

New South Wales: Retailers Factsheet about the Retail Display Ban

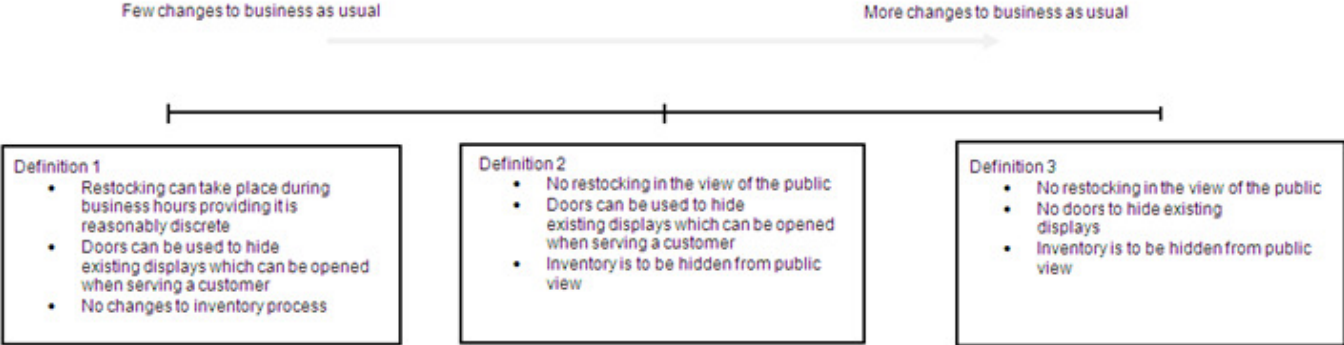
On 11 July 2009, Deloitte prepared a report for the Australasian Association of Convenience stores titled 'Indicative regulatory cost analysis of proposed tobacco retail display ban for convenience store operators in New South Wales, Victoria and Western Australia' (Deloitte Report). On 28 September 2009, New South Wales Health released a 'Retailer factsheet' (the Factsheet) which is intended to provide information to New South Wales tobacco retailers about the impending ban on the display of tobacco products, non-tobacco products and smoking accessories. In light of this new information, we revisit the key findings of the Deloitte Report and question how the statements made in the Factsheet may affect these.

Incidental viewing

The Factsheet states that any storage configuration that could allow for the exposure of tobacco or smoking products during business operating hours, 'including incidental exposure', is not allowed. The document suggests a number of actions retailers must take to comply with the ban described in the *Public Health (Tobacco) Act 2009*.

Incidental exposure is not defined the *Public Health (Tobacco) Act 2008*. Retailers interviewed for the purpose of the Deloitte Report, estimated changes in the usual operations of their business under two definitions of 'incidental exposure'. The factsheet adopts a definition that requires even further changes to the business as usual case than required under these two definitions. All three definitions are illustrated in Figure 1.

Figure 1. Grey area: what constitutes 'incidental viewing'? Three scenarios as they relate to the current 'business as usual' of convenience store operators in NSW



Adopting Definition 3 of incidental viewing will influence the following business as usual operations of convenience store operators in NSW:

- **Transaction time costs** – it was estimated by retailers that under Definition 2 of incidental viewing, each transaction that includes a tobacco product would increase by approximately 30 seconds where transaction time was only expected to increase by approximately 15 seconds under Definition 1. Adopting Definition 3 has the potential to increase transaction

times above that which was estimated for Definition 2 by approximately 5 seconds for the following reasons:

- The time taken to retrieve the correct product from a concealed location may be longer depending on the storage method used. For example, retailers who suggested that they would have to use drawers under the counter under Definition 2 felt that their search time to retrieve the appropriate product would significantly increase through an inability to clearly view the product facing
 - Customers must individually enquire about each option which they may be interested in purchasing (for example, options for packet sizes) before being able to view them and then make a purchase
 - Sales assistant must take the time to respond to each query, either producing the packet from their storage or checking stock and referring back to the customer. For example “I will check to see whether we stock product ‘x’ in packet sizes ‘s’ and ‘l’ and whether either of these sizes are currently in stock”.
- **Restocking costs**– under Definition 2 (and Definition 3) of incidental viewing, the time taken to restock was expected to increase by 60 minutes a day if carried out during store hours, as was necessary in most stores compared to the 30-minute increase expected under Definition 1. The reason for higher restocking costs under Definition 2 was as follows:
 - Stock cannot be placed on the counter while restocking meaning that the sales assistant must walk between a concealed storage area (the floor behind the counter was generally not seen as a safe place for leaving stock so this area was typically a back-of-the-store storage room) and the restocking area discretely carrying as much stock as they can.

