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This is a pre-copyedited, author-produced PDF of an article accepted for publication in the *Australian and New Zealand Journal of Public Health* following peer review. The definitive publisher-authenticated version [Hooker, C. and S. Chapman (2006) 'Structural elements in achieving legislative tobacco control in NSW, 1955-95: political reflections and implications.' *Australian and New Zealand Journal of Public Health* 30:10-15] is available online at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-842X.2006.tb00078.x/abstract> .

# Structural elements in achieving legislative tobacco control in NSW, 1960-1995: implications for the future

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(2007)

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## Abstract

**Objective:** To analyse structural factors revealed by politicians that shaped legislation on tobacco control in New South Wales, 1955-1995.

**Methods:** Parliamentary debates and other records were collected. Open-ended interviews were conducted with 17 of the Members of Parliament (MPs) and health advocates who were significantly involved, and analysed for structural elements.

**Results:** Tobacco industry lobbying had a significant but limited influence on policymaking, being exerted largely through social interactions with executives and based on concerns for the economic impacts on third parties. MPs saw health advocates' chief functions as (1) generating community concern about the issue and support for control measures, and (2) bringing any new information to political attention, providing pro-control arguments and data through the media. Factors that delayed tobacco control policies included: the conservative stance of Premiers and major parties, commitments to unanimous federal action, and rivalry between parties. Factors that facilitated control policies included: reforms that gave the Legislative Council increased power, the use of Parliamentary committees, and backbencher and grass roots support.

**Conclusions:** Tobacco control policy and legislation has been the product of political structures that gave power to those MPs in the least powerful positions – minor parties, Members of the Legislative Council (MLCs), backbenchers, women and party rank and file – rather than to major parties and their executives.

**Implications:** Advocates should make the most of their access points to the political process, providing information, arguments and support to interested backbenchers, party and parliamentary health committees, the health ministers' conference, minor parties and independents, and demonstrating public opinion in favour of further control.

The history of Australian tobacco control is one of achievement: smoking rates have dropped dramatically since 1945<sup>1</sup> and there exists comprehensive legislative and programmatic efforts to discourage smoking and protect non-smokers from exposure to tobacco smoke. Yet today's advocates still face more battles to regulate tobacco products, halt subtle product promotions and support those who wish to quit.<sup>2,3</sup>

Advocates are now reflecting on past campaigns to identify factors that have previously facilitated or retarded its progress.<sup>4-6</sup> Many view successful policymaking as the product of opportunistic activity by 'policy entrepreneurs' such as advocates, health bureaucrats or ministers for health, as described in Kingdon's agenda-setting theory of policy change.<sup>7-9</sup> However Studlar's<sup>10,11</sup> comparative evaluation of tobacco control policy showed that theories more centred on structural elements<sup>12</sup> - interest groups, partisanship and ideology, and political institutions and culture - hold explanatory importance also (see also Gardner's work on health policy in Australia<sup>13,14</sup>).

Australia's history of tobacco control policy has already attracted interest,<sup>15-17</sup> and invites further historical analysis, especially in the light of ongoing research into tobacco industry documents.<sup>18-21</sup> Our approach to this subject is structural, using analytic categories drawn from Studlar. We examine the roles of (1) 'interest groups' (advocates and industry lobbyists), (2) changes in political institutions, (3) political parties and partisanship and (4) public opinion in the development of tobacco control. Our focus is on politicians' activities and perceptions, and on legislation, as central components of tobacco control policy.<sup>22</sup>

## Methods

Our study is of New South Wales 1955- 1995; ongoing research addresses the subsequent period. All parliamentary debates concerning smoking were collected, and oral history interviews<sup>23,24</sup> requested from politicians and some tobacco control advocates to provide background. Sixty invitations to participate resulted in 20 respondents representative of all parties and Chambers (no particular group failed to respond), leading to 17 1 – 2.5 hour interviews conducted by CH, including with four former Ministers for Health and two former Premiers. Past communicative antagonism precluded inviting tobacco industry employees to participate.

In accordance with the open-ended oral history practice, subjects were invited to reflect on their memories of the politics of tobacco control. The second author's (SC) high profile as a tobacco control advocate was known to all our participants and the interviewer's (CH) non-activist professional historian background was explained. However, as perspectives opposing tobacco control were explicitly invited, and participants were well accustomed to aggressive debate and were often readily critical of tobacco control we see no evidence that SC's involvement affected the reliability of the study results. The interviews were transcribed, cross-checked against published sources and tobacco industry documents for reliability, and, with the debates, reviewed for references to historical structural elements<sup>25-27</sup> such as public opinion, party structure, etc.

