

4 April 2011

Dr Paul Hutchinson MP
Chairperson of the Health Committee
Parliament Buildings
Private Bag 18041
WELLINGTON 6160

New Zealand Retailers Association Incorporated
National Office
Level 2, CMC Building, 89 Courtenay Place
PO Box 12 086, Wellington, 6144, New Zealand

Freephone: 0800 472 472
Telephone: 04 805 0830
Facsimile: 04 805 0831
Email: helpline@retail.org.nz
Website: www.retail.org.nz

Dear Dr Hutchinson

**SUPPLEMENTARY SUBMISSION ON THE SMOKE-FREE ENVIRONMENTS
(CONTROLS AND ENFORCEMENT) AMENDMENT BILL ("BILL")**

1. As you are no doubt aware, on 14 March 2011 the Government tabled its response to the Report of Maori Affairs Committee's *Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Maori* ("**Government's Response**"). The New Zealand Retailers Association ("**NZRA**") is concerned that aspects of the Government's Response may have an adverse impact on the due process of the Bill, and we therefore ask that the Health Committee considers our views in this letter before finalising its recommendations on the Bill.
2. In particular, the Government's Response states that the Government is considering introducing certain amendments to the Bill, as follows:
 - (a) Prohibit "covert sponsorship arrangements" such as exclusive supplier deals; and
 - (b) Increase the maximum penalty for selling tobacco to minors.
3. If the Government does decide to introduce such amendments to the Bill, or the Health Committee decides on its own accord to recommend such amendments, it is not clear what process will be used to achieve this. The NZRA is particularly concerned that there may be no opportunity for public submissions on the proposed amendments.
4. In our view, it would be inappropriate to make such amendments without inviting submissions on the proposals and the underlying regulatory impact analysis. The proposals go beyond the scope of the Bill as introduced, and were not part of the consultation that preceded the Bill. They are likely to have significant consequences for the industry.
5. It is a fundamental part of New Zealand's legislative process that those who will be affected by proposed laws are given an opportunity to submit on them. This is not only a matter of natural justice, but as pointed out in the Legislation Advisory Committee Guidelines, effective consultation can

contribute to higher quality legislation, identification of more effective alternatives, lower administrative costs, and better compliance.

6. NZRA believes that the proposals raise issues that should be tested with the public. Although it is not possible to provide fully informed views at this stage, such issues include:

- (a) Recommendation 10: The Government has proposed to amend the Bill to prohibit covert sponsorship arrangements, such as exclusive supplier deals. This could potentially impact on a range of agreements between retailers and suppliers, depending on what a "covert sponsorship arrangement" actually covers, which is very unclear from the Government's Response. The scope of this proposal should therefore be clearly defined to avoid unintended consequences, and to ensure it is workable without imposing undue compliance costs. Further, if such an amendment is introduced, the application of the relevant provision should be forward-looking, and should therefore only apply to agreements entered into *after* the amendments are assented to;
- (b) Recommendation 13: The Government proposes to raise the maximum penalty for selling tobacco to minors. The proposal does not provide a clear indication of what the maximum penalty is likely to be, however, the Maori Affairs Committee recommended a maximum of "at least \$10,000". The NZRA notes that this penalty is a significant increase from the current penalty of \$2,000. Although the NZRA does not condone the sale or supply of tobacco products to minors, it does believe that further consideration and analysis needs to be undertaken as to whether raising the penalty is fair and appropriate. For example, is there evidence that the current penalty is too low to promote compliance and/or that a higher penalty would do so?

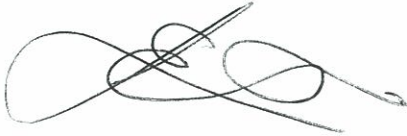
Further analysis should be undertaken as to whether the level of the fine is realistic and reasonable in proportion to the offence. Any substantial change in the penalty for selling tobacco to minors should be carefully considered to ensure it reflects the gravity of the conduct. We also agree with the observation in the Government's Response that it will be important to consider comparable offences under other legislation. For example, any person who sells a restricted substance to a person under the age of 18, pursuant to section 36 of the Misuse of Drugs Amendment Act 2005, is liable to a fine not exceeding \$2,000. It is not clear to us why sale of tobacco merits a substantially higher penalty.

7. NZRA believes that the proposals discussed above raise some difficult issues that will benefit from public submissions. Accordingly, if the Committee is considering recommending amendments to the Bill to incorporate such proposals, we urge the Committee to provide affected parties with an opportunity to submit on the proposed changes (and the associated regulatory impact analysis) before it makes any such

recommendations. If that is not possible due to time constraints, then such amendments should not be made to this Bill.

8. We have also written to Hon Tariana Turia, urging her not to introduce amendments (by SOP), in the absence of consultation, at a later stage of the Bill's progress.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Louise Evans McDonald
Government & Advisory Group Manager