

**Implementation and Regulation of the Tobacco Products Control Act 83 of 1993  
by Street Level Bureaucrats (and the Tobacco Control Amendment Act of 1999)  
in Relation to Selling of Tobacco Products to Underage People. The  
Pietermaritzburg central business district as a case study.**

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## **Dedication**

This work is dedicated to my parents Norman and Veronica Sanyanga. You are my inspiration.

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## **Declaration**

I declare that this thesis, unless specifically indicated to the contrary, is my own original work. It has not been submitted before any degree or examination at any other university.

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## **Abstract**

This study aims to explore the challenges faced by Street level bureaucrats in the implementation and regulation of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) in relation to the selling of tobacco products (especially cigarettes) to minors in the Pietermaritzburg central business district area. These Acts are national policies formulated through the various stages of policymaking for tobacco control. Policymaking is not complete once a policy is approved. Instead implementation and regulation determine the success or failure of a policy or programme therein. Common implementation challenges include amongst others large number of participants in a programme, diverse goals, lack of commitment to the programme, lack of resources and technical difficulties. It is the purpose of this study to critically analyse and discuss the implementation problems faced by street level bureaucrats who have certain discretionary powers and are at the frontline of policy implementation. Specific focus will be given to environmental health officers and police officers in the Msunduzi Municipality and the Drugs and Liquor Section respectively (Pietermaritzburg central business district area).

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# **PART ONE**

## **1. Introduction**

This research is an attempt to explore the challenges faced by street level bureaucrats in the implementation and regulation of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) by street level bureaucrats. The implementation and regulation will relate specifically to selling of tobacco products (especially cigarettes) to underage people in Pietermaritzburg central business district. This is important to investigate given that Section 4[1] of the Tobacco Products Control Act states “no person shall sell or supply any tobacco product to any person under the age of 16 years, whether for his personal use or not”. My interest in this particular topic was based on the personal observation that minors in the Pietermaritzburg central business district area can easily access or buy cigarettes from retailers and informal traders. This raised the question as to why is it that those empowered to carry out the law were not doing so effectively. Using public policy theories and models of implementation and street level bureaucracy, as well as literature on underage smoking and its effects on public health, this thesis shall explore the challenges to implementation and regulation of this Act.

This thesis is divided into four parts. These are as follows: Part One which introduces the background to the study; Part Two embraces the context of the study and current literature on public policy theory and models; Part Three covers the research methodology which explains how the research was conducted and the research findings and Part four will entail the analysis of findings, recommendations and concluding thoughts based on the research findings.

### **1.1 Background**

The Tobacco Products Control Act was passed in 1993 in South Africa and later amended to the Tobacco Products Control Amendment Act 12 of 1999. Tobacco use in South

Africa is an ever increasing health problem. According to Reddy et al (1998) by 1996, 25 000 tobacco related deaths were reported annually, seven million (34%) of a total population of adult South Africans smoke and estimates of economic costs of tobacco in terms of lost productivity due to premature deaths and hospitalization exceeded R 2.5 billion in 1994. The direct cost of hospitalization and outpatient treatment for smoking related diseases in the public sector alone is approximately R 1.5 billion per year (Yach 1995:18). Some have maintained that the government's historical lack of interest in tobacco control was "a crime of apartheid", arguing that the tobacco industry was dominated by white Afrikaans-speaking South Africans with very close ties to the government (Wilkens 2000:27). Evidence of this is revealed when exploring the history of the tobacco industry before 1993.

The Rembrandt group under the leadership of Afrikaner businessman Anton Rupert controlled 87% of the market. Rupert was one of the most powerful businessmen in South Africa. According to Malan and Leaver (2003:122) Rupert built up strong links with virtually every major decision maker, including legal firms and media institutions and was on the boards of most major trusts. Yach in Malan and Leaver (2003:123) recalls that "anywhere you turned in the media and tried to get a story published that advocated tobacco control; you were blocked by their absolute fear and trepidation of Rupert's long reach through his tobacco companies."

The transition to democracy brought with it a new government dedicated to reducing the incidence of smoking and the power of the tobacco companies. The changing political landscape helped the tobacco control cause. The first democratic elections in 1994 saw the new ruling party African National Congress coming into power. The ANC had no alliance or links with the tobacco industry and had a much stronger focus on primary health care than the previous government (Malan and Leaver 2003: 140). The new president, Nelson Mandela, had consistently voiced his support for antismoking legislation and he was on record as having called for a "world free of tobacco." (Republiken 1994).

The availability of good health and economic data, together with strong support from the governments has helped to make tobacco a leading health and political issue. This has led to the formulation of policies on tobacco control such as the Tobacco Products Control Act of 1993 which was extended to the Tobacco Control Amendment Act 12 of 1999. These two acts comprehensively regulate the following:

- All tobacco advertising, sponsorships and promotions;
- Smoking in all enclosed public places, including the workplace, except in specially designated smoking areas;
- The free distribution of tobacco products;
- Awards or prizes for purchasing tobacco products;
- Labeling of tobacco packages with health warnings;
- The maximum amounts of nicotine, tar, and other hazardous chemicals in tobacco products and their combustion products; and
- Tobacco sales to children under 16

(Tobacco Products Control Act of 1993; Tobacco Products Amendment Act No. 12 of 1999)

Furthermore, the government has put in place tobacco control strategies by increasing taxes and banning all direct and indirect advertising and promotion of tobacco products. According to the Tobacco Free Project of San Francisco the South African government has increased excise taxes on cigarettes a record six times up to 1998. This brought the total tax to forty-seven percent (47%) of the retail price of a pack of cigarettes which is relatively high for Africa. These tax increases are intended to reduce cigarette consumption by increasing the cost of cigarettes.

According to researchers at Economics of Tobacco (a joint project for the South African Medical Research Council and University of Cape Town) tobacco advertising leads to increased cigarette demand in South Africa. They estimate that for each 1% increase in tobacco advertising expenditures, consumer demand for cigarettes rises by between 0.18% and 0.24%. According to Section 3(1) of the Tobacco Products Control Act of 1993 “No person shall advertise, including the use of tobacco trade marks, logos, brand

names or company names used on tobacco products.” The intention again, is to reduce consumption. This has led to an advertising ban on cigarette companies which used to sponsor sporting and entertainment events in South Africa such as Rothmans July and Gunston 500. Such promotions increased the demand for cigarettes especially among the youth as the sporting and entertainment events were targeted at the young ones.

This study will explore the implementation and regulation of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) by street level bureaucrats in Pietermaritzburg central business district. This study proposes to explore the challenges and difficulties faced by street level bureaucrats in implementing and regulating this policy with regards to underage smoking. The term “street level bureaucrats” refers to environmental health officers and the police force with the mandate to enforce this regulation. Environmental health officers are trained and qualified personnel from the local authorities who are empowered to enforce national, provincial and local regulations. The police force falls under the South African Police Services and are responsible for maintaining law and order. In the context of this study they are responsible for enforcing implementation of the Tobacco Products Control Act 83 of 1993.

## **PART TWO**

### **2. Policy Context**

The World Health Organization (1996) postulates that cigarette smoking is one form of risk behaviour that forms part of an unhealthy lifestyle. It further states that tobacco smoke contains 43 unknown cancer causing agents. Steyn, K et al (1992) argues that tobacco use, which is addictive, is a risk factor for a range of chronic diseases, viz: tobacco induced cancers, chronic obstructive lung diseases, cerebrovascular diseases and ischaemic heart diseases. They further note that chronic diseases were responsible for 24.5% of deaths of all South Africans and 28.5% of deaths of those aged between 35-64 years whose deaths were reported in 1988. Steyn (1995) reports that these deaths increased to 42% in 1990. The World Health Organization estimates that tobacco is the second most important risk factor for disease after nutrition. It further estimates that the number of tobacco related deaths in the year 2000 was 4.9 billion- more than the number of AIDS related deaths. The number of tobacco related deaths is increasing with most of the increase in developing countries (World Health Report, 2002) According to Leeman (2001) from the Health Systems Trust; smoking contributes to almost one in 10 of all adult deaths in South Africa, with more smokers dying of tuberculosis (TB) and lung-related disease than of cancer.

The economic costs of tobacco use are equally devastating. In addition to high public health costs of treating tobacco caused diseases, tobacco kills people at the height of their productivity, depriving families of breadwinners and nations of a healthy workforce. The World Health Organization (1996) reports that tobacco was the cause of 3 million deaths globally in 1993. Sir Richard Peto (1999:32) quantifies the scale of the challenge of tobacco by stating that “There were 100 million deaths from tobacco in the 20<sup>th</sup> century, but if current smoking patterns continue then there will be about 1,000 million this century: the annual numbers killed by tobacco will increase from about 4 million now to 10 million in 2030”. Half of lifelong smokers start smoking in adolescence and continue throughout their lives will be killed by tobacco. These economic costs are clearly

avoidable if the tobacco control policies currently in place such as the ban on advertising of tobacco products are implemented effectively. Tobacco is indirectly draining resources from the South African economy. Reduction in tobacco consumption would help save revenue lost on health care costs and prevent reduced productivity as a result of tobacco use.

Various studies into the effects and use of tobacco among youths are available. The Framework Convention on Tobacco Control (2003) (of which South Africa is a signatory) aims to decrease smoking and other forms of tobacco use. Among the framework's major aims is that governments must develop and implement tobacco control strategies in terms of selling tobacco products to minors. The World Health Organization and Center for Disease Control conducted a school based survey in 1999 on youth smoking rates across the WHO member states. This gave South Africa an opportunity to collect data on youth smoking. According to the Global Youth Tobacco Survey (1999) South Africa reported that 46.7% of learners had never smoked a cigarette and that 23% of learners were current smokers. Regarding initiation, 18, 5% learners reported first smoking a cigarette before the age of 10. In 1999 29, 7% learners reported being offered a free cigarette from a tobacco representative.

Furthermore, Fisher et al (1993) report that of their sample in the Cape Peninsula, 18.1% of high school students smoked at least one cigarette per day. Of these, 66.9% had tried to quit. Of those who did not smoke at least one per day, 41.2% had smoked previously and 3.6% intended to start smoking. Reddy (1996) consolidates this report by arguing that since almost half of all South African households have smokers in them, exposure of children to cigarettes has reached critical levels. This implies that smoking amongst children is on the increase.

Adolescent health is a major concern in South Africa. Dostal (1990) postulates that the population of young people in South Africa is growing rapidly. Children of school-going age (5- 19 years) dominate the South African demographic profile and their number is nearing 15 million (Jacobs, 1996). Statistics South Africa, in the 2001 Census, notes that

there are approximately 44.8 million residents in South Africa. Of the estimated population forty three (43%) of the population is 19 years and under with seventy percent (70%) aged between 12 and 19. According to Bradshaw et al (1995) there are unacceptable levels of mortality, morbidity and risk-taking behaviours within the group and much of the consequences of these are preventable. Fisher et al (1993) state that behaviour of adolescents influences their eventual morbidity and mortality and there is an association between different forms of risk taking behaviour. Ennet et al (1994: 84) contend that cigarette smoking in adolescence represents a crucial entry in the progression to illicit drugs. This shows the need for effective intervention so as to prevent the experimentation, initiation and maintenance of smoking behavior. Prevalence of smoking among youths is increasing in South Africa and developing countries. This is mainly due to the tobacco industry targeting the youth in developing nations. Therefore a comprehensive approach is needed to deal with access and distribution of tobacco products to underage people.

When signing The Framework Convention on Tobacco Control (2003), the South African Health Minister Tshabalala-Msimang outlined the harmful effects of smoking among youths when she said, “If we want to save the lives of millions of people who die of cancer, cardiovascular diseases and other conditions linked to smoking, our youth need to know the harmful effects of tobacco.” She further explained that “We have to find new ways to help people understand what emphysema, peripheral vascular disease and cancer mean to a smoker’s health. A picture really does speak more than a thousand words. While die hard smokers may ignore the messages, youngsters about to start smoking will have second thoughts and those thinking of quitting will be encouraged to quit.” (South Africa first to sign Global Tobacco Treaty: <http://www.info.gov.za/speeches/2003/htm>). Taking this into consideration given the purposes of this study, it is of importance to portray visual images denoting the effects of smoking on ones health. The following pictures demonstrate the effects of smoking on a person’s health.