## Results

### *Historical Changes*

A full historical analysis of tobacco control in New South Wales is beyond the scope of this paper (see <sup>28-30</sup>), but the following overview highlights significant milestones:

Table 1: Overview of major events by change in government, 1955-1995

Date	Major Events
1950-55	<ul style="list-style-type: none"><li>• Relationship between smoking and lung cancer conclusively demonstrated</li></ul>
1955-1965	<ul style="list-style-type: none"><li>• Labor government.</li><li>• Tobacco growing important in Australia (including NSW), supported by politicians</li><li>• Tobacco control legislation passed, USA</li><li>• Calls for tobacco control from NHMRC</li><li>• Tobacco control is the subject of only three brief questions in the NSW parliament, control strategy limited to education</li></ul>
1965-1975	<ul style="list-style-type: none"><li>• Liberal government.</li><li>• Tobacco control discussed at annual State/Federal Health Ministers' Conferences.</li><li>• 1968 the Conference proposes Australia's first tobacco control legislation (warnings on cigarette packets), stalled by NSW Premier, Sir Robert Askin, under industry influence, until passed in 1973.<sup>31</sup> <b>1<sup>st</sup> piece of State legislation.</b></li></ul>
1975-1988	<ul style="list-style-type: none"><li>• Major parties begin to corporatise</li><li>• Labor government.</li><li>• Tobacco control rarely mentioned in Parliament.</li><li>• However, activism and growth of health promotion more generally puts tobacco control on public agenda<sup>28,29</sup></li><li>• Pilot Quit campaign 1979.</li><li>• From late 1970s, the tobacco industry formally organizes, founding the Tobacco Institute of Australia, and makes aggressive use of politically manipulation, power plays and public misinformation campaigns<sup>32</sup></li><li>• From 1981 incremental, non-legislative anti-smoking regulations enacted.</li><li>• 1986 stronger warnings legislation passed -<b>2<sup>nd</sup> piece of State legislation</b></li><li>• 1986 Tobacco industry documents claim success in opposing strongly worded warnings.<sup>31</sup></li><li>• From 1986 tobacco control discussed in Parliament at least once a year.</li></ul>
1988-1995	<ul style="list-style-type: none"><li>• Coalition government. Health Minister Peter Collins continues regulatory reforms</li><li>• 1991 MLC Reverend Fred Nile's private member's Bill banning</li></ul>

tobacco advertising and sponsorship is passed under minority Coalition government despite expensive public advertising campaign conducted against it by the Tobacco Institute.<sup>15</sup> **3<sup>rd</sup> piece of State legislation.**

- Tobacco is commonly a subject of Parliamentary debate thereafter, and tobacco control legislation banning smoking in parliament (passed 1993) and limiting juvenile smoking (ongoing amendments from 1994) is debated
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### *Structural Factors*

#### 1. Industry

'I used to say to the tobacco companies, the fellows that used to come to the conference, "the campaign that's being waged against tobacco products and cigarette smoking is going to win, and you better get yourself steeled for that ... it's my job to see that people don't smoke, and that's what I will do.'" Former Labor Health Minister Kevin Stewart

Those interviewed mostly recalled well-publicised instances of aggressive, obstructive tobacco industry action. These included: the legal proceedings against the first Quit campaign in the early 1980s alleging misleading statements<sup>33</sup>; threats of legal action sent to MLA Ernie Page when he proposed to screen the film *Death in the West* in the Parliament theatre,<sup>34</sup> threats of unspecified legal action made to TV presenter Ray Martin<sup>34</sup> and to entrepreneur Dick Smith for his anti-smoking advertising,<sup>35</sup> threats of union-voter backlash against Labor MLA and Health Minister Laurie Brereton (LB), whose electorate included a cigarette factory; and the large-scale advertising campaign launched against MLC Fred Nile's Tobacco Advertising Prohibition Bill (FN).

Interviews suggested that industry influence was mainly exercised indirectly through relationships between industry lobbyists and members of the governing executive. These men (lobbyists and ministers) typically shared common social circles and values. However, while these relationships gained lobbyists a sympathetic hearing, they did not prevent tobacco control legislation. All five health ministers interviewed clearly recalled telling industry lobbyists that they intended to pursue anti smoking policies and that opposition was futile.

