

**Review of Tobacco
Displays in New Zealand**
Consultation Document

Citation: Ministry of Health. *Review of Tobacco Displays in New Zealand: Consultation Document*. Wellington: Ministry of Health.

Published in December 2007 by the
Ministry of Health
PO Box 5013, Wellington, New Zealand

ISBN 978-0-478-31259-1 (online)

This document is available on the Ministry of Health's website:
<http://www.moh.govt.nz>



MANATŪ HAORA

Foreword

New Zealand has a reputation as a world leader in tobacco control. Tobacco control and reducing the harms related to smoking are priorities for the New Zealand Government and for the Ministry of Health.

The Government has introduced a number of measures that have kept us at the forefront of tobacco control. In 2003, New Zealand became only the third country in the world to ban smoking in bars and restaurants and to make all indoor workplaces 100 percent smokefree. New Zealand is the only country that provides a national freephone smoking cessation advice service (Quitline) and offers subsidised Nicotine Replacement Therapy for those who are trying to quit smoking.

Now many countries are assessing the role of tobacco displays in people's attitudes to smoking. Three countries (Iceland, Thailand and Ireland) have already introduced legislation banning tobacco displays. Canada is in the process of implementing nationwide regulations to ban tobacco displays in areas that are accessible to people under 18 years of age, with many provinces having already completed the change.

New Zealand last updated the laws controlling tobacco displays in 2003 as part of its Smoke-free Environments Amendment Act. The Government is continuing to evaluate the effectiveness of tobacco control legislation and is now considering other options for tobacco display restrictions.

New Zealand's tobacco control strategy aims to create an environment that supports smokefree lifestyles, prompts people to quit smoking and is supportive of people who are trying to quit. As part of this, the Ministry of Health is now reconsidering the role of retail tobacco displays.

This consultation document outlines a number of options for the future of tobacco displays in New Zealand and seeks your feedback on these options with a view to formulating future policy. I encourage you to take this opportunity to provide feedback and look forward to your comments.

Stephen McKernan
Director-General of Health

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Executive Summary

The Ministry of Health (the Ministry) is reviewing the tobacco display provisions of the Smoke-free Environments Act 1990 ('the Act'). This consultation document outlines the current situation and issues with tobacco displays in New Zealand, presents and analyses a number of options for the future of tobacco displays and seeks feedback from interested parties on these options with a view to formulating future policy.

The Smoke-free Environments Amendment Act was passed in 2003. Among other things, it placed a number of restrictions on how tobacco products could be displayed in retail settings. 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.

There are a number of reasons why the display provisions of the Act should be reconsidered and potentially strengthened. These include:

- protecting children and young people
- providing an environment that supports smokers who are trying to quit
- avoiding undermining the health message
- addressing the issue of tobacco displays as a means of advertising.

This consultation document focuses on tobacco displays in retail outlets. It is a consultation document that outlines a range of options, and, as such, does not represent Government policy. It seeks comment on the options proposed.

In this document, the Ministry has outlined three broad options for the future of tobacco displays in New Zealand. These include:

1. retaining the current regulations with enhanced education and enforcement
2. placing further restrictions on tobacco display
3. banning tobacco displays.

Each of the options is discussed in detail, and the potential advantages and disadvantages of each are outlined.

There are a number of questions posed throughout the document that are intended to guide you as you make a submission. When writing your submission, please use the Submission Form (see Appendix One) as a guide.

How to Make a Submission

This consultation document is one of the first steps involved in reviewing the current policy on retail displays of tobacco products. Interested parties are encouraged to provide comments and suggestions on the topics covered in this document. Your submission on the proposals outlined in this paper will help decide the future of tobacco displays in New Zealand.

Please use the submission form included as Appendix One to guide you when writing your submission. This form outlines the questions that the Ministry would specifically like feedback on and will help to ensure that all submissions can be analysed fairly.

You can make a submission by writing your comments as a letter or an email.

Send your comments to:

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The closing date for written submissions is **15 February 2008**.

The Ministry welcomes submissions from both individuals and organisations. When sent on behalf of an organisation, please include details of the organisation.

All submissions will be made available to the public. Any information that you do not wish to be made public should be clearly marked 'Confidential'. Any request for confidentiality will be considered subject to the Official Information Act 1982.

Introduction

New Zealand has a reputation as a world leader in tobacco control. Successive New Zealand governments have introduced measures that form part of a comprehensive tobacco control package, including legislation banning smoking in all indoor workplaces in 2003, a national freephone smoking cessation advice service (Quitline) and subsidised Nicotine Replacement Therapy for those who are trying to quit smoking.