**Figure 1**



**Figure 2**



**Figure 3**

Adopted from the Free Quit Smoking Website (<http://www.quit4good.com/facts.html>)

The idea of these pictures is to deter young people from experimenting with cigarettes and at the same time controlling their access to tobacco products. This is because many young people underestimate the health risks of tobacco use and how addictive nicotine is and how hard it is to quit. According to Ballenger (1998), in an effort to better track tobacco related mortality, the South African Institute of Medical Research recently announced that tobacco use would be noted on death certificates if the patient had smoked in the past five years. Until now, death certificates would often note causes such as “inability to breathe”, without any specific reference to smoking-related lung cancer.

### **3. Theoretical Framework**

#### **3.1 Defining Public Policy**

Given that the study is being undertaken in the context of public policy, it is important to explore various definitions of public policy. Anderson (1984:4) defines public policy as a relatively stable and purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern. Bridgman and Davis (2000:16) define policy as “a course of action by government to achieve certain results.” The above definitions suggest that public policy is the purposive exercise of authority mainly by governments to achieve collective purposes. It is a multi stakeholder activity that includes

various actors with different interest to achieve certain goals and objectives in a given policy. Tobacco control in South Africa is a matter of concern. Hence the government has embarked on a course of action through the Tobacco Products Control Act 83 of 1993 and the Tobacco Control Amendment Act of 1999.

Anderson (1997:9) sees public policy as policies developed by governmental bodies and officials. This implies that governmental agencies and officials are at the forefront of implementing public policy; hence Thomas Dye (1985:1) postulates public policy is “whatever government chooses to do or not to do.” Colebatch (2002:49) notes that the policy process is often represented as a sequence of stages in the development and pursuit of this goal, beginning with thought, moving through action and ending with the solution. There are various categories of public policy. The next section discusses categories of public policy. The next section discusses and portrays the policy process.

### 3.2 Categories of Public Policy

Anderson (1997:14) has categorized policies into substantive and procedural policies; distributive, regulatory, self regulatory and redistributive policies.

#### Substantive and Procedural Policies

Substantive policies involve what government is going to do such as constructing an airport or a highway. They also involve prohibiting certain modes of behaviour or conduct. Anderson (1997:15). The essence of substantive policies is that they directly distribute benefits and costs, advantages and disadvantages. On the other hand procedural pertain to how something is going to be done or stipulate who is going to take action. They provide for the certain of an administrative agency which outlines or determines those issues which an agency has jurisdiction or authority over. Thus procedural policies specify the processes and techniques to be used when carrying out a policy or programme.

### Distributive Policies

Anderson (1997:18) contends distributive policies involve the allocation of values resources or benefits to particular segments of the population in order to improve social equality. They maybe individuals groups or communities. Distributive policies involve using public funds (state funds) to help certain groups in a given society. For instance free primary education to all children is a distributive policy. Anderson (1997) argues that beneficiaries do not directly complete to seek or enjoy the benefits. Significantly the benefits do not represent a direct cost to any group. The costs are borne by the public; that is taxpayer's money. Distributive policies create winners and losers in that some benefit from the policy entirely whilst others are not taken into consideration, and therefore do not benefit from the policy

### Redistributive policies

“Redistributive policies involve deliberate efforts by the government to shift the allocation of wealth, income, property and rights among broad classes or groups of the population” (Anderson 1997:18). A good example is land redistribution from commercial farmers to landless peasants. However redistributive policies are controversial, contestable and conflict charged. They involve reallocation of those who have to those who do not have. Redistributive policies are difficult to implement because they entail reallocation of resources from one to the other.

### Regulatory Policies

Regulatory policies impose restrictions or limitations on the behavior of individuals or organizations. (Anderson 1997:17) .They are many variables of regulatory policies. Regulatory policies might be economic, labour and business. The Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) is an example of a regulatory policy. Thus regulation is a prescription by the government which must be complied with by intended targets; failure to do so usually involves a penalty. (Howlett and Ramesh 1995:157). Some regulatory policies are laws which involve the police and judicial systems for their enforcement. Regulatory policies are

distinguishable from distributive policies in that a regulatory involves a direct choice as to who will be indulged and deprived.

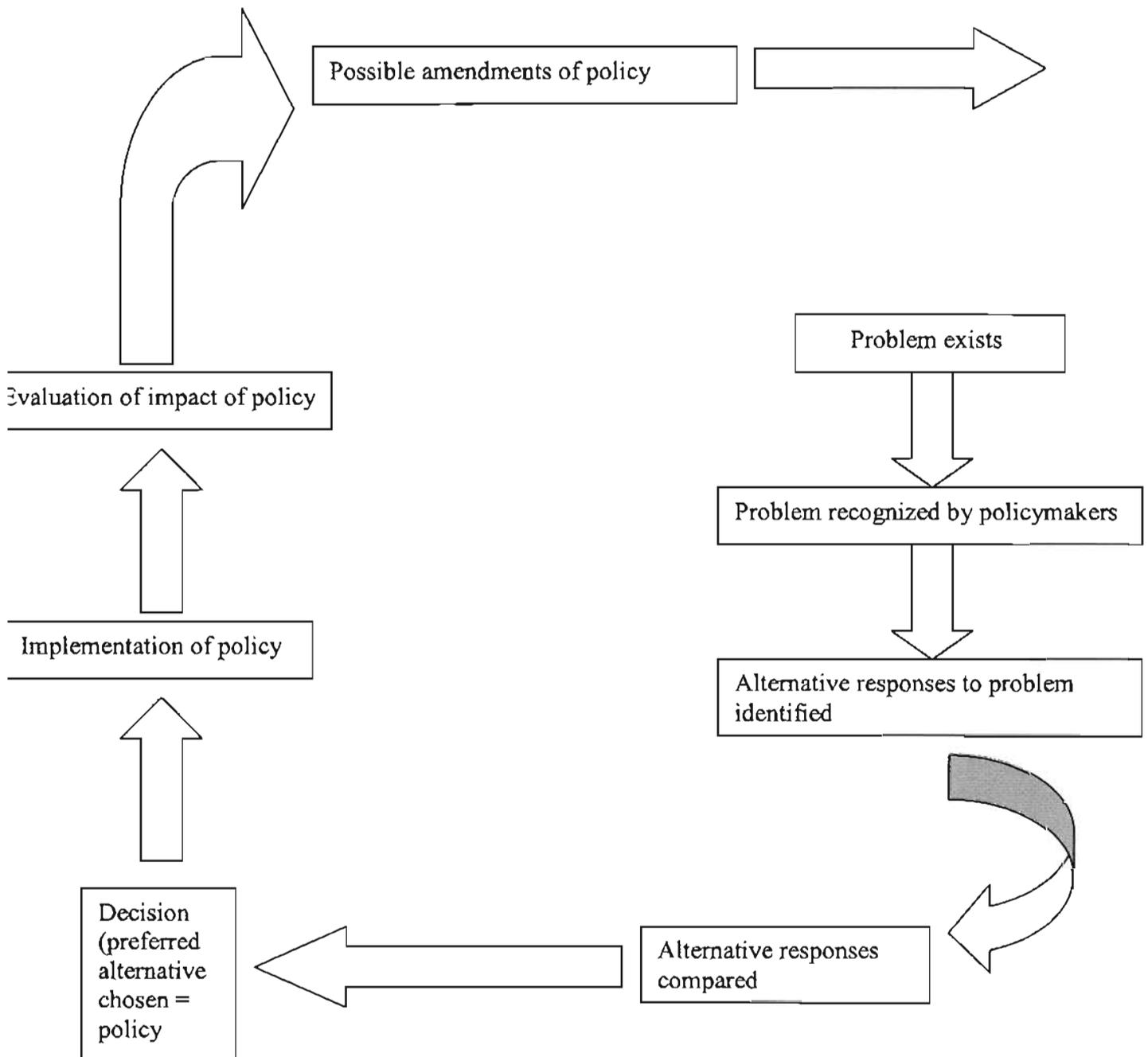
### Self Regulatory

These are more or less similar to regulatory policies because they also involve restrictions or controls on individuals, groups or behaviours. Anderson (1997:17) postulates “self regulatory policies are usually sought and supported by the regulated group as a means of protecting or promoting the interests of its members”. The usual pattern is that professional bodies such as the Law Society or Medical Society may formulate and adopt policies to control and govern the behaviour of its members during their operations.

It is of importance for decision makers to take heed of the policy types when formulating and deciding on a policy action. The above mentioned categories of public policy determine what a policy intends to achieve and who it is meant for. Most governments take note of these policy types when formulating and implementing their programmes and projects.

### 3.3 Policy Cycle

The policy cycle or process is seen as a number of successive stages as espoused by Colebatch (2002:49). These stages are as follows; determining goals, choosing courses of action, implementing these courses of action, evaluating the results and modifying the policy. The following diagram illustrates the policy cycle adopted from Colebatch (2002:50)



**Fig. 4: The Cycle Model of the Policy Process**

Adapted from Colebatch (2002:50)

Not all policies are made in the systematic process depicted by the policy cycle above. Accounts of the policy cycle are often accompanied by warnings that “the public policy process is not nearly as tightly sequential or goal-driven as the cycle model makes it appear” (Howlett and Ramesh, 1995:198). Bridgman and Davis (2000:23) say that the cycle model is both descriptive and normative: “is a guide designed to inject rigour [into the policy process] ...good policy should therefore include the basic elements of the cycle.” The policy cycle is a guideline for the rational way in which policies are to be made. Deborah Stone (1988:4) calls it the “rationality project”, the “mission of rescuing public policy from the irrationalities and indignities of politics.” This shows that the policy cycle is therefore reassurance that policy outcomes were as a result of the appropriate format. Using this policy cycle framework, my study is going to focus on policy implementation by street level bureaucrats with regards to the Tobacco Products Control Act 83 of 1993 and the Tobacco Products Control Amendment Act 12 of 1999 in relation to the selling of tobacco products to underage people. The next section discusses the analytic techniques of this study, namely, policy implementation and policy regulation.

#### **4. Analytic Techniques**

This study will focus on the implementation and regulation of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act 12 of 1999). Implementation and regulation were chosen as the analytic techniques because the focus of this study is to understand why a policy is not being effectively carried out and enforced.

##### **4.1 Policy Implementation**

Policy implementation came to the fore in the early 1970s. This was the result of policy goals consistently failing to be achieved by policy implementers. This was the perspective taken in the pioneering book on this subject, *Implementation* by Pressman and Wildavsky (1973:23). They asked “why was it that goals articulated by the policy makers in Washington bore little relation to what could be seen on the ground in Oakland, California?” This question led to the realisation that in most policy fields there

was a serious problem with implementation. Policy goals were not being realized. According to Webster and Rogert in Pressman and Wildavsky (1973:36), policy implementation is defined as “to carry out, accomplish, fulfill, produce and complete a statement of intention.” Various theoretical conceptions of policy implementation have been formulated; policy implementation starts once a government has made a choice among alternatives on the national agenda when government decides to act on a specific decision. It is a process whereby programs or policies are carried out. Anderson (1997) argues that implementation denotes translating plans into practice. He further argues that translation of policy goals into intended effects requires time, expertise, energy and resources.

Implementation is a complex process involving various actors with different vested interests in a given policy. Brinkerhoff and Crosby (2002: 23) explain that no single agency can manage the policy implementation effort. Policy implementation requires the concerted actions of multiple agencies and groups within government and outside, from civil society and the private sector. This means authority and responsibility is dispersed among actors involved. Taking this into consideration, policy implementation is not a coherent process. Brinkerhoff and Crosby (2002: 23) postulate that as a result of lack of coherence, policy implementation is often multidirectional, fragmented, frequently interrupted, and unpredictable and very long term.