Industry political donations were described as significant, especially at a time when the cost of political advertising had increased steeply: 'I can remember the comment was, you know, "The [fundraising] raffle ticket days are over" ... [at fundraising events] people like Rothmans would have a whole table... a big contribution, very visible, and also, very sociable' (Dorothy Isakson, Labor MLC). Tobacco companies were large donors to the Labor Party in the late 1970s when corporate contributions outstripped trade union funds for the first time. However, they were described by party members with fund-raising responsibilities as being not disproportionate to other industry donations, and most interviewees stated that what donations bought was access, not policy determination.

Interviewees suggested that the most significant industry influence, which greatly retarded the prohibition of tobacco advertising and of limiting passive smoking, occurred through third parties. This influence is also described in tobacco industry documents.<sup>36</sup> Concerns about the

economic impact of banning tobacco sponsorship of sport and of banning smoking in pubs and clubs were cited by most interviewees as dominating tobacco control debates in the late 1980s and early 1990s. Even strongly pro-control politicians felt that these concerns had some weight and at the least tended to justify very slow, incremental legislative adjustments.

## 2. Political Structures

'With the smoking issue, I think any politician who supported restrictions on smoking and wanted to take the next incremental step, could do so with some ... success in the Legislative Council, although not in the Legislative Assembly.' Peter Collins, former Liberal Health Minister

The evolution of tobacco control policy was shaped by two significant structural features, (1) federalism / state relations, and (2) bicameral relations.

(1) Australia is a federation of six former British colonies. The federal constitution was designed to maintain the powers of these States, though since Federation (1901) the Commonwealth government has gained increasing power through fiscal control.<sup>37</sup> Like most health matters tobacco control is regarded primarily as the responsibility of states and territories. However legislative action is considered typically to be dependent on uniform agreement and action from all States, negotiated at the regular conferences of all State and Federal Health Ministers, which was considered by the former Health Ministers interviewed to be the primary venue for policy development. The pursuit of uniform agreement could delay legislation if opposed by a single recalcitrant State, as was the case for the first warnings legislation.<sup>31</sup> Nevertheless, by passing legislation alone a State could set agendas for other States, as when the Victorian government banned tobacco advertising and sports sponsorship in 1988. Differences between States (for example, on taxation levels for cigarettes or sponsorship of international sporting events) created a dilemma for government between protecting public health and preventing crime (cigarette smuggling) or raising public revenues (hosting sports).

(2) From the colonial period NSW was bicameral, that is, it had two houses of Parliament, a 'lower' house (the Legislative Assembly (LA)) filled with representatives directly elected by the people with the task of proposing legislation, and an 'upper' house (The Legislative Council (LC)), originally of appointed members, with the task of reviewing legislation. Until the 1970s the LC acted as a 'rubber stamp'. Political reforms passed then transformed it into an elected body with genuine powers for review,<sup>38</sup> and created the conditions that allowed tobacco control legislation to be advocated and enacted. In part this was because the reforms resulted in the election of minor party members and more women to the LC. These were both groups that Hansard records and interviewees indicated were more likely to be vocal tobacco control advocates. This directly resulted in the proposal and passage of one of the most important pieces of legislation in NSW, the Tobacco Advertising Prohibition Act, which was Call to Australia (CTA)'s first piece of legislation (FN). Members of the LC (MLCs) had more time to discuss and advocate for tobacco control, while MLA's allotted time for speaking in the House was limited and was devoted largely to the affairs of their electorate. That several nevertheless raised the issue in their rare speech opportunities was a strong index of support for control measures.

Adversarial political structures – the necessary rivalry between parties - that could potentially slow tobacco control were significantly mitigated by the Committee system. This system required that members from different Houses and parties work together. This often had the

effect of building consensus in favour of tobacco control and was a significant venue for developing State-based policy recommendations that were later used in legislative debates. 'I was on the Government Health Committee – so we were exposed to a lot more statistics and things there and there were bits of legislation starting to come up,' (Wendy Machin, National Party MLC).

### 3. Parties and Political Roles

'[I]t wasn't a vote winner ... you addressed [it] when you had the power to do something about it. And that you hoped that it had some sort of positive electoral impact. But you don't put it out there to enable those opposed to organize against you.' Peter Collins

Tobacco control policy was the outcome of shifts in power between major and minor parties, the executive and party rank and file. These negotiations were conducted on the basis of two significant assumptions: (1) that because of the accumulating evidence of significant harm tobacco control was *inevitable* and (2) that although it had some significance as an 'indicator' or 'touchstone' issue ('affecting perceptions of a party's general moral valence' (former Premier Nick Greiner)) tobacco control policy would not in the end significantly affect votes.

