

Review of Tobacco Displays in New Zealand

Summary of results of the consultation process

Ministry of Health

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Executive Summary

The Ministry of Health (the Ministry) released two public consultation documents on the future of tobacco displays, 'Review of Tobacco Displays in New Zealand', and the youth-targeted 'Tobacco Displays, Tell Us What You Think!', on its website on 3 December 2007. Submissions closed on 15 February 2008.

The documents sought feedback on three broad options for the future of tobacco display. These options, which also contained sub-options, were:

- Option 1: Current restrictions with enhanced education and enforcement
- Option 2: Further restrictions
 - Further limit the maximum size of tobacco displays
 - Limit the number of tobacco displays to one display per retail outlet
 - Require graphic health-warning posters to be displayed
- Option 3: Ban on tobacco displays
 - Ban tobacco displays in areas accessible to under-18s
 - Completely ban all tobacco displays

In total, 557 submissions were received from a wide range of groups and individuals, with a variety of interests and perspectives. While there was a large number of submissions, many contained similar themes. This document summarises and presents the views expressed in the submissions.

The majority of submissions (just over 80%) supported completely banning all tobacco displays and opposed retaining current restrictions. All medical professionals, Non-Government Organisations, District Health Boards, smoking cessation groups and researchers chose 'Option 3 - Completely ban all tobacco displays' as their preferred option.

Less than 5% of submissions favoured retaining current restrictions. Most of these submissions were from retailers and the tobacco companies, who were also strongly opposed to any further restrictions or banning tobacco displays.

The option to introduce further restrictions attracted considerably less comment, and support for this option was limited. Submissions were largely divided into those who supported retaining current restrictions, and thus felt that any further restrictions were unnecessary; and those who were opposed to anything less than a complete ban.

Banning tobacco displays only in areas accessible to under-18s was almost universally not supported, largely because it was seen as being impractical.

A number of other themes, unrelated to the three options proposed, also emerged as part of the analysis. The most common of these called for the establishment of a licensing scheme for tobacco retailers.

Introduction

This document outlines feedback received during public consultation on the review of tobacco displays in New Zealand. The report summarises and presents the views expressed in written submissions on the consultation document 'Review of Tobacco Displays in New Zealand', and the youth-targeted 'Tobacco Displays, Tell Us What You Think!'

Background

The statutory requirements for tobacco display are included in the Smoke-free Environments Act 1990 (the Act). Changes to tobacco display requirements were last made as part of the Smoke-free Environments Amendment Act 2003 (the Amendment Act). This Amendment Act introduced a number of prescriptive requirements for compliant tobacco display.

Sections 23A and 23B of the Act outline a number of restrictions on how tobacco products can be displayed. These include the following restrictions:

- At each point of sale, the tobacco display is limited to a maximum of 100 cigarette packets and 40 cartons.
- Each tobacco display may include a maximum of two packets of the same variant (no block displays).
- Tobacco products may not be displayed within one metre of 'children's products' such as confectionery and ice cream, soft drinks and products that are marketed primarily for children.
- Tobacco products may not be displayed on a counter top or similar surface, whether at a point of sale or not.
- If tobacco products are displayed within two metres of a point of sale, a sign stating 'SMOKING KILLS' must be displayed in clear view of the customer at the point of sale (the Ministry supplies free signage).

While the restrictions were thoroughly canvassed before being introduced, the Government is continuing to evaluate their effectiveness and consider their consistency with the overall goals of the tobacco control programme.

Consultation Process

On 3 December 2007 the Ministry of Health (the Ministry) initiated a review of tobacco display by releasing a public consultation document 'Review of Tobacco Displays in New Zealand', and the youth-targeted 'Tobacco Displays, Tell Us What You Think!' on the Ministry website¹.

¹ www.moh.govt.nz – Latest News and Issues, Consultation Documents

The consultation document outlined three broad options for the future of tobacco displays. These were:

- Option 1: Current restrictions with enhanced education and enforcement
- Option 2: Further restrictions
 - Further limit the maximum size of tobacco displays.
 - Limit the number of tobacco displays to one display per retail outlet.
 - Require graphic health-warning posters to be displayed.
- Option 3: Ban on tobacco displays
 - Ban tobacco displays in areas accessible to under-18s
 - Completely ban all tobacco displays

Respondents were asked which of the various options they would support and to comment on perceived advantages and disadvantages of each of the options, as well as to make any additional comments.

Submissions closed on 15 February 2008, although some submissions were received, and accepted, by the Ministry after this date.

Separate from the consultation process, Ministry officials met with representatives of retailer groups and the tobacco industry in April 2008, to allay a number of the concerns expressed in their submissions, particularly around process. The Ministry was clear that the feedback from this meeting would not be included as part of the submissions process.