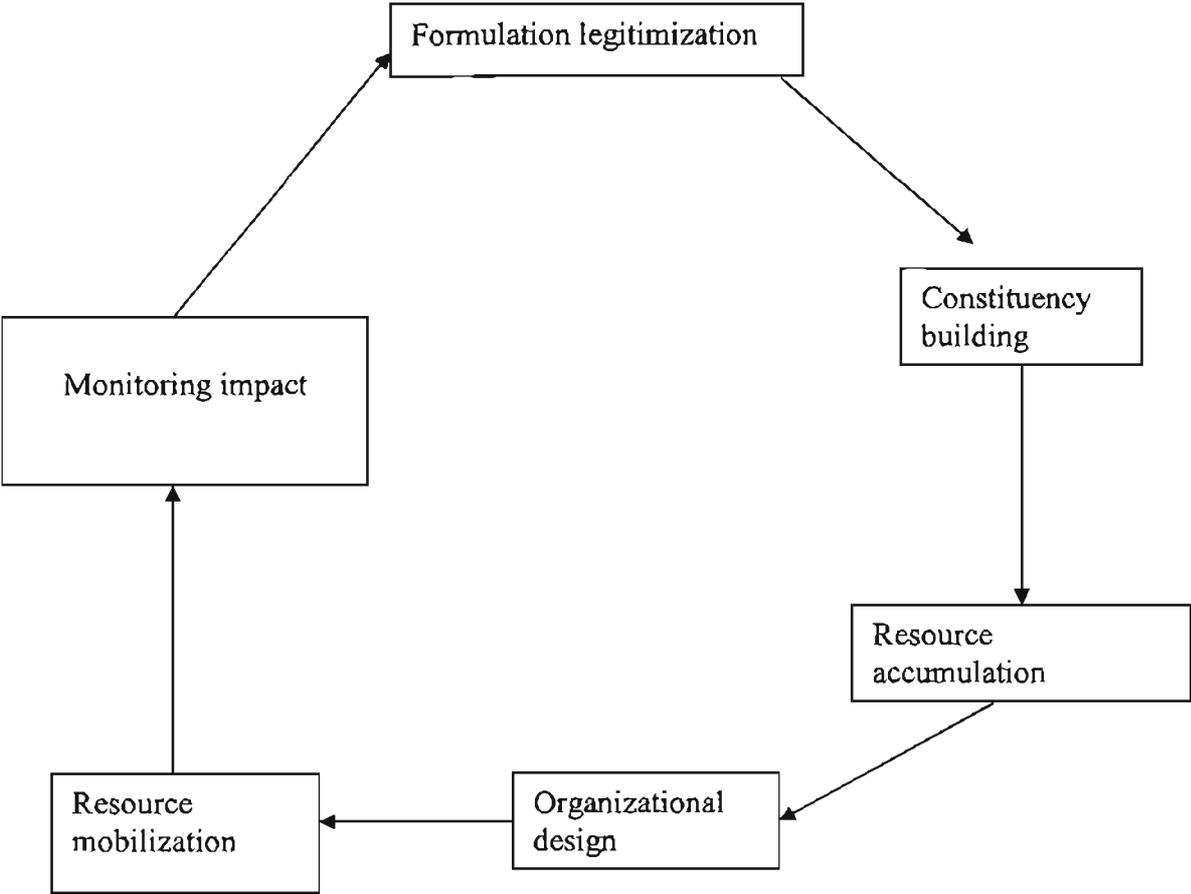
According to Parsons (1995:462) policymaking does not come to an end once a policy is set out and approved. This is reiterated by Anderson (1997:98) who notes “policy is being made as is being administered and administered as it is being made.” These views suggest that implementation is the core component of policymaking. It is clear, then, that implementation is of utmost importance in policymaking and ultimately determines the success or failure of a program, project or statute.

#### 4.2 Policy Implementation Challenges

There are various challenges to implementation that have rendered many projects and programs unsuccessful. Pressman and Wildavsky (1973) explained the failure of

implementation action as involving large numbers of participants, diversity of goals, clearances at certain points and different levels of commitment to the policy objectives. Hessing and Howlett (1997:11) contend that implementation is a complex process that involves not only bureaucratic execution of political decisions but also the utilization of a gamut of governing tools or policy instruments in the effort to urge, bribe, coerce or otherwise convince policy targets to adhere to the wishes of governments. They further contend that there are several factors that affect implementation. These include technical difficulties, lack of resources, change in government, inter and intra-organizational conflicts among other factors (Hessing and Howlett 1997:173). Brinkerhoff et al (2000; 25), thus recommend strategic implementation tasks that will help reduce these policy implementation challenges. These tasks include legitimization, constituency building, and resource accumulation, organizational design, mobilizing resources and actions and monitoring progress. These should be done by key decision makers.

**Fig. 5: Policy Implementation Tasks**



Adopted From Brinkerhoff and Crosby (2002; 32)

According to Brinkerhoff and Crosby (2002:33), the implementation task framework is useful for a number of purposes. Firstly, it helps to assess where the policy implementation process stands at a given point and provide a mere accurate view as to what steps to take next and how long the process might take to accomplish. Secondly, the task framework may be used as a diagnostic instrument for pinpointing potential or existing trouble spots and roadblocks facing the policy reform effort. They further note that the task framework can be of considerable assistance in mapping implementation

strategies. Lastly, the framework's recognition of the sequential nature of policy implementation tasks makes it simpler to identify what needs to be done and when.

### 4.3 Approaches to Policy Implementation

There are two basic approaches to policy implementation. These are the "top down" and "bottom up" approaches. Pressman and Wildavsky (1973) are accepted as the forefathers of the "top down" approach. To them, implementation is a process of interaction between setting of goals and actions geared to achieve them. The "top down" approach, as argued by Pressman and Wildavsky (1973), involves a good chain of command and a capacity to coordinate and control from the top to the ground level. This "top down" notion of a rational system was later developed in the works of Andrew Dunshire (1978), and Christopher Hood (1976). They argued that implementation involved clear lines of authority, hierarchy, control, unity of purpose and direction.

Colebatch (2002:23) terms the "top down" approach the "vertical dimension". To him these terms are synonymous and should be used interchangeably. The vertical dimension or top-down approach to policy implementation sees policy as rule. Colebatch (2002:23) contends that it is concerned with the downward transmission of authorized decisions. This vertical dimension stresses instrumental action, rational choice and the force of legitimate authority. It is concerned about the ability or capacity of subordinate officials to give effect to these decisions (the implementation problem) and with ways of structuring the process of government so as to achieve this compliance (Colebatch: 2002). The top-down approach is largely state centered and treats administrators as mere policy implementers. Its strength lies in the facts that it provides clear directions for policy implementation research and emphasizes goal achievement and it is efficiency oriented.

The "top down" approach was heavily criticized for not taking into account the role of other actors in the implementation process. It operates on a mistaken assumption that policy goals are always clearly articulated and erroneously assumes that policy implementation can be fully understood by focusing on senior decision making. In

practice, policy implementation is largely affected by lower level officials and members of the public. These criticisms led to the evolution of the “bottom-up” approach.

According to Parsons (1997:409) the “bottom-up” model stresses the fact that “street level” implementers have discretion in how they apply policy. He further contends that professionals have a key role in ensuring the performance of a policy: teachers, doctors, planners, social workers all have opportunities and responsibilities of control and delivery of a service (Parsons, 1997:409). Colebatch (2002:23) terms the “bottom-up” model the horizontal dimension to policy. To him “bottom-up” approach is concerned with relationships among policy participants in different organizations. It recognizes that policy work takes place across organisational boundaries as well as within them and consists in the structure of understandings and commitments among participants in different organisations (Colebatch, 2002:23).

This shows that the “bottom-up” approach is concerned with linkages and interdependency of various actors. It also directs attention to the formal and informal relationships characterising policy implementation. According to Parsons (1997) the “bottom up” approach sees implementation as involving negotiation and consensus building. Howlett and Ramesh (1995:157) postulate that the key advantage of the bottom up approach is that it directs attention to the formal and informal relationships constituting the policy networks involved in making and implementing policies. The bottom up approach orients the study of implementation away from policy decisions and back towards policy problems, thus extending the study to all private and public actors and institutions involved in the problem. Fox in Lipsky (1980:15) argues “the distinction between the top-down approach and bottom-up approaches to policy implementation, while useful, tends to blur the fact that both approaches bring insights to policy implementation and should be combined to reach a comprehensive understanding of the subject”. This study will relate these approaches to the implementation of the tobacco control policy. However increased focus will be on the bottom up approach given that this study is focusing on street level bureaucrats who are on the ground level of policy making.

#### 4.4 Policy Regulation

According to Meier (1985: 1) regulation is any attempt by the government to control the behavior of citizens, corporations or sub governments. A comprehensive definition is offered by Michael Reagen in Meier (1985:2) who defines regulation as “a process or activity in which government requires or proscribes certain activities or behaviour on the part of individuals and institutions, mostly private but sometimes public, and does so through a continuing administrative process, generally through specifically designated regulatory agencies”. In terms of public policy, all regulation is designed to coerce certain patterns of behavior. Thus, the Tobacco Products Control Act 83 of 1993 can be seen as a policy tool formulated by the South African government to control tobacco use among its citizens. Anderson (1984) argues regulatory policies are there to control, impose restrictions or limitations on the behavior of individuals or groups in society. There are a variety of regulatory policies. Some are economic, labour, environmental or business regulations. For instance the National Environmental Management Act 107 of 1998 regulates environmental practices in South Africa. However the most extensive or visible are those which deal with criminal behavior like the Sexual Offences Amendment Act of 2003 deals with issues of rape, and intentional transmission of HIV/AIDS, which are criminal acts.

It is of importance to note that failure to adhere to a government act should result in criminal prosecution. Of particular relevance for this study is the fact that The Tobacco Products Control Act 83 of 1993 states that any person who contravenes or fails to comply with the provisions of Section 4[1] “shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to such imprisonment as may be determined”. In addition the Minister of Health made notice relating to the point of sale of tobacco products. In terms of sections 3 and 6(1) of the Tobacco Products Control Act 83 of 1993, a retailer of tobacco products may indicate the availability of tobacco products and their price only by means of signs at the point of sale that-

- Do not exceed one square metre in size; and
- Are placed within one metre of the point of sale.

- All signs that indicate the availability of tobacco products and their price must contain the following messages in letters that are at least 2cm in height and 1,5cm in width. “WE CANNOT, BY LAW, SELL TOBACCO PRODUCTS TO ANYONE UNDER THE AGE OF 16 YEARS”; this message must appear at the top of the sign and across its full width; and a health message as listed below.
- Vending machines selling tobacco products must not be accessible to children under 16 years of age.

Anderson (1997) notes that regulatory policies create clear winners and losers. Winners are those who adhere or are in support of the regulation and losers are those who do not adhere or are against a regulation. Regulations establish rules of conduct, command and direct the behavior patterns of individual and groups. Hessing and Howlett (1997; 170) argue that regulation provides for the establishment of administrative bodies to develop and implement regulations, rules, standards and policies. In this study, the administrative bodies are local municipalities and the police force that are responsible for implementing and regulating the policy to curb underage smoking.

Eisner et al (2000; 5) contends that there are several rationales for regulatory policies but the main one is to further public interest. Most policies or acts are as a result of the wishes of the people and what is considered right for them. Although regulatory policies are in the interest of the public, their implementation is ineffective. Hessing and Howlett (1997; 174) postulate various reasons of implementation of regulatory policies. These include lack of information and data, risks on the part of implementers, economic power of regulated groups and lack of effective enforcement. According to section 2[a] 6 of Tobacco Control Amendment Act 12 of 1999 a local authority which has made regulations relating to the control of smoking in terms of this act shall have the power, duty and obligation to enforce regulations in its area of jurisdiction. Local governments and municipalities are empowered to enforce this law or policy and it should be reflected in their by laws. The police as guardians of law and order are also empowered to enforce this act. This study will thus determine how the Tobacco Products Control Act 83 of 1993 (in relation to underage smoking) as a regulatory policy has been implemented.

In terms of tobacco control the Msunduzi municipality has no by laws set as yet. The Msunduzi municipality has several bylaws that are used to promote standards for our community as well as protect the safety, health and welfare of our residents. Bylaws are passed by the executive committee of the city council. For instance the Msunduzi Street bylaws set on the 30<sup>th</sup> of January 1995 are a reflection of the Business Act 71 of 1991. The bylaws restrict street traders from selling their products in front of church buildings, sleeping overnight at business sites, keeping the business site in a clean and sanitary condition and free from litter, among other regulations. However the municipality through the environmental health section is empowered to carry out tobacco control as laid out in the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). Smoking in public places and buildings is prohibited as pointed out in section 2[1] of the act. Prescribed requirements have to be met to allow smoking in public places. This is being implemented in the Pietermaritzburg city public places and buildings. For example restaurants and pubs are supposed to have 25% percent designated areas for smoking to protect non smokers.

Compliance in relation to policy regulation is of core importance in order to achieve policy goals and objectives. Anderson (1997:257) states that compliance with policy may be based on some form of reasoned, conscious acceptance. Even some whose immediate self interest conflicts with a policy may be convinced that it is reasonable, necessary or just. Compliance can be achieved on the basis of respect for authority, fear or ignorance. For instance one complies with the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) because of fear of being punished through a fine. Also people comply because of respect for authority. For example most citizens abide to the laws in South Africa because they believe the current government is legitimate and has the mandate to control them as it deems necessary.

