actions to businesses and tobacco companies and earned significant media exposure and public attention. As a result of speedy and illustrative collaborative action between the NGOs, media, and mobile courts, signboards and billboards showing tobacco products have completely disappeared in several parts of the country¹⁹.

Figure 3.1: Mobile Court Removing Tobacco Advertisements in Dhaka



Figure 3.2 Bulldozers in Bangladesh Enforcement Action

Courtesy: Bangladesh Anti Tobacco Alliance

2. France: Engaging Civil Society in Enforcement

The responsibility for enforcing tobacco control regulations in the 1970s was vested primarily with the French Ministry of Justice. However, in response to increasing tobacco industry violations of the law and the need for enhanced enforcement, the Government recruited non-governmental organizations to play a more direct role in enforcement efforts.

The French tobacco control laws of 1976 and 1991 empowered non-governmental organisations (NGOs) specialising in tobacco control to launch legal action whenever the law was not respected. This opportunity was extended to consumers' rights and family welfare organisations through public health legislation in 2004. To facilitate this process, the health ministry provides financial support to NGOs, which in turn initiate legal action against offending companies. The fines levied by the courts to non-compliant parties is accrued to the Government, while any damages awarded in the litigation goes to strengthen the NGO's further legal interventions and preventive and educative activities.

The direct outcome of this strategy of empowering civil society in legal action has been increased numbers of convictions for violations of the law. Additionally, the legal actions have developed an entirely new jurisprudence about the advertising ban, health warnings, and non-smoker's rights, which greatly contributes to strengthening the legislation and ensuring its comprehensive enforcement.

French experience shows that legal actions put the tobacco companies in an uncomfortable situation. They damage the image of the company, and its managers are apprehensive of being found personally liable, which is an important possibility under the French law. Press reports on the convictions have helped to expose the tactics of the tobacco industry, formulate public opinion about tobacco, and to "denormalise" tobacco use.

This has proved a win-win situation for law enforcement, the Government, and civil society. The efforts of the NGOs helped to complement human and financial resources and mobilise political will on the part of the government in monitoring and enforcing the legislation. At the same time, fines imposed on tobacco companies found to have breached the law boosted the limited financial resources of health organisations to launch further legal action. The net result of both has been better enforcement of advertising regulations and improved compliance with the law.

Comité National Contre le Tabagisme, France- CNCT (National Tobacco Control Committee, France), the NGO Alliance engaged by the French Ministry of Public Health to identify and launch legal action against violating firms, strongly recommends

this strategy particularly for jurisdictions where enforcement resources are limited, Government enforcement mechanism is overloaded or disinterested, and where a vibrant tobacco control NGO movement is present²⁰.

3. India: Civil Society Involvement in Enforcement of Indian Laws

There is precedence in the implementation of Indian laws which is similar to the French experience of engaging civil society in law enforcement. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act of, 2003²¹, is a case in point. Products regulated under this Act draw a close parallel to tobacco products in terms of being consumer products with known consequences to human health and life.

Under Sections 21(1)(c) and 21(2) of this law²², representatives of voluntary organisations engaged in the field of child welfare, development, and child nutrition as identified by the Government in the Official Gazette, are authorised to monitor any violation of the Act and make a complaint directly to the Court of Law in writing and bring criminal complaints for prosecution. The services of Assistant Public Prosecutors are extended to prosecuting in these cases.

Utilising this provision, the Association for Consumers Action on Safety and Health (ACASH), one of the NGOs authorized under the Act, has filed criminal complaints against Nestle, Johnson & Johnson and Wockhardt. The case against Johnson & Johnson involved the promotion of feeding bottles and resulted in them submitting a letter of apology to ACASH which stated that because bottle feeding may not be appropriate in the Indian context it is withdrawing from the market. The Wockhardt case involved its labelling of Dexolac, and the company has issued an apology to ACASH and to the courts²³.

Therefore, the involvement of Indian NGOs in monitoring the implementation of tobacco advertising compliance should not face any undue restrictions or obstacles.

4. Ireland: Planned Approach to Enforcement

On 9 July 2008, the Irish Minister of State at the Department of Health and Children announced the removal of all tobacco advertising and product display from retail premises in one year's time - from 1 July 2009. This

presents a classic scenario of pre-enforcement planning and preparation targeting diverse stakeholders.

The Office of Tobacco Control (OTC), the nodal agency for tobacco control policies in Ireland, has set in motion a multi-pronged enforcement preparatory strategy which includes the following:

- a. **Preparing the evidence-base:** Ireland recognized the significance of sound empirical data in support of policy proposals. Accordingly, epidemiological, advertising, and marketing data were collected and analyzed, and the emerging trends in tobacco retailing and youth access to tobacco products and exposure to tobacco advertising were taken into account in formulating and enforcing the new regulations.

This included commissioning research that explored the retail environment and public opinion about regulating youth exposure to tobacco²⁴. Eighty percent of child smokers in Ireland were reported to smoke just two brands – those that are the most heavily marketed through the use of in-store displays. This evidence established that points-of-purchase have significance influence on youth exposure to tobacco promotions and therefore are critical area for regulation. Public opinion polls conducted in parallel demonstrated overwhelming 78% support for a ban on all forms of tobacco advertising, promotion, and communication as a means to discourage young people from smoking.

- b. **Developing a media strategy:** Based on the research, tailored messages were developed reinforcing the Ministerial announcement and elaborating the provisions of the new regulations. It pitched the law as protecting the country's young population from access and exposure to tobacco²⁵. The media strategy also highlighted the high level of public support for the law.
- c. **Launching public information campaigns²⁶:** which included the development of information materials for retailers. Signs, posters, and DVDS were made available to the retailers by the Office of Tobacco Control, and were widely promoted in the campaign.

5. Ontario, Canada: Vendor Education and Phased-in Enforcement of Point of Purchase Promotions' Regulations

In Canada, most direct and indirect forms of advertising and promotion are prohibited. Tobacco display and promotions at the point-of-purchase are significantly restricted. The province of Ontario (Canada) follows a detailed protocol for enforcement with regard to any allowed display, handling, and promotion of tobacco products at tobacco vendors. The protocol reflects a step-wise approach towards increased compliance. The steps include the following:

- i) educate and provide explanatory materials (even if the vendor is found in compliance);
- ii) if a vendor is found non-compliant, but takes corrective action and achieves compliance during the course of inspection, a re-inspection is not required;
- iii) if the vendor does not take the corrective action during the inspection, the vendor is issued a verbal warning and re-inspected within 5 working days;
- iv) if within 5 working days the re-inspection demonstrates non-compliance, the vendor is charged; and
- v) if the vendor remains non-compliant after initial charge or conviction, progressive enforcement is initiated.

6. Norway: Pioneering and Improvising Strategies

Norway was one of the first countries to regulate tobacco advertising in a comprehensive manner beginning with its legislative efforts as far back as 1975.

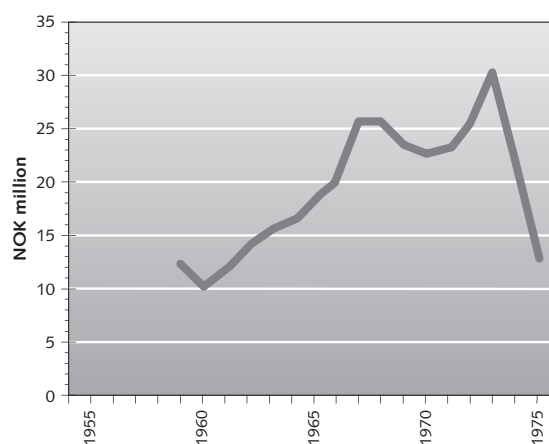
As the tobacco advertising sales figures of Norwegian Advertising Agencies in Figure 1 indicate, advertising activities in Norway plummeted sharply in 1975, following the enforcement of the advertising ban from July of that the year.

A WHO publication²⁷, “Norway: Ban on Tobacco Advertising and Promotions”, cites two key contributing factors for Norway’s successful advertising Ban:

- High public support: even in 1973, 81% of the adult population favored the advertisement ban.
- Government mass media campaigns: concerned with the impact of tobacco advertising on youth in all Norwegian newspapers and select magazines.

Figure 3.3

Total sales of tobacco advertisements by Norwegian advertising agencies, 1959-75



Source: A/S Norsk Reklamestatistik

Norway adopted enforcement procedures as described below in cases of early infringements:

- i. Ministry of Health and National Council on Tobacco and Health closely monitored the law in the print media. The public and the media reported apparent violations to the Government.
- ii. The Council sought and considered legal opinion and their evaluations were forwarded to the Directorate of Health.
- iii. The Directorate followed up with the violators and warnings were issued.
- iv. Repeat offences were reported to the Police.

The Council's legal expert identified the following reasons for its successful enforcement:

- i. The ban on tobacco advertising and promotions was comprehensive, leaving little opportunities for loopholes.
- ii. Pre-legislative discussions provided interpretation of the application of the law that fed into the development of enforcement practices.
- iii. Close monitoring and firm action on violations by the Norwegian public and the National Council on Tobacco or Health reduced infringements.

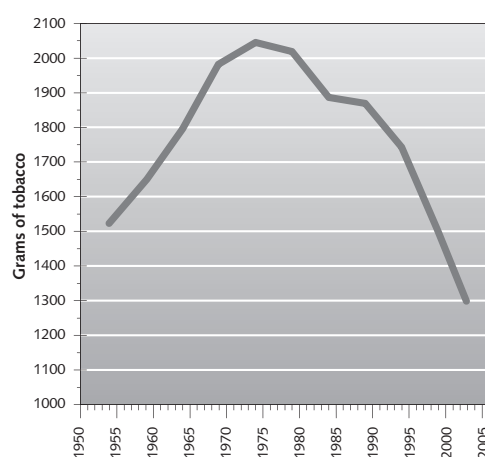
In recent years, the enforcement strategy has been revised in response to the tobacco industry's dubious indirect advertising maneuvers:

- i. Monitoring showed the need to amend the law on Trade Mark Diversification to include brand sharing and the free distribution of tobacco products that the tobacco industry was newly employing in its advertising, and therefore
- ii. A full time legal position was created in the Council to review the cases.

