

# Worldwide news and comment

This edition of News Analysis brings good news stories from several regions. Two of the world's most populous countries have adopted new tobacco control measures: in India, larger graphic health warnings will come into force from April 2015, and an Indonesian court has upheld the introduction of a tobacco tax to be partially used for health funding. Meanwhile, the Dutch court of appeals has ruled in favour of smoking bans for small cafes, based on the country's legal obligations under the World Health Organization Framework Convention on Tobacco Control (FCTC). Civil society has had another victory in Bangladesh, this time against tobacco sponsorship of music events, and endgame options move closer to reality, with tobacco sales bans on the table in a small town in Massachusetts, USA and Australia's smallest state of Tasmania.

## INDIA: NEW WARNINGS TO COVER 85% OF PACKS

While the global tobacco control community was taking stock of the implementation of the FCTC at the sixth session of the Conference of the Parties (COP6) in Moscow from 13–18 October 2014, in New Delhi, India, the health minister of India announced amendments to the Cigarettes and other Tobacco Products

(Packaging and Labelling) Rules, 2008. The amended rules come into force from 1st day of April 2015 and the warnings are required for the next two years until otherwise specified by the Indian government.

The amendments stipulate much larger health warnings that will cover 85% of tobacco packs on both sides (60% pictorial and 25% text), more than four times the current specification of 40% of the front panel. The changes will put India among the global leaders for health warning size. Thailand currently has the largest pictorial warnings at 85% of the front and back, followed by Australia (75% of front surface, 90% of back) and Uruguay (80% on both sides).

In addition to mandating the larger graphic health warnings, the Ministry of Health and Family Welfare (MoHFW) has further strengthened the packaging and labelling rules. The revised rules include two each graphic images for both smokeless and combustible forms of tobacco products and require that the two images should be rotated on a 12 monthly basis. However, the industry will have a two month grace period to clear stocks, effectively requiring the new health warnings to come into effect on all tobacco products within 14 months.

The regulation prohibits use of any messages, images and pictures that directly or indirectly promote any specific brand or tobacco use generally or any matter or statement which is inconsistent with, or detracts from, the specified warnings on the packs.

With regard to the text warnings, where more than one language is used, the text warning shall appear in not more than two languages, with each language to appear on one side of the pack. This provision is intended to keep the warnings clear and legible and prevent cluttering of the texts on each side of the pack.

With an eye to curb the illicit trade in tobacco products, the amendment to the regulations also mandates that each package of tobacco product shall display the name of the product, name and address of manufacturer or importer, country of origin, quantity, date of manufacture and any other matter required by the government in accordance with international practice.

One of the most significant aspects of the amended regulations is that they provide for a minimum size for the warnings on each panel of not less than 3.5 cm (width) and 4 cm (height) so as to ensure they are legible, prominent and conspicuous. This will prevent sale of tobacco products in small and miniature packages which are appealing to youth and low income consumers.

The changes in the pictorial health warnings are a result of recommendations made to MoHFW by an expert committee constituted earlier in 2014 to look at global best practices, develop India-specific graphic health warnings, and carry out research and field testing of those warnings. The most effective warnings from the testing were selected.

This change in the way pictorial warnings will appear on all tobacco products in India is a great move in the right direction taken by MoHFW in the interest of protecting public health. It provides hope that India may eventually progress to the gold standard of tobacco plain packaging as the next logical step.