Anderson (1997:245) argues that policy implementation facilitates control. He further notes that power relations at play in the implementation process ensure that policies are adhered to. He supports this argument by stating “policies are designed to cause people to

do things, refrain from doing things, or continue doing things that they would not otherwise do". (1997:245)

## **5. Policy Instruments**

An instrument is a term frequently used in policy science. Policy instruments are the specific means whereby a policy is implemented. They are the actual means or devices which governments have at their disposal for implementing policies. Levitt (1980:161) contends "an instrument is a mechanism that enables the policy to be expressed so that its form and nature take into account that individuals and organizations will be involved in operating it". Therefore policy instruments should be aligned with the needs of the prevailing situation.

Street level bureaucrats are public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work. (Lipsky 1980:23) This means that after a decision-making process has been concluded, a street level bureaucrat or official may realize that in order to implement that particular decision, certain practical and inevitable steps have to be taken which were not anticipated by decision makers. (Magagula 2003:15). Street level bureaucrats in the form of environmental health officers and the police force constitute the policy instruments of analysis in this study.

Street level bureaucrats make and shape public policies. Citizens directly experience government through street level bureaucrats and their actions are the policies provided by government in important respects (Lipsky 1980: xvi). Davis (1969: 4) argues "A public officer has discretion wherever the effective limits on his power leave him free to make a choice among possible courses of action and inaction". Lipsky (1980:13) contends the policy making roles of street level bureaucrats are built upon two interrelated facets of their positions: relatively high degrees of discretion and relative autonomy from organizational authority. This shows that street level bureaucrats exercise wide discretion over citizens and their actions add up to the actual policies. For example a policeman decides when to apply the law or who to arrest and whose behavior to overlook. Judges

decide who shall receive a suspended sentence and who shall receive maximum punishment.

Street level bureaucrats interact with the public and represent a significant portion of public authority at the local level. This implies that street level bureaucrats have the authoritative right in the allocation of resources to a given clientele. For instance environmental health officers at a local city council may use funds allocated to them for refuse collection by the provincial government to control water pollution because refuse collection is not a priority at that point in time. At the grassroots level when interacting with citizens street level bureaucrats have wide discretionary powers as to how to allocate resources. It is of importance however to note that although bureaucrats have wide discretionary powers to carry out policies on the ground, the allocation of rewards or benefits, rules, regulations and services they provide are set and shaped by policy elites and political and administrative officials.

Street level bureaucrats face a number of problems and challenges when implementing or carrying out policies. Lipsky (1980: 82) states the problems of street level bureaucrats, when he asks, "How is the job to be done with inadequate resources, few controls, indeterminate objectives and discouraging circumstances?". Street level bureaucrats do not seek to optimize or make the best out of their mental capacities and organizational processes but seek to satisfy clients, policy formulators and themselves with the resources at their disposal. Lipsky (1980:8) argues that "they believe themselves to be doing the best they can under adverse circumstances and they develop techniques to salvage service and decision making values within the limits imposed upon them by the structure of their work". This is largely because they work under difficult circumstances where there are no clear objectives, scarce resources and ambiguous discretionary powers.

Firstly, bureaucratic decisions are carried out with inadequate resources. Lipsky (1980; 29) postulates that street level bureaucrats are constrained by time and information. Decision makers typically are constrained by the costs of obtaining information relative to their resources, by their capacity to absorb information and by the unavailability of

information. Information and time are vital resources to carry out a policy. Without them then a policy decision is rendered futile. This is further compounded by the fact that street level bureaucrats deal with high case loads. For instance a teacher is required to give individual attention and services to a class of forty pupils. This is a very difficult task, not all students will receive the same service and the overall quality of the teaching is often comprised. Street level bureaucrats have very large case loads relative to their responsibilities. Lipsky (1980:30) gives the analogy of public service lawyers who are responsible for perhaps 80 to 100 clients whose cases they represent but are working actively on only a dozen or so cases.

Lipsky (1980:31) notes street level bureaucrats also lack personal resources in conducting their work. Some are under trained and inexperienced. However this lack of experience is attributed to the nature of the job in most cases. For example some jobs are difficult to carry out because of the ambiguity of goals and technology. Therefore the combination of under training, inexperience and the nature of a job make it difficult for street level bureaucrats to perform their mandated tasks. It is of importance that the problem of inadequate resources should be viewed in relation to the supply and demand dynamics of public services. Demand for services is usually unpredictable in a turbulent environment. This demand for services might increase, and street level bureaucrats must then ensure supply matches demand regardless of resources on offer or provided. On the other hand if more resources are provided high demand might consume them. This leaves the civil servant in a dilemma as to how to carry out his or her duties (Lipsky: 1980).

Street level bureaucrats work in jobs with conflicting and ambiguous goals. Landau (1973: 536) argues public service goals tend to have an idealized dimension that makes them difficult to achieve and confusing and complicated to approach. For example goals such as good health, equal justice and public education are difficult to accomplish as they are relative. Street level bureaucrats face difficulties in carrying out their jobs as their goals are not clear.

Civil servants are in a dilemma as to their work goals and objectives of the public they serve or to the socially accepted practices. It is a difficult situation in the sense that street level bureaucrats are in a catch 22 situation- the goals are often unclear and therefore their duties are difficult to determine. They also have to deal with public goals in relation to set organizational goals. Citizens have different expectations of service delivery from street level bureaucrats.

At the same time the bureaucratic organizational entity is concerned with the processing of work quality using available resources. Lipsky (1980: 44) argues “the goals of street level bureaucracies are compounded by the contradictory roles of street level bureaucrats”. In executing their duties they have different roles depending on the stakeholder. They have to work in accordance with the expectations of their peer workers, reference groups such as managers who have their own picture and expectations of street level bureaucrats’ roles and public or client expectations. With this in mind becomes apparent that ambiguous objectives make a street level bureaucrat’s job impossible to do in ideal terms.

Lipsky (1980:4) contends that street level bureaucrats are in a dilemma in terms of policy implementation on the ground. He says that these low level workers are always in one way or the other confronted with conflicting need to provide social public services while operating under sometimes rigid rules imposed by the state and senior officials. They often have to play a mediatory role between the state and citizens. This results in bureaucrats failing to live up to the expectations of the citizenship in terms of service delivery, efficiency and responsiveness. The system they operate in has a large chain of command, is impersonal, rigid and full of regulations which is typical of the top down approach to implementation.

In addition, street level bureaucrats work under discouraging circumstances. This is why they tend to satisfy rather than optimize their jobs. Organizational factors as mentioned by Lipsky (1980:30) affect the work of street level bureaucrats. Emphasis on tasks such as filing, drawing out plans and other administrative tasks affects the amount of time

available to citizens. There is no citizen interaction with the street level bureaucrats as is widely mandated in his or her responsibilities. This should be improved by providing support services such as clerks, receptionists and investigators. They also work under pressure and are sometimes threatened with physical harm. For instance a policeman is constantly under threat of violence that may come from any direction, at any time. This has a psychological impact on the street level bureaucrat as he or she is always on the defensive and as a result does not accomplish his job properly (Lipsky 1980).

This environment causes the bureaucrats as Lipsky argues to retire early or suffer from burn out. Those who do stay on their jobs become masters at their jobs and do their best to serve the public. However on the other hand others resort to non compliance. Street level bureaucrats may end up withholding cooperation within the organization, engage in absenteeism, aggression towards the organization like stealing, cheating, deliberate time wasting, embarking on go slows and negative attitudes with implications for work like alienations, apathy or resignations (Lipsky 1980:15). The above mentioned factors reflect that street level bureaucrats work in difficult conditions and that their jobs are not easy to carry out.

## **PART THREE**

### **6. Methodology**

#### **6.1 Research techniques**

Qualitative data analysis will be used in order to investigate the challenges faced by street level bureaucrats in implementing and regulating the Tobacco Products Control Act 83 of 1993 in relation to selling of tobacco products to underage people. According to Babbie and Mouton (2001:270) qualitative research attempts to study human action from the perspective of the social actors themselves. They further note that the primary goal of studies using this approach is defined as describing and understanding rather than explaining human behavior. Blanche and Durrheim (1999:42) postulate “qualitative methods allows the researcher to study selected issues in depth, openness and detail as they identify and attempt to understand the categories of information that emerge from the data”. Qualitative research is important and appropriate for this study as it attempts to describe and understand street level bureaucrats’ behaviors. Qualitative research occurs in a natural setting of social actors. Therefore the researcher used qualitative research to understand behaviors and attitudes of street level bureaucrats in a more natural setting that provides firsthand information.

#### **6.2 Data Collection Methods**

This study was investigated using in-depth interviews (with open ended questions) with environmental health officers and the police officers in the Pietermaritzburg central business district. According to Neuman (2000:112) in-depth interviews involve a series of face-to-face, detailed discussions with selected people who represent different sections of the wider community. One of the advantages of in-depth interviews is respondents can express their opinion in a much freer and informal manner, and can also touch upon areas that they deem important. On the other hand information from in-depth interviews is difficult to transcribe and interpret. Using the same general interview guides consisting of relevant open ended questions the researcher interviewed environmental health officers

and the police respectively. A number of questions pertained specifically to either the environmental health officers or the police officers. Environmental health officers and the police are the street level bureaucrats as they interact directly with citizens and have discretion in carrying out the policy in question.

Literature reviews of related documents and publications were used. A literature review involves the identification and analysis of literature related to one's research project. This is meant to familiarize the researcher with the body of knowledge in relation to tobacco control and establish credibility. Blanche and Durrheim (1995:18) argue "a literature review puts your research project into context by showing how it fits into a particular field". Literature reviews also show prior research and how this study is linked to it. The policy context section provided literature and information on what has been researched on concerning access, control and health effects of tobacco among youths. In addition simple observations and investigations were carried out by the researcher to find out the addictive nature of tobacco, general public and traders awareness of tobacco access and its restrictions. Bless and Smith (1995:105) contends that simple observation also known as non participant observation is the recording of events by an outsider.

### 6.3 Target Population

Neuman (2000: 216) contends that a target population refers to the specific pool of cases a researcher intends to study. In this study the researcher interviewed the whole population of 11 environmental health officers in Pietermaritzburg Msunduzi municipality. Due to lack of knowledge by many police officers about the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) the researcher held interviews with key informants in the police force from the Drugs and Liquor Section situated at the Alexander Davies Building in the Pietermaritzburg central business district. According to Blanche and Durrheim (1999:137) "a key informant is somebody you get on with, who is part of and knows the culture you are studying and who likes talking about it". They were chosen as the target population because they are the ones empowered by the Act to enforce this law. In doing this the researcher used purposive or judgmental sampling as espoused by Babbie and Mouton (2000:166) was

employed. Purposive sampling is based on the basis of your own knowledge of population, its elements and the nature of your research aim.

#### 6.4 Data Analysis Procedures

Because this is an explanatory study, my data analysis focused on the responses by street level bureaucrats interviewed and data from related literature and publications. Explanatory studies are used to make investigations into relatively unknown areas of research. They employ an open, flexible and inductive approach to research as they attempt to look for new insights into phenomena (Blanche and Durrheim 1995:18). The purpose of this study is to explore the challenges faced by street level bureaucrats in implementing the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). Content analysis will be used to analyse data collected. Brewerton and Millward (2002) contend that content analysis is collecting and organizing information systematically in a standard format that allows analysts to draw a conclusion about the characteristics and meaning of recorded material. Responses from the street level bureaucrats interviewed were the content of this study. It was organized and analysed in a thematic format and conclusions were drawn from these responses. Neuman (1997) argues that content analysis can be applied to any form of communication. According to Babbie and Mouton (2001) in qualitative data analysis, data is interpreted using various styles. This is rarely done in an orderly manner. However the general procedures are:

- a) Familiarization and immersion
- b) Inducing a main theme and sub-themes
- c) Coding
- d) Elaboration
- e) Interpretation and checking

The researcher followed these guiding steps in data analysis by coding data from the interview responses, related literature and publications collected highlighting dominant themes and issues. In turn the researcher described and interpreted the findings of the factors hindering effective implementation of the policy by street level bureaucrats.

## **6.5 Ethical Concerns**

Due to the nature of the research questions, confidentiality of the participants will be maintained and protected through participant confidentiality. Participation was voluntary. The researcher was objective and adhered to the general code of ethics for social science researchers. When concluding the interview processes the researcher debriefed the participants. Blanche and Durrheim (1999: 67) note that debriefing involves explaining to research participants at the beginning and conclusion of the study, the nature and purposes of the study.