New Zealand's tobacco control strategy aims to create an environment that supports smokefree lifestyles, prompts people to quit smoking and is fully supportive of people who are trying to quit. While the current initiatives are making a difference, there is a need for further and faster progress.

To this end, the Ministry is now reconsidering the role of retail tobacco displays. The Smoke-free Environments Amendment Act was passed in 2003 and, among other things, it placed a number of restrictions on the way that tobacco products could be displayed in retail settings. While the restrictions were thoroughly canvassed before being introduced, the Government is continuing to evaluate their effectiveness and consider other options.

In October 2006, Hon Damien O'Connor, the Associate Minister of Health, announced the Government's intention to review the way that tobacco products are displayed in retail outlets. Following preliminary research into the role of tobacco displays in New Zealand by Ministry officials, in June 2007, Hon O'Connor announced forthcoming public consultation on future options for tobacco displays.

Scope of this consultation

The purpose of this consultation document is to provide a basis for discussion and to encourage feedback. This document:

- outlines the current situation and issues with tobacco displays in New Zealand
- presents and analyses a number of options for the future of tobacco displays
- seeks feedback from interested parties on these options with a view to informing future policy.

As part of this review, the Ministry will seek input from key stakeholders, including health groups, retail organisations and the tobacco industry. The Ministry's main purpose in consulting is to canvass the views of interested parties so that these views may be taken into account in the decision-making process. This consultation document seeks comment on a range of options for the future of tobacco displays.

Status of this document

This document is confined to an examination of tobacco displays in retail outlets. It is a consultation document that outlines a range of options, and, as such, does not represent Government policy. It seeks comment on the proposed options.

Following consultation on this document, the Ministry will provide advice to the Government on options for the future of tobacco displays in New Zealand.

All submissions made on this document will be carefully analysed before the Ministry develops advice to be presented to the Government. A summary of submissions will be made publicly available on the Ministry website (<http://www.moh.govt.nz>) at the earliest opportunity.

Timing for comment on this paper

Submissions on the document will close on **15 February 2008**.

The following is a proposed timetable for the review.

Consultation document issued	3 December 2007
Deadline for submissions	15 February 2008
Analysis of submissions	February–June 2008

Background and Context

This section provides some background and context for considering the future of tobacco displays in New Zealand. It outlines the current situation regarding harm from tobacco in New Zealand and gives an overview of key national and international strategies and frameworks that shape New Zealand's priorities and goals for tobacco control.

Tobacco use and harms

The World Health Organization (WHO) has estimated that there are currently 5 million deaths per year attributable to tobacco, a figure that is expected to rise to about 10 million per year by the year 2020. Smoking is the world's biggest preventable cause of death (World Health Organization 2007).

Smoking is a major public health problem in New Zealand. Tobacco is still the single largest cause of preventable morbidity and early mortality and is an important contributor to health inequalities in New Zealand.

It is estimated that approximately 5000 New Zealanders die (including deaths attributable to exposure to second-hand smoke) each year from smoking-related diseases, such as lung cancer, heart disease and respiratory illnesses (Ministry of Health 2006). One in two New Zealand smokers die early as a result of smoking, and those who die early lose, on average, an estimated 23 years of life. Around one-fifth of all cancer deaths in New Zealand are due to smoking (Peto et al 2006).

Smoking is a significant contributor to health inequalities. While around 23 percent of the total adult population smokes, the rates are significantly higher for Māori (45 percent) and Pacific peoples (37 percent) (Ministry of Health 2006). Tobacco is said to account for up to one-quarter of the Māori/non-Māori mortality difference (Ministry of Health 2001).

There is also a strong relationship between socioeconomic status and smoking, with higher rates of smoking in lower socioeconomic groups. Smoking produces a greater relative burden of disease and premature death in lower socioeconomic groups and is a major contributor to socioeconomic inequalities in health (Ministry of Health 2001).

Tobacco control in New Zealand

Clearing the Smoke: A five-year plan for tobacco control in New Zealand (2004–2009)

Clearing the Smoke is a tobacco control plan that outlines the goals and priority areas for tobacco control for the years 2004 to 2009. The vision for the tobacco control plan is for New Zealand to become a country where smokefree lifestyles are the norm. The document has a number of objectives, including preventing smoking initiation and promoting smoking cessation. One of the actions identified to achieve these objectives is to reduce retail displays of tobacco.

Health sector targets

The Ministry has recently announced nine target areas for the health sector that District Health Boards (DHBs) must work to achieve and that they must report on annually to the Ministry. Tobacco control is one of these target areas and is a priority for the Ministry and the wider health sector.

