



Submission to the Health Select Committee on the Smoke-free Environments (Controls and Enforcement) Amendment Bill

To: Committee Secretariat
Health Select Committee
Parliament Buildings
Wellington

From: Richard Green
The Association of Community Retailers
Palmerston North
info@acr.org.nz

**THIS SUBMISSION IS FROM THE ASSOCIATION OF COMMUNITY RETAILERS.
MR GREEN WISHES TO APPEAR IN FRONT OF THE COMMITTEE**



INTRODUCTION

The Association of Community Retailers (ACR) represents small, independent family-run community retailers, mostly dairies and convenience stores, around New Zealand.

The ACR was borne out of the former Stay Displays Coalition, which was established by retailers to promote their views on the review of tobacco displays proposed by the Ministry of Health in 2007. The ACR keeps members and the wider retailing community informed through direct contact or via media publicity of the tobacco debate and its negative effect on their legitimate businesses.

This submission reinforces the concerns expressed by the Stay Displays Coalition of Retailers in 2008 when the Ministry of Health first put forward legislative proposals to ban tobacco displays (only to have the current Government turn it down in March 2009). We provide further views in relation to the latest regulatory and legislative proposals in the Smoke-free Environments (Controls and Enforcement) Amendment Bill 2010.

In preparing this submission, we spoke to retailers around the country. Some have taken the time to call me personally to discuss their concerns to this Bill and express their opposition to most of it. Most retailers are concerned that they will be required to spend money on rebuilding significant areas of their stores to accommodate the new rules but do not believe that such changes will have any effects whatsoever on helping to reduce smoking in society. They also question this approach given the lack of success overseas with bans on tobacco displays, which we will demonstrate in this document, and that Kiwi retailers have faced two of the most difficult years economically.

Retailers do agree with some proposals within the legislation. We believe infringement notices should be issued to retailers who continue to sell tobacco to underage consumers. The ACR agrees with appropriate measures to dissuade shopkeepers from committing such offences.



The ACR is, however, concerned that the Ministry of Health continues to pursue an agenda with little regard to the views of retailers. Throughout this process, the Ministry (and its directly supported lobby groups that have been used to publicly advance the Ministry's policies) has treated retailers as pariahs and people who should not be listened to. The taxpayer-funded anti-tobacco lobby groups such as ASH and Smokefree Coalition have denigrated retailers and sought to undermine our views and attack us for publicising and highlighting the plight of Kiwi shopkeepers. Retailers are the only group of people affected by this legislation.

In its March 2009 decision, the Government noted that evidence could not directly link the banning of displays with decreasing smoking rates. The Government added that it would consider any options, including legislation, if international and domestic research "gives us a compelling case that it would lead to a significant decrease in tobacco use".

The ACR contends that, since the time that the Government made that decision, there has been no new evidence produced that suggests a direct causal link between the banning of retail tobacco displays and decreasing smoking rates. There has been no further international and domestic research that would give a compelling or any other case that the banning of displays would lead to a significant decrease in tobacco consumption.

Overseas the countries that have implemented a ban on tobacco displays from retail outlets have seen no reduced smoking in society; Canada has witnessed an increase in youth smoking, and countries have seen consumers move away from small, family-owned shops to larger supermarkets where they are perceived to have a full range of tobacco products.

We remain concerned that some of these effects will occur in New Zealand. We believe the cost to retailers (the financial cost of reconfiguring their stores; the increased security risks to retailers; a move away from community stores) is too great for a plan that has not been proven in the few countries that have implemented a ban.

The ACR supports the right of retailers to display and sell a product that remains legal. If the Government wants people to stop smoking, it should focus its efforts on further education and

enforcement, not impose restrictions and enforce a retail display ban on tobacco that unfairly penalises everyday New Zealanders trying to earn a living and serve their communities.



Richard Green

Association of Community Retailers

C/- Discount Tobacconist

289 Main Street

Palmerston North

+64 274 92 46 70

info@acr.org.nz



PERSONAL VIEWS OF RETAILERS

Retailers who support the ACR and our position have taken the time to communicate their views to us. Many retailers also sent their views to the former Stay Displays Coalition.