**Amit Yadav**

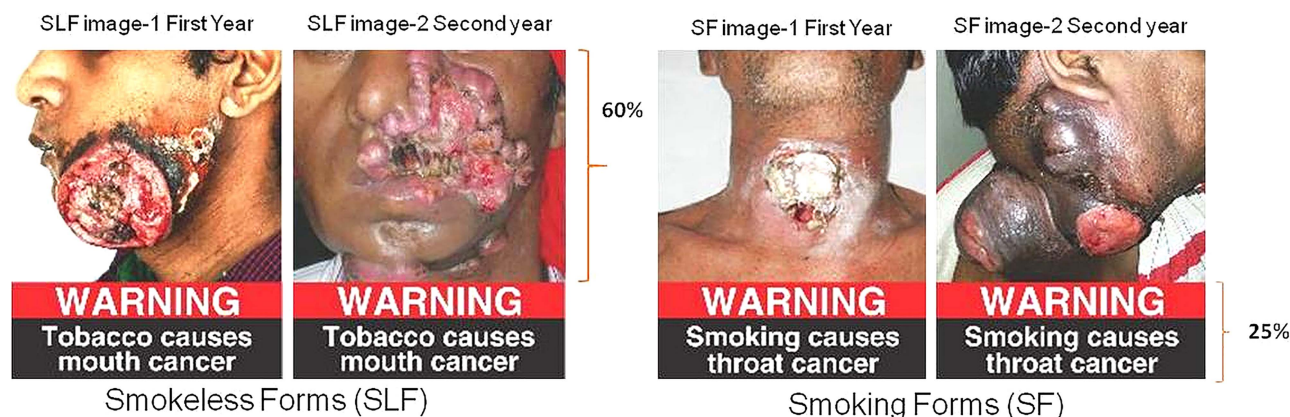
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## INDONESIA: COURT UPHOLDS TOBACCO TAX TO FUND HEALTH

Good news on tobacco control from Indonesia is rare. Recently, however there was a victory in the area of tobacco tax.

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## Pictorial health warnings in India from April 2015 to March 2017



The new strengthened India pictorial health warnings to come into effect in 2015.

On 1 January 2014, Law No. 28 of 2009 on regional taxes was introduced, which allows local provinces in Indonesia to charge a local tax to cigarettes. The tariff is 10% of cigarette excise.

This tax collectively amounts to about USD 796 Million, a significant sum. Following successful international examples for funding tobacco control, a minimum of 50% of the funds raised from the tax are to be used for health promotion, in particular through public anti-smoking campaigns and enforcing smoke free public spaces. This means local governments have the authority to decide on strengthening tobacco control measures for their provinces and cities.

Unfortunately, five smokers challenged this cigarette tax policy in the Constitutional Court, calling for its abolition. Their argument was that the policy harms the constitutional rights of cigarette smokers as consumers by requiring them to pay both excise tax and local cigarette tax. They argued this amounts to double taxation, which is prohibited by the tax law and is unjust.

However public health won, and the suit was rejected by the Constitutional Court in May 19, 2014. In the judgment, the Court stated that in accordance with Law No. 11/1995 on Excise Tax, the subject of excise tax is manufacturers, distributors, and importers, while its object includes cigarettes, cigars, tobacco leaf and tobacco strips. In the provisions of Articles 26 and 27 of the Local Tax Law on the other hand, the object of local cigarette taxes is consumption of cigarettes and the subject of this tax is cigarette consumers. "Thus, there is a difference between the object and the subject of excise tax in comparison to the object and subject of local cigarette tax," said one of the Constitutional Judges.

The Court ruled that the cigarette excise tax paid together with local cigarette tax is the "politics of taxation" to increase state revenues as well as provide compensation for the negative health impacts of the products. According to the judge, "Simultaneous excise tax and local cigarette tax have positive impact on reducing cigarette consumption and improve society's health".

Several benefits will arise from the Court's rejection of the suit and implementation of the tax. The first is that the local cigarette tax will increase cigarette prices, thereby making cigarettes less affordable, and in turn likely directly reduce smoking uptake among children. The second benefit is local governments will receive increased funds to go towards local development and increased living standards. A third benefit is the increased funding available to be used

exclusively for health promotion and law enforcement. This includes anti-tobacco campaigns and strengthened enforcement of tobacco control regulations such as non smoking areas.

Together, these measures will change tobacco control at the local level and enhance local government efforts to better protect children and the poor from the harms of tobacco. It represents a welcome step forward in a country that has been dubbed a paradise for tobacco companies due to lax regulation.

This article is available on the Tobacco Control website at <http://blogs.bmj.com/tc/2014/10/04/indonesia-court-upholds-tobacco-tax-to-fund-health>

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### NETHERLANDS: SUPREME COURT RULES SMALL CAFES TO BE SMOKE-FREE

In a significant victory for public health, on October 10, 2014, the Dutch Supreme Court confirmed that an exception to the smoking ban for small cafes should be considered invalid because it conflicted with article 8.2 of the FCTC.