Tobacco control legislation and regulations

Smoke-free Environments Act 1990 and Smoke-free Environments Amendment Act 2003

The Smoke-free Environments Act 1990 ('the Act') introduced a number of provisions that banned the promotion and advertising of tobacco products. From 1990, tobacco products were prohibited from being advertised in the media, for example, on television or in magazines. Retailers were also banned from advertising the sale of tobacco products (though this ban did not come into force until 1995). Tobacco products were able to be displayed in retail stores but only if they were not visible from outside the retail premises.

The Act was amended by the Smoke-free Environments Amendment Act 2003. The Act now contains a number of provisions designed to further limit the promotion and advertising of tobacco products. Part Two of the Act contains restrictions on how tobacco products may be displayed in retail premises, such as dairies, supermarkets and service stations.

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).

The full text of sections 23A and 23B of the Act is attached as Appendix Two.

Tobacco Display Guidelines

As a supplement to sections 23A and 23B of the Act, the Ministry published the *Tobacco Display Guidelines*, which were updated and re-released in December 2006. The purpose of the *Tobacco Display Guidelines* is to help large retail organisations and tobacco manufacturers and importers understand the details of the tobacco display restrictions. The *Tobacco Display Guidelines* are available through the Smokefree Law in New Zealand website at: http://www.moh.govt.nz/moh.nsf/wpg_index/About-smokefreelaw-resources#1.

World Health Organization's Framework Convention on Tobacco Control

The World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC) is the first public health treaty initiated by the World Health Assembly, the governing body of WHO. As at September 2007, 168 countries and the European Community had signed the FCTC, and 150 parties had ratified the treaty. New Zealand ratified the FCTC in January 2004.

The objective of the FCTC is to:

‘... protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke’. (Article 3)

The Preamble to the FCTC recognises the need for countries to give priority to a country's right to protect public health and reflects the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke.

While there are no specific provisions in the FCTC regarding retail tobacco displays, parties are encouraged to implement measures that are stronger than the minimum standards required by the FCTC, provided these measures are consistent with the FCTC's provisions and are in accordance with international law.

Tobacco Displays in New Zealand

The current situation

The Ministry estimates that currently there are approximately 10,000 retail outlets selling tobacco products in New Zealand. Tobacco products, primarily cigarettes, are usually displayed in large, wall-mounted, shelving units.

As outlined earlier, the Act limits the size of these displays to a maximum of 100 packets of cigarettes and 40 cartons, per point of sale (that is, per till or sales counter). However, retailers sometimes put shelving units side by side to create a larger visual display, sometimes referred to as a 'power wall'.

Point-of-sale advertising, such as a retail display of tobacco, is a promotional tool that generates awareness of products, communicates information, stimulates trial and encourages repurchase (McCarville et al 1999).

Currently, the location of tobacco displays at the point of sale means that they are highly visible to all customers – including vulnerable consumers such as children, young people, ex-smokers and smokers trying to quit.

Compliance

There is some evidence that the current tobacco display provisions in the Act are not being followed. A 2006 study by the Wellington School of Medicine found that 64 percent of retail outlets in New Zealand were not fully compliant (Department of Public Health 2006).

Compliance checks by Ministry officials in early 2007 found a higher level of compliance than was found in the 2006 research, however, non-compliance was still higher than desirable. Overall, 39 percent of premises visited were non-compliant on initial inspection. Later checks by Ministry officials found that 24 percent of premises were non-compliant, and a follow-up check found that only one premise (of 201 premises initially inspected) was still non-compliant.

Information from these compliance checks suggests that issues of non-compliance partly relate to the complexity and lack of clarity about what is meant by some of the display provisions in the Act rather than deliberate actions not to comply.

Issues with tobacco displays

This section outlines the reasons why the display provisions of the Act are being reviewed. These include:

- protecting children and young people
- providing an environment that supports smokers who are trying to quit
- avoiding undermining the health message
- addressing the issue of displays as a means of advertising.

Protecting children and young people

The average age of smoking initiation in New Zealand is 14.6 years, well below the legal minimum age of 18 years. Many young people regret their decision to start smoking, with the New Zealand Tobacco Use Survey 2006 showing that the majority of youth (72.3 percent of young people aged 15–19 years) would not smoke if they had their lives over again (Ministry of Health 2007).

Longitudinal studies have shown that children and young people exposed to tobacco advertising and promotion are more likely to take up smoking (Lovato et al 2003). Children and young people are exposed to displays of tobacco products every time they enter a supermarket or dairy. While the Act prohibits tobacco products from being displayed within one metre of children's products, tobacco displays are usually situated directly behind sales counters and are often in the same sightline as confectionery and other products primarily marketed at children.