Submissions

In total, 557 submissions were received. The table below outlines a break down of the submissions received.

| Submitter type | Number of submissions |
|---------------------------------------|------------------------------|
| Medical group or organisation | 23 |
| Non-Government Organisations (NGOs) | 30 |
| Cessation support groups or providers | 17 |
| Tobacco companies | 5 |
| PHOs | 11 |
| Retailers | 14 |
| District Health Boards (DHBs) | 12 |
| Public health groups | 8 |
| General public | 36 |
| Researchers | 6 |
| Youth | 60 |
| Cancer Society template | 48 |
| Support of Cancer Society template | 222 |
| Aukati Kai Paipa template | 65 |
| Total | 557 |

Template Submissions

A significant number of submissions (335 in total) used template submission forms. Three templates were received – two were developed by the Cancer Society of New Zealand (the Cancer Society) and one by Aukati Kai Paipa.

The Cancer Society template was used by 48 submitters. This detailed submission was emailed out by the Cancer Society head office to interested parties. The template was several pages long and spelt out, in detail, the reasons why each option was either supported or not supported. It supported a complete ban on tobacco display and was strongly opposed to any option that would result in less than a complete ban. The Cancer Society also supported the display of graphic warning posters at the point of sale, but only in the context of a ban on tobacco display.

As well as those that directly used the Cancer Society template, a number of other submissions also contained excerpts from the Cancer Society template.

The other two templates, one in support of the Cancer Society's position (222) and the other distributed through Aukati Kai Paipa networks (65), were tick box template forms. Not all of these submissions supported the same options as submitters could choose which boxes on the form to tick. Both templates included options that did not relate directly to the three options presented in the consultation paper.

The majority of submitters using the Aukati Kai Paipa template chose to support all four options. This tick box submission form was made available at various Aukati Kai Paipa sites. The options presented on the template were:

- A complete ban on the retail display of tobacco products with all tobacco products to be kept in closed containers or cupboards under the counter (64)
- The positioning of graphic health warning posters at point of purchase (55)
- All graphic warning posters must display the Quitline telephone number as per the oncoming package warnings (57)
- Only one tobacco outlet per store should be permitted. This should be limited to one cash register (53).

The tick box template in support of the Cancer Society's position was distributed via its Wanganui branch, primarily through the Auahi Kore/Smokefree networks. This template had mixed responses to the four options presented. Generally, just over half of the respondents supported each of the four options. The four options on the template form were:

- A complete ban on the retail display of tobacco products with all tobacco products to be kept in closed containers or cupboards under the counter (153)
- The positioning of graphic health warning posters with the Quitline telephone number at the point of purchase (130)
- The number of locations where tobacco is sold to be limited to one point of sale per store (128)
- The introduction of a comprehensive retailer licensing scheme (131).

Stay Displays Coalition

Following a number of media articles on the issue of tobacco display but prior to the release of the consultation document, the www.staydisplays.co.nz website was set up. The purpose of this website was to oppose any moves to further restrict or ban tobacco displays.

A submission from the 'Stay Displays Coalition' was received as part of the consultation process. The submission claims to represent the views of 170 retailers from across New Zealand, as listed on their website. This submission preferred retaining current restrictions and was strongly opposed to banning tobacco displays.

Consultation feedback

This section of the report outlines the key themes identified in submissions on each of the three broad options and briefly summarises a number of comments that were made that were not directly related to any of the options.

Selected quotes from submissions have been included. They do not represent all of the comments received on each of the options but are intended to reflect the nature and tone of some of the submissions.

The table below gives an overview of the number of submissions that supported each option. However, it should be noted that the analysis of submissions is both quantitative and qualitative, and as such, while the numbers are important they are not the sole consideration.

| Submitter type | Total number | Preferred option | | |
|---------------------------------------|--------------|------------------|----------|------------|
| | | 1 | 2 | 3 |
| Medical group or organisation | 23 | | | 23 |
| Non-Government Organisations (NGOs) | 30 | | | 30 |
| Cessation support groups or providers | 17 | | | 17 |
| Tobacco companies | 5 | 5 | 1 | |
| PHOs | 11 | | | 11 |
| Retailers | 14 | 12 | | 1 |
| District Health Board | 12 | | | 12 |
| Public health groups | 8 | | | 8 |
| General public | 36 | 2 | 1 | 33 |
| Researchers | 6 | | | 6 |
| Youth | 60 | 6 | 7 | 47 |
| Cancer Society template | 48 | | | 48 |
| Support of Cancer Society template | 222 | | | 153 |
| Aukati Kai Paipa template | 65 | | | 64 |
| Total | 557 | 25 | 9 | 453 |

Note: the total number of preferred options does not necessarily add to the total number of submissions - some submitters identified more than one preferred option, and some did not identify any preferred option.

Option One

- Option 1: Current restrictions with enhanced education and enforcement

This option would involve retaining the provisions that currently exist in the Act but increasing education for retailers and increasing the number of monitoring and enforcement operations conducted by Smoke-free Enforcement Officers.