The result of Norway's successful tobacco control programme, a key component of which has been its early advertising ban, is reflected in Figure -2. It shows the steady drop in sales of manufactured cigarettes plus smoking tobacco per adult aged 15 and above since 1975, with sales in recent years dipping below the 1950's average.

Figure 3.4

Registered annual sales of cigarettes + smoking tobacco per adult 15+, Norway. Five year means 1950/'51-1999/2000 + mean 2000/'01-'01/'02



Source: Directorate of Customs and Excise, Norway

7. Pakistan: Inter-sectoral Guidance Committee on Implementation

Pakistan's tobacco control regulations²⁸ provide for a Committee on Tobacco Advertisements Guidelines to facilitate the implementation of its Advertising regulation. The committee is authorized to:

- Prepare, plan and implement guidelines for the advertisements of tobacco and tobacco products;
- Monitor implementation of the guidelines;
- Initiate proceedings against violators; and
- Regularly evaluate the effectiveness of the guidelines based on empirical data.

The committee includes representatives from the Ministry of Health, consumer and cardiac associations, public and private sector media, UNICEF, and WHO. However, the presence on this committee of the tobacco industry and its allied industries and the weak guidelines it has produced²⁹ restricting tobacco advertising only in certain media, target groups, and timeframes is regrettable. Evidence suggests that, to be effective in reducing tobacco use, the tobacco advertising ban needs to be comprehensive in terms of covering all media and the entire population at all times.

Box 3.1 Tobacco Industry Subverting Implementation in Pakistan: The Committee Way

The tobacco industry in Pakistan has been masquerading itself as a 'responsible' business entity and has adopted voluntary codes for advertising and marketing of tobacco products, in preemption of legislative efforts.

Their contacts with the policy makers, their perceived contribution to the economy, and their apparently "responsible" behavior has allowed them to be invited to the meetings of the statutory 'Committee on Tobacco Advertisement Guidelines. During the Committee's meetings, the tobacco industry representatives projected themselves as undertaking their business responsibly by marketing a legal product to above 18 year olds.

They surely distanced themselves from underage selling and willingly removed advertisements from the electronic media in an attempt to thwart stricter legislative measures covering other media. They promoted ineffective youth smoking prevention campaigns.

They avoided confrontation with the officials at meetings, but would influence less informed officials in the corridors moving them very subtly towards ineffective measures. In the process, they managed to keep advertising at the points of sale out of the purview of Pakistan's tobacco control law. Involving the tobacco industry in tobacco control law implementation is like keeping a fox in charge of the chicken coup!- At the cost of lives!!

Source: Latif E. Former Director, Coalition for Tobacco Control, Pakistan

8. Singapore

Singapore has a robust advertising, promotions, and sponsorship ban that includes trademark/brand sharing under its the Smoking (Control of Advertisements and Sale of Tobacco) Act. The Act elaborates on the enforcement mechanism including the authorization of officers, their powers, and penalties for violations. Under Singapore Law, suspected offenders can be arrested without a warrant by any police officer or authorised officer and produced before a Magistrate's Court or a District Court.

9. South Australia

Australia's advertising ban covers all direct advertising, promotional leaflets, handbills, trademark/brand name promotions, tobacco sponsorship, contests, gifts, coupons, free sampling, and retail display signs.

South Australia's Guide for Enforcers on advertising regulations recommends educating staff members at the premises initially, observing the removal of advertising, arranging a compliance "due-date," conducting follow-up inspections, and issuing penalties if the business remains non-compliant. While using discretion, officers are to regard deliberate and direct advertising more seriously than incidental or unintentional activities.

10. Thailand: Need for identifying and training appropriate and diverse enforcement agencies and establishing specialized tobacco control enforcement task force

Thailand has strong regulations covering direct and indirect tobacco advertising, promotion, and sponsorship under the Tobacco Products Control Act 1992. In 2005, Thailand tightened its advertising law by extending its scope to prohibit display of tobacco products at point-of-sale.

The country's earlier ban on advertising was implemented through the Consumer Protection Act, 1989 and officers of the Consumer Protection Bureau (CPB) were responsible for its enforcement. As the Bureau was not familiar with tobacco industry tactics, however, the Secretary of the National Committee for Control of Tobacco Use monitored violations and in turn notified the CPB which then prosecuted cases.

This seemingly circuitous enforcement process was modified when the new law of 1992 was enacted and the Ministry of Public Health, perceived to be more knowledgeable in tobacco control matters, was tasked with enforcement of tobacco advertising and promotions.

Box 3.2: Turning Media Spot light on Violators-Protecting Thai Sponsorship Regulation

In late 1990, the Olympic Committee of Thailand (OCT) issued a media announcement of its interest in seeking an amendment to the country's tobacco advertising regulations to allow it have the sports sponsorship of Thai Tobacco Company.

Thailand's National Committee for Control of Tobacco Use (NCCTU) and its allies opposed the proposal in the media. Twenty news stories and 24 articles favored tobacco sponsorship, while 18 news stories and 15 articles opposed it. The battle lines were clearly drawn in full public view with OCT Office bearers, a former Deputy Health Minister, and sports columnists favoring tobacco sponsorship and the NCCTU, the Public Health Minister, No Smoking Campaign Project, and some journalists opposing the exception.

The debate publicly identified those opposed to public health measures and welfare. After a 5 month long battle in the media, the pro-sponsorship group gave up its efforts and the Thai law was protected.

(H. Citanondh & World Health Organization. Thailand Country Report on Tobacco Advertising and Promotion Bans).

The Minister of Public Health has further appointed officials from the Ministry of Public Health, Ministry of Interior, Institute of Tobacco Consumption Control under the Department of Medical Services and Municipalities, among others, to be responsible for the enforcement of the law. It qualifies 3000-5000 officials to enforce the Thai tobacco control law; however, the enforcement was reported to be weak and fines seldom imposed.

As per the Thailand Country report on tobacco advertising, promotion and Promotion Bans³⁰, challenges to the enforcement of the advertising regulations in the country have included:

- a) lack of sensitization of enforcement agencies;
- b) wide-ranging responsibilities of appointed officers and agencies with limited focus on tobacco promotions;
- c) lack of officers dedicated to tobacco control law enforcement; and
- d) low prioritization of tobacco control laws.

The Thai Health Promotion Institute (THPI), a non Governmental organization working closely with the enforcement agencies, serves as a voluntary monitoring force, reporting violations to the authorities and pressing for action. Active vigilance and strong media advocacy have contributed to their successful interventions, as is revealed in the following success stories.

Box 3.3: High Profile Action Ensuring Compliance in Thailand

The Asian Professional Golf Associations widely acclaimed “Davidoff Tour” tournaments were held 20 times in 11 countries.

In 1999, when the Tournament came to Thailand, the Thai Health Promotion Institute (THPI) informed the organisers that use of Davidoff logos at the tournament would be illegal. The organisers ignored the warning and THPI initiated an arrest and the tournament organiser was prosecuted. Since then several Asian PGA Tours have been held in Thailand, albeit without the “Davidoff” branding.

(H. Citanondh & World Health Organization. Thailand Country Report on Tobacco Advertising and Promotion Bans.).

11. United Kingdom (UK): Attempts to Regulate Internet Promotion and Restrict Point-of-Sale Advertising

Point of sale Advertising Restrictions: Under the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004, the United Kingdom has greatly restricted the amount of advertising permitted where tobacco products are sold to a single A5 poster listing tobacco products with their prices.

Local Authority Coordinators of Regulatory Services (LACORS), responsible for the co-ordination of regulatory services at local government levels, has developed a detailed guidance note (shown in **Annexure - 3.1**) to educate retailers regarding the point-of-sale advertising restrictions. A detailed FAQ Guide has also been developed for use by the enforcement officers (**Annexure- 3.2**). The guide is frequently updated in response to the queries of the enforcement officers. This is a good practice to ensure robust enforcement machinery that responds to emerging needs.

Internet Ad Regulations: the UK is also one of the few jurisdictions that has restricted internet advertising originating from its territory; these restrictions are noted in the Tobacco Advertising and Promotions Act 2002 (Amendment) Regulations 2006. These regulations do not prohibit trade or retail of tobacco on the internet, but they do prohibit the advertising and promotion of such products. It also makes those indirectly involved with publishing an advertisement on the internet, for example editors or proprietors, liable for an offence. LACORS has prepared detailed FAQs for businesses to better understand the regulation, an abridged version of which is found in **Annexure- 3.3**.

12. Western Australia

Under the Tobacco Products Control Act 2006, the province has significantly regulated tobacco product displays at points-of-sale, including the number of packages that can be displayed and the manner of their display. Its key features include:

- Limiting the total surface area of tobacco product display within a point of sale premise to under one square meter;
- The display can not be illuminated or highlighted in any manner;
- Only one sample per brand and brand variants could be displayed in the permitted tobacco display; and
- Confectionary or other products designed or marketed specifically for children can not be displayed within one meter of a tobacco product display.

Retailers are provided with a detailed guidance brochure that outlines the legislative requirements, training of staff, penalties etc. Relevant pages of the brochure are found in **Annexure-3.4**.

3.5 LESSONS LEARNED

1. Identifying and engaging locally relevant, existing, and diverse enforcement mechanisms such as mobile courts and consumer boards could help in timely and resource-efficient enforcement. However, the leadership and co-ordination should come from the Ministry of Health, or its equivalent, which has overall responsibility for reducing harm to public health from tobacco use.
2. Limited but firm and visible action in the early stages of enforcement conveys, to the community and businesses, the seriousness of the enforcers to secure compliance
3. Whilst Government enforcement capacity is being built, public and NGO enforcement could commence.
4. Enforcement planning in preparing businesses and the community needs to begin before enactment of the laws. The preparatory plan needs to roll out ahead of the legislation and include the generation of an evidence base, launching mass media campaigns, announcing the enforcement start date, and developing guidance materials for businesses and the general public.
5. Retailer education on the point-of-sale advertising regulations, before and during the enforcement phase, leads to better sensitization of the law and improved compliance. Enforcers also need to be trained in utilizing initial compliance checks for education.
6. Inter-sectoral monitoring committees (with the exclusion of tobacco and its allied interests at national, sub-national, and local levels) are useful in



overseeing implementation.