A study by the Wellington School of Medicine, released in October 2006, found that stores in areas that had a high percentage of youth in the local population were the most likely to be in violation of the current display provisions (Department of Public Health 2006).

Tobacco displays can give people, especially children, the impression that smoking is more common than it actually is, and familiarising children with tobacco products and specific tobacco brands may influence their future behaviour. Research has shown that if young people overestimate the use of tobacco products, and perceive that smoking is generally tolerated, they are more likely to start smoking (United States Department of Health and Human Services 1994).

Many aspects of the current tobacco control programme, such as legislating for smokefree environments and promoting smokefree homes and cars, aim to de-normalise smoking, particularly around children. This message is potentially undermined when children and young people enter dairies and supermarkets and are confronted with large, highly visible displays of tobacco products.

Providing an environment that supports smokers who are trying to quit

Most smokers want to quit but find it very difficult to do so due to the highly addictive nature of the nicotine contained in tobacco products. The New Zealand Tobacco Use Survey 2006 showed that around 65 percent of smokers had tried to quit in the last five years, and that approximately 45 percent of smokers had made a quit attempt lasting at least one week in the last year (Ministry of Health 2007).

Research has found that point-of-sale stimuli, in particular bright visual images (such as those on cigarette packages in tobacco displays), encourage unplanned purchases (McCarville et al 1999). Retail tobacco displays have a particular impact on vulnerable consumers, such as people still experiencing nicotine withdrawal symptoms, and can prompt impulse purchases (Lavack et al 2006).

Avoiding undermining the health message

The presence of tobacco displays in stores makes tobacco socially prominent, and this prominence conflicts with the message that tobacco products are extremely harmful to health. Tobacco displays undermine efforts by the Government, health agencies and non-governmental organisations to protect children and young people, former smokers and people trying to quit smoking from inducements to smoke.

The high visibility of tobacco displays in retail outlets and the proximity of tobacco products to other consumer products in retail outlets suggests to consumers that they are normal everyday products. This perception reduces the impact of the message that tobacco products are highly harmful to people's health.

Addressing the issue of displays as a means of advertising

The Act prohibits tobacco product advertising, which has been defined as 'any words ... and any pictorial representation, design or device, used to encourage the use or notify the availability or promote the sale of any tobacco product or to promote smoking behaviour' (Ministry of Health 2004). Previously, tobacco displays have been considered to be outside this definition and are covered by a separate section of the Act (section 23A).

However, tobacco retail displays as currently used are a 'device used to ... notify the availability or promote the sale of any tobacco product' and could therefore be treated as a form of advertising.

Point-of-sale displays have been described as 'the industry's most important sphere of influence' (Anon 2006). As other avenues for promoting and advertising tobacco products have been restricted or banned, retail tobacco displays have become increasingly important to the tobacco industry. The industry is increasingly relying on this type of display as a means of continued advertising in the face of advertising restrictions (Lavack et al 2006).

International evidence from the United Kingdom and the United States has shown increasing incentive payments from tobacco companies to retailers as tobacco companies compete over the location and size of their retail tobacco displays. In New Zealand, there have been reports of a small number of cases of incentive payments. One media report suggested that some dairy owners have received payments of \$10,000 to stock certain brands of cigarettes (Forbes 2005).

Tobacco companies have argued that retail displays are intended to inform customers of the products available to them and to promote brand switching. However, research has found that smokers are actually highly brand loyal and generally do not switch brands; each year, only about 7 percent of smokers switch brands (McCarville et al 1999). One Australian study has shown that less than 1 percent of smokers use tobacco displays to inform their brand choice (Wakefield et al 2004). This suggests that tobacco displays are actually an ineffective means of encouraging brand switching.

International approaches to tobacco displays

Many countries have restrictions on point-of-sale tobacco displays. A number of international jurisdictions have recently moved to ban or further restrict tobacco displays. To date, three countries (Iceland, Thailand and Ireland) have legislated to ban all tobacco displays.

This section provides a brief summary of some international jurisdictions' policies towards tobacco displays.

Iceland

Iceland was the first country to ban retail displays of tobacco products, banning all displays of tobacco in 2001. Article 7 of Iceland's Tobacco Control Act states that 'Tobacco and tobacco trademarks shall be so placed at points of sale that they are not visible to the customer'. Typically, in Iceland, tobacco products are kept in drawers or under the counter, and compliance with the law is high (personal communication Jensson).

