



**SUBMISSION**

Prepared by  
**New Zealand Retailers Association**

For the  
**Ministry of Health**

On the  
**Proposal to Ban Tobacco Retail Displays in New Zealand**

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## **Introduction**

These submissions are made by the New Zealand Retailers Association.

## **Background**

The Association is the largest trade association involved in the retail industry in New Zealand. We represent an industry that has annual sales of \$66billion 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 welcomes the opportunity to file further submissions on a proposal to ban tobacco retail displays in New Zealand ("**Proposal**"). We note however that the issue was comprehensively reviewed by the Health Select Committee in November 2007 following a petition by the Cancer Society and then subsequently by the Ministry of Health in February 2008. We are also aware that the current Government declined to pursue the issue in early 2009, noting that there needed to be a compelling case that removing tobacco displays would lead to a significant decrease in tobacco use. The Government has therefore (appropriately) established a high threshold for further regulatory intervention. However, the Government has now agreed to reconsider the issue at the specific request of the Associate Minister of Health. Although we have not commented in detail on the evidence cited by the Ministry of Health, we consider that the Proposal falls a long way short of demonstrating that there is a compelling case for imposing a ban on tobacco displays.

In our previous two submissions (copies appended for easy reference) we have opposed moves to introduce retail display bans and we continue to be opposed to further regulatory controls such as a retail display ban. We are concerned that the measures set out in the Proposal directly contravene the Government's regulatory commitments, which have been made since the last consultation on removing retail displays for tobacco (see Press Statement of Hon Bill English and Hon Rodney Hide of 17 August 2009). The Government's core commitment is to introduce new regulation only when satisfied that it is required, reasonable and robust. It has further stated that it will require a particularly strong case for any regulatory proposals that are likely to impose additional costs on business in these difficult economic times. Other more effective measures are available to reduce tobacco use, such as the recent increase in the excise tax and graphic health warnings. We therefore consider that a move to ban retail displays will impose unreasonable compliance costs on tobacco retailers despite significant unanswered questions as to the effectiveness of such a ban.

Furthermore, we understand that two of the leading supermarkets in fact are already voluntarily pursuing policies to minimise tobacco displays to their customers in their major brand stores.

Further, regulatory proposals submitted to Cabinet should confirm that they comply with the Code of Good Regulatory Practice ("**Code**"). The Code sets out a number of guidelines based on efficiency, effectiveness, transparency, clarity and equity. It is not apparent that the Proposal reaches the standards set out in the Code. In particular, the efficiency objective essentially requires the benefits of regulation to exceed the costs, and that regulation will achieve objectives at the lowest cost, taking into account alternative approaches to regulation. We consider that the recent increase in excise tax is a more direct and efficient regulatory option that will make a greater impact on reducing tobacco use than removal of tobacco displays.

The Government has recognised that poorly conceived and poorly implemented regulation can significantly hinder individual freedom, innovation and productivity. Other measures to reduce the harm of tobacco, including excise tax and graphic health warnings, do not hinder individual freedom and customer choice to the same extent as the removal of tobacco displays under the Proposal.

Ultimately, the costs for installing new displays and instigating new procedures will be borne by consumers. Given that most consumers who shop at supermarkets and convenience stores do not purchase tobacco, the Proposal will unfairly prejudice non-smokers by increasing costs for other goods. Therefore, there are serious questions as to whether the proposal is fair and equitable.

### **Specific Submissions**

We note that the discussion paper invites comment on 16 specific questions and we will comment on these in the order set out in the discussion paper.

#### **Question 1:**

***In general terms do you support the proposals set out in section 3 of the document? Please indicate which option you prefer and why?***

We confirm our position of questioning the necessity for a retail display ban for tobacco products. We understand that the evidence that is available demonstrates that fewer New Zealanders are in fact smoking and consider this trend is likely to continue given the recent introduction of graphic health warnings on cigarette packs.