- “If the Government are that concerned about peoples’ health, they should completely ban all tobacco and alcohol products, rather than ripping people off in tax. The Government gets the biggest cut out of the sale of tobacco and alcohol products.”
- “In the fading hope that the public still gets a say, I accept the dangers of smoking to people’s health, but going to this extreme does not solve the issue.”
- “Educating the public rather than nailing the small business sector surely would be more preferable, or doesn't the public have the right to make their own choices anymore. And before you say that not everyone makes the right choice, use some of the excise dollars earned from tobacco to make people more aware. "Out of sight, out of mind" doesn't work.”
- “One of my greatest concerns is SAFETY. While one has their backs turned to get the goods, someone could pull a knife or gun, etc, on you. Also as a Tobacconist, this is all we sell – cigarettes, tobacco and associated products – so therefore we are virtually an 18+ shop, and feel Tobacconists should be EXEMPT from the proposed law changes.”
- “I am totally against the banning of Cigarette/Tobacco displays. We as retailers are responsible people who make a valuable contribution to our local community, and have done so for well over 30 years. This product is a legal product. I can see no reason to ban the display thereof. We are being forced to stop earning a living from the sale of this product by not having it on display.”
- “I am a small dairy owner and cigarettes are a large part of the shop. They help get people into the shop. People have the right to think for themselves to make their own choices without being dictated to.”
- “We would like to lodge our objection to the proposal to hide displays of tobacco products as we do not feel that any reasonable result will be achieved from this action and will also add another financial burden to thousands of small businesses. I would also like to lodge an objection to the Ministry of Health funding anti-tobacco lobbyists when these funds could be better used for funding health care for those who are ill. If anti-tobacco lobbyists are so committed to their cause then they should put their hands in their own pockets to foot the costs.”



- “If your Government is so serious about health in this country, (and it seems you are, because of your interest in fuel emissions), then place a total ban on all tobacco products immediately. Or would that create a hassle with your TAX revenue? Don't be two faced. All or nothing!”
- “I will not be told by anyone what I can display in my shop as long as it is legal. When smokes & tobacco become illegal retail items, only then will I remove any in-store displays.”
- “We are only a small store and rely on the trade of Smokers. Also it would be difficult to change our shop around to suit what is proposed, which is also a cost we cannot afford. We feel that there are already fairly stringent restrictions in place and feel it would not be any advantage to do what is being proposed. Strongly against!”

SPECIFIC COMMENTS ON THE SMOKE-FREE ENVIRONMENTS (CONTROLS AND ENFORCEMENT) AMENDMENT BILL



Clause 2 - Commencement

The ACR does not support a ban on the retail display of tobacco products. Should the Government continue to implement a ban, the ACR believes the two-year transition period as outlined in the Bill is the minimum requirement for retailers to comply with any legislation.

There are over 7,000 independent retail outlets selling tobacco in New Zealand. All of these retailers will have issues and problems specific to their own business. The costs of implementing a display ban will vary from shop to shop. It is not realistic to expect retailers to comply within a six-month timeframe.

Clauses 6 and 7 – Promotion and Advertising, and Displays of Tobacco Products

It does not make any sense to outlaw signs that a) convey health warning information in relation to tobacco products and b) purchase age warnings, except for those required by the Act, noting that if the Government continues with a ban on tobacco displays, notices identifying tobacco products for sale and their price will be exempt from the Act. These clauses should be removed from the Bill.

A ban on display of tobacco products and where retailers can only utilise a notice that “does no more than identify the tobacco products that are available for purchase in that place and indicate their price...” will only increase the amount of time a retailer spends on serving each consumer.

The ACR also has concerns regarding the new section 23A (1) – Display of tobacco products in or from sales outlets or vending machines generally prohibited, notably sub-section 4. Tobacco is considered an FMCG product – a Fast-Moving Consumer Good. In many retail outlets, it is necessary to re-stock tobacco products throughout the day as they are sold. It is unreasonable



to expect retailers to NOT undertake restocking on the basis that a consumer might “view” the product. It is unnecessary and unrealistic. There needs to be flexibility in this arrangement.