As a corollary of its perceived inevitability tobacco control was considered a nonpartisan issue, though more likely to be associated with the 'left wing' of each party. Regulatory control and the enactment of significant legislation occurred under both Labor and Coalition governments, and each party saw protesting Government inaction on tobacco control as a regular part of their function while in Opposition. While this adversarial system was meant to encourage debate and to place sufficient pressure on the Health Minister to take action,<sup>39</sup> it could also cause delays in legislation as Government and Opposition proposed different Bills on similar subjects in the effort to claim responsibility for tobacco control (as in the slightly different legislative controls proposed to limit juvenile smoking in from 1994 onwards<sup>40</sup>).

The major parties were slow to engage in tobacco control (table 1). They preferred to introduce tobacco control in small, incremental steps, avoiding legislation. Laurie Brereton explained that the only proposal he made as health minister that did *not* get Cabinet support was his only legislative proposal for tobacco control (to raise the fines for sales to minors): 'they thought that was going a bit too far.'

Within major parties, putting tobacco control on the legislative agenda was typically the outcome of negotiations between the executive and the rank and file, and in government between the Health Minister and the executive, especially the Premier. Both major parties had loose federal structures (less binding in the Liberal party) in which rank and file influence a party's platform by placing issues on an agenda then voted on at State conferences.<sup>37</sup> State level party committees were important venues for policy development on such issues. In the Labor party the gradual acceptance of tobacco control as an appropriate part of government activity between the 1960s-80s occurred as a result of rank and file concern expressed in branch meetings,<sup>29</sup> which encouraged executive action, in part by providing a proxy for public opinion on the subject. Similarly, by consistently raising and supporting the issue, over time backbenchers gained important party room support for legislation.

Health Ministers were usually firm advocates for tobacco control proposals which typically went beyond what their executive would allow. Their strong leadership was often crucial to the success of tobacco control. However, tobacco control was typically low priority in comparison with the immediate demands of day to day events. Opposition to legislative change was typically forthcoming from Premiers – Robert Askin, Neville Wran and Nick Greiner opposed legislative controls – and most vocally from older, often senior, men, especially those with sports interests / ministerial portfolios.

Women politicians across all parties were a particularly important source of support, advancing the issue through their administrative roles within parties and as elected members. Often networked by participating on parliamentary committees, women MPs made tobacco control bipartisan. 'From time to time there would be cross-party gatherings of women on issues like that ...Whether it's because women tend to be the carers, you know, in the family and the community a bit more still, they are interested in health issues, probably a little bit more empathic.' (WM)

Despite their limited power, minor parties, especially the Australian Democrats and CTA, played a critical role in the development of tobacco control policy. Tobacco control was adopted as party platform because these parties' ideologies – critique of big business and of economically-driven government agendas, concerns over consumer culture, and, for CTA, Christian moral values – made it a priority. Despite their ideological differences on other matters the minor parties were united and not distinguishable on tobacco control. By articulating the most coherent ideological framework for supporting tobacco control and critiquing government inaction minor parties could provide an important path finding role. They lobbied other MPs, consistently raised the subject for debate in Parliament ('getting something debated – rather than won – is a major achievement for a minor party' (FN)), and opportunistically introduced legislation as private member's bills, a strategy that crucially broke through major party unwillingness to ban tobacco sponsorship of sport in 1991.

#### 4. Advocacy and Public Opinion

'It was like a flood! They tell me that in the west when a flood occurs, you can have a dry riverbed, and you can see it coming towards you. Well, you could see the change in public opinion coming towards you.' Former Labor Health Minister Kevin Stewart

Advocacy was considered very important in encouraging tobacco control legislation. In debates and in interviews 'advocates' connoted both specific interest groups such as Australian Council for Smoking and Health and the organized medical profession: MPs made frequent references to pro-control statements from the NHMRC, the Australian Medical Association, the Anti-Cancer Councils, 'doctors', etc. While members of the executive saw advocates' chief functions as (1) generating community concern about the issue and support for control measures, and (2) bringing any new information to political attention, backbenchers and minor parties were highly reliant on advocates for information and for persuasive arguments. Advocates exercised significant influence through the media, since most backbenchers and minor party members who spoke in Parliament in favour of tobacco control measures took their arguments directly from media sources.

Interviewees agreed that public opinion, while not strongly influencing particular policy directions, led or supported tobacco control. What counted as 'public opinion' was unclear. The media were one important proxy for MPs. The other proxy was personal experience and anecdote, which was very prominent in tobacco control debate in Parliament and in interviews.<sup>9</sup> Most MPs' support for, or opposition to, tobacco control proposals was couched in very personal terms – many with accompanying stories of having quit smoking, of parents or relatives who smoked or became ill from smoking, or of pleasure in smoking. Parliamentary debate on tobacco control frequently contained references to the smoker status of speakers, and in the 1990s, to the larger numbers of politicians who were quitting. All smoking Health Ministers attempted to quit (with various degrees of success) upon taking office. Changes in public opinion were judged in large measure by recalled incidents such as MPs noticing people objecting to other smokers in restaurants or observing more and more people give up.