If the Proposal is implemented (despite our submission) then regulation should be limited to modifications that ensure tobacco displays are covered. We consider that the specific proposal for tobacco products to be placed under the counter, in drawers or through vending units is not appropriate given the much larger compliance costs associated with these more demanding requirements, with no identified benefit. Please refer to our example compliance costs in question 11 below.

#### **Question 2:**

***If you do not support the proposals as a whole, what specific elements of the proposals do you support and why?***

Although we do not support the ban of displays for tobacco products, we agree that if the Proposal proceeds there should be a reasonable transition process for retail outlets to modify or replace existing tobacco display and storage units (as discussed below).

**Question 3:**

***What alternatives or amendments would you suggest and why?***

We do not consider it is appropriate to comment on this question given our ongoing opposition as a matter of principle to introducing a retail display ban for tobacco and tobacco related products.

**Question 4:**

***Would you support a different level of regulation being applied to specialist tobacco retail outlets and why?***

No, we consider it is appropriate that a common regulatory regime should be applied to all retailers selling tobacco and tobacco related products except for specialist stores selling cigars.

**Question 5:**

***If a ban on tobacco retail displays was implemented, what transition time would you support for retail outlets generally, and specialist tobacco outlets specifically?***

Whilst we do not support a retail display ban, we would submit that a lead-time of two years would be needed to move towards a tighter regulatory regime.

**Question 6:**

***What are the practical limitations (excluding transition timing), if any, to modify different types of retail cabinetry and units that store and display tobacco products.***

We consider that it is inevitable that additional compliance costs would arise to retailers if frosted glass or covers had to be added to existing cylindrical cigarette pack storage units or roller or sliding panels for wall mounted shelving. Such costs may be a formidable burden for supermarkets and convenience stores, particularly if point of sale stations had to be changed or modified. As noted above, these costs are likely to be passed on to consumers.

**Question 7**

***What are the practical limitations if any to replace retail cabinetry and units that store and display tobacco products so that tobacco products are stored under counters, in drawers or in vending units operated by retailers?***

Once again we see significant compliance costs arising from this Proposal for all members of the retail sector. The physical layout of stores may render such a solution practically impossible to implement. Possible health and safety problems could also arise for retail staff being required to bend over out of sight to the customer to obtain access to tobacco products should they be stored under the

counter. Speed of customer service could also reduce, especially in large supermarkets where the procedures required to sell tobacco would cause considerable inconvenience to all customers. Stock management would also become far more difficult. There could be significant design issues if the more stringent under-the-counter measures were to be implemented at supermarket checkouts - it is not clear whether current cabinetry and layouts could accommodate such requirements (leading to much higher implementation costs).

Such an approach also raises possible problems associated with theft. The New Zealand Police acknowledge that store layout is critical in providing a safe environment for staff and other customers. Therefore, measures in the Proposal which divert the attention of staff, such as having to open cupboards or drawers (out of customer sight), could be detrimental to safety. We suggest any steps to regulate under the Proposal have due regard to this issue as a material cost (albeit unquantifiable).

**Question 8:**

***Is handing a customer a list of tobacco and prices a practical strategy for assisting customers to select tobacco products in the absence of visible displays?***

No we do not consider this to be a viable option.

**Question 9:**

***What gross revenue target should define whether a retail outlet is entitled to operate as a specialist tobacco retail outlet and thus display a limited number of tobacco products?***

**Question 10:**

***Should smoke free officers be given a power to require the provision of information to enable them to legally display a limited number of tobacco products as a specialist tobacco outlet?***

As stated above we do not favour different regulatory controls for different sectors of retail apart from cigar retailers. However if a definition is to be developed for specialist tobacco retailers we suggest that the Ministry consider adopting the practice used by Statistics New Zealand which defines a business as being a specialist retailer if it sells 50% or more of the particular retail category.

**Question 11:**

***What would be the cost of modifying your existing tobacco storage and display units to comply with the proposals in the discussion paper?***

By way of example, we provide the following inventory review by one of the large supermarkets, which currently uses the following equipment in its stores:

- 960 carousels (including express lanes);
- 190 customer service display units; and
- 70 under bench express units.