7. Engaging, authorizing, and supporting credible civil society groups in monitoring and launching legal action against non-compliant entities is a cost-effective and efficient enforcement technique which contributes towards enhanced compliance.
8. Using the media to highlight successful enforcement efforts or singling out “high profile” violators is both educational to the rest of the community and stakeholders, whilst also acting as a deterrent that can improve compliance levels among businesses.
9. Training officers from diverse enforcement agencies is critical for better results, particularly those with a mandate beyond tobacco control.
10. Regulating internet advertising originating within each country’s territory is an important component for cross-border control of tobacco advertising.

Annexure 3.1

UK's Retailer Guidance Regarding Point of Sale Advertising

This guidance note is intended for retailers of tobacco products – separate guidance is available for Specialist Tobacconists and sales of tobacco from Vending Machines.

From December 21st 2004, new regulations, **The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004** come into force. These Regulations strictly control the amount of advertising permitted where tobacco products are sold.

These new regulations will ensure that advertising of tobacco, which has already been banned on billboards and in newspapers and magazines, is now very strictly controlled at the Point of Sale, with the maximum area of advertising being restricted to A5 in size (half the size of this A4 guidance note).

It will be an offence to advertise in any way other than within the strictly controlled guidelines.

What will this mean ?

In practical terms, you will no longer be able to advertise tobacco products within your premises other than at point of sale and any advertising that you do will be restricted to an A5 size in total.

Posters in shop windows , sandwich boards outside premises , awnings that carry a tobacco brand or logo that advertise tobacco products will be therefore be prohibited.

What is meant by Point of Sale ?

This is the point where your gantry or display unit is fixed. You may therefore advertise at this place but no where else in the premises. If you have more than one point of sale within the premises then you may only advertise at one point. (If the premises are occupied by more than one business, then each business within the premises may have one point of sale).

What sort of advert can I have ?

The advert must be 2 dimensional and may be one single advert or several provided that the total area does not exceed A5 in size.

Annexure- 3.1 continued...

The advert can include the following information:

1. the name , or emblem or any other feature of the tobacco product
2. the price of a packet and the size that the price relates to

The advert must include the warning :

“Smoking Kills “or “Smoking seriously harms you and others around you “
and

“NHS Smoking Helpline 0800 1690169”

You may not have any advertisement that is displayed electronically on a screen or contains a moving image or background or an image that changes colour or is lit by flashing lights.

Annexure- 3.2

UK's Enforcer Guidance Regarding Point of Sale Advertising Regulations (Condensed)

Note: SAMPLE ONLY- Based on the UK Laws- To be used with discretion as Relevant to Tobacco POS, Labelling and Vending Machine Regulations in India)

Source: LACORS, UK

Q – Price indications and Advertising

The information in the price list must do no more than identify products and give their prices. If the price list has more than the name of the product and the price of that product - for example the logo or other emblem of the particular brand, or perhaps the “brand colours” are used, then clearly this would be more than just a price indication and may be deemed to be an advertisement for the purposes of Regulation 4 of the Point of Sale Regulations. There is no intention in the Act to preclude the giving of pricing information. Each price indication must therefore be assessed on its own merits.

Q – The retailer is displaying several large multi packs of cigarettes such that they form a display of a particular brand that appears to promote/advertise that brand more than others , is this caught by the POS regulations ?

Tobacco products may be displayed in any way except in a way which constitutes a tobacco advertisement. Therefore the manner in which the multi packs of tobacco products are displayed could result in them constituting an advertisement (possibly where the display constitutes what is termed a “Power Wall”). This situation is recognised by section 8 of the Act. Each case needs to be considered on its own facts although it is thought that additional Regulations may be required to control the display of product in the future.

Q – The labelling on the packets carries additional information about other goods or services – does the legislation apply to this?

Ordinary labelling on a tobacco product cannot be considered to be a tobacco advertisement. On the other hand, if promotional material is being added to the normal packaging then, careful consideration should be given to whether the added material can be regarded as a tobacco advertisement.

Annexure- 3.2 continued...

This situation has arisen already where the outer cellophane wrapper carried additional material, in this case the additional material was not deemed to be a tobacco advertisement. This is to be contrasted with the insertion of trivia cards within packets. The cards carried information about tobacco products and were deemed to contravene the Act. This resulted in a formal caution being accepted by the company concerned

Q – The display unit for the packets of cigarettes has a “low stock” feature that comes into view upon the sale of the last packet of cigarettes – this shows a picture of the brand / packet that needs restocking. Is this an advert?

Yes, any picture / image of a tobacco product would be included in the total A5 area that is permitted at Point of Sale. For retailers to avoid breaching the Regulations, such devices should be modified such that they are not tobacco advertisements or removed completely.

Q – I have noticed the increased use of counter mats at the point of sale that carry adverts for tobacco products, can these to be considered Point of Sale Advertising material?

The current view is that such mats are to be considered to be Brandshare issue.

Section 2 of the Tobacco Advertising and Promotion Act 2002 has not been commenced fully in respect of brandshared articles such as counter mats. The section will be commenced fully in respect of brandsharing on 31st July 2005 by the Tobacco Advertising and Promotion Act 2002 (Commencement No. 7) Order 2004 No. 3138 (C.134).

Enforcement action (including prosecutions under section 2) may be started on or after that date in respect of any brandsharing which is prohibited by the Tobacco Brandsharing Regulations.

Until 31st July 2005 there is a partial commencement of section 2 for brandshared goods. Provision for this is made by the Tobacco Advertising and Promotion Act 2002 (Commencement No.3) (Amendment and Transitional Provisions) Order 2003 No 258 (C.15).

Annexure- 3.2 continued...

Q – Are there any exemptions for Duty free shops at airports?

No, duty free shops must comply in the same way in which other businesses comply.

In offering this advice LACORS wishes to make it clear that::

Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information. Additional advice has been sought from the Department of Health Legal Advisor on Tobacco policy in order to provide the most up to date interpretation of these matters.

Only the courts can interpret statutory legislation with any authority. This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.

Updated 27th January 2005 (first posted 22nd December 2004)

Annexure-3.3

FAQ Guide for Enforcers on Internet Tobacco Advertising in the UK

Source: LACORS, UK

Who enforces the Regulations?

The Regulations are the responsibility of Local Authority Trading Standards Services

When do the Regulations come into force ?

The Regulations come into force on the 28th September 2006

What effect do they have?

The Regulations prohibit advertising of tobacco products via any form of electronic communication including the internet. Tobacco Products are those consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed, this therefore includes products such as blunts , chewing tobacco etc

Who do the Regulations apply to?

Any business established in the UK where the business sells, advertises or promotes any type of tobacco product on the internet will be subject to these Regulations. A business without a base in the UK will not be caught by these Regulations.

What constitutes advertising?

The Tobacco Advertising and Promotion Act 2002 defines a tobacco advertisement as:

“an advertisement-

- a) whose purpose is to promote a tobacco product, or
- b) whose effect is to do so.”

Does this mean that tobacco products can no longer be sold on the internet?

No. The intention of these Regulations is NOT to prohibit the trade or retail of tobacco products on the internet, but to prohibit the advertising and promotion of such products . It is possible for a potential customer to request information about products but it is not permitted to access a site and have product immediately presented to the customer by means of pictures / graphic of the product – this would constitute advertising .

Annexure-3.3 continued...

What information can a business put on a website to allow the sale of tobacco products?

Information on the internet such as tobacco product lists could be construed as adverts if they can be accessed by persons who inadvertently access the page on which they are located, therefore

caution will need to be exercised in how information on tobacco products is provided on the website.

Tobacco product lists should only be viewed by customers who make a conscious decision to access them. In order to prevent other persons accessing such information, security measures will need to put in place. These might include for example :

A list that is protected by the requirement of the use of a pre established password , or other such security feature.

Is it duty?

It is the duty of an enforcement authority to enforce, within its area, the provisions of these Regulations (See S.13 TAPA)

What are the Powers for enforcing authorities?

Powers extend to require the production of :

Books, documents, data, records (in whatever form held) or product – for inspection , taking of copies or extracts from;

To take possession of any book, document, data, record, or product which is on the premises and retain it for as long as is deemed necessary;

To require a person to provide information and to provide such assistance as is required in the performance of those duties. (see S14 TAPA)

What are the offences ?

The offences are for a business established in the UK to transmit, in electronic form, a tobacco advertisement via the any electronic communication (see S2 TAPA)

It is therefore not an offence for a person whose business is not established in the UK to publish or cause to be published a tobacco advertisement by means of information society services (the internet).

Annexure-3.3 continued...

Regulation 3 inserts a new Section into the Act . This provides that those indirectly involved with publishing an advert on the internet, for example editors or proprietors, may be guilty of an offence.

What are the defences ? (Regulation 5)

A person does not commit an offence if :

he does not know and had no reason to suspect that the purpose of the advertisement was to promote a tobacco product.

OR

he could not have reasonably foreseen that the effect of the advert would be likely to promote a tobacco product .

OR

he had no reason to know or suspect that the advertisement would be published in the UK

What are the penalties? (Regulation 7)

On summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 , or both

OR

On conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine or both .

Exception (Regulation 4.7 and Schedule to Regulations)

There are exceptions for persons or businesses that are involved in the conduit , caching or hosting of a site with a tobacco advert on. Sites that contain or lead to a tobacco advert without their knowledge (for example a “Google “ search that leads to a tobacco advert) .