### Conclusions and implications

This study shows there is no simple way for any elite group to simply 'pull' a legislative lever in order to confer economic or health benefits. Rather, legislation and policy are the changing outcome of complex interactions between engaged elements of civil society, political, public and private institutions, and the public.

Individual politicians' successes in sponsoring key tobacco control legislation, such as Nile's 1991 Bill, were possible only as a result of political and social structures that supported (and constrained) tobacco control. The roles taken by various players – support from Health Ministers, obstruction from Sports Ministers, conservatism from Premiers, advocacy by backbenchers, non-elected members, minor parties and women – were considered essential ingredients in explaining the slow process of policy formation and implementation, and the perceived need to balance the interests of industry, third parties, and health outcomes.

Most importantly our study shows that tobacco control policy and legislation has been the product of political structures, from internal party policymaking procedures to parliamentary committees, that gave voice and occasionally power to those MPs in the least powerful positions – minor parties, MLCs, backbenchers, women and party rank and file - against the major parties and the governing executive, to whom tobacco industry lobbyists had access.

However, it would be easy to overstate this case. Influenced by media advocacy and articulate champions within Parliament, tobacco control gained momentum from 1979 onwards in ways that established it as non-partisan, inevitable and morally compelling. From 1980 this meant that both Labor and Coalition governments in NSW developed slowly moving policy agendas for tobacco control and industry influence was limited. Above all general social change witnessed personally by politicians as MPs slowly quit smoking and Parliament House was declared smoke-free<sup>41</sup> supported ever-evolving tobacco control policies.

Watching the snail's pace of tobacco control policy development as lives are foreshortened around them, advocates have felt particularly frustrated at their limited access to the corridors of power. This study shows that their perceptions of the pace of reform being slow are shared by politicians and that these delays are not easily remedied. Nonetheless this study holds certain implications for future advocacy.

Firstly, media advocacy and work seeking to shape public opinion is widely acknowledged among politicians as having been extremely successful. This momentum must be harnessed in future de-normalisation campaigns. Without stigmatizing smokers, advocates might pay particular attention to demonstrating public support for tobacco control policies, particularly through anecdotes and other ‘human’ representations of changes in social opinion as well as through opinion polls and other study data.

Secondly, though they are largely removed from the executive, advocates can make the most of the many access points open to them by offering submissions to or conducting and publicizing strategic research in the weeks prior to the Health Ministers’ conferences and parliamentary committee sittings. Thirdly, they can provide information, arguments and support to ‘internal’ advocates such as interested backbenchers, party health committees, and minor parties and independents. Since it is likely that smoking rates among children will be a perennial concern, targeting MPs with children may add support to policy proposals.

Fourthly, although tobacco control is highly unlikely to ever become a voting issue, advocates might exploit its ‘indicator’ value by emphasizing policy alignment with public opinion, giving it moral context, and thus removing any undefined fears MPs might hold of a policy’s unpopularity. Fifthly, although the pace of tobacco control is constrained by structural factors such as federalism and executive conservatism, advocates both outside and within parliament need to take advantage of political opportunities if they arise – to have recommendations for incremental regulatory steps or drafts of possible legislation drawn up, with the involvement of MPs who will champion the proposals.<sup>8</sup>

Finally, if tobacco control advocates, building on the techniques of partnership and consultation now being successfully used in managing environmental risk issues,<sup>42,43</sup> can cultivate relationships with any potential ‘third party’ stakeholders, such as the owners of retail outlets selling cigarettes, opposition can be minimized in ways that will tangibly proxy pro-control public opinion. Given the potential for tobacco control to seem ‘done’ and in need of no further attention by policymakers, it is important to reaffirm the perception of it in this way as inevitable, non-partisan and morally right.

### **Acknowledgments:**

The research reported in this paper was supported by a grant from the National Health and Medical Research Council (2003-2005 #253657). The authors are grateful to Ms Katie Bryan-Jones for her sharing her discussions and interview transcripts, and to Ms Fiona Byrne for her impeccable information management and aid in preparing this paper. We would like to thank our reviewers for their insights.

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Word count including references: 4541

Word count excluding references: 3665

Word count excluding references and table: 3358