Even under the above solution suggested by convenience store operators, there is a possibility that there will be opportunities for *some* incidental viewing. To *completely* comply with the suggestions of the Factsheet, convenience store operators felt that they may have to invest in building a ‘backfilling’ room or limit restocking to after hours. The second option was rarely seen as a viable solution; particularly in stores that were open both day and night.

- **Training costs**– under Definition 2 (and Definition 3) of incidental viewing, staff training costs were expected to be higher than under Definition 1, as staff will be required to have a more extensive knowledge of the stock carried within a store.

Each of the above costs is estimated in terms of ‘time’. Time is converted in the report to a dollar value to represent the monetary value of the opportunity cost of times estimated. These values under Definition 1 and Definition 2 and Definition 3 are presented in Table 1 below:

Table 1. Costing of operational changes under Definition 1, Definition 2 and Definition 3 of incidental viewing

Operational change	Estimate under Definition 1 of incidental viewing	Estimate under Definition 2 of incidental viewing	Estimate under Definition 3 of incidental viewing
Additional transaction time	\$6,000	\$12,000	\$14,000
Restocking	\$3,500	\$7,500	\$7,500
Training	\$100 in first year with an estimated annual cost of \$30 for subsequent years	\$300 in first year with an annual cost of \$60 for subsequent years	\$300 in first year with an annual cost of \$60 for subsequent years
Indicative estimate of annually recurring operational costs RDB	\$9,530	\$19,560	\$21,560

Multiplied over the 5,650 convenience stores in New South Wales, adopting Definition 3 of incidental viewing represents an estimated \$122 million in operational costs for convenience store operators above business as usual. This is \$68 million higher than the expected increase under Definition 1 and \$11 million higher than the expected increase under Definition 2.

Price communication instruments

At the time of compiling the Deloitte Report, draft regulations suggested that retailers would have to choose between price boards and price tickets. The regulation has since been enacted and the need to explicitly choose one instrument or the other is reiterated in the Factsheet.

Table 2 illustrates the difference in estimated economic costs between NSW retailers being given the opportunity to use two price communication instruments and having to choose only one. The range represents the estimates under Definition 1 to Definition 3 of incidental viewing.

Table 2. Difference in estimated economic costs depending on allowances for price communication instruments

	One price communication instrument	Two price communication instruments	Difference in estimated economic costs between approaches from business as usual situation
Estimated increase in economic cost for Convenience store operators across NSW from business as usual situation	\$82 million to \$178 million	\$71 million to \$167 million	\$11 million

The use of two price instruments was expected to cost \$11 million less than 1 price instrument through improved transactional efficiencies.

Costs of inconsistent advice

The option of installing covering public facing storage units with a single opening door/curtain is not explicitly defined as ‘non-compliant’ behaviour in the *Public Health (Tobacco) Act 2008* but is explicitly stated to be ‘non-compliant’ with legislation in the Factsheet. The cost of covering an existing display, compared to the cost of relocating the display to a concealed location such as an overhead compartment and building the required fittings is vastly different.

The difference, as estimated in the Deloitte Report, is presented in table 3.

Table 3. Difference between higher and lower levels of refit

	Lower level of refit (not explicitly excluded under <i>Public Health (Tobacco) Act 2008</i>)	Higher level of refit (explicitly excluded by the Factsheet)	Difference
Fit out costs across convenience stores in NSW	\$28 million	\$56 million	\$28 million

Both large and small retailers had fears that inconsistent advice could unfairly affect their businesses. Larger convenience store operators felt that their increased visibility would mean that they would bear a greater burden of complying with impossibly high standards. See box 1 below for an example of this.

Box 1. Quote from convenience store operator of a comparatively large chain of convenience stores

“People pay more attention to what we are doing and are faster to report us if they think we are doing the wrong thing. We have a reputation to uphold. We are the ones who have to go the whole mile in complying, change fit outs, retrain staff, rewrite procedures, even if the standards are impossibly high.”

Smaller retailers felt that their dependence on ‘easy to read’ publications may mean that they end up paying more than would be required to meet minimum legal requirements. Where incidental viewing is not as clearly defined in the Act as it is in public reading material, as is the case here, smaller retailers may pay to do more than they have to in order comply.

Inconsistent advice creates uncertainty in understanding. This, in turn, creates fear amongst stakeholders that their efforts to comply may be wasted. For example, some retailers had pre-emptively installed doors over their cabinets following the enactment of the *Public Health (Tobacco) Act 2008*. They now worry that they will have to pay to change their fitout once more to comply with stricter requirements despite their earlier efforts to comply with the law.