Annexure-3.4

Business Guidance Brochure- Display at Points of Sale- Western Australia (Relevant pages only)



RESTRICTIONS ON DISPLAYING TOBACCO PRODUCTS

Restrictions apply to the size and specifications of tobacco product displays, the number of packages that can be displayed and the manner in which they can be displayed.

- Only 1 m² of surface area of tobacco products can be displayed.
- The 1 m² must be contained within an area that has a perimeter not greater than 5 m.
- Only 150 different brands and kinds of tobacco product can be displayed.
- Only one of each brand and brand variants can be displayed, including cigarettes, cigars etc.
- Only tobacco products that are available for sale can be displayed.
- The display cannot be highlighted or illuminated in anyway to make it stand out from its surroundings.
- Only 1 display is permitted, although up to 2 cigar cabinets may also be displayed separately, however only the transparent glass area of these is included in the 1 m².
- Different requirements exist for cigar cabinets in liquor licensed premises - see Page 6 - "LIQUOR LICENSED PREMISES & MINE AMENITY AREAS".
- Confectionary or other products designed or marketed specifically for children must not be displayed within 1 m of a tobacco products display (some flexibility is conditionally allowed - contact the DoH for further information).

The display must be located behind and not on a counter or other facility across which customers are served or above the counter if the bottom of the display is at least 1.7 m above the floor level on the seller's side.



CERTAIN TOBACCO PRODUCTS CANNOT BE DISPLAYED

It is an offence to display certain tobacco products including:

- A carton or part of a carton;
- A package that contains cigarettes that, when smoked, have a flavour or aroma of -
 - Any kind of fruit; or
 - Chocolate, vanilla, caramel, coconut, mint (but not menthol), or any other flavour used in the production of confectionary.

- A package displaying a word or set of words, picture, sign, symbol or other visual image (including a colour or scheme of colours) suggesting that the package contains cigarettes of a kind mentioned above.

Examples of the above are DJ Mix, Peel, Pink Elephant, Black Devil, Sobranie Cocktail and Springwater Vanilla.

- A package that is designed, or capable of being split into 2 or more portions each containing less than 20 cigarettes (these packages also do not comply with Commonwealth labelling laws and are illegal to sell).



Chapter-4

Enforcement of Tobacco Packaging and Labelling Regulations

4.1 CONTEXT

Recent years have seen extensive and effective innovation in the regulation of packaging and labelling of tobacco products with a view to reducing the use of those products. Currently, at least 18 jurisdictions have adopted legislation that requires picture-based warnings on tobacco packs, and many others are in the process of doing so.

Tobacco packaging regulations also encompass prohibitions of misleading terms, descriptors, and other signs/ images, and constituent and emission labelling. To date, forty countries have banned the terms “light” and “mild” on tobacco packs, as they are misleading in terms of the level of harm caused by the products.

Responding to emerging evidence, at least five countries that had previously required that tar and nicotine levels be included on the side of the package now require a more descriptive text message instead (including Australia, Brazil, New Zealand, Thailand, and Venezuela). This was done because the yield numbers provided by the tobacco industry were found to be misleading, thereby conveying a false sense of safety³¹.

Nevertheless, among the jurisdictions that provide information about inspection protocols and procedures, packaging and labelling is an area where most jurisdictions are yet to develop detailed protocols. Some countries combine packaging and labelling implementation with their points-of-sale inspections and enforcement actions, while others address it as part of customs checks.

4.2 FCTC OBLIGATIONS

Article 11 of the Framework Convention on Tobacco Control requires all Parties to have large, clear, and visible rotational health warnings or other messages that include pictures conveying the harmful effects of tobacco use. The warnings must occupy a minimum of 30% of the principal display areas of all tobacco packs (the ideal coverage space is 50%). Relevant information on product contents and emissions must also be provided. Parties must comply with this obligation within 3 years of the treaty’s entry into force for that Party.

Within the same timeframe, Parties must also prohibit the posting of all misleading terminology, descriptors, or signage on the packs that create false impressions about the safety of the products.

4.3 STIPULATIONS UNDER INDIAN TOBACCO CONTROL LEGISLATION

The Cigarettes and Other Tobacco Products (Act) of 2003 required that all tobacco product packages intended for sale in India carry health warnings, including a depiction of “skull and cross bones” and other pictures. The implementation of this requirement involved the challenging task of developing pictorial warnings for diverse tobacco product packs of varying shapes and dimensions in more than a dozen languages. The Ministry of Health Rules of 2006 proposed that two sets of strong warnings that had been tested for cigarette packs and smokeless tobacco products be displayed rotationally from 1 February 2007.

In response to tobacco industry protests, however, a 2007 amendment to the law made the “skull and bones” signage optional. Tobacco industry challenges and other political pressures led to the strong warnings being replaced by three weaker warnings in 2007. This experience points to the need for sensitising and securing the support of businesses ahead of law implementation. Rules under the law still prohibit all misleading terms, descriptors, and signage.

The FCTC required India to have rotational health warnings and to prohibit misleading descriptors by February 2007, three years from the entry into force of the treaty for the country. However, five years after the Tobacco Control Act was passed, the implementation of the newly proposed warnings is now waiting court approval. India’s tobacco control coalition, Advocacy Forum for Tobacco Control, has been running a sustained campaign as in **Figure 4.1** calling for the early approval of more effective warnings.

Figure 4.1 Indian Newspaper Ad Demanding Strong Pictorial Tobacco Warnings



**India's National Bird Is
The Peacock.**

**And not
The Ostrich!**

Strong Warnings!

SMOKING KILLS	TOBACCO KILLS
	
Smoking causes cancer	Tobacco causes mouth cancer

Weak Warnings!

SMOKING KILLS	TOBACCO KILLS
	
Tobacco causes cancer	Tobacco causes cancer

Pictorial Health Warnings must convey the true picture of the terrible effects of Tobacco!

Issued in public interest by:



HRIDAY
(Health Related Information Dissemination Amongst Youth)

On behalf of:



Advocacy Forum for Tobacco Control (AFTC)

HRIDAY: C-1/52, 3rd Floor, Safdarjung Development Area, New Delhi-110016.
 Tel: 011-26850342. 26511840 Fax: 011-26850331.
 Email: info@hriday-shan.org; contact@hriday-shan.org • Website: www.hriday-shan.org

4.4 CASE STUDIES OF INTERNATIONAL BEST PRACTICES

1. Australia

In March 2006, Australia revised its health warning policy and introduced 14 picture-based health warnings that occupy 90% of the back and 30% of the front of tobacco packs. The warnings also included the Quitline logo and telephone number.

A key strategy employed at the onset of the policy's implementation was a well-planned television campaign that familiarised the public with the new warnings and informed businesses about the implementation start date.

The campaign in New South Wales, one of the five Australian States, engaged images appearing on the new warnings and included personal narration on how the harmful effects of tobacco negatively impacted people's lives. These television advertisements aimed to bring to life the on-pack picture messages and leave a lasting impression each time a smoker purchased cigarettes. The campaign served thus the dual purposes of ushering in enforcement and creating public awareness³².

One of the challenges to successful implementation of health warnings has been the tobacco industry's resistance to pictorial warnings. On the announcement of the new warning policy, tobacco interests posed challenges to its implementation through a poster and letter campaign called "Enough is Enough" at retail stores (**Annexure- 4.1**) that masqueraded as a backlash from smokers, well resourced and orchestrated by an unnamed third party.

Civil society groups such as ASH Australia exposed the non-transparency and vested interests behind the opposition to the warnings³³. This throws light on the scope for involving civil society in defending tobacco control policies and pre-empting delays in the implementation of Governments' public health efforts.

2. Brazil

Brazil was the second country in the world to introduce picture-based, rotational health warnings, next only to Canada. Since 2002, the country has constantly improvised, pre-tested, and launched new sets of warnings.

Figure 4.2 Brazilian Pack Warning (Translated)



ANVISA is the enforcement body that oversees tobacco control policy enforcement in Brazil. ANVISA, through its provincial chapters, employs enforcement officers who regularly carry out food- and health-related inspections, who are mandated to tobacco control. Brazil is reportedly developing a system for training and equipping these officers to enforce tobacco control policies³⁴.

3. Canada

Canada enjoys the distinction of being the first country to implement strong, rotational, picture-based health warnings on tobacco packs in December 2000. It has also banned the use of terms such as “light” and “mild” and other forms of misleading labelling.



Figure 4.3 Canadian Pictorial Warning

Tobacco Control enforcement officers are engaged in the enforcement of packaging regulations in Canada. A Sample Labelling Assessment Tool³⁵ for use in inspections is annexed at **Annexure-4.2**.

4. Belgium

Belgium requires pictorial warnings in 3 local languages (English, Dutch, and French) occupying 48% of the front and 63% of the back of the packs. It has also banned the misleading terms “light” and “mild”.

Enforcement of pack warning laws in Belgium is the responsibility of the Department of Consumer Products Inspections in the Ministry of Health. The enforcement team is comprised of 22 officers (20 controllers and 2 inspectors), and each of these officers covers a section of the Belgian territory. The controllers are familiar with the laws and are trained to recognise and identify improperly labelled packs of cigarettes. Belgium’s pack warning legislation is unambiguous and the controllers know what must and must not be shown on a pack of cigarettes.

Concretely, all the controllers inspect a maximum number of tobacco-selling venues (libraries, filling stations, night shops, etc.) in their districts where they check the conformity of all packs of cigarettes with Belgian law. Annually, approximately one thousand tobacco shops are visited on compliance checks.

If incorrectly labelled packs of cigarettes are found in a shop, the controllers have the legal power to seize and destroy them. Enforcers recognise this power to seize non-conforming products as a remarkable measure that encourages producers and sellers to conform their products to the standards prescribed by the law, thus yielding significant compliance results³⁶.

The number of incorrectly labelled packs of cigarettes encountered has been found to be on the decline, although illegal packs are occasionally traced and attributed to contraband trade or as coming from jurisdictions whose warnings (and/or warning regulations) are different.