Implementation of this option would only require a change to internal Ministry policy on education for retailers and enforcement operations. No amendments to either the Smoke-free Environments Regulations or the Act would be required.

Submissions feedback

Submissions on Option One were firmly divided; those that had Option One as their preferred option and those that were strongly opposed.

The vast majority of submitters, including all Non-Government Organisations (NGOs), medical professionals, researchers, public health groups and smoking cessation providers were strongly opposed to Option One.

Generally, submitters supportive of Option Three (453) were strongly opposed to Option One. Reasons given for not supporting this option related primarily to the underlying issues with, and impact of, tobacco displays, which would not be addressed by allowing tobacco displays to continue to be permitted in their current form.

‘Although enhanced education of retailers may help to ensure they keep to current legislations it does nothing to address the underlying problem of tobacco displays.’

One of the most common reasons cited for opposing Option One was the harmful and addictive nature of tobacco products that sets it apart from other consumer items.

‘Tobacco products are not normal consumer products and should not be treated in that way. They are highly addictive and cause thousands of deaths in New Zealand each year.’

‘Tobacco is far from being a normal consumer product and therefore its legal status should in no way protect it from regulation aimed at increasing cessation rates and decreasing smoking initiation. Tobacco must be regulated in line with the harm it causes.’

‘Cigarettes should not be treated the same as daily household items such as bread, milk or chocolate.’

'Other dangerous legal products such as guns and pharmaceuticals have retail restrictions – so why do we not do the same for cigarettes?'

'The undeniable fact is that tobacco is not a normal consumer product. Cigarettes are highly addictive and lethal, therefore forfeiting normal retail rights. They must be regulated in line with the harm that they cause.'

'The ubiquitous presence of tobacco products conveys the message that tobacco is the same as other daily household products'

'Currently, tobacco sits alongside other products such as confectionary, suggesting it is an ordinary product that should be available to all. It is not. As such, it should be treated differently and removed from sight.'

Many submissions also expressed concern that the presence of tobacco displays does not help vulnerable populations, such as ex-smokers and those trying to give up smoking.

'For those already fighting their tobacco addictions every action should be taken to support them with their battle. Decreasing the availability and visibility of tobacco products may prove beneficial for those attempting to quit.'

'Education does not stop impulse buying when confronted by tobacco displays at the shop/service station counter and so there is a constant recycling of relapsed smoker to ex-smoker and back.'

'The displays undermine and discourage quit attempts amongst smokers and continually challenge those who have chosen to become smokefree.'

Reference was also made by many submitters to the aims of the Act and the inconsistency of option one, which would continue to allow tobacco displays, with these aims as well as with health messages.

'This option is not consistent with current smokefree health messages. This focuses on enforcement rather than promoting societal change.'

'Displays of cigarettes in dairies, supermarkets and petrol stations undermine educational and parental messages that smoking is dangerous for children and teenagers.'

'While smokefree lifestyles is [sic] promoted in schools, children are confronted with cigarettes everywhere they go and this undermines the health message.'

'Tobacco displays contradict a lot of the smoke-free campaigns and advertisements. We are told it is harmful yet are exposed to it at dairies, supermarkets and gas stations wherever we go!.'

'Current restrictions do not promote a smokefree/auahi kore lifestyle with tobacco displays housed prominently at most convenience stores and garages. The Smokefree Environments Act of 1990 looks to promote smokefree/auahi kore lifestyles as normal and present restrictions do not support this'

'The continual promotion of tobacco through displays creates a culture in which smoking is normalized. This sends a contradictory message to children and young people who are encouraged at school and other settings to consider their health and not start smoking.'

'Although enhanced education of retailers may help to ensure they keep to current legislations it does nothing to address the underlying problem of tobacco displays.'

A large number of submissions were of the view that tobacco displays are a form of advertising (which is prohibited in the Act, although tobacco displays have previously been deemed to be excluded from this ban), and are in fact, an effective form of advertising.

'Cigarette displays in retail outlets are a highly effective marketing tool. They create product awareness, provide enticement to smoke and encourage sales.'

'...continued indiscriminant advertising...'

'...allowing the continuation of tobacco displays is allowing advertising...'

'Within the wider marketing and retailing literature, the importance of retail displays in promoting purchase has been well documented. Suggestions that retailing principles known to apply to an enormous range of other products somehow do not apply to tobacco products lack logic, credibility and empirical support.'

Many submitters also expressed that tobacco displays serve to normalise smoking:

'The key disadvantage of maintaining current restrictions is that it does nothing to denormalise smoking. Evidence shows most young people over-estimate the proportion of people who smoke. This is hardly surprising considering they encounter large tobacco displays in most dairies and petrol stations and supermarkets they enter.'

'The continual promotion of tobacco through displays creates a culture in which smoking is normalized. This sends a contradictory message to children and young people who are encouraged at school and other settings to consider their health and not start smoking.'