Tobacconists

A tobacconist is a retailer who specialises in selling tobacco products. Those who buy from a tobacconist are required to be over the age of 18 years. If the Government continues to proceed with implementing a ban on the retail display of tobacco, tobacconists should be provided with an exemption.

The ACR also has concerns that tobacconists would be required to have the tobacco products hidden to avoid them being viewed from the street. Such legislation would place specialist tobacco retailers at very serious risks where criminals could commit a robbery without being seen because retailers were forced to black out their windows to give effect to such legislation.

New Section 23(1)(b): Prohibition of trading names

The ACR contends that this section is contrary to any New Zealander’s fundamental right to be able to choose a trading name of their business. Most trading names are related to the products that are specifically sold by those businesses. We note that this provision originated from the Ministry of Health as some public health officers said businesses were using phrases like “Discount Tobacconist” to advertise their products and that retailers did so to flout restrictions on advertising and marketing. This is pure fiction and this section is opposed by the ACR.

Section 28A Arrangements conflicting with Act have no effect

This new section fails to recognise the commercial reality within an FMCG environment. Rebates are common within the retailing environment. In this instance, rebates and discounts ensure that a manufacturer’s product remains on display within the retail environment. The fact is that abolishing rebates and discounts is redundant if the Government bans displays of tobacco.



Infringement Notices

The proposed law (*Clause 12 Section 36 (1A)*) is to make it an offence allowing tobacco products to be visible “without reasonable excuse” and a retailer could receive a fine up to \$10,000 if convicted for this offence. This level of fine is unreasonable, especially for small, family-owned dairies and small tobacco shops.

New Sections 38A to 38D: The ACR, and most responsible Kiwi retailers, support efforts to dissuade rogue retailers from selling tobacco to underage smokers. We believe that a reasonable approach should be implemented, and we support new sections 38A to 38D regarding infringement notices.

Additionally, we believe that penalties should be imposed on underage smokers and those who buy tobacco for underage smokers. The ACR believes **proxy purchasing** should be a criminal offence. How can the severe penalties against retailers who sell tobacco to minors be justified when it remains legal for adults to purchase tobacco for Under 18s?

Young New Zealanders should be responsible for their actions. If the Government is serious about stopping youth smoking, it should be illegal for Under 18s to attempt to buy it (as is the case with alcohol). Police should confiscate tobacco from any Under 18s smoking in public (like they do with under-age drinkers). It is obvious that common-sense measures such as these would significantly reduce youth access to tobacco and also reduce the opportunity for under-age smokers to smoke.

It is not fair to penalise retailers heavily, while allowing youth access to tobacco through proxy or underage purchasing. The legal responsibility for upholding the law rests entirely with retailers (the only law is that a shopkeeper must not sell tobacco to anyone under 18 years of age). It is illegal for minors to purchase tobacco but it is legal for them to use it. The balance of accountability needs to be redressed. Youth smoking is a problem with society and not just the independent retail trade.

OVERALL GENERAL COMMENTS ON PROPOSED LEGISLATION



Retail Display of Tobacco Products

There is a distinct lack of evidence that a display ban would reduce smoking prevalence and consumption. This fact is supported by the Minister of Health Hon Tony Ryall, who stated in March 2009, that “...evidence could not directly link the banning of displays with decreasing smoking rates” and “the Government will consider any options, including legislation, if international or domestic research gives us a compelling case that it would lead to a significant decrease in tobacco use.”¹

The ACR believes that the above comment by the Hon Tony Ryall on behalf of the Government of New Zealand remains true today as it did in March 2009. There is no evidence that links the banning of tobacco displays directly with a decrease in tobacco consumption.

There is no international research to provide any case for a display ban. There has been no significant international move in regards to banning of displays since the Government made its decision to reject the previous proposal to ban displays. The only nation that has implemented a display ban since 2009 is Scotland, and that decision was political rather than evidential.