Smoke-free legislation for workplaces was introduced in the Netherlands in 2004. The hospitality sector was initially excluded from this legislation, instead subjected to self regulation. In July 2008, the smoking ban was extended to hotels, restaurants and cafes. Opposition was strong and several judicial disputes were initiated by cafe owners, particularly in relation to the legality of including small cafes.

In February 2010, the Supreme Court concluded that the Tobacco Act did provide a sufficient legal basis for the smoking ban in all hospitality venues. However, politics intervened: in November 2010, a partial reversal of the smoking ban was announced by the new Minister of Health, allowing owner-operated cafes smaller than 70 m<sup>2</sup> and with no employees to be exempted.

In October 2011, the non-smokers association Clean Air Netherlands (CAN), supported by the Dutch Cancer Society, Lung Foundation and Heart Foundation, launched legal proceedings against the exception. They claimed it was contrary to article 8.2 FCTC, which requires each Party to take effective measures to provide for protection from exposure to tobacco smoke in indoor public places. The court case has mainly revolved around the question of whether article 8.2 FCTC should be considered binding on all persons and, therefore, to have direct effect. If so, the

Dutch Constitution provides that Dutch statutory regulations shall be deemed non-applicable in case of conflict.

In the first instance (May 2012), the lower court found that the FCTC was not capable of bearing direct effect. The court of appeals disagreed, stating on March 26, 2013, that the question of direct effect should be answered by solely considering the wording and scope of article 8.2 of the FCTC, rather than the convention in its entirety. It was found that this provision is sufficiently clear and concrete with respect to the results to be achieved through national legislation. The mere obligation to put a sign on the door warning possible patrons that smoking is allowed does not provide for effective protection against exposure to tobacco smoke.

It was acknowledged that the State needs time to meet international obligations, and transitional measures such as gradual implementation may be accepted. However, in the Dutch case, this argument did not apply, because the small cafes exception was the result of a reversal of a previous policy. The Supreme Court sided with the court of appeals and ruled that the exception for small cafes should be considered non-binding. This implied that, as of October 10, 2014, the regulatory provision providing for the exception no longer had legal effect.

Following the ruling by the Supreme Court, the deputy minister for health announced on October 21, 2014, that the Food and Consumer Product Safety Authority would immediately start enforcing the ban in all cafes. Until January 1, 2015, first offences in small cafes are only penalised with a warning. Fines (starting at 600 Euros) are being allocated in cases of subsequent offences, and first offences as of January 1, 2015.

An (unofficial) English translation of the ruling has been made available by Campaign for Tobacco-Free Kids on its website [www.tobaccocontrol.org](http://www.tobaccocontrol.org)

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### AUSTRALIA: TOBACCO-FREE GENERATION A STEP CLOSER IN TASMANIA

In 2012 we reported that the Australian state of Tasmania was leading the way towards an endgame for smoking, by developing mechanisms for implementing the Tobacco Free Generation proposal

(TFG) (see <http://blogs.bmj.com/tc/2012/09/28/tasmania-leading-the-way-towards-an-endgame/>)

The Tobacco Free Generation proposal, first developed by Professor Jon Berrick and his colleagues at the University of Singapore, advocates legislation precluding the sale and supply of tobacco to individuals born after the year 2000.

In 2012, Ivan Dean, a member of the Tasmanian Legislative Council moved a motion in support of this proposition, which was carried unanimously. The then Tasmanian health minister Michelle O'Byrne was interested in the idea and referred it to the Children's Commissioner for consideration and consultation with the generation of children who would be affected by the proposal. The idea attracted international attention.

There was a change of government in May 2014, and the Labor/Green government lost the election. The Liberal Party (which in Australia is the more conservative party) is in power for the next four years. The Report of the Children's Commissioner was not released before the election, and a new Commissioner was not appointed until recently. Tasmanian state Liberal governments have a good record on tobacco control legislation, and previously initiated the measure to make it illegal for tobacco companies to tell "lies" about the health effects of tobacco.

In September Ivan Dean announced that he would introduce a Private Members Bill to put the Tobacco Free Generation idea back on the agenda. It is unusual for Private Members Bills to emanate from the Tasmanian Upper House, the Legislative Council, and it will have to be approved in that chamber before going to the House of Assembly, controlled by the government.