The example considers the general cost estimates of the supermarket to comply with the requirements under the two different display ban scenarios:

- (a) **Tobacco display is banned, but the temporary display of tobacco is allowed during the purchase process (e.g. when a cupboard or carousel is open during the act of supplying the tobacco product to a customer):**

In this scenario the estimated cost for installing a flap to existing units that hides the tobacco from display, but can be opened during the purchase process is between \$230 and \$270 per display unit. Therefore, the total cost could reach \$350,000.

- (b) **Tobacco display is banned, including the temporary display of tobacco during the purchase process, e.g. tobacco must be hidden at all times except during the act of passing the tobacco to a customer:**

This scenario would require a significant change to existing equipment. To retrofit a carousel with an alternative storage only fixture will cost approximately \$3,800 per carousel. The cost to retrofit the remaining fixtures would average \$260 per unit. The total cost for this scenario is approximately \$3,700,000.

As noted above at question 7, it is not clear whether these measures are practically possible, and whether current cabinetry could accommodate such requirements. Depending on the design specifications prescribed for complying with this scenario (i.e. storing tobacco under the counter), the costs involved could be significantly higher than provided in this example.

In addition to the above remedial work on store fixtures and fittings, an additional cost is the extra time taken per transaction for customers wishing to purchase tobacco. When staff are required to operate a more 'secretive' display unit, this will slow down each transaction, with the flow on effect inconveniencing all customers. For a business where the speed of transaction is critical, any delays will have a cumulative adverse effect over time. Such impacts would constitute significant (albeit unquantifiable) costs. Please also note our concerns regarding safety in question 7 above.

Further, if the costs in (a) above are extrapolated across the wider industry – to not only include supermarkets but also convenience stores, newsagents, fuel retailers etc - we are looking at approximately 4,520 outlets in total. Therefore we estimate that industry costs could be upwards of \$3,000,000.

**Question 12:**

***When replacing displays during shop refits or installing new displays when establishing a retail unit, what would be the cost of installing new tobacco storage and display units within your retail outlet?***

We have sought information from our members and industry suppliers on these costs based on the two scenarios outlined. We will provide to the Ministry separately as these are not available at the time of the submission deadline. However, we

believe that costs could be mitigated to an extent if the measures were only required to be implemented as part of a planned refit (or the building of a new store), rather than imposing an arbitrary date for compliance.

**Question 13:**

***Do you think there should be a phase out for all tobacco cabinetry other than storing tobacco under the counter, in drawers or in vending machines?***

Although we do not support the ban of displays for tobacco products, if the Proposal was to proceed, we consider that there should be no arbitrary date for tobacco retail outlets to meet the more demanding requirements for storing tobacco under the counter, in drawers or in vending machines. Given the large costs associated with this phase of the Proposal, any regulation should require only new stores, or stores undergoing a major refit, to comply.

**Question 14:**

***Who bears the cost for cabinetry and where are the costs of modifying or replacing tobacco cabinetry in retail likely to fall?***

We are informed that retailers and not suppliers bear these costs. However, ultimately these costs will be passed onto consumers including those who do not smoke. We discuss this in more detail under the general submission above.

**Question 15:**

***More broadly are there any other costs or impacts on businesses that should be taken into account?***

If the Proposal proceeds (despite our submission), then the Ministry should consult with the industry on clear and workable specifications that provide some flexibility for retailers to determine how best to comply. In particular, it will be important to avoid the situation of retailers undertaking expensive modifications only for the enforcement agency to decide they do not meet the applicable regulatory standards.

**Question 16:**

***Please list the other impacts (quantified or estimated financial, social or other issues) that may arise if this proposal were to become law.***

We see potential costs arising in areas such as:

- increased delays for customers;
- increased operating costs;
- changes in restocking practices;
- changes in sales patterns;
- changes in pricing practices if price stickers are removed from retail displays in smaller stores; and
- greater time spent on stock management.

We would welcome the opportunity to discuss our submission with Ministry Officials

New Zealand Retailers Association  
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