



SUBMISSION

Prepared by the
New Zealand Retailers Association

For the
Health Select Committee

In respect of the
**Smoke-Free Environments (Controls and
Enforcement) Amendment Bill**

January 2011

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Introduction

These submissions are presented by the New Zealand Retailers Association.

The Association is the largest trade association involved in the retail industry in New Zealand. We represent an industry that has annual sales of \$66 billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes general merchandise chains, specialised chains, traditional department stores, grocery stores, supermarkets and thousands of owner operators spread throughout the country. The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

General Submission

The Association notes that the key purpose of the Bill is to amend the Smoke Free Environments Act 1990 so that it generally prohibits the display of tobacco products in or at the exterior of retail and other sales outlets. The retail display ban is intended to advance the Bill's objectives of reducing smoking in New Zealand by minimising exposure of young people to tobacco products, limiting impulse buying, and reducing the normalisation of tobacco availability and use.

The Association supports these objectives, and its members recognise that they have an important role to play in helping to achieve the Government's objectives regarding tobacco. However, we are aware that the decision to proceed with the Bill resulted from Cabinet decisions arising from a comprehensive review undertaken by the Ministry of Health at the specific request of the Associate Minister of Health in 2010. In our submissions on that review we argued that the proposal fell a long way short of demonstrating that there is a compelling case for imposing a ban of tobacco displays, as there was insufficient evidence to clearly demonstrate that the retail display ban would help achieve the above objectives, such that the extensive compliance costs that would be imposed on industry were unjustified. We are still of that opinion and would prefer that the Bill not proceed, as we believe that the stringent controls on tobacco already in place, which we support, are sufficient. However, we recognise that this is now a Government Bill that has been introduced following decisions by Cabinet, and, to that end we have concentrated our submissions on those specific parts of the Bill that are likely to directly affect our membership that includes the major supermarkets, as well as some convenience stores, specialised tobacco outlets and corner dairies spread throughout New Zealand. Our aim is to minimise compliance costs by ensuring that the retail display ban is workable in practice, and to ensure that the Bill properly and fairly implements Cabinet's decisions.

- **Effective Date of Implementation - Clause 2**

We note that under Clause 2 that it is proposed that the amendments relating to promotion and advertising, display of tobacco products and sales outlet signs and notices are to come into effect 6 months after Royal assent. However, people offering tobacco products for sale may be exempted by regulations from complying with the product display prohibition during a 2 year transition period.

We welcome the Bill's commitment to providing a reasonable transition period for implementation of the full retail display ban.

However, we are concerned that the regulation making powers provide scope for different classes of retailers to be provided with different transitional periods. As previously stated in our submissions of the Ministry's review document we do not see any need for any differentiation between the transitional times for retail outlets generally, and specialist tobacco outlets specifically. We submit that the fairest way to transition into a full retail display ban is to provide a uniform lead in time of two years for the entire retail industry.

- **Promotion and Advertising, and Display of Tobacco Products – Clause 6 and 7**

From our review of the Cabinet Paper, we understand that the intention was to implement the retail display ban in two stages, and to provide flexibility in achieving compliance, as follows:

- a) the legislation would clearly establish the new policies on removing retail displays; and
- b) detailed regulations and guidelines would be developed in consultation with retail interests, which would lead to "flexible solutions to comply with the law and reasonable transition criteria and timeframes to minimise the downside impact on business" (see paragraph 52 of the Cabinet Paper).

The Association welcomes this sensible approach, and looks forward to engaging constructively with officials on the detail of regulations and guidelines.

However, we submit that the Bill should be clarified to better implement the intent described in the Cabinet Paper, as we explain below.