If passed, the law would come into effect in 2018, providing for the sale of cigarettes and other tobacco products to be gradually phased out. It is important to emphasise that smokers would not be criminalised or penalised; it is the commercial sales of cigarettes that would be phased out over the next forty years, and only the sellers would be subject to penalties.

The tobacco industry have tried to paint this proposal as "prohibition" and argue that black markets will emerge, and compared it to alcohol prohibition in the USA in the 1930s. Imperial Tobacco Company has responded to newspaper stories by hyping up the black market arguments, somewhat of an irony considering their convictions for smuggling in Canada and lambasting by a Parliamentary Committee

in the UK for their role in "oversupplying" lower tax countries.

The process is that the Bill will be tabled in the Tasmanian Parliament in November 2014 and will be debated next year – 2015, when the community and politicians have had time to consider it. The Bill, Clause Notes and Fact sheet will be able to be viewed on the Tasmanian Parliament website in late November 2014. It will be titled *Public Health Amendment – Tobacco Free Generation Bill 2014*.

This article is available on our website and updates will be posted at <http://blogs.bmj.com/tc/2014/11/04/tasmania-legislation-drafted-to-implement-a-tobacco-free-generation/>

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### USA: MASSACHUSETTS TOWN CONSIDERS TOBACCO BAN

While Tasmania is considering a gradual phasing out of tobacco sales, the town of Westminster, in the US state of Massachusetts, population 7300, is considering a complete ban on the sale of all products containing nicotine within the city limits.

The proposal has been developed by the town's three member health board. Significantly, the statement of purpose for the proposal explicitly addresses e-cigarette use, noting American Heart Association concerns that e-cigarettes can service as a gateway to re-initiation of smoking by ex-smokers, and citing research that e-cigarette use leads to dual use rather than quitting among smokers, as well data from the National Youth Tobacco Survey showing that youth who have never smoked conventional cigarettes but used e-cigarettes are twice as likely to have intentions to smoke.

The health board will make the decision about whether to proceed with the proposal in late December. More details, which includes a link to a Newsweek report with legal analysis and the full proposal, as well as an eight minute PBS report on the public debate about the proposal is available on our website at <http://blogs.bmj.com/tc/2014/11/16/usa-massachusetts-town-considers-tobacco-sales-ban/>

### BANGLADESH: TOBACCO-SPONSORED CONCERTS CANCELLED

Bangladesh's national tobacco control law strictly prohibits any advertisement, promotion and sponsorship of tobacco products or tobacco companies. Penal provision for this violation of the law is not less

than three months imprisonment or a fine of up to 100,000 Taka (USD1300) or both for a first offence. Subsequent violations attract a doubling of the penalty. Despite this law, monitoring and protests by civil society activists in Bangladesh have stopped concerts intended to promote both British American Tobacco (BAT) and Philip Morris International (PMI) brands in recent months.

Philip Morris International has been behind a series of concerts since April 2014. With names such as 'Road to Rock Nation', 'Rock Town' and 'Rock City', the concerts, held at upmarket hotels and clubs, focused on promoting Marlboro cigarettes. According to Bangladesh NGO PROGGA (Knowledge for Progress), the Marlboro brand was displayed, along with cigarette booths staffed with attractive young females selling cigarette packets together with free gifts.