While the enforcement machinery incurs cost, it also reported earning some revenue from the offenders' penalties. The enforcers reinforced the need for comprehensive and clear laws for successful enforcement.

5. Hong Kong

Hong Kong implemented its current set of warnings in October 2007 under its Smoking (Public Health) Ordinance³⁷. This ordinance proscribes that pictures must occupy 50% of the front and back of the packs and include text messages in English and Chinese. Hong Kong has also banned all kinds of misleading packaging.



Figure 4.4 Hong Kong's Pictorial Warning

In Hong Kong, the Customs and Excise services are involved in the enforcement of pack warning regulations. A Complaints telephone line also exists, to which violations of the Ordinance could be lodged.

6. Singapore

Singapore introduced graphic health warnings occupying 50% of the front and back of the packs in 2003; it then introduced a new set of warnings in 2006.

Licensing of tobacco retailing entails compliance with health warning legislation.

Tobacco companies are provided an



Figure 4.5 Singapore's pictorial warning

Enquiry Form (shown in **Annexure- 4.3**) to check the compliance of their packs with Singaporean law.

7. United Kingdom

United Kingdom introduced picture-based health warnings in 2007. A significant winning strategy that it engaged in the implementation of the warnings was a public consultation on the introduction of picture warnings on tobacco packs, which was launched on 27 May 2006, prior to its implementation.

This allowed diverse groups such as Cancer Research UK to provide input on the proposed warnings³⁸. It also allowed the Government to understand concerns of various groups in advance of the implementation start date, to anticipate challenges, and to prepare for defending its proposals. The process lent valuable technical inputs both on the content and implementation of the warnings in terms of evidence and best practices.

4.5 Lessons Learned (with inputs from IUATLD Tobacco Labelling & Packaging Toolkit³⁹)

1. **Consultations or public hearings** held in advance of the implementation of policies may facilitate dialogue and feedback from tobacco control experts and help plan for potential challenges to enforcement. This could be done through consultations with civil society and experts not affiliated with the tobacco industry and publicised through media and community-level workshops.

Such activities not only provide helpful feedback on proposals, but also help to generate public support prior to implementation. Consultations can be conducted in parallel with the development of new designs and preparation of the regulatory process to prevent unnecessary delays.

However, caution is to be exercised to not include tobacco industry representatives as “legitimate stakeholders” in the process - in adherence with Article 5.3 of the FCTC. The Article calls on Parties to guard tobacco control from tobacco industry interests. Communication with the tobacco industry, where inevitable, should therefore be limited to conveying legislative standards required of the industry and should not be consultative.

2. **The use of a communications and media strategy** to support the implementation of comprehensive health warnings and other labelling measures is perceived as a major policy proposal that attracts media interest and is therefore to be leveraged to gain maximum media exposure to the proposals. Those responsible for responding to media requests should be prepared to communicate the basic rationale for the

regulations, as well as to respond to common complaints and arguments generated by the tobacco industry.

In countries such as Australia, running specific media campaigns on the proposed warnings was found to be of much educational and enforcement value. There may be opportunities to link and focus a country's tobacco control mass media campaign content to the introduction of graphic warnings. Integrating such messages with other on-going health campaigns would be both resource efficient and help build linkages to other programmes.

A coordinated media campaign will reinforce warnings and messages, improve access to target groups, and provide additional information on health warnings and messages. It will also communicate other information that increases tobacco users' motivation and confidence in their ability to quit, such as the benefits of quitting, attitudes to quitting, quit advice, and contact details of quit organizations.

3. **Optimising resources through effective linkages is recommended.**

Expensive, extensive, or exclusive media campaigns on health warnings are not always possible or necessary. It may be more resource-efficient to link health warnings with related media programming or to draw on existing campaigns. One of the health warnings that Australia implemented in 2007 was on a theme that was featured in a very successful earlier television campaign that depicted the effects of smoking on arteries. Introducing it on the packs helped to capitalise on this success and reinforce the message to smokers.


Similar local opportunities include utilising the opportunity and resources presented through de-addiction programmes or consumer campaigns like "Jaago Grahak, Jaago"[#], meaning "Wake up consumer, wake up".

4. **Civil society collaboration** can be pertinent in countering industry opposition to pack warnings and avert enforcement delays.
5. **Anticipating tobacco industry resistance** and preparing strategies to counter it is essential to avoid delays in implementation.

[#]A national media campaign run by the Ministry of Consumer Affairs, Government of India asserting consumer rights.



Figure 4.6 Australian Pack Warning

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6. Requiring tobacco companies to enquire about and **conform to packaging standards** of the Government as part of the licensing regime can serve as a preliminary check-point and baseline for on-site compliance checks.
 7. Providing for **substantial penalties**, including the power to seize and destroy non-conforming products, would serve as a deterrent to large business interests and companies that support the violation of packaging regulations. It has the additional benefit of facilitating work on counterfeit and contraband products by removing them from the suppliers and sellers.

Annexure- 4.1

Letter Campaign against Pictorial Warnings in Australia

Have you seen this?

This is what the Government are proposing to put on your packets next year.



It's time that people said to the Government

'enough is enough'

Smokers are responsible adults and as such are able to make a decision, we do not need to be shocked into making a choice. By signing the letter below, you will be letting the Secretary for Health know how you feel.

Annexure- 4.2

Labelling Assessment Tool: Example from Health Canada

Name:

Date:

Region:

In order to complete the following assessment, you will need:

- the actual product sample
- the *Tobacco Act* and its *Regulations*, including the *Tobacco Product Information Regulations (TPIR)*
- the *Source Document: Health Warnings and Information for Tobacco Products* dated 05/12/2000
- a calculator and a ruler to calculate the surface areas.

I. Product Sample

Name (include brand)	
Name of Manufacturer or Importer	
Type of Package	
Size (weight or # of units)	

1. Find the definition for “tobacco product” in the Tobacco Act. Does your sample conform to the definition of a tobacco product? (If “no”, the product does not require labelling.) ☐ Yes ☐ No

2. Can this sample be categorized as one of the following tobacco products* that may require labelling as per the Tobacco Product Information Regulations (TPIR)?

Please select form the following:

- | | | |
|--|--|---------------------------------------|
| <input type="checkbox"/> Cigarettes | <input type="checkbox"/> Cigarette Tobacco | <input type="checkbox"/> Leaf Tobacco |
| <input type="checkbox"/> Tobacco Sticks | <input type="checkbox"/> Cigars | <input type="checkbox"/> Pipe Tobacco |
| <input type="checkbox"/> Chewing Tobacco | <input type="checkbox"/> Snuff | <input type="checkbox"/> Kreteks |
| <input type="checkbox"/> Bidis | | |

* **Note:** if the tobacco product does not fall within one of the above-mentioned categories, it likely does not require labelling as per the TPIR.

3. Is this tobacco product destined for retail sale in Canada? ☐ Yes ☐ No
(If “no”, then the product does not require labelling as per the TPIR.)

II. Health Warnings

3. Does this sample require a health warning to be displayed on the package? (If “no”, indicate why and proceed to the section on Health Information.)
- ☐ Yes ☐ No (please explain):

Annexure- 4.2 continued...

4. What type of health warning is required? ☐ Graphic ☐ Text
5. Where are all the sections that describe the manner of display for the sample...
... in the *TPIR*? Section(s)
☐ (if the answer is subsection 6(1), skip to question #7)
... in the Source Document (if applicable)? Part
6. Review the definition of “principal display surface” in Section 1 of the *TPIR*. Which of the four descriptions best applies to this sample’s packaging?
☐ (a) ☐ (b) ☐ (c) ☐ (d)
7. a) If the sample has a health warning, does it conform to the appropriate regulations?
☐ Yes ☐ No
b) If the sample’s existing health warning does not conform to the appropriate regulations or if the sample does not have a health warning, where would you place the health warning (including the manner of display)?
c) If applicable, describe the alternative display options:

III. Health Information

8. Does this sample require a health information message?
(If “no”, indicate why and proceed to the section on Toxic Emissions and Constituents.)
☐ Yes ☐ No (explain):
9. What type of health information message is required?
☐ On package ☐ Leaflet ☐ Both possible
10. Where are all the sections that describe the manner of display for the sample...
... in the *TPIR*? Section(s)
... in the Source Document? Part
11. a) If the sample has a health information message, does it conform to the appropriate regulations?
☐ Yes ☐ No

Annexure- 4.2

continued...

Note: verified that health information conforms to size as per 7(1)(b)(ii).

- b) If the sample's existing health information message does not conform to the appropriate regulations or if the sample does not have a health information message, where would you place it (including the manner of display)?
- c) If applicable, describe the alternative display options:

IV. Toxic Emissions and Constituents

12. Does this sample require the display of toxic emissions/constituents?

(If "no", proceed to the section on Results of Label Assessment.)

- ☐ Yes ☐ No (explain):

13. a) What type of toxic substances are required to be displayed?

- ☐ Constituents ☐ Emissions

b) Which section(s) of the *TPIR* describe the manner of display??

Section(s):

14. Where is the list of toxic substances located in the *TPIR*?

15. a) If the sample displays toxic emissions/constituents, does it conform to the appropriate regulations?

- ☐ Yes ☐ No

b) If the sample does not conform to the appropriate regulations or if the sample does not display toxic emissions/constituents, where would you place the toxic emissions/constituents (including the manner of display)?

c) If applicable, describe the alternative display options:

Results of Labelling Assessment Tool

Now that you have thoroughly examined the sample, please list the areas that must be modified for the product to comply with the requirements of the *TPIR*.

- 1.
- 2.