(Scotland has now suspended the introduction of a display ban there because of legal action against the legislation².)

Financial effects of a Display Ban on Tobacco Products

The ACR is concerned about the financial effect that this policy will have on small retailers. Tobacco is the most valuable Fast Moving Consumer Good (FMCG) within the retailing environment of dairies and convenience stores. Tobacco can provide anywhere between 40 and 60 percent of operating income.

¹ “Tobacco Display Ban not on Government Agenda”, 3 March 2009

² Scottish Government News Release, Tobacco Display Ban, 25 January 2010.
<http://www.scotland.gov.uk/News/Releases/2011/01/25100544>



Each retailer will be required to restructure their counter environment at their own cost because the tobacco companies have stated that they will not contribute to any reconfiguration where their products are to be hidden away from consumers. Currently, the existing structures are paid for by the tobacco companies.

The New Zealand Association of Convenience Stores (NZACS), an organisation whose retailing values are shared by the ACR, has recently produced evidence that, collectively, the cost of reconfiguring shops to implement any retail display ban is in the order of \$51 million. This is unacceptable in the current economic environment.

Additionally, it will be difficult for many small retailers to provide under-the-counter drawers from which to dispense and sell tobacco, and for many retailers incorporating a drawer under the counter is not feasible because of the limited space available. When taking into account the costs for retailers, the following points must be taken into account:

- The shipping and fitting costs for any display equipment,
- The sustainable removal and disposal of current equipment,
- The need for permanent, secure and robust units,
- The need for professional units in keeping with the type of retail outlet,
- The significant cost for independent retailers or those with small chains, who will be unable to benefit from bulk purchase discounts,
- Any potential refurbishment work to a shop without a suitable storage space, for example repositioning a counter in a different part of the shop.

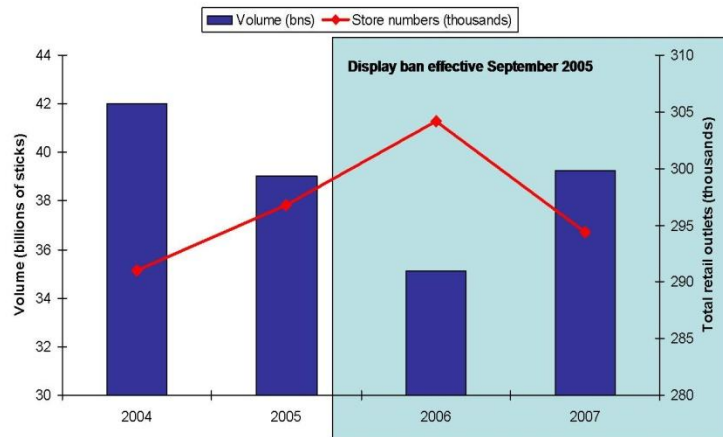
Shop closures in countries with display bans

In Canada, where some provinces have implemented a ban on displays of tobacco products there have been a high number of permanent closures of small retailers as consumers move more towards supermarkets that are perceived to have a greater range of tobacco products.



In Thailand, which instituted a display ban in September 2005, approximately 10,000 small, independent retail outlets have closed. From 2004 to 2007, tobacco sales in Thailand were thus: 42 billion sticks (2004), 39 billion sticks (2005), 36 billion sticks (2006), 39 billion sticks (2007). (See Table 1: AC Nielsen Retail Audit.) While the ban has seen significant effects on the retailing environment, there has been little overall effect on the consumption of tobacco in that country. Larger stores' share of tobacco business doubled in three years. Indeed, immediately after the display ban was implemented in Thailand, a previously upward trend in the numbers of independently owned shops was reversed.

Table 1



Source: AC Nielsen Retail Audit

Increased Security Risks

The ACR has concerns that hiding products under the counter will bring added security risks. Since the Government increased the excise on tobacco in April 2010 and thereby increasing the value of tobacco, there has been a spate of robberies of small dairies and convenience stores nationwide. The ACR contends that a display ban will add further security and shoplifting risks if shop owners are required to turn their backs on consumers for longer in order to obtain tobacco products.