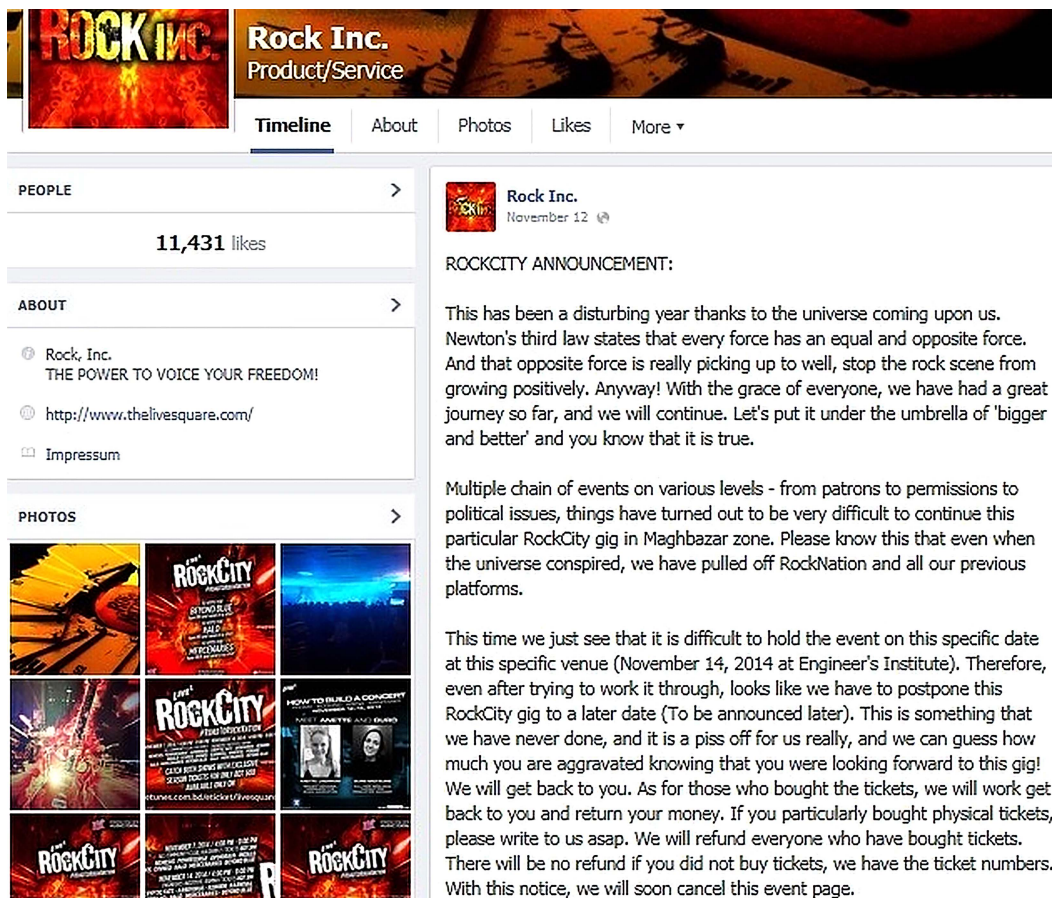
The 'Live-2 Rock City Concert' was held at a city club on November 7, attracting condemnation from PROGGA and other health and civil society groups. A second round of the concerts had been due to take place on 14 November, but was postponed shortly before it was due to go ahead.

In an announcement on the event Facebook page, organisers advised that they would refund tickets, and blamed a 'multiple chain of events on various levels', including 'permissions' and 'political issues'. The announcement ended on a defiant note: "...here's to conclude – when did we ever stop for other people? Nothing has stopped us before, and nothing will in the future".

On 21 September, the Bangladesh Anti Tobacco Alliance discovered a six day music festival sponsored by British American Tobacco Bangladesh (BATB). It had started on 19 September, and was being held at the Bangabondhu International Conference Centre. The festival was targeted at private university students to promote BATB's new brand Benson & Hedges Fine Cut.

The venue was visited by a group of tobacco control activists who checked the authenticity of the information and collected photographs to document the promotion. Some of the guests reported that BATB promotional agents had previously had a presence at chain superstores and lounges, where they collected contact information and later sent invitations to the event directly by text message. Such tactics, familiar from music-based promotions in other countries, are simultaneously able to promote an impression of exclusivity because entry is by invitation only, and avoid the need for more public event





A screenshot from the Facebook event page for 'Live-2 Rock City Concert' advising the event is postponed



Health and other NGOs protest against the BATB sponsored concert and demand legal action

society organisations, including Work for a Better Bangladesh, which maintained their protests and continued to attempt to monitor and publish information about the event. However, they were subsequently prevented from entering the venue by BAT security. The issue resulted in widespread negative media coverage, and ultimately led to BAT cancelling the remainder of the event.

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*Tob Control* 2015;24:3–6.  
doi:10.1093/tobaccocontrol-2014-052156

promotion by using the contact databases for direct promotions. A formal complaint was lodged with the Deputy Commissioner, Dhaka about this violation, together with a

request to take necessary legal action against BAT.

The Bangladesh Anti Tobacco Alliance informed journalists and other civil