Additional items:

Annexure- 4.3 Business Enquiry Form-Singapore



TOBACCO REGULATION UNIT – CENTRE FOR DRUG ADMINISTRATION

ENQUIRY OF HEALTH WARNING AND LABELLING OF TOBACCO PRODUCTS BASED ON SMOKING (CONTROL OF ADVERTISEMENTS AND SALE OF TOBACCO)(LABELLING) REGULATIONS 2003

Name of Importer / Wholesaler:

Tobacco product (e.g. cigarettes, Ang Hoon, Beedies, etc):

Packing Size:sticks / gm / kg *

Packing Type (e.g. Box, Soft pack, Pouch etc):

Brand Name of Tobacco Product:

Type of Warning:

- ☐ Smoking Causes Gangrene
- ☐ Smoking Increases Miscarriage Risk
- ☐ Smoking Causes 92% of Oral Cancer (Tongue)
- ☐ Smoking Causes 92% of Oral Cancer (Cheek)
- ☐ Smoking Causes Neck Cancer
- ☐ Smoking Causes Mouth Diseases
- ☐ Smoking Kills
- ☐ Smoking Causes Cancer
- ☐ Smoking Causes Heart Disease
- ☐ Smoking Harms Your Family
- ☐ Smokeless Tobacco Kills
- ☐ Smokeless Tobacco Causes Mouth Cancer
- ☐ Smokeless Tobacco Causes Mouth and Gum Disease

* Delete where applicable

CHECKLIST:

Have you checked the following(s)?

(NOTE: Please provide an explanation to seek Authority's advice)

SPECIFICATIONS	COMPLY WITH REGULATIONS	REASON
1. Measurements Of The Health Warnings:		
1.1 The total area of health warning (Part I and Part II) is not less than 50% of the largest area of the container.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
1.2 The area of Part I is not less than 50% of the total area of warning	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
1.3 The area of Part II is not less than 35% of the total area of the warning.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
2. Positioning Of The Health Warning On The Container:		
2.1 The position of the health warning is parallel to the top / bottom** edge **Only for soft pack	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
2.2 The health warning is positioned in the same direction as the other information that is on the container.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
3. Colour and Font Typeface Of The Health Warning(s):		
3.1 The background colour is 100k black box.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
3.2 The colour for the text "WARNING" is Pantone Red 032. (Colour 100m 100y)	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
3.3 The font typeface for the text "WARNING" is TradeGothic Bold typeface.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
3.4 The font typeface for the text is GillSans typeface.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
4. Warnings on Packaging:		
4.1 The text / graphic warnings are not obscure, obliterated, severed, or becomes unreadable in any way.	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
5. Other Warnings:		
5.1 No Sale to Persons Under 18	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
5.2 Tar and Nicotine Level	<input type="checkbox"/> Yes <input type="checkbox"/> Seek Authority's Advice	
You have filled up all the information above <input type="checkbox"/> Yes <input type="checkbox"/> No		

I, as authorized representative of the company, hereby declare that the information submitted is accurate, truthful and consistent. The advice given by HSA (TRU) is

Annexure- 4.3 continued...

not to be construed as an endorsement of the tobacco product that is in question or any claim made for it. It is based on the information provided by me.

The onus responsibility for the consistency and quality of the health warning and labelling and the compliance with legislative requirements remains with me as the importer or wholesaler. The advice is given without prejudice to any future legislative and administrative change on the control of this tobacco product. It may be superseded as and when new information is obtained from further investigation, published or reported.

Signature of representative :

Name of representative :

Designation :

Company Stamp :

Date :

FOR OFFICIAL USE ONLY

☐ Enquiry received on :

☐ Advice was given on :

☐ Further clarification needed

Name of Authorized Signatory

Chapter- 5

Enforcement of Youth Access Regulations

5.1 CONTEXT

This chapter explores the enforcement of a variety of measures that are used to address youth access to tobacco. These measures include prohibition of tobacco sales to minors, prohibition of the loose sales and kiddie packs and the sale of tobacco in and near educational institutions, and regulations regarding the sale of tobacco through vending machines. Measures that address the sale of tobacco by minors have not been reported by the jurisdictions approached for information on their inspection practices, and therefore are not included in this report. It is noteworthy that the various jurisdictions have defined different cut-off age with respect to youth access regulations; youth in these cases range from 16 to 20 years of age.

Both global practices and Indian law recognise a complete ban on tobacco vending machines as means to reduce youth access to tobacco. Some jurisdictions with vending machines have attempted to regulate their access through age-identification mechanisms. However, there are challenges in restricting youth access to vending machines, particularly in jurisdictions without reliable age-proof systems. Therefore, a complete ban is justified.

It is noteworthy that evidence regarding the impact of some of the youth access restrictions aimed at reducing tobacco use has produced mixed results about their effectiveness, with some studies indicating that they may actually be ineffective. One reason for this finding is that tobacco is generally widely available to youth in most societies and cutting off access to tobacco only through retail outlets does not eliminate the easy access that youth have to tobacco from other sources such as their family and friends. At the same time, inspecting and enforcing youth access measures can be very resource intensive and detract from the government's ability to enforce measures that have been proven unequivocally to be effective.

Distinctly, population-based measures have proven to be efficient in reducing tobacco use across ages, including among youth. Taxation in particular has been found to be the single most effective measure to reduce tobacco use, more so among youth who are the most price-sensitive.

5.2 FCTC OBLIGATIONS

FCTC Article 16 addresses affordability and accessibility of tobacco products to youth and prohibits the sale of tobacco products to those less than 18 years of age (or another

age set by domestic law) and sale by means easily accessible to children. It restricts youth access to vending machines. It also bans the free distribution of tobacco products, the sale of tobacco look-alikes appealing to children, and loose sales or sale in small packs.

5.3 STIPULATIONS UNDER INDIAN TOBACCO CONTROL LEGISLATION

The Indian Cigarettes and Other Tobacco Products (Act) of 2003 banned sale of tobacco products to those below 18 years of age, sales by minors and through vending machines, and sale within the radius of one hundred yards of any educational institution. Educational institutions are to display a signage board on their periphery wall indicating the existence of the ban. Similarly, tobacco vendors are required to display signage stating the prohibition of tobacco sales to those under 18 years of age. Tobacco products are not to be displayed as visible to minors.



Figure 5.1 Display Boards at Points of Sale in India

5.4 CASE STUDIES OF INTERNATIONAL BEST PRACTICES

1. Ireland: Planned Enforcement

Ireland has recently tightened control over the sale and access of tobacco products to children. The new law that came into effect on 9 July 2008 bans all in-store/point-of-sale advertising of tobacco products (including branding backdrops) in shops and counter change mats, the display of tobacco products in retail premises, sales to minors, and sales of packs of less than 20 cigarettes. It also introduces tighter controls on the location and operation of tobacco vending machines and maintenance of a retail register to facilitate enforcement.



Ireland brought in the enforcement of these provisions through a systematic information and compliance campaign that was launched in advance of the start date of the law. This involved:

- a) **Preparing the evidence-base:** Preparations for ushering in the legislation began by consolidating evidence in support of the measures proposed. This included studying the Irish retail environment vis a vis tobacco products, retailer behaviour with regard to sales to minors, and public opinion polls regarding the sale of tobacco products to minors and points-of-sale⁴⁰. The evidence has been used to defend the policy measures, to increase community and business' awareness and support, to influence business attitudes and practices, and to popularise the policies.
- b) **Using Media:** Media was widely engaged prior to, during, and following the start of the enforcement to prepare the community and businesses, to release the study findings, and to generate community support.
- c) **Guidance to businesses⁴¹:** This included the development of an Information Guide for Retailers and Staff. The user-friendly Guide is available in the most frequently used languages of retailers (English, Irish, Polish, and Chinese), clarifies the legislative requirements, answers Frequently Asked Questions about violations and implications, and provides a checklist for business owners and managers to ease their compliance with the law (**Annexure- 5.1**).

A training DVD was also made to raise awareness about retailers' responsibilities at points-of-sale. Signage (as in **Annexure-5.2**), posters, and DVDs were made available to the retailers through the Office of Tobacco Control and were widely promoted during the campaign.

- d) **Reporting and handling violations:** A compliance telephone line (called Lo-Call Compliance Line) has been established for the public to report violations of the ban on tobacco sales to minors. The complaint details are passed on to the relevant Health Service Executive area or the Health and Safety Authority, whose officers are tasked with enforcing the legislation.
- e) **Evaluating progress of enforcement:** The Office of Tobacco Control presented a yearly evaluation of its enforcement efforts in its Annual Report 2007⁴². 684 test purchase inspections with regard to sale to minors were carried out by the Environmental Health Officers in 2007. The inspections covered hotels, restaurants, licensed premises, and retail premises. Of the reported contraventions, 20 were successfully prosecuted for offences. Monitoring and evaluating trends in enforcement data are important for further strategising, planning legislation, and resource allocation.

2. Ontario, Canada- Use of Test Shoppers & Close Monitoring

The Province of Ontario has prohibited the sale of tobacco products to those less than 19 years of age. The province has developed detailed protocols for enforcement agencies to follow when ensuring vendor compliance and undertaking enforcement checks of under-age sales restrictions. Its key features include:

- a) **Use of test purchasers:** The province engages test purchasers in the age group of 15-17 to undertake vendor checks. The Ontario protocol addresses the steps required to recruit and train test shoppers and to conduct compliance and enforcement checks at vendors. Detailed guidelines exist for each of these steps and include modes of recruitment and eligibility criteria for test purchasers, content of their training, training outcome indicators, and safety guidelines.
- b) **Compliance Check vs. Enforcement Check:** A significant feature of the Ontario enforcement strategy is that it includes both a compliance check and a mandatory enforcement check within 3 months. The compliance check involves a purchase attempt by a test shopper, but stops short of a legal charge even when the purchase is completed. Rather, a warning letter is left with the business, informing it that it has violated the law. A sample warning letter is shown in **Annexure- 5.3**. The follow-on enforcement check, on the other hand, would result in legal action upon completion of test purchase. The progressive enforcement plan is described in **Annexure- 5.4**.
- c) **Guidance on compliance and enforcement checks are elaborated as follows⁴³:**
 - i) **Compliance Check:** This involves a preliminary visit by the enforcement officer to determine vendor compliance. In the event of non-compliance, the vendor is informed about the non-compliance and the requirements needed to comply with the law. Education, explanatory materials, and signage are provided to encourage compliance.
 - ii) **Enforcement Check:** Within 3 months of the compliance check, enforcement check is undertaken. If the vendor is still non-compliant, charges are issued against the person and owner of the establishment that violated the Act. The tobacco product is retained as evidence.
- d) **Evaluating Retailer behaviour:** Health Canada commissioned a report to evaluate how retailer behaviour had changed since the enforcement of youth access restrictions⁴⁴. It indicated very high level of compliance of 82% with regard to sales to minors.