## **7. Findings**

The Msunduzi Municipality is the local council in the city of Pietermaritzburg. A municipality, according to Section 151(3) (1996) of the constitution has the right to govern on its own initiative the local government affairs of its community “subject to national and provincial legislation” According to the White Paper on Local Government, Section A (2002:1), local government has been given a distinctive status and role in building democracy and promoting socio-economic development, playing a central role in representing communities, protecting of human rights and meeting basic needs. It must focus its efforts and resources on improving the quality of life of our communities, especially those members and groups within communities that are often marginalized or excluded such as women, disabled people, minors and very poor people (White Paper on Local Government, Section A (2002:1).

The White Paper on Local Government of 1998 categorizes municipalities as follows:

### **Category A Municipalities**

These are municipalities that have exclusive municipal executive and legislative authority in their areas. They are single tier municipalities in large urban areas.

### **Category B Municipalities**

Are municipalities that share municipality executive and legislative authority in their area with a category C municipality within whose area it falls. This type forms a two tier municipality with category C municipality.

### **Category C Municipalities**

Are municipalities that have municipal executive and legislative authority in an area that includes more than one municipality (Khoza 2001:6).

Zuma (2002:35) notes that the Msunduzi Municipality is a Category B Municipality (councils that share legislative and executive powers with the District council in which they fall), and is organized in a collective executive system. This means that the Mayor through the executive committee which is made up of ten councillors leads the exercise of executive authority (Zuma 2002:35).

Below is an organogram depicting the structure of Msunduzi municipality. The purpose of this organogram is to show where the environmental health section lies in the municipalities operational divisions.

**Msunduzi Municipality Basic Layout (Organogram)**



**Figure 6** [www.pmbcc.gov.za/](http://www.pmbcc.gov.za/) (2005)

The Community Services and Social Equity department is responsible for all aspects of environmental health and community health services such as pollution control, sanitation, vegetation control, disease outbreak control among other concerns.

*The Environmental Health Division (Msunduzi Municipality)*

The Environmental Health Division deal with issues of public health. It is headed by a Chief Environmental Health Officer. The Department is presently involved in a number of projects; these include food control in relation to hygiene, restaurants and food preparation. It also deals with aspects of infectious diseases, rodent control, mosquito control and industrial environmental control which involves inspections of factories, pollution and occupational health. This division reports to the Community Services and Social Equity committee. The Environmental Health Division is also accountable to the Provincial Health Department. It is empowered to enforce national and provincial environmental legislation. The National Environment Management Act 108 of 1998 (NEMA) gives the Msunduzi Municipality Environmental Health Division statutory powers to implement environmental health regulations. With regards to the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) the environmental health division in Msunduzi Municipality has powers to stop the selling of tobacco products to minors as stated in Section 4[1] of the Act.

The Msunduzi Municipality is tasked with environmental health care and management in its area of jurisdiction. This means that environmental health officers in the local council are mandated to implement the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). According to section 2[a] 6 of Tobacco Control Amendment Act 12 of 1999 “a local authority which has made regulations relating to the control of smoking in terms of this act shall have the power, duty and obligation to enforce regulations in its area of jurisdiction” (1993:4). With this in mind tobacco control as an environmental health concern should be undertaken within the district health systems of any municipality or local council.

Thus, the Msunduzi Municipality has 11 Environmental Health Officers or practitioners who are committed to implementing the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) in relation to selling of cigarettes to minors. The environmental health function is a section within the local council’s health

department. The environmental health division is currently facing problems of financial and material resources to carry out its duties. They have a high employee turnover and the division is heavily understaffed. According to the chief environmental health officer the division currently has 11 environmental health officers instead of 24 to effectively carry out its duties and obligations. The chief environmental health officer further expressed that they face major transport problems to do site visits which are crucial for any environmental health concern.

### South African Police Services

The Constitution of the Republic of South African, 1996 Act 108 of 1996 lays down that the South African Police Service has a responsibility to prevent, combat and investigate crime; uphold and enforce the law and participation in efforts to address the causes of crime. This means that the South African Police are empowered to implement and regulate the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) in relation to selling of cigarettes to minors.

## **7.1 The Research Findings**

The research findings are drawn from face to face in depth interviews, which I held with environmental health officers in the Msunduzi municipality and two police officers and from the South African Police Services in Pietermaritzburg. The two police officers are ranked as Captain and work in the Drugs and Liquor Section.

## **7.2 The Research Process**

In total eleven (11) Environmental Health Officers were interviewed. Interestingly, although mandated to regulate this policy, the police officers in the Drugs and Liquor Section were not familiar with the policy. Although assured that the police officers in this section fully understood the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) and its implications, during preliminary investigations, this was not the case. Initial interviews were conducted with the head of department (Drugs and Liquor Section). Two captains within the section appeared to know a little about the regulation. Since the two police officers did not know fully about the legislation

they were debriefed about the Act and the purposes of my research study and given time to research about the legislation in relation to their operations. This affected the research design as the sample of policeman had to be changed from 11 to two policemen who now acted as key informants. This also led to delays in my research as and time frames projected in the research proposal stage had to be altered. In order to understand the various challenges faced when trying to implement this particular policy, questions were designed under the following five themes:

- Awareness
- Resources
- Experiences
- Challenges
- Recommendations

These themes were devised based on the implementation theories presented earlier which provided a framework for the investigation of how street level bureaucrats on “the bottom” implement policies set from the “top”. The bottom up model of policy implementation was very influential in shaping up the interview themes. The questions in the interview guide were open ended so as to give the respondents as much time, space and freedom to discuss the important issues in depth. In addition simple observations on street traders were made.

### **7.3 Limitations of the Research Process**

Gaining responses from the environmental health officers proved difficult as many felt, some of the questions were sensitive and would lead to victimisation. The majority requested anonymity on the research findings. The language barrier also played a role as some of the black environmental health practitioners felt they could better communicate in their mother tongue of IsiZulu. I am not a Zulu speaker.

Another research problem was that some of the environmental health officers were new to the department and were not well versed in the topic of discussion. Police officers in

the Drugs and Liquor Section were ignorant of the legislation, and I was referred to their superiors whom they thought were more knowledgeable about the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). This had adverse effects on my research study as I could not get enough information. This sometimes led to generalized comments during the interviews that were not expert in nature from some of the environmental health officers and police officers.

The research findings below are presented in the following five themes: awareness of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999); its objectives; resources; experiences; challenges; recommendations.

#### **7.4 Environmental Health Officers**

##### **1. Awareness of the Act and its objectives (selling tobacco products to minors).**

All the respondents were aware of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). They felt it was a good policy in that it protects the rights of non smokers. They also consistently felt that the regulation was excellent in terms of controlling access of minors to tobacco products, in the sense that tobacco products were harmful to young people's health. The majority of the respondents postulated that it was difficult to control access and that minors continued to get access of cigarettes anyway. One environmental officer stated **"The policy serves its purposes of not making minors access tobacco products but kids will continue to get hold of cigarettes anyway"** (Respondent 29/08/2005). Thirty five percent (35%) of the environmental health officers stated that they knew of the part of the Act which controlled access to minors through signage's on cigarette packs, in pubs, public places and restaurants. All respondents talked about the Act in terms of smoking in buildings and designated areas for smoking in places such as pubs and nightclubs.

Asked whether there were by-laws that responded to the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) all noted that no by-laws existed in this regard. One officer stated **"We follow the national Act as it is, having by-laws would create an overlap. It is a national directive which we have to carry**

out” (29/08/2005). Another officer noted that most municipalities countrywide followed the national directive and had no bylaws relating to this policy.

## 2. Resources

Regarding resources that exist to carry out the policy implementation all the environmental health officers responded that human resources and material resources (in the form of flyers and pamphlets) were available to carry out the policy. Asked what resources were missing and what resources could make their job easier, varying responses emerged. The majority said financial and material resources such as information (flyers, pamphlets, and magazines) were missing. Two of the respondents stated that community participation as a resource was lacking. One officer said **“One of our biggest hurdles is the lack of community participation as a resource in addressing this problem. Community participation is essential to control access of minors to tobacco products”** (Respondent 29/08/2005). The officer further reiterated that community leaders and parents were not aware of the policy regulation. However all the respondents felt that there was shortage of personnel (human resources) and more personnel would make their job easier. One officer stated **“Lack of staff has been our greatest challenge. There is only eleven of us at the present moment and we used to be eighteen”** (Respondent 29/08/2005). One particular environmental health officer felt that the South African Police Service should provide human resources to make the job easier by increasing collaboration.

In terms of discretion, the environmental health officers stated that they had discretion in terms of carrying out the policy within the stated legal framework environmental health officers. They all noted that the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) was the major guideline for dictating the degree of powers they had when implementing the policy. Sixty percent (60%) felt that they had sufficient powers when implementing the policy. Twenty percent (20%) felt that they needed more freedom such as having powers to give spot fines. One environmental health officer expressed **“It would be much easier to carry out this policy if we can give spot fines to offenders”** (Respondent 29/08/2005). They felt the current law was

ambiguous in terms of how much freedom they had as environmental health officers and did not clearly state the roles and responsibilities of environmental health officers.

Various factors were cited as obstacles to efficient implementation. Firstly, the majority of environmental health officers expressed that the community at large and informal traders were ignorant of the policy in relation to selling of tobacco products to minors. Twenty percent (20%) feared to be attacked especially by informal traders. One officer noted **“It is difficult to carry out or prosecute offenders’ especially informal traders as they might follow you up and threaten you”** (Respondent 29/08/2005). To augment this assertion another officer said **“Informal traders are the main culprits in selling of tobacco products to minors and most of them are not traceable therefore making our jobs difficult”** (Respondent 29/08/2005). Sixty percent (60%) felt there was a need for by-laws to implement the policy effective and efficiently but eighty percent (80%) were more concerned with the problems of smoking in public buildings and buildings and designated areas rather than selling of tobacco products to minors. The particular point expressed by all was that it was difficult to monitor the culprits as they are not always there all times. One female officer stated **“It is difficult to carry out the policy as no one is assigned to monitor formal and informal traders twenty four hours of the day”** (Respondent 29/08/2005). Lastly fifty percent (50%) of the environmental health officers felt that lack of cooperation from other role players such as the police, non governmental organizations and the community at large stood in the way of efficient implementation.

### 3. Experiences

All the respondents noted that national Department of Health directs how they implement and regulate the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) in relation to selling of tobacco products to minors. Thirty percent (30%) of the environmental health officers said they were bound by the Act itself and directives from their superiors. Different views were expressed when responding to the question of experiences with traders or merchants who have not been abiding by the policy. One officer stated that a couple of informal traders have been caught breaking the

law and they have not been cooperative with the officers from the environmental health section in the Msunduzi municipality. Formal businesses were regarded to be more cooperative. One officer said **“Formal registered traders appear to take heed of the regulation as they fear their licenses might be taken away from them but the biggest problem is informal traders’ especially street vendors who are difficult to monitor their operations”** (Respondent 29/08/2005). One particular environmental health officer noted that informal traders acted hostile as selling cigarettes was a source of income and livelihoods. However the majority that is seventy percent (70%) responded by noting that they had had no experience at all with traders breaking the policy regulation.

All environmental health officers expressed that no prosecution or an attempt to prosecute had been executed to those found to be selling cigarettes to underage people. They all stated the procedures to be taken when an offender is caught, that is to serve a notice and prosecute if the offender does not stop selling cigarettes to minors within a certain period of time were discouraging. All felt that the prosecution process was cumbersome and time consuming. To confirm this view one officer stated **“It is not worth it to go to the courts or through legal proceedings to testify against an offender who is selling a couple of cigarettes to kids. In any case this practice will continue”** (Respondent 29/08/2005).

#### 4. The Challenges

The majority, which is ninety percent (90%) of the environmental health officers, felt that implementation of the policy, is not a priority. They noted that they had other pressing issues which needed urgent attention. These issues included pollution, food control, and disease outbreak (epidemics) and hygiene of public places. Seventy five percent (75%) stated that within the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) they paid more attention to smoking in buildings and designated areas in public places.