Thailand

Thailand has prohibited the display of tobacco products since September 2005. The ban was met with strong resistance, particularly from the more than 3200 '7-11' convenience stores across the country, who initially refused to remove tobacco displays. After several months of fighting the ban, the convenience stores agreed to comply, and there are now no tobacco displays in the more than 500,000 points of sale across the country.

Ireland

In order to sell tobacco in Ireland a person must be a registered tobacco seller. The Public Health Act of Ireland (2002) stipulates that registered tobacco sellers must keep tobacco products in a 'closed container or dispenser that is not visible or accessible to any person other than the retailer'. This provision is now included in the legislation, however, it is yet to be enacted.

Canada

In December 2006, Health Canada released a consultation document that proposed a nationwide ban on tobacco displays in places accessible to young persons (under 18 years of age). Submissions closed in March 2007 and are now being analysed.

A number of provinces and territories within Canada have already enacted their own legislation limiting or banning tobacco displays. Six Canadian provinces have already banned cigarette displays. By the end of 2008, this will have increased to 10 provinces.

In 2002, Saskatchewan banned all advertising, promotion or display of tobacco products in any place where children (under 18 years of age) are permitted. This law was challenged by the tobacco industry and was initially overturned. However, the Saskatchewan provincial government appealed to the Supreme Court of Canada in 2005, which ruled in favour of the legislation, and the ban is now in force.

In Ontario, legislation currently allows one packet of each cigarette type to be on display. From May 2008, all forms of tobacco display will be banned under the Smoke-free Ontario Act, which states that 'No person shall display or permit the display of tobacco products in any place where tobacco products are sold or offered for sale in any manner that will permit a consumer to view any tobacco product before purchasing the tobacco product'.

Australia

Due to Australia's federal government system, legislation governing tobacco displays varies from state to state. The restrictions implemented in some Australian states are outlined below.

In Tasmania, tobacco displays are restricted to one packet per product line to a maximum of 150 packets within a space of four square metres. In addition, a graphic health-warning poster, advising of the health dangers of smoking, must accompany the display. The poster must include the graphic of a diseased smoker's mouth, which is required as a graphic health warning on cigarette packets by the Australian government. Following the introduction of this regulation, some retailers, including one of Australia's two major supermarket chains, have voluntarily removed their tobacco displays and keep their tobacco products out of public sight in order to avoid having to display the graphic health warning.

Victoria also places restrictions on tobacco displays. These restrictions include only allowing one display per retail outlet, with the display not exceeding four square metres and only one packet of each product line being displayed. Displaying cigarette cartons (packages of multiple cigarette packets) is prohibited.

In Queensland, only one tobacco product display is allowed per retail outlet. Display of health-warning signs is mandatory, and the size of the display is limited to one square metre (three square metres in specialist tobacconist stores). Additional smoking products, such as filters, must be out of sight, and no cigarette cartons are to be displayed.

United Kingdom

In 2004, under the Tobacco Advertising and Promotion Act 2002, the United Kingdom passed point-of-sale tobacco display regulations. These were unsuccessfully challenged by the tobacco industry and came into force on 21 December 2004. The regulations limit the size of advertisements in retail outlets to one advertisement no larger than 21 centimetres x 15 centimetres.

Options for the Future of Tobacco Displays in New Zealand

This section outlines three broad options for the future of tobacco displays in New Zealand.

- 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.

Each of these options is discussed in further detail below. Your feedback is sought on your preferred option, and the Ministry asks that you raise any issues that you foresee arising with any of the options, as well as other suggestions that you may have.

Questions have been included throughout this section to help guide your submission. Please keep these questions in mind as you consider the options.

A summary table providing a brief description and the benefits and costs of each option is attached as Appendix Three.

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.

Discussion

Greater education is likely to increase retailers' awareness of their obligations under the Act and may result in increased compliance with current provisions. This option would cause no cost to retailers as no changes to retail outlets would be required.

This option would not address the underlying issues presented by tobacco displays. Tobacco displays are inconsistent with the 'don't start' and 'stop smoking' messages, and allowing retail tobacco displays to continue in their current form is at odds with these health messages. Even with increased compliance, tobacco displays would continue to be prominent in retail environments, which would mean that young people, smokers trying to quit and ex-smokers would still be exposed to tobacco displays and might be tempted to try or continue to purchase tobacco products.

Would you support this option? If yes, why? If not, why not?

What possible advantages or disadvantages do you see with this particular option?

Option 2: Further restrictions

The section below outlines three ways that the current tobacco display provisions within the Act could be strengthened.

These are:

- 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.