3. Singapore: Demerit Points for Offences

Singapore has banned the sale of tobacco products to minors. In facilitating the enforcement of this provision, the country has required that all tobacco retailers to be licensed since 1998. Packets with less than 20 cigarette sticks and tobacco product look-alikes, replicas, free samples, and cigarettes provided as gifts are prohibited.

A unique feature of Singapore's youth access regulations is its demerit system in addition to fines for offenders. This system was introduced in 2004 in response to growing illegal sales of tobacco products to under-aged persons through retail outlets.

In the event of contraventions, demerit points are issued to the licensee, which are accumulated for each offence (as shown in **Table-5.1** below), leading to eventual license suspension or revocation. The lost points will be reset if the licensee is able to maintain a clean record for 36 months from the last date of offence, but not once the licence is suspended or revoked.

Table 5.1: Singapore's Demerit Points System for Sales to Minor Offences

Offence Sequence	Demerit Points Awarded to Licensee	Action Taken Against Licensee
1st offence	10 points	Warning / Advice
2 nd offence	20 points	6 months suspension
3rd offence	30 points	Revocation (not allowed to re-apply)

4. India: Demerit system in traffic regulations

Similar to the demerit system followed by Singapore for point-of-purchase regulations, India also employs disincentives in enforcing its civic rules. Currently, Mumbai is considering introducing a demerit system for its traffic regulations whereby offenders accumulate points for various established driving offences, leading to eventual license suspension and cancellation. A similar system could be put in place for tobacco control violations.

5. United Kingdom (UK)

The UK has banned the sale of tobacco to minors and their access to vending machines. Test purchase operations engaging minors form an important part of the enforcement of the ban on sales to minors. In addition, local authorities also educate businesses through media, seminars, visits, inspection, and production of guidance materials. Effort is also made to implement and improvise Proof of Age Schemes.

Detailed guidelines are provided to local authorities regarding the selection of test purchasers, assessing risks for their involvement, and briefing them about the tasks.

Annexure– 5.5 provides a sample agreement that the enforcing agency may use with test shoppers and their parents/care givers.

6. Western Australia


Western Australia has licensed all retail, wholesale, and indirect sale (such as mail order, internet or fax) entities in order to regulate tobacco sales to minors. Sale of tobacco is limited to the point-of-display within the sales premises.

Sale to those below 18 years of age is prohibited. A guidance brochure for retailers has also been developed, and is shown in Annexure- 5.6. Two warning signs (shown in Annexure-5.7) must be visibly posted at all points-of-sale and vending machines.

Sale of tobacco to minors through vending machines is prohibited and employers of premises with vending machines are required to train their staff on their use to ensure youth restriction. In addition, vending machines are restricted premises which hold a liquor licence and mining amenities, which are unlikely to be visited by children.

5.5 LESSONS LEARNED

1. Restricting youth access to vending machines is challenging; enforcing a ban on vending machines is one productive way of reducing youth access. The focus therefore needs to be on ensuring that tobacco vending machines are completely removed.
2. Ongoing educational efforts to ensure retailers are informed about the law and understand its application have been shown to be critical to vendor compliance.
3. The progressive nature of enforcement, ranging from educational visits to compliance checks and further enforcement charges with penalties, is critical to secure sustainable vendor acceptability and compliance.
4. “Under age” test shoppers can be used effectively to assess compliance with youth access laws. Engagement of such “under age” test shoppers in checks need to be addressed sensitively, protecting child rights and welfare, adhering to country’s child labour laws, and must include parental involvement and consent.
5. Demerit points are a way to increase compliance, if supported with retail licensing. Other penalties may also be considered.

- 
6. Enforcement of regulations about youth access to tobacco revolves largely around the scope for age identification and retail licensing.

5.6 SUGGESTED STRATEGIES FOR JURISDICTIONS WITHOUT AGE PROOF IDENTITY

In jurisdictions where age identification cards do not exist or are limited, enforcement of youth access regulations is more challenging and calls for strategies adapted to local realities that draw on local structures and values. Emphasis in these scenarios needs to be on improving implementation through community ‘policing’ and enforcement supplemented by formal enforcement to the extent possible. Model implementation projects exploring efficacy of potential strategies is to be encouraged.


Possible strategies for these environments include:

- a. Retailer education and sensitization, including developing picture-based guidance materials to overcome illiteracy barriers;
- b. Building on local and cultural values of child protection and community values;
- c. Engaging trade unions and women and child welfare groups in sensitising the businesses and the community;
- d. Involving educational institutions, principals, and teachers to reach out to stores close to centres of learning;
- e. Establishing compliance lines for reporting violations; and
- f. Proactively engaging community groups such as senior citizens groups, resident welfare associations, and youth clubs to monitor compliance and reporting violations.

Annexure-5.1

Ireland's Retailer Information Guide on Under-Age Sales Regulations


It is an offence to sell cigarettes or other tobacco products to persons aged under 18.



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Willow House
Millennium Park
Naas
County Kildare


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Lo-call Compliance Line: 1890 333 100

E-Mail: info@otc.ie
Web: www.otc.ie



Information Guide for Retailers and Staff

Help stub out under-age smoking.



It is an offence to sell cigarettes or other tobacco products to persons aged under 18.

- Make sure you display signs stating that your retail outlet does not sell tobacco products to under-18s and that customers may be asked for I.D. to prove their age.
- If you suspect that someone under 18 years of age is trying to buy a tobacco product, you should ask to see identification to prove that he or she is the legal age. This could be a:
 - National Age Card
 - Passport
 - Driver's Licence
- It is your right to ask any customer for proof of age.
- If the customer can't provide suitable proof, refuse the sale.
- Explain that it is against the law to sell tobacco products to anyone you suspect is under-age and that is why you are refusing the sale.
- If a customer becomes abusive, it is your right to ask him or her to leave your premises.

Frequently Asked Questions

What are the implications of selling to under-18s?
You could face possible prosecution and a fine of up to €3,000, or to imprisonment to a term of up to 3 months, or to both.

What is the law regarding selling tobacco to people under the age of 18?
Under Section 45 of the Public Health (Tobacco) Act, 2002, it shall be an offence for a person to sell a tobacco product by retail to a person who has not attained the age of 18 years.

Who may be prosecuted if tobacco is sold to someone under-18?
Depending on the circumstances of the case, the person who sells the product may be prosecuted and/or the owner of the retail outlet may also be prosecuted.

Can someone under 18 sell tobacco products?
Currently there is no legal prohibition for someone under-18 to sell tobacco, however some shops have introduced this policy. It is the owner/manager's responsibility to ensure that anyone who sells tobacco understands their legal obligations and complies with the law.

What is a tobacco product?
Any product consisting of tobacco (such as cigarettes, cigars and loose tobacco) and any cigarette paper, tube or filter manufactured for use in the smoking of tobacco.

A checklist for owners/managers

- Make sure signage is clear and visible.
- Make sure your staff know the law and the penalties for illegal sale to under-18s.
- Encourage and help your staff to ask confidently for proof of age identification.
- Lead by example. Refuse to sell to under-18s and train your staff to do the same.
- Monitor your staff for compliance with the legislation.

Annexure-5.2
Irish Poster on Under-Age Sales Regulation



**No I.D.
No Sale.**

**It is an offence to sell cigarettes
or other tobacco products to
persons aged under 18.**

Office of **TOBACCO
CONTROL** 
Let's keep our children smoke-free

Annexure-5.3 Sample Vendor Warning Letter- Ontario

SAMPLE ONLY

APPENDIX B

TOBACCO VENDOR WARNING

DATE: _____

Re: *Smoke-Free Ontario Act Violation*

Dear Sir/Madam:

A compliance check of your business was conducted on the above date. You were found to violate Section 3(1) of the *Smoke-Free Ontario Act*. This section prohibits the sale of tobacco products to persons under the age of 19 years. It is your responsibility to ensure that tobacco products are not sold or supplied to anyone under the age of 19 years.