The majority that is eighty percent (80%) of environmental health officers stated that in reality it was difficult to implement and regulate the policy. Firstly, they felt that selling

of tobacco products to minors was occurring in informal outlets and owners of these informal outlets were not even aware of the policy. Secondly, environmental health officers and police officers are not present 100% of the time. One environmental health officer respondent gave the example of sheebens in the townships which are difficult to monitor. One felt that minors were “growing up” therefore would always find a way to access and experiment with tobacco products. He stated **“Children who are growing up will always experiment with cigarettes as they see elders smoking, therefore it is difficult to control them as they will always find a way of accessing cigarettes” (Respondent 29/08/2005)**. Thirty percent (30%) stated that there were loopholes in the regulation and that they thus had less discretion to implement and regulate the policy. It was stated that it is difficult for the environmental health officers as there was no one assigned to specifically regulate and implement this policy. Lack of cooperation from other relevant stakeholders was also cited as an experience hindering effective implementation. One particular environmental health practitioner expressed **“It is difficult for the policy to be a reality because other role-players such as the police and non governmental organisations are not coming on board” (Respondent 29/08/2005)**. Another officer indicated that they had other pressing issues to attend to like the control of food hygiene at informal businesses at the present moment.

### 5. Recommendations

The environmental health officers had various recommendations to make implementation and regulation of this policy easier and more effective. They all recommended that there be health education on the dangers of smoking to minors, community participation and awareness campaigns to deter minors from buying or accessing tobacco products. Some said that the media should be in the forefront to effect awareness that it is illegal to sell tobacco products to minors. One officer expressed that signage showing that those under sixteen should not buy cigarettes should be placed visibly at every public place. There was a general expression among environmental health officers that other role players such as the police, business, youth and the community at large should be in the forefront of implementing and regulating this policy. Two environmental health officers felt that there should be specialists or staff assigned to this particular policy. Sixty five percent

(65%) felt there was need to give spot fines to those caught on the wrong of the regulation. One environmental health officer particularly stated that the school institution should be used to create awareness on the policy and educate the minors about the health effects of using tobacco products especially cigarettes. She stated **“The school setting is a perfect instrument of deterring young ones from smoking through teaching on the health effects of tobacco. Schools should not only concentrate on business education but health education as well.”** (Respondent 29/08/2005). Sport was also seen as a way of keeping minors occupied so that they do not experiment with tobacco products.

## 7.5 The Police

### 1. Awareness of the Act and its objectives (selling tobacco products to minors)

The two key informants within the South African Police Service were stated that they only knew that legislation existed. The informants became aware of the Act after being debriefed for this research process. Both noted that it was important to control access to tobacco products especially by the youth as smoking had negative effects on one`s health. One police officer stated that he was not fully aware that it was a criminal offence to sell cigarettes to minors, but was now fully aware after being apprised of Section 4[1] of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999).

### 2. Resources

The two police officers agreed that there were no resources dedicated to implement and regulate the policy. One of the officers stated that it was high time resources be committed to fight selling of tobacco products to minors. He stated **“This is an important regulation and resources must be made available to combat it. Cigarette smoking leads to drug and alcohol abuse among the youths which later leads to crime”** (Respondent 31/08/2005). He further stated that the first resource is to inform all street level police officers about the legislation and train them so as to implement and regulate the policy. They both recommended that financial, material and human resources were essential for successful implementation.

On the notion of discretion, the police officers stated that they had enough powers and discretion to carry out the policy as stated in the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999). One of the officers equated the tobacco control policy to the control and access of liquor in informal and formal outlets. He felt it would be easier to enforce and control access of tobacco products if the two are implemented and regulated simultaneously. He said **“Tobacco control regulations in connection with access should be carried out simultaneously with liquor regulations as they are more or less the same” (Respondent 31/08/2005).**

### 3. Experiences

The two police key informants noted that they should follow the legislation as it is and take orders from their superiors. They had had no experiences with traders or merchants who sold tobacco products to minors. However both noted that if one is caught breaking this law, he or she will be prosecuted as envisaged in the legislation.

### 4. The Challenges

Both police officers expressed that this particular legislation was is not a priority in their daily activities. Their department, the Drugs and Liquor Section, had other pressing issues which demanded urgent attention. One police key informant expressed **“To be honest this policy is not on the list of our priorities, at the moment we are concerned with drug and alcohol abuse” (Respondent 31/08/2005).** These commitments included substance abuse of drugs such as marijuana, ecstasy and cocaine, drug trafficking, liquor licensing and underage drinking which in turn led to more serious crimes such as murder and robberies. They stated that they were more concerned with preventing use of drugs and alcohol by minors. One police officer said they gave more attention to these issues as they were impacting negatively on the society as a whole. He expressed **“Drug and alcohol abuse has led to many criminal activities and social misdeeds by youths as they will be under the influence, so these have to be addressed as a matter of urgency” (Respondent 31/08/2005).** However they all felt that the regulation should become a priority as they were concerned with the effects of tobacco on minor’s health.

### 5. Recommendations

From the police it was recommended that there was a need to create awareness of this legislation among the police. One officer recommended that there was need for constant raids on informal and formal traders to try and enforce this policy regulation. It was also recommended that controlling the access and consumption of liquor by minors should happen simultaneously with tobacco products. Both police officers recommended community and youth education on the effects of tobacco on ones health. One officer stated that families should teach their children the dangers of smoking so that children do not find anything attractive in smoking.

Simple observations revealed that street traders regarded cigarettes as a quick source of money. The researcher noticed that on average a street trader could sell eight (8) packs containing twenty (20) cigarettes in one day in the Pietermaritzburg central business district. Street traders buy the cigarettes in bulk from wholesale shops and supermarkets. The cigarettes are sold in a loose form that is one can buy one cigarette separate from the full packet. The researcher also observed that tobacco products especially cigarettes were always available. An underground market for cigarettes were the minors and street traders held their transaction was in full operation. School children would simply go to vendors they are connected to who sell cigarettes. Literature reviews also indicated that tobacco is highly addictive. The World Health Organization (1996) postulates that cigarette smoking is one form of risk behaviour that forms part of an unhealthy lifestyle. It further states that tobacco smoke contains 43 unknown cancer causing agents. Therefore observations indicated that most adult people who smoke started at a young age and could not fight the addiction.

## **PART FOUR**

### **8. Analysis of Findings**

This section will interpret and analyse the research findings with a view to answering the research question focusing on the challenges faced by street level bureaucrats in implementing and regulating the Tobacco Products Control Act 83 of 1993 with regards to selling of tobacco products to underage people. The analysis takes into account public policy theoretical perspectives discussed earlier on in relation to the research findings.

The first challenge that street level bureaucrats in the Pietermaritzburg central business district are facing in implementing and regulating this policy is awareness. The research findings indicate that although environmental health officers knew about the legislation they are not fully aware of the section relating to the selling of cigarettes to underage people. The same applies to the police, they also lack full awareness of this section of the legislation. Interestingly one police key informant noted that he was not really sure whether it was a criminal offence to sell cigarettes to minors. This aspect of “not knowing” has proved to be a challenge which has seen the neglect of the policy’s implementation. It is unsurprising then that street level bureaucrats battle to implement the policy as envisioned by the policy elites.

This lack of awareness by street level bureaucrats raises a number of questions. For instance, is it because policy decisions are not being communicated to lower level workers by political elites or is it because street level bureaucrats are not competent enough to know some of the policies they are supposed to implement?. Apparently a communication gap exists between policy formulators and policy implementers. Nonetheless, it is of importance to encourage the participation of as espoused by Peters (2001:50). Participation of street level bureaucrats in policy formulation is one way of improving awareness and effective implementation. Peters (2001:51) argues that the hierarchical top down style of management in traditional bureaucracies restricts the involvement of employees in their own jobs. The policy regulation is being implemented

through the “top down” approach. Colebatch (2002) notes the top-down approach is largely state centered and treats administrators as mere policy implementers. This absence of real involvement in their jobs alienates public sector employees and reduces their commitment to the organization. In relation to this study the police and environmental health officers should actively participate in policy formulation so as to create awareness that it is illegal to sell cigarettes to minors and to determine what is expected of them when dealing with the situation.

Furthermore, lack of sufficient power and discretion to fully implement the policy regulation is a sizeable challenge faced by street level bureaucrats when trying to implement and regulate this policy. From the research findings presented in this study environmental health officers noted that there were no bylaws relating to this specific aspect of the policy that is selling of tobacco products to underage people. Instead they implemented the policy as a national directive as it is national legislation. However the national policy is ambiguous in that it does not reflect the roles and functions of environmental health officers and the police. Kickert et al (1997:8) argues that in order to improve public policy making and implementation there is a need to clarify policy goals. This can be achieved by providing information concerning clear intentions of the policy and increased monitoring and control of activities.

Although Lipsky (1980:13) states that street level bureaucrats have considerable discretion in determining the nature, amount and quality of benefits and sanctions provided by their agencies, environmental health officers in this case, do not have much discretion. Hence Hessing and Howlett (1997:11) contend that implementation is a complex process that involves not only bureaucratic execution of political decisions but also the utilization of a gamut of governing tools or policy instruments in the effort to urge, bribe, coerce or otherwise convince policy targets to adhere to the wishes of governments. This is why environmental health officers especially are advocating giving spot fines to offenders so that they can implement the policy effectively. Lack of sufficient power and discretion makes the work of environmental health officers especially difficult as they can only act to a certain extent in carrying out their duties. At

present the most they can do to implement the regulation is warn, give notices to offenders or prosecute through the municipal courts. The police on the other hand can charge offenders but the problem is they are not fully aware of the policy and its intentions. This is further compounded by the fact that there is a lack of by-laws in the Msunduzi Municipality regarding this policy. This makes it difficult for environmental health officers especially as they are really not sure of their roles and functions and what is expected of them. One potential solution would involve the Msunduzi Municipality creating bylaws to assign roles and functions of environmental health officers so that they know their duties and obligations when implementing the policy. By-laws would also give these street level bureaucrats enough power and discretion to carry out this policy as they would be clearer and more specific than the national policy which is more general in nature.

The process of monitoring, implementing and regulating the policy has proved difficult. The research findings indicate that it is difficult for street level bureaucrats to be consistently available to monitor the sale of cigarettes to minors. This practice occurs 24 hours of the day and it is difficult for street level bureaucrats to be consistently present when this practice occurs. This practice of selling cigarettes to minors is very evident amongst informal traders. This is why Anderson (1997) argues that translation of policy goals into intended effects requires time, expertise, energy and resources. Monitoring of their activities is very difficult as they move from one place to another and a large proportion of them are not registered. Therefore time and information on the operations of formal and informal traders are acting as a constraint to effective implementation. There is not enough time to monitor the activities of traders and information on how traders operate is not forthcoming making it difficult for the police and environmental health officers.

The environmental health officers have more pressing issues to attend to such as pollution, hygiene and disease outbreaks. The police, on the other hand, have to attend to issues of drug and alcohol dealings and criminal activities in general. These research findings show that preventing the selling of tobacco products to minors is not a pressing

problem for the police or environmental health officers. It is regarded as a less serious issue which does not require swift attention as it is not a “big” threat to the social, economic or political state of people’s lives. However, these research findings show that priority is being given to implementing the aspect of the policy which speaks to smoking in public places and buildings. This is being given more attention. Maybe this is because smoking in public places can lead to fires which can destroy infrastructure. As mentioned in the theoretical framework street level bureaucrats have wide discretionary powers and can decide where or not to apply a law or implement a policy. These research findings have indicated that environmental health officers and police officers using their discretionary powers do not regard this policy regulation a priority.

Lack of information regarding the policy regulation on the part of the general community and informal traders is one of the factors that has hindered effective implementation and regulation. The research findings suggest that the community (parents, elders and other social leaders) is ignorant of this policy regulation. Environmental health officers and the police continually emphasized the need to inform, educate and create awareness among the youth and the community at large. Some formal and informal traders are also unaware that it is illegal to sell cigarettes to minors. This makes it difficult for environmental health officers and the police to fully implement and regulate this policy as the practice is now “acceptable” and is seen as unavoidable. Implementing and regulating the policy effectively means changing the attitudes and perceptions of the general community and informal traders about the negative effects of smoking.

