



**Comment
on the
Effective
Enforcement of
the 'Sales to
Minors'
Requirement of
the ACT
Tobacco Act
1927
Consultation
Paper**

**May
2005**

INTRODUCTION

ACTCOSS acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS's objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

ACTCOSS Comment

On the Consultation Paper: Effective Enforcement of the 'Sales to Minors' Requirements of the ACT Tobacco Act 1927

Summary

ACTCOSS wishes to express its concern at the proposals to use children to conduct Controlled Purchase Operations (CPOs) for the purpose of enforcing the Tobacco Act 1927.

In particular, our concern arises from:

- The use of children in operations involving committing offences;
- The use of triggering an offence by way of deception, regardless of whether this is legally defined as 'entrapment' or otherwise;
- The lack of response to the major sources of tobacco procurement for minors, being from friends or relatives, or by getting someone else to buy cigarettes on the child's behalf.
- The focus in this consultation upon enforcement alone rather than a broader examination of demand and supply reduction and licensing controls to reduce child use of tobacco, as well as reducing tobacco use more generally; and

ACTCOSS would also add that the timeframe for consultation appears to have been very short, and the extent of consultation is limited. ACTCOSS has recorded receiving the consultation papers on 17 May, less than 2 weeks before the close of consultations. Our understanding is that the consultation has not been widely distributed, nor is it publicly available (for example, by being displayed on the ACT Health website).

ACTCOSS also notes that there is a divergence in views among the community sector about the appropriateness of Controlled Purchase Operations. Our impression is that while health orientated organisations appear very supportive, those who focus more on human rights and child protection are less enthusiastic.

The Use of Minors

ACTCOSS acknowledges that the use of children for CPOs in Australia is not new and is practiced in a number of jurisdictions. We also understand that there is little evidence that children involved in CPOs are likely to be psychologically harmed by their involvement or more likely to commence or maintain smoking behaviours.

However, ACTCOSS continues to express unease at the use of children in CPOs. The stated aim of CPOs is to increase compliance with the *Tobacco Act*, and presumably, this is done by convincing retailers that a child who seeks to buy tobacco products may be, in fact, a stooge sent by the Department of Health, resulting in a decreased propensity to offend against the provisions of the *Tobacco Act*. However, this approach necessarily casts children as deceptive and not to be trusted, and ACTCOSS raises the concern that inducing retailers to distrust children is not an ideal means to enforce legislation.

ACTCOSS would point out that children and young people are already the subject of community distrust, and are more likely to be subject to surveillance for shoplifting or engaged by security officers in retail environments. While ACTCOSS supports increased compliance with tobacco legislation, doing so by creating an environment that utilises suspicion in child behaviour as a motivation is less than welcome.

Deception and Law Enforcement

In a more general sense, ACTCOSS continues to question proposals that seek to enhance compliance with the law or securing convictions by using deception by police or other public authorities. One of the aims of the Canberra Social Plan is to “promote fairness and understanding”. The use of deception by Governments promotes distrust and suspicion and works to reduce community cohesion and undermines social capital.

At the time of writing, it appears that Australian jurisprudence does not consider CPOs a form of entrapment, as demonstrated by the Victorian Supreme Court Decision in *Rice v Tricouris 2000*. However, the fact that this ruling overturned the reverse finding by a lower court, and the necessity of deception as to the child’s true motives in a CPO, means that even if CPOs are not legally considered ‘entrapment’, that is precisely how the community will interpret the action.

While this consultation is aimed a very specific area of public policy, it should not be considered in isolation from the more general principles of good governance. ACTCOSS supports open, honest and transparent government, and adopting practices that necessarily involve deception by the State erodes public trust in government and appeals to fear rather than the more ethical instincts of people.

Reducing Supply to Minors

As the ACT Government's own research shows, less than a quarter of young people actually derive their cigarettes through illegal sales. Many more obtain tobacco products through friends and relatives, or through others buying them on their behalf. The obviously point to note that even if CPO completely eliminated direct tobacco sales to minors, this would make only incremental reductions in the total availability of tobacco to children.

A broader approach to enforcing tobacco regulation would also place greater attention to reduction in these forms of obtaining tobacco, rather than only through illegal sales direct to children. ACTCOSS is unaware of additional ACT Government strategies in this area. This could include community education and increased awareness campaigns, as well as consulting directly with young people to target behavioural change through avenues that they deem appropriate and effective.

A Holistic Approach

The current emphasis in this consultation is on enforcement of illegal sales of tobacco to children. ACTCOSS acknowledges that this forms only one element of the ACT Government's commitment to reducing the harm from tobacco, yet the problems the Department has raised beg further questions.

Tobacco is not the only controlled product that is available to minors. Are the instances of sales to minors similar in the selling of alcohol, x-rated videos or gambling services? Do these areas of controlled sales also need additional examination, and would the government also propose to use CPOs in these areas?

Equally, if the currently regulatory mechanisms for tobacco control are insufficient, then perhaps the Government needs to reconsider the availability of tobacco licenses. Why are so many businesses being licensed to sell tobacco if the Government believes many of them will ignore the Act?

ACTCOSS suggests a number of other areas of licensing could be examined to reduce the number of illegal sales to minors, and indeed, to reduce the volume of sales overall, such as:

- Tightening the eligibility criteria for businesses to sell tobacco products
- Requiring provision for staff training for tobacco sales, as is the case for the provision of gambling services
- Limiting the number or type of outlets that are allowed to sell tobacco
- Stipulating that tobacco may only be sold by adults