Each of these options is discussed separately below, however, they could be combined so that a number of changes were made to the Act to tighten up the rules for tobacco display.

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.

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.

Discussion

This proposal could strengthen the current tobacco display provisions of the Act without requiring major changes by retailers. Limiting the physical size of the display could reduce young people's and recent quitters' exposure to tobacco displays.

This option would still leave tobacco displays in prominent locations in retail outlets. Regardless of the size of the display, which is already limited somewhat by the current provisions in the Act, tobacco products would still be visible to customers and would likely still remain at the point of sale, thus potentially triggering impulse purchases. Tobacco displays would remain highly visible to children and young people and would continue to undermine the message that smoking is harmful to health.

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.

Discussion

This option would reduce the number of tobacco displays that young people and recent quitters are exposed to. In large retail stores, such as supermarkets, it would be possible to visit the store without seeing any tobacco products, as they would be displayed at only one of multiple points of sale – vulnerable customers, such as recent quitters or those trying to give up, or parents with children, could choose to use a point of sale that did not have the tobacco display. This option would be easy for retailers to understand and comply with; therefore high levels of compliance would be expected.

However, this option would make no, or very limited, difference in small retail environments, such as dairies, convenience stores and many service stations. Customers would still see tobacco displays every time they entered such stores. These retail environments, in particular dairies and convenience stores, are often frequented by children and young people who would continue to be exposed to tobacco product displays. It would also not prevent ex-smokers from being tempted in these locations to make impulse purchases.

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).

Discussion

This option would mean that any time young people were exposed to tobacco products they would also be made aware of the health impacts of smoking. This option would link with the new graphic health warnings that will be required on all tobacco products after 28 February 2008.

Also, as happened in Tasmania, some retailers may choose not to display tobacco products (and keep them out of sight, under the counter or behind screens) rather than display the graphic health warning.

However, this option would still have young people and ex-smokers exposed to displays of tobacco products in most retail settings, potentially prompting impulse purchases.

Also, as all tobacco products are going to carry graphic health warnings as of 28 February 2008, the graphic health-warning poster may have only a minimal additional impact.

Do you support any of these options? If yes, why? If not, why not?

Would you like to see some of the above options combined? For example, only one tobacco display per retail outlet *and* this display to include a graphic health-warning poster.

What possible advantages or disadvantages do you see with these options?

Option 3: Ban on tobacco displays

This section outlines two options for banning tobacco displays. These are:

- 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.

Discussion

This ban would prevent the exposure of children and young people to tobacco displays. It would help to further de-normalise smoking, as it would remove the last major source of exposure to tobacco products for children outside the home, now that schools, workplaces, cafés and restaurants are all smokefree.

This type of ban would also limit the number of places where adults, including ex-smokers and those who are trying to quit, are exposed to tobacco products, as it would effectively prohibit displays in dairies, service stations and supermarkets, which do not have entry age restrictions.

Some retailers may feel that they are unfairly disadvantaged by an age-related ban as it would create an uneven playing field where some retailers, for example liquor stores, would be able to display tobacco products, while others, such as most dairies, supermarkets, etc, would be subject to the ban. The ban might make it difficult for consumers to know where to go to buy cigarettes and to know what products are available.

The ban would also not completely address the issue of adult ex-smokers or smokers trying to quit still being exposed to tobacco products in some locations. The displays of tobacco products may prompt these customers to make an impulse purchase, particularly if they are still struggling with symptoms of nicotine withdrawal.

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.

Discussion

A total ban would be consistent with the intent of the Act, which aims to prohibit anything that encourages smoking or advertises the availability of tobacco products. It would also be consistent with and supportive of other efforts to prevent the uptake of smoking and increase cessation attempts.

A ban on tobacco displays would prevent children and young people from being exposed to tobacco products and would contribute to de-normalising smoking. A ban on point-of-sale tobacco displays would remove the last major source of exposure to tobacco products for children outside the home, now that schools, indoor public places, workplaces, cafes and restaurants are all smokefree.

This option would also protect ex-smokers, recent quitters and those trying to quit smoking from being exposed to tobacco products and would reduce the temptation for impulse purchases.

A complete ban on displays would also mean that tobacco products were treated in a manner that is more consistent with the serious harm caused by the product.

A complete ban would be simple for retailers and the public to understand and would be easy to enforce. It would eliminate any potential for the legislation to be misinterpreted by retailers, and therefore, high levels of compliance would be expected. It would also ensure that there was a level playing field as all retailers would be subject to the same restrictions.