First, the new policy of ensuring tobacco products are not stocked in view of customers is fairly clear. We support the provisions that state that the display ban is not breached if the product is visible only to the extent necessary to allow it to be delivered to the person at the place of business or to the purchaser of the product. However, we submit that two additional clarifications are necessary, as follows:

- a) It should not be a breach of the display ban if the tobacco product is visible only to the extent necessary to allow the relevant storage unit or vending machine to be restocked. This will be necessary for supermarkets in particular, to ensure storage units at points of sale can be restocked during business hours as necessary; and
- b) It should not be a breach of the display ban if the tobacco product is visible when the door or screen to the storage unit is opened to the extent necessary to allow a tobacco product to be retrieved to be delivered to a purchaser. As currently drafted, the Bill could be interpreted as requiring tobacco products to be completely hidden at all times, which would effectively mean that only under the counter drawers would be compliant. The proposed amendment is therefore necessary to ensure flexibility is provided for retailers to adopt storage units other than under the counter drawers, which is consistent with the policy articulated in the Cabinet Paper as referred to above. As discussed

below, storage units could still be required to comply with any applicable regulations.

Second, it appears that the Bill does not provide for the making of regulations allowing flexible solutions to comply with the law, as anticipated by the Cabinet Paper. Clause 14 of the Bill repeals section 39(1)(ia), which is the provision that currently allows regulations to be made governing the display of tobacco products. Clause 7 inserts a new section 39(1)(ic), which allows regulations to be made, for the purpose of section 23A(5), prescribing ways in which people who offer tobacco products for sale may allow the product to be visible. The problem is that by virtue of new section 23B(1) (inserted by Clause 7 of the Bill), sections 23A(5) and 39(1)(ic) only remain in force for two years. That is, the Bill implements the intended ability to provide reasonable transition criteria, but does not provide for regulations to allow flexible solutions to comply with the law once the transition period ends.

The Association therefore submits that the Bill should be amended to include a regulation-making power to prescribe when persons who sell tobacco may allow the product to be visible and/or to establish requirements for compliant storage units. Such a power must endure beyond the two year transitional period. In our view, this would ensure that the policy as set out in the Cabinet Paper is properly implemented, and would provide an important mechanism to help ensure that compliance requirements are clear and that consistent standards are achieved throughout the country.

- **Sale of Tobacco Products and Herbal Smoking Products to People under 18 – Clause 13**

We note that the Bill reinforces the current legal requirements that preclude the sale of tobacco to people under 18 years of age but adds a provision for an infringement notice scheme to enforce this prohibition. We are not opposed to the continuation of this age restriction, nor the proposed infringement notices, but we continue to believe that sanctions should also be faced not only by those that sell tobacco to minors but also by minors who seek to purchase tobacco or herbal smoking products.

- **Compliance Costs**

The Regulatory Impact Statement that accompanies the Cabinet Paper following the Ministry of Health 2010 review sets out the estimated costs of complying with the retail display ban. (We note that it is difficult to estimate the scope of compliance costs until the extent of the display ban is clarified).

We submit that it is important that the Committee should fully consider the cost implications of the Bill's proposals, particularly as the cost assessments contained in our submission to the Ministry – attached – of \$3,800 per carousel are higher than the \$1,500-\$1,700 assessed by the Ministry of Health. We also note that the degree of compliance costs have been assessed at significantly higher levels by other retail groups.

In our view, the extensive compliance costs (which we believe have been underestimated by the Ministry) support a uniform two year transition period, as submitted above.

- **Regulations**

We note that the Bill provides that regulations may be made for various purposes detailed in the Bill relating to tobacco product visibility, signage and notices.

As noted above, we welcome the amendments made by the Bill that make it clear that under the new regulation-making powers, the Minister must consult interested parties prior to the enactment of any new regulations.

We submit that if additional regulation-making powers are included as submitted above, then they should also be subject to these consultation requirements, thereby achieving a practical result which leads to best practice implementation.

Conclusion

If the retail display ban is to proceed, then it is critical that it is designed to apply uniformly to all retailers, the requirements are clear, and that compliance costs are minimised. Evidence available to the Association indicates that these are key considerations in overseas jurisdictions also. For example, we understand that a review of the previous British Government's decision to introduce a visibility display ban is being undertaken in the United Kingdom, recognising that the ban due to come into force this year will impose extensive compliance costs on the retail industry.

We therefore urge the Committee to give due consideration to the concerns outlined in this submission.

We would like to appear to speak to our submission.

New Zealand Retailers Association
January 2011