However, this option was the preferred option of almost all retail and tobacco industry submitters (12 of 14 and 5 of 5 respectively). A number of these submitters stated they perceived the current restrictions on tobacco display to be sufficient and any further changes were unnecessary. Some submitters feel that even current restrictions are excessive.

'We believe the current regulations... are enforceable and workable'

'Retailers believe that the current regulations for tobacco displays within dairies and convenience stores are enough to ensure restrictions on tobacco sales and the promotion of health messages from the Government.'

'Current regulations surrounding display of tobacco products, the Smoke-free Environments Act 1990, are already disproportionate, constraining New Zealand businesses, specifically the retail sector.'

A number of submissions from retailers and the tobacco industry focused on the role of compliance and education. Many submitters focused on comments in the consultation document that demonstrated that compliance was not as low as previously thought and the need for greater enforcement of current restrictions.

'The Ministry of Health's own checks clearly show that with effective education and enforcement the provisions relating to the display of tobacco products retailers do comply'

'The Consultation Document also demonstrates that when compliance checks were undertaken by Ministry officials the level of non-compliance was reduced to almost no reported instances of non-compliance. This strongly indicates that should the Ministry wish to see compliance with regulations pertaining to the display and sale of tobacco products then they need to ensure checks are regularly undertaken.'

Submitters commented that more education, including in other languages, should be available to retailers to help them to understand the requirements in the legislation.

'Translation of Ministry of Health education materials into Hindi or other sub-continent languages for new retailers who have English as a second language.'

'If there is an issue of retailer misunderstanding of the provisions relating to the display of tobacco products then xxx understands it is the Ministry of Health's statutory duty to provide education to those stakeholders affected by legislation it is responsible for.'²

² Name of submitter has been removed.

Option Two

- Option 2: Further restrictions
 - Further limit the maximum size of tobacco displays.
 - Limit the number of tobacco displays to one display per retail outlet.
 - Require graphic health-warning posters to be displayed.

There is provision within the Act to make some changes to the display provisions through regulations, rather than requiring a change to the legislation itself. Any or a combination of the options could be introduced using this process.

Submissions feedback

Option Two attracted significantly less comment than the other options. There was very limited support for Option Two (9). Retailers and the tobacco industry generally stated that current controls were sufficient and that any further restrictions were unnecessary, while most other submitters commented that further restrictions would not address the underlying problems of tobacco displays and that nothing short of a complete ban would be sufficient to remedy the issues.

Many submitters outlined similar reasons for not supporting Option Two as they did for Option One – that is, the fundamental problems with tobacco display in any form. Submitters commented that simply further reducing the size or number of displays would not address the issues presented by tobacco displays in their current form.

“They are an effective marketing device even if reduced in size, and there is no justification for allowing tobacco to continue to be marketed in this way.”

‘Continued use of tobacco displays with only a few restrictions could be interpreted as legitimizing the promotion of a product that ceases death and harm in our community.’

‘Further legislative restrictions would no doubt be accompanied by interpretative policies, thus maintaining the complicated and confusing nature of the law.’

On the other hand, submitters supportive of Option One opposed Option Two on the grounds that current restrictions are sufficient and any extra restrictions unnecessary.

Several retail and tobacco industry submissions expressed concerns that any further restrictions on tobacco display would be anti-competitive.

'Reduced visibility of these smaller SKUs would see consumers switch to well-known displayed brands, with larger market shares. This would see the demise of our smaller brands...making it difficult if not impossible for us to compete.'

'To restrict displays further would deny adult consumers the right to choose freely, and disadvantage our company commercially.'

'There are already sufficient limitations on the number of tobacco products that can be displayed in retail outlets.'

Retailers and the tobacco industry also expressed concern at the potential costs of reconfiguring stores to comply with new tobacco display restrictions.

'Reconfiguration of retail stores is an expensive and time-consuming process, as well as re-educating staff on the new requirements. While this could potentially be devastating to small family run dairies and convenience stores, larger supermarkets would also suffer significant cost in store renovations.'

'...will present considerable problems to the retail industry who will be faced with additional compliance costs to modify existing displays.'

'...necessitate a large-scale refit and remodelling effort behind the busiest area of the retail premises – that of the point of sale area. To undertake such an activity, businesses would be required to organise and supervise builders and shop-fitters, while trying to still operate a friendly customer-focused business.'

'...costing hundreds, or even thousands, of dollars in building costs.'

One tobacco industry submission did support the introduction of further restrictions on tobacco displays, including prohibiting the display of cartons, permitting a maximum of 100 packages on display and limiting the number of display areas in a shop to one, irrespective of the size of the outlet or the number of individual check-out stations in the store. This submitter was also not opposed to graphic health warning posters.

Option Two included various options for strengthening the current restrictions on tobacco display, some submissions partially supported Option Two, though the aspects of Option Two that were preferred varied greatly. Specific comments on each of the options are outlined below.