It is also difficult for street level bureaucrats to carry out this policy as cigarette selling especially loose ones is a source of income and livelihoods for many informal traders’ especially street traders. Children below the age of 16 are a ready and viable market for cigarettes. Therefore informal trader’s especially street vendors will continue to resist efforts from the police and environmental health officers to stop selling cigarettes to young ones as it is a source of income to them. Simple observations on street traders revealed that they made profits from selling loose cigarettes and seventy percent (70%) of their customers are school going children mostly under sixteen. This makes it difficult

and challenging for the police and environmental health officers as the practice is seen as a source of life to many families. Despite measures to control it, it is deemed by many of the street level bureaucrats as a practice that will continue. One environmental health officer mentioned **“Children who are growing up will always experiment with cigarettes as they see elders smoking, therefore it is difficult to control them as they will always find a way of accessing cigarettes” (Respondent 29/08/2005).**

The various procedures and bureaucratic processes employed when a culprit is caught selling cigarettes to young ones is a major challenge for the environmental health officers. As mentioned by one respondent going to the legal courts and embarking on legal proceedings is time consuming. The process of serving notices and going through the municipal prosecutor is long and tiring. It is a vertical structure that perpetuates hierarchy, a chain of command, rules and procedures. It is rigid in nature and results in slow decision making. Lipsky (1980) contends that street level bureaucrats operate in a system that has a large chain of command, is impersonal, rigid and full of regulations which is typical of the “top down” approach to implementation. This makes it difficult for the environmental health officers especially as their cases are not attended to urgently. This is why Lipsky (1980) argues that street level bureaucrats work under discouraging circumstances. In this case the environmental health officers do not have the necessary support which results in demotivation and discouragement hence they do not implement and regulate the policy effectively and efficiently.

Concurring with Lipsky’s assertion that street level bureaucrats work under discouraging circumstances, fear of being attacked is one of the challenges faced by police and environmental health officers. The police and environmental health officers feel that it is not worth it to warn or try and prosecute someone who is selling cigarettes to young ones. To many it is a petty crime that does not warrant much attention. This is because one might be victimised especially by informal traders as it is a source of their livelihoods. Fear of violence is one of the factors that street level bureaucrats fail to implement and regulate this policy effectively.

Coordination and cooperation from various role players is also one of the challenges faced by street level bureaucrats in implementing and regulating this policy. These other role players include non governmental organizations, the community, church, schools and civil society. For instance environmental health officers have complained that the police are not collaborating with them. One other respondent indicated that the school institution should play a role. Bardach (1998) notes that interagency collaboration is essential to achieve public goals and objectives. He defines interagency collaboration as “a set of individuals who design or operate the machinery that makes for the smooth day to day operations within the constraints set by various partner agencies” (Bardach 1998:26). The research findings indicate that environmental health officers are trying to implement this policy without the support of the police, schools, community and civil society as espoused by the “bottom up” model of implementation. Colebatch (2002:23) terms the “bottom-up” model the horizontal dimension to policy. To him “bottom-up” approach is concerned with relationships among policy participants in different organizations. It recognizes that policy work takes place across organisational boundaries as well as within them and consists in the structure of understandings and commitments among participants in different organisations (Colebatch 2002:23). Implementation and regulation become difficult as role players are acting individually and not supporting each other. Bardach (1998) contends that interagency collaboration should operate with an implementing network. He defines an implementing network as “a set of individuals who design or operate the machinery that makes for the smooth day to day operations within the constraints set by various partner agencies”.

In this case research findings have shown that there is no collaboration and this has resulted in an implementation deficit. The police and environmental health officers are working individually which should not be the case as access of tobacco products by minors is a multi faceted problem that requires cooperation from various role players. Implementation is a complex process involving various actors with different vested interests in a given policy. Brinkerhoff and Crosby (2002: 23) explain that no single agency can manage the policy implementation effort. Policy implementation requires the concerted actions of multiple agencies and groups within government and outside, from

civil society and the private sector. This means authority and responsibility is dispersed among actors involved.

Resource shortages are one of the challenges that street level bureaucrats are facing in trying to implement and regulate the policy in relation to the selling of tobacco products to minors. Lipsky (1980:82) postulates the problem of lack of resources when he states “how is the job to be done with inadequate resources”. Although there are some financial and material resources to carry out the policy, research findings indicate that they are not enough. For the environmental health officers’ financial and material resources such as flyers, booklets to create awareness and vehicles are missing. The police do not have specific financial and material resources assigned to carry out this policy. Instead they have to use the allocated resources to their department to carry out this policy regulation. With the various issues they have to attend to it is clear that the resources are not sustainable and sufficient to carry out the policy. The major challenge however is lack of human resources. Human resources are the cornerstone of any organisation. They are at the forefront of any implementation process without them implementation is very difficult. Research findings show that there is lack of staff in the department of environmental health officers and a high labour turnover. This means that they cannot cope with the workload. They have a work overload as they have to attend to other issues besides implementing this policy. Efforts should be made to retain the environmental health officers through increasing incentives such as fringe benefits or competitive salaries. On the other hand the police do not have sufficient personnel as well to carry out this policy regulation. Considering that the Pietermaritzburg central business district is a large area, it is difficult for 11 environmental health officers and a couple of police officers to fully police and regulate this policy. Street level bureaucrats are working under capacity and this has impacted negatively on the successful implementation and regulation of this policy.

Personal observations have revealed that the addictive nature of tobacco makes it difficult to implement and regulate this policy. Barlow and Durand (2001) argue smoking is an addictive. Therefore this means that once young ones access cigarettes constantly and

easily it is easier for them to get addicted. This means that minors will always find ways of buying cigarettes so as to satisfy their addiction. This in turn will lead to a thriving underground market or black market of cigarettes. Some retailers and vendors are aware of the regulation that prohibits selling of tobacco products to minors but escape the regulation by creating an underground black market that is hard to detect. In this black market cigarettes are sold separately and individually commonly known as “loose”. It is difficult to make a follow up as sellers and minors know each other and have devised ways of evading prosecution. There will always be a demand for cigarettes by minors. Therefore the addictive nature of tobacco and underground market makes it difficult for the environmental health officers and police to fully implement and regulate the policy regulation.

## **9. Recommendations**

In order to efficiently and effectively implement the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) with regards to selling of tobacco products to underage people there is a need to create awareness about the policy among street level bureaucrats that is environmental health officers and the police. Research findings indicated that they were not fully aware of the policy regulation in terms of selling tobacco products to underage people. Awareness of this policy can be achieved through refresher within the environmental health section and police drugs and liquor section. Refresher courses should be a constant reminder to street level bureaucrats on their duties and obligations. Collaboration between the police and environmental health officers should be encouraged when undertaking these courses so as to create awareness and improve implementation. Focus should be given to the section that prohibits selling of tobacco products to underage people. It should be reinforced among all street level bureaucrats that all regulations are the same or are equal and priority should not be given to other policy regulations. Awareness of this policy regulation is a great step towards effective implementation.

Furthermore information dissemination and awareness campaigns should be carried out vigorously to the retailers, vendors, public and young ones that it is illegal to sell cigarettes to minors. This can be done through the media, schools and signages in public places. The radio has proved to be the most effective form of media communication that reaches many. It is relatively cheap and affordable to the majority hence should be used as an instrument to communicate to the general public, retailers and vendors that it is illegal to sell tobacco products to minors. Other forms of media such as the television, internet and newspapers should also be used. The school institution is a perfect instrument to create awareness on the health dangers of smoking so as to deter and discourage smoking at a young age. The school setting is the perfect environment where under 18' can be found at one place and be communicated to on the dangers of smoking. Signages should be placed in public places, retail shops and street level bureaucrats offices to act as a constant awareness reminder and enhance implementation.

In relation to the above mentioned it is crucial to have capacity building programmes for street level bureaucrats so that they are empowered and enlightened on how to carry out the policy regulation. In other words there should be “capacity building”. According to Grindle (1997:15) capacity building encompasses a variety of strategies that have to do with increasing the efficiency, effectiveness and responsiveness of government performance. In connection with implementing the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) with regards to selling of tobacco products to underage people street level bureaucrats concerned that is environmental health officers and the police should be trained and capacitated on how to implement and regulate the policy. As mentioned earlier on refresher courses are one way of improving implementation through human resource development. In addition more financial, human and material resources in various forms of vehicles, flyers should be provided. Environmental health officers and the police should be given more powers to spot fine those selling tobacco products to minors.

There should also be institutional capacity building that is creating structures with regards to the legal proceedings when an offender is caught selling tobacco products to minors. Decentralisation should be encouraged and if possible municipalities should have their own structures to deal with those selling cigarettes to minors. Debureaucratisation will lead to more autonomy and enhance prosecution and improved implementation of the policy. One major recommendation is that municipalities should have bylaws to curb the selling of tobacco products to minors. At the present moment Msunduzi municipality does not have by-laws to enforce this policy regulation. A by-law regulating the selling of tobacco products to minors will lead to increased awareness among environmental health officers and the public at large. It will also lead to effective implementation as street level bureaucrats are more aware of their duties, responsibilities and boundaries regarding this policy regulation.

Participation and consultation is essential when trying to curb the selling of tobacco products to minors. The World Bank (1996:3) defines participation as “a process through which stakeholders influence and share control over development initiatives and the

decisions and resources which affect them”. Participation and consultation with regards to this policy is analysed from two fronts. Firstly participation and consultation of street level bureaucrats that is environmental health officers and the police in the policy formulation and decision making of this policy regulation. Secondly there should be participation and consultation of the public that is civic groups, non governmental organizations, schools, community leaders, vendors and retail shops as they are affected one way or the other with this policy regulation. This can be done through local government structures. Participation and consultation can be achieved through councillors and community leaders who can promote the involvement of citizens and community groups in the design and delivery of national, provincial and local policies. Majone in Grindle (1997) argues that experts in a bureaucracy do not have the right type of information for making policy. Therefore isolating important decisions from public involvement will generate policy errors. This means that street level bureaucrats and the public at large should have an input with regards to the formulation and implementation of tobacco control especially when it comes to underage smoking. For instance the public or street level bureaucrats should recommend the establishment of a hotline telephone number to report all those selling tobacco products to underage people. Brinkerhoff and Crosby (2002) contend that participation and consultation leads to joint decision making, sustainability, responsiveness, transparency, accountability and legitimacy. Therefore it is of importance to encourage consultation and participation among street level bureaucrats and the public at large when dealing with selling of tobacco products to underage people in the Pietermaritzburg central business district.

There should also be collaboration and networking among various role players who have a stake in the policy regulation so that their efforts are directed at controlling access of tobacco products by minors. Role players who have a stake in this policy regulation include non governmental organizations, the community, church, schools and civil society. Networking and collaboration should be encouraged especially between environmental health officers and the police as they are mainly involved in the implementation and regulation of the policy. Claire Short in Grindle (1997) postulates “No government or organization can afford to work in isolation. We need to recognize

the different strengths and capabilities different organizations have and build partnerships and networks". Therefore networking and collaboration ensures that different actors complement each other and try to look for consensus on how to implement policy decisions. It also enhances human, financial and material resources that will help tackle a problem. In fact networking and collaboration should be the basis of implementing the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) with regards to selling of tobacco products to minors.

Lastly there is a need to give stiffer penalties for those caught selling tobacco products to minors. The present fine and punishment is 10 000 rands or a punishment determined by the judge. With the high rate at which underage people are accessing tobacco product it is evident that the fine and punishment is not preventing retailers and vendors from selling tobacco products to minors. In addition selling licenses of vendors and retail outlets caught selling cigarettes to minors must be withdrawn so that they cease to operate in order to curb this practice.

## **Conclusion**

This study explored the challenges faced by street level bureaucrats in implementing and regulating the Tobacco Products Control Act 83 of 1993 with regards to selling of tobacco products to underage people. The main focus of this study was to understand why environmental health officers and the police were not effectively controlling access of tobacco products by minors in the Pietermaritzburg central business district. Effects of tobacco on health especially minors motivated me to understand why is it that measures set out to curb dangerous practices among the young ones were not being carried out efficiently and effectively. The literature review shows the effects of tobacco on health, economy and social lives and the statistics on of tobacco among the youth and what the South African government has tried to do to curb this dangerous practice.

The theoretical framework explicates various public policy theories on policy implementation and its challenges, policy regulation and street level bureaucracy and its challenges. The theoretical framework indicates that policy implementation by street

level bureaucrats is a complex process that involves many factors. In order to understand dynamics that affect implementation by street level bureaucrats, the study investigated the experiences, challenges, resource allocation, awareness levels and recommendations of environmental health officers and the police. Their responses to these dynamics clearly highlighted the difficulties they face when carrying out their duties. Lack of resources, awareness, enough discretion and powers, bureaucratic bungling and other pressing commitments were some of the major findings that hindered effective policy implementation.