A ban on displays might make it difficult for consumers to know where to go to buy cigarettes and to know what products are available. Retailers might be wary of potential compliance costs associated with implementing a complete ban on tobacco display. However, costs could be kept to a minimum by simply covering existing displays or moving tobacco products to drawers or cupboards.

Do you support either of these options? If yes, why? If not, why not?

What possible advantages or disadvantages do you see with these options?

Appendix One: Smoke-free Environments Act 1990

Part 2 – Control of smoking products

Promotion and advertising

23A Compliant product display

- 1) A retailer of tobacco products must not expose a tobacco product for sale inside the retailer's place of business unless its exposure –
 - (i) complies with this section; and
 - (ii) complies with any regulations for the time being in force under section 39(1)(ia).
- (2) The exposure of tobacco products for sale inside a retailer's place of business complies with this section if, and only if, –
 - (a) no tobacco product exposed for sale is visible from outside the place; and
 - (b) unless the place of business is a tobacconist's shop, not more than 100 tobacco packages are exposed for sale at any point of sale; and
 - (c) unless the place of business is a tobacconist's shop, not more than 40 tobacco cartons are exposed for sale at any point of sale; and
 - (d) not more than two tobacco packages of the same kind are exposed for sale at any point of sale; and
 - (e) not more than two tobacco cartons of the same kind are exposed for sale at any point of sale; and
 - (f) no tobacco package (other than a pouch pack of loose tobacco) with a face that has an area greater than 66 cm² is exposed for sale; and
 - (g) no pouch pack of loose tobacco with a face that has an area greater than 105 cm² is exposed for sale; and
 - (h) no tobacco carton with a face that has an area greater than 266 cm² is exposed for sale; and
 - (i) either –
 - (i) no tobacco product is exposed for sale within one metre of any children's product exposed for sale; or
 - (ii) if, because of the size of the place, it is not reasonably practicable to keep all tobacco products exposed for sale at least one metre from any children's product exposed for sale, the retailer has taken all reasonably practicable steps to ensure that every tobacco product exposed for sale that is within one metre of any children's product exposed for sale is as far away from the children's product as possible; and
 - (j) no tobacco product is exposed for sale on any counter top or similar surface; and
 - (k) there is displayed at each point of sale where tobacco products are exposed for sale a rectangular sign, with its longer sides horizontal and its shorter sides vertical, and the message "SMOKING KILLS Ka mate koe i to kai hikareti" printed in black across it –

- (i) within a black rectangular border that is no wider than an upper case letter “i” in the point size used for the words “SMOKING KILLS”; and
 - (ii) on a white background within that border; and
 - (iii) in the type face known as Helvetica; and
 - (iv) in roman font; and
 - (v) with the words “SMOKING KILLS” printed centred, in upper case letters, in one line; and
 - (vi) with the words “Ka mate koe i to kai hikareti” printed centred, in upper case and lower case letters (as it is printed in this subparagraph) in one line –
 - (A) beneath the words “SMOKING KILLS”; and
 - (B) in a point size such that its risers are two-thirds the height of the words “SMOKING KILLS”; and
 - (vii) in a type that is clear and legible, of normal weight, and of such a point size that the words “Ka mate koe i to kai hikareti” do not touch the vertical elements of the border, but as nearly as possible take up the full width of the sign between them.
- (3) The sign must have at least the lesser of the following areas:
- a) one square metre
 - b) 10% of the area of the display in which the tobacco products are exposed for sale.
- (4) The sign may include the attribution “*Ministry of Health Warning*”, printed centred, in one line beneath the words “Ka mate koe i to kai hikareti”, –
- (a) in upper case and lower case letters (as it is set out above); and
 - (b) in an italic font in the type face known as Helvetica; and
 - (c) in a point size such that its risers are no more than half the height of the words “SMOKING KILLS”; and
 - (d) otherwise in accordance with subsection (2)(k).
- (5) The sign must not include anything that is not –
- (a) required by subsection (2)(k); or
 - (b) authorised by subsection (4).
- (6) For the purposes of subsection (2)(k), tobacco products are exposed for sale at a point of sale if they are exposed for sale –
- (a) in a display that forms part of a unit or counter of which that point of sale forms part; or
 - (b) at a place that –
 - (i) is within two metres of that point of sale; and
 - (ii) is not closer to some other point of sale than to that point of sale.