Further limit the maximum size of tobacco displays

This option would place further restrictions on the size of retail displays. Under the current provisions of the Act, the size of a tobacco display is limited to a certain number of packages and cartons of tobacco products. This option would increase the restrictions by including a prescription for the maximum physical size of the actual display.

Submissions feedback

This was seen by those opposed to Option One as being a minimal improvement on current restrictions, and thus was not supported.

‘...does not support an approach that is limited to restricting the size of tobacco displays, as tobacco displays in themselves are also deemed to be an effective marketing tool.’

‘In small retailers, such as dairies, even small tobacco displays can still have great impact’

Some tobacco industry submitters emphasised their concern that reducing the size of tobacco displays would be anti-competitive.

‘This would see the demise of our smaller brands, resulting in a loss of xxx market share, making it difficult if not impossible for us to compete.’³

‘Any further restrictions would be anti-competitive, entrench the tobacco manufacturers who already dominate the NZ market.’

Limit the number of tobacco displays to one display per retail outlet

This option would limit the number of tobacco displays in each retail outlet. Irrespective of the size of the retail outlet or the number of points of sale within the outlet, each retail outlet would only be allowed one tobacco display.

Submissions feedback

Some small retailers were supportive of this option as they perceived that it would create an even playing field between themselves, who often have only one display currently, and larger retail outlets, such as supermarkets, who have multiple tobacco displays.

‘It would also have the effect of making a ‘level playing field’ across retail businesses that sell tobacco.’

‘...supports Option 2 because it is the most practicable without significantly disadvantaging dairies.’

Other supporters of this option commented that:

³ Name of submitter has been removed.

'...a smaller, single unit means that dairy and convenience store operators will find it easier to comply with the display requirements that are proving difficult, such as the one metre from children's products rule, the position requirements in relation to the point of sale, and the position requirements in relation to additional units.'

However, some larger retailers felt that this option could have a negative impact on customer service, as all customers who wish to purchase tobacco would be likely to use this one point of sale.

'...unrealistic in busy supermarkets.'

'...would also lead to customers being frustrated at not being able to see the product of their choice and/or see what alternative products are available.'

Other submitters were opposed to this option on the grounds that it would have minimal impact on reducing the visibility of tobacco products, particularly in small stores, which currently have only one display anyway.

'It is still a visual display and would make no difference in a small retail store i.e Dairy.'

The Cancer Society template submission proposed a variation on this option - only allowing the sale of tobacco at one point of sale (checkout or till) per retail outlet.

'A limit of one cash register and point of purchase (POP) location selling tobacco per shop.'

Require graphic health-warning posters to be displayed

This option would allow retail displays of tobacco to continue in their current or further restricted form but would require all displays to be accompanied by a large graphic health warning (of prescribed size and proximity to the display).

Submissions feedback

Of the three sub-options proposed as part of Option Two, this attracted by far the most comment. This option was seen as supportive of current health messages, and would tie in well with the new graphic warnings.

'To significantly re-enforce the health messages, we believe that a very large, full colour graphic health warning sign (minimum A3 size) should be required to be placed immediately alongside a tobacco products display.'

A number of submissions supported requiring the display of a graphic health warning but only in the context of a ban, meaning that no tobacco products

would be displayed but a graphic health warning would be displayed wherever tobacco products were for sale.

The Cancer Society template submissions supported this approach and suggested that the graphic health warning poster also include the Quitline number.

'We support requiring stores that sell tobacco to display large government designed graphic health warnings at the location where tobacco is sold. Additionally, we support the inclusion of the Quitline telephone number on the graphic health warning posters, as per the incoming package warnings. Such warnings need to be at eye height, immediately next to the point of purchase, and be completely unobstructed.'

Some submitters also commented that this would also provide a clear signal that tobacco is available for purchase – allaying retailer concerns that customers would not know if tobacco was for sale or not.

Retailers were strongly opposed to this option.

'Pictorial health warning posters instead of being a method of increasing public awareness are an unwarranted attempt to vilify and stigmatise smokers'

'Retailers across New Zealand are trying to provide a friendly and pleasant retail environment and forcing them to display a shocking graphic poster is not supported.'

'Retailers make every effort to portray their store as attractive. Requiring retailers to display large posters with graphic warnings would detract from that objective.'

'We question why non-smokers (and the majority of our customers) should be forced to be confronted by these images. This concept completely goes against our ethos of offering visually compelling retail locations and is strongly resisted.'

Option Three

- Option 3: Ban on tobacco displays
 - Ban tobacco displays in areas accessible to under-18s
 - Completely ban all tobacco displays.

While there is provision in the Act to make some changes to tobacco display requirements through regulations only, a ban on tobacco displays would require a change to the primary legislation and would require an amendment to the Act itself.

Ban tobacco displays in areas accessible to under-18s

This option would require tobacco products not to be displayed anywhere visible to young people (under 18 years of age), and the ban would apply to retail premises that can be accessed by young people under 18 years of age. Tobacco displays would be permitted only in retail outlets (or areas of retail outlets) that are restricted to people over 18 years of age.