Health and Safety

Our organisation has concerns about increased health and safety aspects if they are made to lift heavy sliding doors each time they sell a packet of cigarettes. Depending on their location and

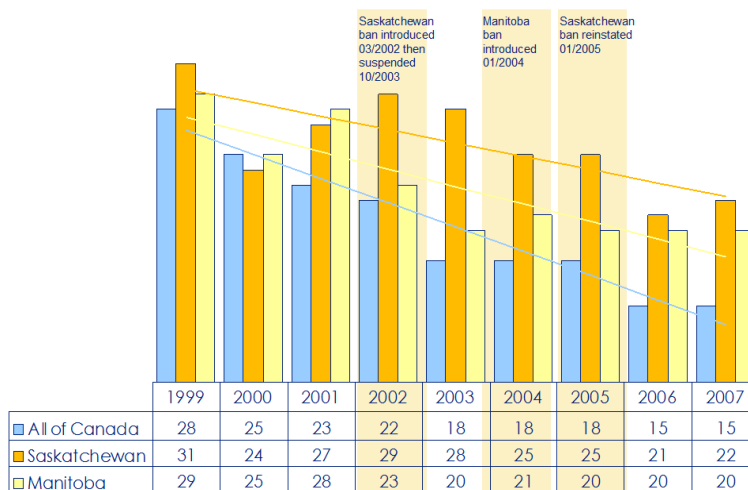


size, retailers sell on average between 80 and 150 various tobacco products each and every day – sometimes each sale is in quick succession. Our members have health concerns in relation to lifting these doors each time they make a sale and similarly, if they are required to bend down to retrieve tobacco from under the counter. We also express reservations about how practical the law would be for retailers when they are required to stock tobacco shelves throughout the day while not allowing tobacco products to be seen by consumers.

Displays and Youth Smoking

Banning displays of tobacco would only reduce the **visibility** of tobacco products in shops. It

Canada – smoking incidence among 15-19s in Saskatchewan and Manitoba fell slower than the rest of Canada. Where is the impact of the ban?



Source: Canadian Tobacco Use Monitoring Surveys 1999-2007

would not reduce or restrict under-age **access** to tobacco products. If a shopkeeper is unscrupulous enough to sell tobacco to under-18s, he or she will not stop simply because the tobacco is hidden out of sight. There is no research or evidence to prove that interfering with the act of purchasing tobacco from a legitimate retailer has any impact on smoking rates

or curb youth smoking, and in fact research from overseas in countries that have implemented a display ban is trending towards there being little or absolutely no effect on smoking rates.

Display bans are an experimental measure, at the expense of small businesses. Advertising and promotion of tobacco were banned in 1990 with the introduction of the Smoke-free Environments Act. It is illegal to sell tobacco to anyone under 18 years of age. Youth smoking is at an all-time low and falling every year. However, evidence from Canada has shown that in some provinces that have instituted a display ban, youth smoking has in fact increased contrary to a national decline in youth smoking.



According to research, the principle causes of youth smoking are:

- Parental smoking
- Peers smoking
- Social factors (such as single parent families, deprivation, low aspirations, etc.)

Retail displays of tobacco in shops are not identified as a contributing factor to youth smoking. Canada offers a useful model as this policy was enacted in only a few provinces initially, enabling us to compare neighbouring areas where the only variable was the display ban. The chart above illustrates how the provinces where displays were banned compared to the average rate of decline in youth smoking across Canada over the same time period.

Even pressure group ASH (Action on Smoking and Health) now admit that the decline in youth smoking in Canada merely ‘coincided’ with a ban on displays of tobacco. In a statement about the evidence from Canada, ASH said: *“ASH makes claims of causation with great care and for a number of technical reasons, including the fact that display bans were part of a range of interventions, it is not possible to definitely claim causation at this stage.”*

Richard Green

Association of Community Retailers