Please be advised that this letter is a warning to you and any future violations will result in legal action from this Department. The fines under this legislation can be substantial. Furthermore, two or more convictions will result in your premises being **prohibited from selling tobacco for six months.**

Tobacco Enforcement Officer

Please Print

Signature

Corporation/Owner: _____

Premise Name: _____

Premise Address: _____

Owner/Operator/Employee

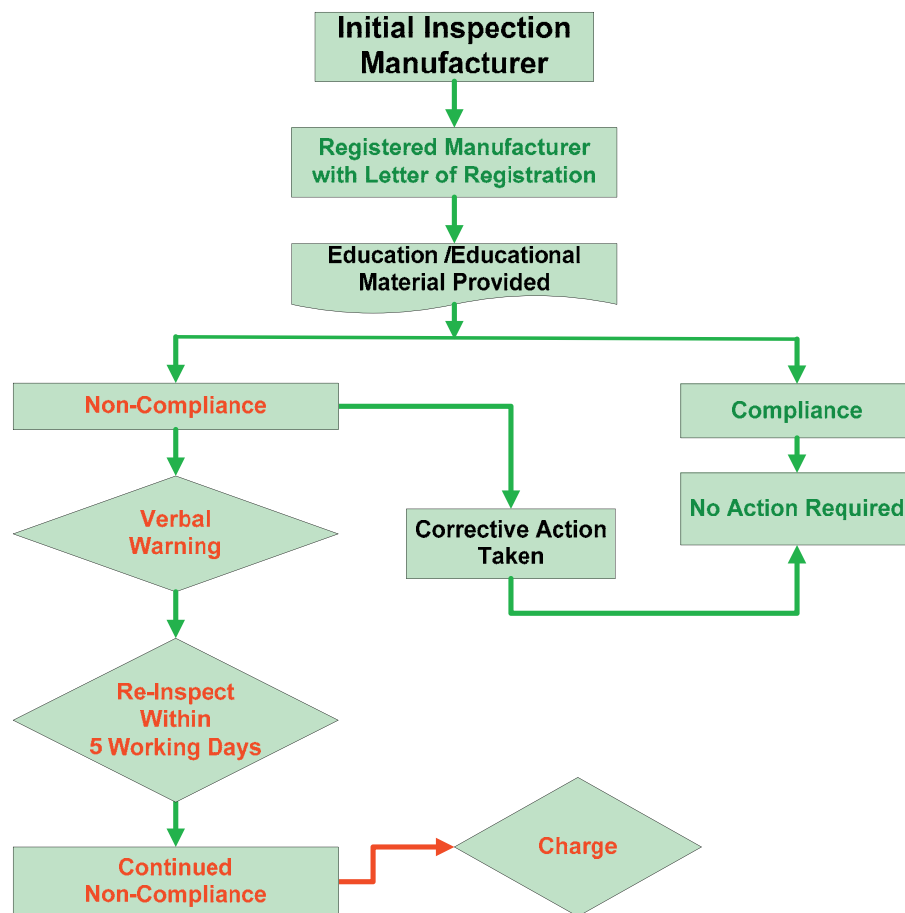
Please Print

Signature

Annexure-5.4
Progressive Enforcement Steps in Youth Access Regulations
-Ontario

Smoke-Free Ontario Act

Section 3.1 & Regulation 6 – Manufacturer





Annexure-5.5 Sample Agreement with Test Shoppers and Parents -UK

AGREEMENT WITH PARENT/CARER, YOUNG PERSON AND THE LOCAL AUTHORITY FOR TEST PURCHASING

The purpose of this agreement is to ensure that the parent/carer and young person are aware of what the local authority officers intend to do and what safeguards will be used.

- i. The young person will be fully trained in what to say and do. The young persons parent/carer may attend the training session(s). The young person will be told to tell the truth about their age unless previously agreed that the operation is deemed "exceptional " .
- ii. At least one officer will supervise the young person at all times.
- iii. The young person will not be asked to make test purchases in any areas where he/she is likely to be recognised.
- iv. In any exercise, the young person's welfare is paramount. The nature of the young person's involvement in the exercise will not be revealed whilst they are on the premises, unless the officer is of the opinion that their welfare is at risk.

The officer will intervene at any time where the young person's welfare is at risk.
- v. The young person's identity will not be revealed by the local authority in any subsequent publicity.
- vi. Payment may be made where the young person is employed by the Local Authority, otherwise no payments will be made for this assistance, but appropriate refreshments and travelling expenses will be provided.
- vii. This exercise may result in legal action.
- viii. The local authority will endeavour to ensure that the young person will not be required to attend court as a witness. However, in exceptional circumstances, this may still occur.
- ix. The parent/carer will provide a witness statement to confirm the date of birth of the young person, if required.

I have read and understood the above

Signed: (Parent/Carer)

Signed: (Officer in charge of exercise)

Signed: (Young Person)

Date:

Contact details of senior local authority officer

Name: **Position:**

Telephone number(s):



Annexure -5.6

Retailer Staff Training Guide-Western Australia

EXAMPLE OF A STORE POLICY

Our store strictly supports the minimum age laws governing the sale of tobacco products.

We do not intentionally sell or supply tobacco products to anyone under the age of 18 years.

If we suspect a person to be under 18 years of age we always ask to see photographic ID.

To help this store uphold the law, you, as an employee, must follow this procedure:

- Visually check for the legal age.
- Ask to see ID of anyone who may be under 25 years of age.
- If unsatisfactory, do not make the sale.
- Be firm but polite.
- State the store's policy.
- Remind them of the law.

EXAMPLE OF AN EMPLOYEE PLEDGE

I have read and understood our store policy on selling tobacco products. I am aware that as an employee I am also liable and can be fined for breaches. I have been informed that it is an offence to sell tobacco products to people under 18 years of age and I will not knowingly sell tobacco products to anyone under this age. I will check the identification of anyone who looks like they might be under the age of 25 years.

SUGGESTED EMPLOYEE PROCEDURE

Do A Visual Check

Visually check to make sure the customer appears to be 18 years or over. It is good business practice to ask to see ID if you think the person looks under 25 years.

Annexure -5.6 continued...

Ask To See Identification

If there is any doubt about the person's age, it is mandatory to ask for proper ID. If the person is of legal age, he or she probably won't mind showing suitable photographic ID.

Check Identification Carefully

Check the birth date. Make sure it has not been altered in any way eg, erased, typed over, smudged or cut out and replaced. Compare the photograph to the person. Be sure the physical characteristics match those of the customer.

If In Doubt, Don't Make The Sale

If the person can't produce a valid identification, regardless of the reason, DO NOT make the sale.

Be Informative

The person will understand your position better if you explain it. Show them the store policy and signage. Explain the law and the penalty that applies.

Seek Manager Support

If the person still does not accept your refusal to sell, suggest they talk to the manager. Often this will discourage an underage person from persisting.

Signature: Date:

Annexure-5.7

Sales to Minors Warnings at Points of Sale in Western Australia

COMPULSORY WARNING SIGNS

Two warning signs must be displayed with the tobacco products display and on vending machines.

The signs are provided by the DoH when a licence is issued. Additional signs are available on request.

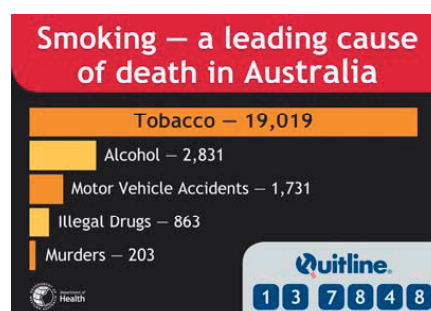
Warning Sign 1 - Supply to Minors

The following A5 sign is required to be displayed above the height of the counter at the place of sale and must be clearly visible to a customer at the time of purchasing tobacco products.



Warning Sign 2 - Health Warning Sign


Either one of the following health warning signs is required to be displayed immediately adjacent to the tobacco products display so it is clearly visible to a customer when purchasing a tobacco product.



RECOMMENDATIONS

This report describes the experiences of diverse international jurisdictions in enforcing major tobacco control policies and the lessons learned thereof. This brings to light key areas of significance to enforcement practices in India. These include:

1. **Legislative Backing:** Country experiences point to the need for clear legislative provisions that address potential exemptions and loopholes. COTPA, 2003 provides a good starting point towards comprehensive tobacco control legislation in India. Ambiguities and limitations in the existing law could be addressed through follow-on amendments to provide a more robust backbone for law enforcement.
2. **Planned Enforcement:** Detailed planning in tune with the notification of emerging regulations at the national, state, district, and sub-district levels are critical to carry out effective enforcement. Planning needs to address compliance and enforcement checks, protocols, media strategies, stakeholder education, community sensitisation, human resources, and other factors of local significance. The planning exercise could draw on the lessons learnt from the enforcement of similar laws locally and globally.
3. **Enforcement machinery:** While tobacco control policies tend to become self-enforcing over time, resource allocation is critical to initiate action and sustain the basic enforcement machinery, including dedicated enforcement staff, materials development, and compliance and cessation telephone lines. This would include involving food and drug inspectors, licensing officer and police among others. The capacity of state- and district-level tobacco control cells needs to be developed to co-ordinate these efforts, and needs to include dedicated enforcement officers. These could be supplemented through existing community-level enforcement personnel such as traffic wardens and clean-up marshals who are currently engaged in the enforcement of various civic laws.
4. **Budget Allocations:** In order to address enforcement in a serious manner, specific budget allocations need to be made for tobacco control policies. Resources under the National Tobacco Control Programme and other sources need to be specifically streamlined to enforcement activities. Tobacco taxes constitute a sustainable source of income for such activities.

- 
5. **Inter-agencies Linkages:** Formal and informal co-ordination between Government departments enforcing tobacco control policies is critical at the national and sub-national levels. Co-ordination is needed in the areas of enforcer capacity building, pre-testing and developing guidance materials and media campaigns, generation of standardised inspection protocols, and enforcement and compliance data collection, reporting, and evaluation. Linkages across various government ministries, departments, and agencies would help bring additional human, technical, and financial inputs to enforcement.
 6. **Civil Society Involvement:** In India, civil society is traditionally viewed as not having a direct role in enforcement. Nevertheless, the report refers to various jurisdictions that have creatively engaged NGOs (not associated with the tobacco industry) in monitoring, reporting, and legal action against violators. Community policing involving local associations such as resident welfare associations, senior citizens' and youth clubs in business and community education, watch dogging, and reporting violations could supplement governmental efforts.

CONCLUSION

India is at the threshold of tobacco control policy enforcement. Several Indian sub-national jurisdictions have successfully implemented tobacco control laws. These experiences, along with the best practices from international settings adapted to the Indian context, could boost enforcement efforts at all levels and across policies.

Political will, programme prioritisation and resource allocations need to consider the benefits of proactive enforcement of tobacco control laws as well as the continuing harm from deficiencies in policy enforcement. A combination of a top-down approach (enabling federal to local Governments and community) and a bottom-up approach (from community to policy makers and enforcers) is critical to successful law implementation.

This would require all concerned stakeholders to be resourceful and creative and to rise above the call of duty to personally commit to the cause of better health for all. The hope is that, over a period of time, we progress from official enforcement to community policing and self-enforcement resulting in a change in cultural norms with regard to tobacco control measures in ensuring that one of the public health challenges of the century could be made history!

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