Submissions feedback

This option was almost universally not supported. A number of problems with this limited ban were identified, primarily that it was perceived as being impractical in most locations.

Many submitters noted that a ban on retail displays in areas accessible only to persons over 18 years of age would be impracticable and difficult to implement and enforce. For example,

'The 'area of retail outlets' would be very difficult, even practically impossible, to institute... The size and configuration of most premises would not lend themselves to the creation of an R18- based product segmentation, as has been done, for example, in video outlets.'

'...realistically this is not an option.'

'...would be the same as a total ban for the majority of retailers.'

'Would be completely unworkable and impractical.'

A number of submissions also expressed concern that this approach might further highlight the appeal to young people of smoking as an 'adult only' behaviour and have the unintended consequence of making smoking more desirable to young people, who wish to appear older.

'By still allowing displays in 'adult' areas this will only reinforce a false image of smoking as a glamorous 'adult' activity.'

It was also noted that this could further re-emphasise the link between smoking and drinking alcohol. Also, this would not provide any support for ex-smokers and those trying to quit smoking, many of whom find alcohol a trigger for smoking.

'Reinforces the association of drinking alcohol and smoking, as many areas exempted by this option would be places serving alcohol.'

'Does not protect people who are trying to quit in environments such as bars or night clubs where alcohol is served and the risks of relapse for smokers trying to quit is heightened.'

Completely ban all tobacco displays

A complete ban on tobacco displays would mean that no tobacco products would be able to be displayed anywhere in the retail environment. Tobacco products could still be sold but would need to be stored out of the customers' sight, for example, under the counter, in cupboards or behind screens.

Submissions feedback

The vast majority of submissions, approximately 80%, were in support of 'Option 3 – Completely ban all tobacco displays'. This option was supported by all NGOs, medical professionals, researchers and smokefree and cessation groups. Many of the comments in support of 'Option 3 – Completely ban all tobacco displays' cover the same reasons cited for opposing Option One, the fundamental problems with allowing the display of tobacco products.

A number of submissions also commented that a complete ban would be simple for retailers to understand and would eliminate the potential for misinterpretation of the legislation. It would also apply to all retailers equally. While the current requirements are perceived by many to be overly complex, a ban would be very simple.

'A complete ban on all tobacco displays will be easier for retailers to comply with and to enforce compared to limited restrictions. This offers the least potential for confusion and less room for retailers to challenge the circumstances and definitions.'

'...a complete ban will make the process of retailers' education simpler, as it will not require complex interpretations about display location or size.'

'It is unambiguous for retailers and compliance is straight forwardd.'

'Provide a consistent and easy to manage message to all retailers in relation to tobacco regulation and compliance.'

'Logically, a display ban would simply compliance for small shops, particularly when compared to the current situation, where small shops are less knowledgeable about their obligations, less compliant and at greater risk of prosecution.'

'Because a total ban imposes equal restrictions on all sellers, it would not disadvantage any particular category of seller.'

Many submitters commented on the harmful nature of tobacco products and the need for them to be treated in a manner consistent with the harm that smoking causes.

'A ban on displays is a justified measure given the serious impacts of smoking.'

'Cigarettes kill so don't display them like they are ok.'

'A complete ban will help children and adolescents realize smoking is not a normal or desirable behaviour.'

'The advantages of a complete ban will be tobacco products will no longer be a normal consumer product. Tobacco will be available by 'request only' at point of sale.'

'Displays of tobacco products acts as advertising and gives these products a similar social status to other products that are on sale in the same outlet. They are of course not the same since they are very harmful and highly addictive.'

'Tobacco needs to be established as an abnormal products, not as if it's just a pack of chewing gum you buy when you go to get petrol.'

This option was seen as being the most supportive of ex-smokers and people trying to quit smoking, as it would remove some of the reminders and cues to smoke from the environment.

'By completely banning all tobacco displays it removes this avenue of temptation to these groups, but doesn't infringe on the rights of smokers to buy their products.'

'By banning tobacco displays we will be sending a clear message denormalising tobacco. This is especially important when trying to reduce the smoking initiation of young people.'

'People who are trying to quit will have a better chance of actually quitting because there are less temptations.'

'It supports quitters and their whanau to become and remain smokefree.'

'Anecdotally, our cessation team often hear that smokers have been triggered to smoke again on site [sic] of shop displays. We often hear that 'you just can't get away from cigarettes.'

'The visual stimuli that a tobacco display offers are a temptation for persons battling with nicotine addiction.'

A complete ban was perceived to be the option that was most consistent with the intent of the Act, and the most likely to support health messages.

'This is a practical step that will support reducing health inequalities (structural interventions, such as a total ban, have greater ability to decrease disparities. Those most at risk, in this case Maori and lower socio-economic groups, receive the greatest benefit).'