A thorough analysis of the findings in relation to policy implementation and street level bureaucracy saw the research study come to a conclusion that environmental health officers and police in the Pietermaritzburg central business district faced a number of underlying challenges that needed to be resolved so as to achieve effective and efficient policy implementation. Recommendations were given on how to improve and enhance implementation and regulation of the Tobacco Products Control Act 83 of 1993 (and the Tobacco Control Amendment Act of 1999) with regards to the selling of tobacco products especially cigarettes to minors.

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UNIVERSITY OF  
KWAZULU-NATAL

SCHOOL OF HUMAN AND SOCIAL STUDIES

UNIVERSITY OF KWAZULU-NATAL/POLICY & DEVELOPMENT STUDIES

PIETERMARITZBURG

## **In-depth Interview**

### **1. Identification**

- Name: .....
- Address: .....
- Tel: .....
- Occupation: .....

## **Appendix 1 Interview Guide**

### **2. Awareness of the act and its objectives in relation to the selling of tobacco products to minors.**

- What do you think or feel about the Tobacco Products Control Act 83 of 1993?
- One of its major objectives is to control access of tobacco products by as stated in Section 4[1] of the act. What are your comments on this policy or regulation?
- Are there any by laws (provincial or municipal) that respond to this section of the act?

### **3. Resources**

- What resources currently exist to carry out this policy or regulation?
- What is missing? What would make your job easier?
- As a public official what are your levels of discretion in carrying out this regulation?
- What are the other hindering factors in implementing this policy?

### **4. Experiences**

- Who controls or determines how to implement and regulate this policy
- What have been your experiences with traders or merchants who have not been abiding to this policy regulation?

-What measures have been undertaken to ensure that they are prosecuted and that the law takes its course?

## **5. The challenges**

-Is the implementation of this policy a priority or there are other pressing issues, which dominate your attention?

-What are your comments on the realities of implementing and regulating this policy?

## **6. Recommendations**

-What do you recommend for the successful implementation of this policy?

-How else can it be done better?

## TOBACCO PRODUCTS CONTROL ACT (NO. 83 OF 1993)

Assented to: 23 June 1993 Date of commencement: 1 February 1994

### ACT

To prohibit or restrict smoking in public places; to regulate the sale and advertising of tobacco products in certain respects and to prescribe what is to be reflected on packages; and to provide for matters connected therewith.

### PREAMBLE

ACKNOWLEDGING that tobacco use—

is extremely injurious to the health of both smokers and non-smokers and warrants, in the public interest, a restrictive legislation; is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advancement, and sporting prowess through the use of advertising and promotion has the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death

[Preamble inserted by s. 1 of Act 12 of 1999.]

### 1. Definitions

In this Act, unless the context otherwise indicates—

advertisement, in relation to any tobacco product, means any drawn, still or moving picture, sign, symbol, other visual image or message or audible message designed to promote or publicise a tobacco product or to promote smoking behaviour and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer's company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and advertise has a corresponding meaning;

[Definition of advertisement amended by s. 2(a) of Act 12 of 1999.]

constitution means the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

[Definition of constitution inserted by s. 2(b) of Act 12 of 1999.]

constituent, in relation to any tobacco product, means nicotine, tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the Gazette declare to be a constituent for the purposes of this Act;

[Definition of hazardous constituent amended by s. 2(c) of Act 12 of 1999.]

Director-General means the Director-General: Health;  
[Definition of Director-general amended by s. 2(d) of Act 12 of 1999.]

employed or employment means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No 75 of 1997);  
[Definition of employed inserted by s. 2(e) of Act 12 of 1999.]

local authority means any institution or body established by or under any law with a view to performing local government functions in respect of a particular area or region;

Minister means the Minister of Health;  
[Definition of Minister amended by s. 2(f) of Act 12 of 1999.]

nicotine means nicotine alkaloids;

officer means an officer in the Department of National Health and Population Development mentioned in section 5;  
[Definition of officer amended by s. 9 (a) of Act No. 157 of 1993.]

organised activity-

(a) means any activity or event-

(i) which the public attend or participate in;  
(ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and  
(iii) where a tobacco product, or brand name, trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event; but

(b) excludes any private activity or event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend.

[Definition of organised activity inserted by s. 2(g) of Act 12 of 1999.]

package means any packing, carton, wrapping or any other container in which tobacco products are generally sold by retail;

prescribe means prescribe by regulation under this Act;

private dwelling means any part of-

(a) any room or apartment of a building or structure which is occupied as a residence; or

(b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, residential purposes.

[Definition of private dwelling inserted by s. 2(h) of Act 12 of 1999.]

public place means any indoor area which is open to the public or any part of the public and includes a workplace and public conveyance;

[Definition of public place amended by s. 2(i) of Act 12 of 1999.]

smoke means to inhale, exhale, hold or otherwise have control over an ignited tobacco product, weed or plant, and smoked and smoking have corresponding meanings;  
[Definition of smoke amended by s. 2(j) of Act 12 of 1999.]

tar means the anhydrous and nicotine-free condensate of the smoke of a tobacco product;

this Act includes a regulation made under this Act; and

tobacco product means any product manufactured from tobacco and intended for use by smoking, inhalation, chewing, sniffing or sucking;  
[Definition of tobacco product amended by s. 2(k) of Act 12 of 1999.]

trade mark includes—

- (i) any mark whether registered or registrable for trade purposes or any recognised version thereof that is likely to be taken as, or confused with, that trade mark;
  - (ii) certification trade mark or collective trade mark;
  - (iii) trade mark as defined in section 1 of the Trade Marks Act, 1993 (Act No. 194 of 1993);
- [Definition of trade mark inserted by s. 2(l) of Act 12 of 1999.]

workplace means—

- (a) any indoor or enclosed area in which employees perform the duties of their employment; and
  - (b) includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment, but
  - (c) excludes any private dwelling, and any portion of an area mentioned in paragraph (a) specifically designated by the employer as a smoking area and which complies with the prescribed requirements.
- [Definition of workplace inserted by s. 2(m) of Act 12 of 1999.]

## 2. Control over smoking of tobacco products

(1)(a) The smoking of tobacco products in any public place is prohibited.

(b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the Gazette declare specified public places permissible smoking areas, subject to any conditions that may be specified in such notices.

(c) Notwithstanding the fact that a private dwelling is excluded from the definition of “workplace”, if a private dwelling is used for commercial child care activities or for schooling the smoking of tobacco products in such dwelling or on the terrain of such dwelling is prohibited, except in an area of the private dwelling which is specifically designated by the employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.

[Sub-s. (1) amended by s. 3(a) of Act 12 of 1999.]

(2) The Minister may at the request of any local authority, but subject to subsection (3), grant any or all of his or her powers contemplated in subsection (1) to such local authority.

[Sub-s. (2) amended by s. 3(b) of Act 12 of 1999.]

(3) A power contemplated in subsection (1) shall not be granted to a local authority under subsection (2) in respect of-

(a) a public place owned by the State or which is occupied by officers or employees in the employment of the State; or

(b) such other public places or particular kinds of public places as the Minister may determine by notice in the Gazette.

(4) When a local authority issues regulations by virtue of subsection (2), it shall do so by notice in the Official Gazette.

(5) The Minister may issue regulations prescribing conditions to which the exercise of a power by local authority in terms of subsection (2) shall be subject.

(6) A local authority which has made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce the regulations in its area of jurisdiction.

[Sub-s. (6) inserted by s. 3(c) of Act 12 of 1999.]

(7) A local authority which has not made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce any national regulations connection therewith in its area of jurisdiction.

[Sub-s. (7) inserted by s. 3(c) of Act 12 of 1999.]

3. Advertising, sponsorship, promotion and required information in respect of packages of tobacco products

(1) No person shall—

(a) advertise, including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or

(b) use tobacco trade marks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event.

(2) No manufacturer, importer, distributor or retailer of tobacco products shall—

(a) organise or promote any organised activity that is to take place in whole or in part in the Republic;

(b) make any financial contribution any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;

(c) make any financial contribution to any person in respect of—

(i) the organisation or promotion of any organised activity in the Republic by that person;

(ii) the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic;

(3) A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price.

(4) No person shall sell or import for subsequent sale any prescribed tobacco product, unless—

(a) such product is in a package;

(b) the package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and

(c) the quantities of the constituents present in the tobacco product concerned are stated on the package.

(5) Notwithstanding the provisions of section 3, the Minister may, by regulations, provide for exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

[S. 3 substituted by s. 4 of Act 12 of 1999.]

#### 3A. Maximum yields of tar and other constituents in a tobacco product

The Minister may, by notice in the Gazette, declare the maximum permissible levels of tar, nicotine and other constituents which tobacco products may contain and the maximum yield of any such substance that may be obtained therefrom.

[S. 3A inserted by s. 5 of Act 12 of 1999.]

#### 4. Prohibition of sale of tobacco products to persons under age of 16 years

(1) No person shall sell or supply any tobacco product to any person under the age of 16 years, whether for his personal use or not.

(2) .....

[Sub-s. (2) deleted by s. 6 of Act 12 of 1999.]

(3) .....

[Sub-s. (3) deleted by s. 6 of Act 12 of 1999.]

#### 4A. Free distribution and reward prohibited

(1) No manufacturer, distributor, importer or retailer of a tobacco product shall for free, or at a reduced price, other than a normal trade discount—

(a) distribute any tobacco product; or

(b) supply any tobacco product to any person for subsequent distribution.

(2) No person shall offer any gift, cash rebate or right to participate in any contest, lottery or game to any person in consideration of the purchase of a tobacco product, or the furnishing of

evidence of such a purchase.  
[S. 4A inserted by s. 7 of Act 12 of 1999.]

#### 5. Restrictions on use of vending-machines

(1) The sale of tobacco products from vending machines shall be restricted to places in which purchases from such machines are inaccessible to persons under the age of sixteen years.  
[Sub-s. (1) amended by s. 8(a) of Act 12 of 1999.]

(2) It shall be the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending machine is kept to ensure that no person under the age of sixteen years makes use of any such machine.  
[Sub-s. (2) amended by s. 8(b) of Act 12 of 1999.]

(3) The Director-General may in writing direct the owner of the vending-machine in question or the person in control thereof-

(a) to take such precautionary measures as are specified in the direction to prevent the vending-machine being used by persons under the age of 16 years; or

(b) to remove the vending-machine from the premises within the period specified in the direction.

(4) .....  
[Sub-s. (4) deleted by s. 8(c) of Act 12 of 1999.]

#### 6. Regulations

(1) The Minister may make regulations regarding-

(a) the manner and form in which information contemplated in section 3 is to be reflected on the package of a tobacco product or in which it is to appear in any advertisement of such product;  
[Para. (a) amended by s. 9 (b) of Act No. 157 of 1993.]

(b) the manner or method of determining the quantities of hazardous constituents in tobacco products;

(c) the properties of a tobacco product, the claims in respect of such product and the representations in respect of the use thereof that may not appear in any advertisement;

(d) the returns, reports and other information to be furnished to the Director- General by manufacturers and importers of tobacco products;

(e) any other matter required or permitted to be prescribed in terms of a provision of this Act to achieve the objects of this Act.

(2) Regulations made under subsection (1) (b) may prescribe for the determination of the quantities of hazardous constituents in tobacco products any manner or method set out in a publication which in the opinion of the Minister is generally recognised as authoritative.

(3) The Minister shall, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the Gazette, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with any comments thereon or representations in connection therewith within a specified period.

(4) The provisions of subsection (3) shall not apply in respect of-

(a) a regulation which, after the provisions of the said subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him in pursuance of the notice published in terms of the said subsection;

(b) any regulation in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

#### 7. Offences and penalties

(1) Any person who contravenes or fails to comply with any notice issued in terms of section 2 (1) shall be guilty of an offence and liable on conviction to a fine of R200 or to such penalties as may be determined.

(2) Any person who contravenes or fails to comply with the provisions of section 4(1) or 5 shall be guilty of an offence and liable on conviction to a fine of R10 000 or to such imprisonment as may be determined.

(3) Any person who contravenes or fails to comply with the provisions of section 3 or 4A or any notice issued in terms of section 3A shall be guilty of an offence and liable on conviction to a fine of R200 000 or to such imprisonment as may be determined.

[S. 7 amended by s. 9 of Act No 157 of 1993 and substituted by s. 9 of Act No 12 of 1999.]

#### 8. Short title and commencement

(1) This Act shall be called the Tobacco Products Control Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act.

#### AMENDMENTS

General Law Fifth Amendment Act, No. 157 of 1993

Tobacco Products Control Amendment Act, No 12 of 1999