23B Exposure for sale

- (1) For the purposes of sections 23(1) and 23A, –
 - (a) a tobacco product is exposed for sale if the tobacco package or tobacco carton it is in is exposed for sale; and
 - (b) a tobacco package or tobacco carton is exposed for sale inside a retailer's place of business if it is for sale, and any part of it is visible –
 - (i) from outside the place; or
 - (ii) from an area inside the place to which members of the public are allowed access.
- (2) In determining for the purposes of section 23(1) in a visible stack are exposed for sale, the front package must be counted; but
 - (a) if there are four or fewer other packages behind it that are exposed for sale, the other packages must not be counted; and
 - (b) if there are five or more other packages behind it that are exposed for sale, the first four of the other packages must not be counted.

Appendix Two: Summary Table

Options	Brief description	Advantages	Disadvantages
<p>Option 1</p> <p>Current restrictions with enhanced education and enforcement</p>	<p>Current regulations but increased education for retailers, increased enforcement operations.</p>	<p>No cost to retailers.</p> <p>May result in increased compliance with current provisions.</p>	<p>Undermines health message.</p> <p>Vulnerable consumers still exposed to tobacco displays.</p>
<p>Option 2</p> <p>Reduce maximum size of display</p> <p>Limit displays to one per retail outlet</p> <p>Graphic health warning</p>	<p>Place a limit on the maximum size of the tobacco display.</p> <p>Regardless of number of points of sale, each store would only be allowed one display.</p> <p>Stores can only display tobacco products if accompanied by large graphic health warning.</p>	<p>No major changes required by retailers.</p> <p>Limiting size of display could reduce exposure to tobacco displays.</p> <p>Reduces exposure to tobacco displays.</p> <p>Reduces exposure of vulnerable consumers to tobacco displays.</p> <p>Simple guideline, easier compliance.</p> <p>Promotes health effects of smoking to young people.</p> <p>Ties in well with new health warning regulations.</p> <p>Some stores may choose to have no display rather than show graphic health warning.</p>	<p>Undermines health message.</p> <p>Vulnerable consumers still exposed to tobacco displays.</p> <p>Undermines health message.</p> <p>Vulnerable consumers still exposed to tobacco displays.</p> <p>Would not address issues in small stores, eg, dairies, (frequented by children) that currently have only one point of sale anyway.</p> <p>Vulnerable consumers still exposed to tobacco displays.</p> <p>Issue of size and placement of displays not addressed.</p>
<p>Option 3</p> <p>Ban displays in areas accessible to under-18s</p> <p>Complete display ban</p>	<p>Tobacco products not to be displayed anywhere visible to young people (under 18 years of age).</p> <p>No tobacco products visible – must be under counter, screened or in cupboard.</p>	<p>Prevent exposure of children and young people to tobacco displays.</p> <p>Reduces the number of places that people are exposed to tobacco products as it effectively prohibits displays in many retail stores.</p> <p>Eliminate exposure of all customers to tobacco displays, particularly young people and ex-smokers.</p> <p>Easy compliance.</p> <p>Total ban would mean no retailers advantaged.</p> <p>Supports public health message.</p>	<p>Small retail outlets may feel that unfairly disadvantaged.</p> <p>Adult ex-smokers would still be exposed to tobacco products.</p> <p>May make it difficult for smokers to know where to purchase cigarettes and what kinds of products are available.</p> <p>Costs involved for businesses to build shelving or cupboards to hide display.</p> <p>May make it difficult for smokers to know where to purchase cigarettes and what kinds of products are available.</p>

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Submission Form

Please use the form on the next five pages to guide you as you write your submission. This form outlines the questions that the Ministry would specifically like feedback on and will help to ensure that all submissions can be analysed fairly.

You can make a submission by letter or by email.

Send submissions to:

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The closing date for submissions is **15 February 2008**.

The Ministry welcomes submissions from both individuals and organisations. When completing a submission on behalf of an organisation, please include contact details for the organisation.

Submission on the Future of Tobacco Displays in New Zealand

Name/name of organisation making submission	
Contact details	
Opening comments:	

Comments on proposed options

Option 1: Current restrictions with enhanced education and enforcement

Would you support this option? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, why? If no, why not?	
What possible advantages or disadvantages do you see with this particular option?	

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.

Do you support any of these options? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, why? If no, why not?	
Would you like to see some of the above options combined? Yes <input type="checkbox"/> No <input type="checkbox"/> For example, only one tobacco display per retail outlet <i>and</i> this display to include a graphic health-warning poster.	
What possible advantages or disadvantages do you see with these options?	

Option 3: Ban on tobacco displays

- Ban tobacco displays in areas accessible to under-18s.
- Completely ban all tobacco displays.

Do you support either of these options? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, why? If no, why not?	
What possible advantages or disadvantages do you see with these options?	

Which is your preferred option? Why?	
Is there anything else you would like to comment on?	