'This is consistent with the health promotion focus to reduce smoker and its related harm especially among Maori who have higher mortality rates than the general population for smoking related deaths.'

'This option is consistent with the principals of the Ottawa Charter in creating supportive environments and building healthy public policy.'

'These displays help to undo the work undertaken in the tobacco control and public health sectors by encouraging former smokers to use the product again and currents smokers to keep smoking.'

'The presence of tobacco displays is, in effect, a form of advertising of tobacco product...this decreases that impact of tobacco control legislations and other public health measures.'

Submitters suggested that any potential negative economic impacts on retailers should be considered in the wider context of the costs of smoking to society.

'...does not believe that the economic impact on retailers, which are unlikely to be significant, or tobacco companies equates in any way to the costs that tobacco smoking inflicts. Such arguments should not be countenanced when considering the small financial gain of a few to the tragic losses of thousands.'

'Banning the retail display of tobacco products is a health issue, not an economic issue and should be considered in the context of harm caused to young people and smokers who are exposed to these displays'

Researcher submissions also cited overseas research showing that there were no negative economic impacts of a ban.

'In 2006, the director of the Western Convenience Stores Association stated that the Saskatchewan display ban 'has not impaired sales.'

'...while retailers' anxieties about display bans are understandable, the available evidence suggests that their concerns are greatly overstated.'

'In August 2002, the six Health Canada tobacco enforcement officers in Saskatchewan reported they had found 'minimal cost to retailers' from compliance, no stores had closed and no staff had been laid off.'

One retailer was supportive of the ban.

'I am a dairy owner but I totally support the idea of banning smoke display – it works both ways – it saves us from people who want to rob us and helps people quit too. Great idea.'

All tobacco industry submissions were opposed to this option. Some commented that a ban on tobacco display would be anti-competitive and entrench current popular brands, while making it very difficult for new products to gain any market share.

'A ban on retail display would give, in effect, a regulated competitive advantage to brands with high market shares and consumer recognition.'

'With a ban on retail displays, companies lose one of the few remaining tools to compete in the market.'

'Any ban will make it harder for the smaller competitors to compete and communicate with adult consumers.'

Retailers expressed concern that a ban on display would mean that consumers would be unsure as to where they could purchase tobacco products and what products were available at each retail outlet.

'...people who smoke expect to see the cigarette brands available in order to buy the ones they want.'

Small retailers also expressed concern customers would not be certain what brands of tobacco products were for sale and would likely assume that larger stores, for example supermarkets, would be more likely to stock their particular brand, and that this would result in a significant loss of income for these retailers.

'Display bans may encourage consumers to shift tobacco purchases to large stores rather than small retailers, as consumers may believe that such retailers are likely to stock a wider range of products.'

'Customers will walk out of our shop and go elsewhere if they cannot see their cigarette brand – then miss out on other revenue as well.'

'A ban on tobacco displays would only hasten consumers' moves towards larger supermarkets and place at there dozens, if not hundreds, of corner dairies in New Zealand.'

'Banning displays is likely to result in a significant number of small, family-owned dairies being forced to close because many of these businesses' revenues are from tobacco sales.'

'Any such regulations may force the closure of these small businesses.'

A number of retailer submissions state that they should have the right to display tobacco while it remains a legal product in New Zealand and that if the government wants them to stop displaying it then it should be made illegal.

'Tobacco is a legal product – no other legal product is hidden from the customer – what next butter, chocolate?'

'If your Government is so serious about health in this county... 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 and tobacco become illegal retail items, only then will I remove any in store displays.'

'This issue is not about smoking. It is about the right of retailers to display and sell a product that remains legal. If the Government wants people to stop smoking, it should ban tobacco altogether, not impose restrictions that unfairly penalise everyday New Zealanders trying to earn a living and serve their communities.'

As for Option Two, a number of submitters also commented on potential economic impacts of implementing a ban on tobacco displays. Submitters claim that a ban on tobacco display would require costly modification to the layout of their stores and may result in some businesses closing down as a result of lost income.

'...there are considerable avoidable compliance costs associated with implementation of the proposals currently outlined in the consultation document.'

'...would cause major compliance costs for retailers as many would not have places to store tobacco where it cannot be seen.'

Several submissions commented that a complete ban raised health and safety concerns, as well potential security issues. Comments included:

‘Shop security will also be compromised, if they have to turn their backs on customers to retrieve product. There are also health and safety concerns if retailers are required to lift heavy shutters or bend over to fetch a product from under the counter.’

‘Security issues are a real concern... A ban on displays ill mean retailers are forced to turn their backs on customers while opening and shutting cabinets... or bending tog et tobacco from under the counter.’

‘employees would be forced to constantly bend down out of sight of their customer(s) creating issues around OSH requirements about the health and safety of employees.’

One tobacco industry submitter also commented that a display ban would impinge their rights under the New Zealand Bill of Rights Act (1990).

‘It is unreasonable to deprive manufacturers and retailers of a core means of competition if it has not been demonstrated that the regulatory intervention will advance the New Zealand Government public health goals.’

Other comments

A number of other themes emerged as part of the submissions process. These themes, outlined below, did not relate specifically to tobacco display or to the three options in the consultation paper but were common throughout a number of submissions.

Licensing

One of the most common themes was a call for the establishment of a licensing scheme for tobacco retailers. The Cancer Society template and a number of other submissions (228 in total) supported this idea as a means of better controlling the display and sale of tobacco products. Some submissions did not expand on what form a licensing scheme might take, while others included some suggestions, such as a minimum age for selling tobacco and loss of licence for those found to be in breach of the law.

'A logical progression would be to have tobacco products requiring a license to sell them, to reflect their highly hazardous status. There should also be a limited number of licenses available. This way there are limits on product availability and regulation on locations for sale.'

'It would be an advantage for retailers to be required to have a license to sell tobacco products, just as it is for alcohol. This would enable education of retailers so they can fulfill their responsibilities to the health sector and to the public and perhaps improve compliance with all Smokefree legislation.'

'We support the introduction of a comprehensive tobacco licensing scheme in order to support greater regulation and control of the retail of tobacco products. This infrastructure will assist in managing and monitoring tobacco sale in New Zealand.'

'...a process of licensing the sale of tobacco so that retailers understand the nature of the product they are selling.'

Vending machines

A number of submitters also commented on the role of cigarette vending machines, usually located in bars and restaurants. They were seen as being akin to retail displays, in that they promote the availability of tobacco products.

'Vending machines should be banned as they act as retail displays.'

'We regard vending machines as retail displays... We strongly support the inclusion of tobacco vending machines as part of the legislation banning tobacco displays in retail outlets.'

Sales to minors

A number of tobacco industry and retailer submissions focused on the issue of sales to minors. Several suggested that, instead of making changes to tobacco display requirements, the Ministry of Health should concentrate on preventing sales to minors and more rigorously punishing those who do.

'...support greater penalties and prosecutions against retailers who sell tobacco to young people under the age of 18 years.'

'Retailers who sell tobacco to people under the age of 18 years should be prosecuted and/or fined.'

*'It is illegal for xxx retailers to sell to youngsters, but not illegal for people under the age of 18 to buy or attempt to buy tobacco. This law is the one which should be changed.'*⁴

Exemptions – Tobacconists and Duty Free Stores

Issues were also raised as to how tobacconists would be affected by changes to tobacco display requirements. The Act defines tobacconists as those whose primary business is the sale of tobacco and who derive over 60% of their income from the sale of tobacco. The consultation document did not delve into the specifics around tobacconists and how changes to the tobacco display requirements, if any, would apply to them.

Also, Duty Free Stores requested to be exempted from legislation further restricting tobacco displays. Duty Free Stores commented that a very low proportion of their customers are children and that tobacco displays in their stores are seen only by those traveling internationally, which is only a small percentage of the general population.

Process

Some retailers and tobacco industry submitters expressed concern that the consultation document was implicitly biased towards a complete ban.

'The tone and substance of Review of Tobacco Displays in New Zealand – Consultation Document 2007 leaves us with the overwhelming impression that the verdict has been given before the jury has left the room.'

'...lacks (a) balance in terms of understanding the retail environment in New Zealand, and (b) a level of objectivity on the issue'

⁴ Name of submitter has been removed.

Conclusion

It is clear, based on the large number of submissions (557) received, that the display of tobacco products is an issue that concerns many New Zealanders.

The number of submissions received was one of the largest for a Ministry consultation process. In comparison, for example, 252 submissions were received during the consultation process on the Review of Alcohol Advertising in 2007.

Over 80% of submissions (453 of 557) supported completely banning all tobacco displays. This included all the submissions from medical professionals, researchers, NGOs and smokefree/smoking cessation groups. Also, the majority of general public (33 of 36) and youth (47 of 60) submissions supported a complete ban.

There was little support for retaining current restrictions. However, this was the preferred option of most retailers (12 of 14 submissions) and tobacco companies (5 of 5). Generally, those who supported a complete ban were strongly opposed to retaining current restrictions.

Introducing further restrictions was a compromise option that appealed to few submitters - it was the preferred option of only nine submitters.

As well as comments on the three options proposed, a number of submitters also chose to comment on other matters. The most common of these themes was support for the establishment of a scheme that would licence tobacco retailers (228 submissions).

The analysis of submissions has included both quantitative and qualitative analysis. Due to the large number of template submissions, care has been taken to ensure that the sole emphasis has not been placed on the number of submitters who supported each option. The inclusion of quotes from submissions is intended to capture the flavour of the submissions received.

In order to progress the options outlined, it should be noted:

- Option One can be implemented through internal Ministry processes
- Option Two could be achieved through changes to regulations
- Option Three would require an amendment to the Act itself