



Out of sight: Evidence on the tobacco retail environment in New Zealand and overseas

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Abbreviations

AACS - Australasian Association of Convenience Stores

BAT - British American Tobacco (the worldwide firm)

BATNZ - British American Tobacco New Zealand

NARGON - National Association of Retail Grocers and Supermarkets of New Zealand

NATR - National Alliance of Tobacco Retailers (Australia)

NZACS - New Zealand Association of Convenience Stores

POS - Point of sale (generally the area around the checkout counter, although sometimes used by industry documents to mean the whole retail shop setting).

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[Of tobacco retailers] ‘To come to members of parliament and say, “We want to maintain the profits but we claim to be concerned about the impact of smoking” is an extraordinary thing to do.’¹

Pat Putt. *Speech on PUBLIC HEALTH AMENDMENT BILL 2006 (No. 55): Second reading*. Tasmanian State House of Assembly. Hobart. 28 November 2006

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Summary

Internationally, restrictions on other forms of tobacco marketing have increased the importance of the retail setting for recruiting and keeping tobacco customers. This has resulted in greater investment by tobacco companies in display space and equipment, in staff to maintain relationships with retailers, and in research on the effective use of retail marketing. There is some evidence of increasing ties at an international level between tobacco companies and large retailing organisations (supermarkets and oil companies).

Retail display bans have recently been implemented in Iceland (2001), Thailand (2005) and six Canadian provinces and territories (starting with Saskatchewan). Display bans are planned in further Canadian provinces, and in Ireland. The tobacco industry and its allies have used legal actions and threats to try to delay or halt the display bans in Iceland, Canada, Thailand and Ireland.

The implementation of the display ban in the Saskatchewan province of Canada appears to have over 98% compliance by retailers, with minimal costs to retailers. Retail and tobacco industry spokespeople have predicted little or no change to tobacco sales. Payments by tobacco companies to retailers have continued at only a slightly lower rate after the ban.

In New Zealand, while some legislative effort has been made to reduce incentives to retailers by tobacco companies, they continue to make payments for retail display space. In 2000, the Minister of Health briefly supported a display ban, however, by 2001 a negotiated agreement allowed slightly restricted displays. The agreement was incorporated in the 2003 Smoke-free Environments Amendment Act, which came into force in 2004. The Associate Minister of Health, Damien O'Connor, is currently inviting public submissions on retail display options.

There are over 8000 tobacco retail outlets in New Zealand; these include nearly all New Zealand convenience stores (dairies, chain convenience stores, service stations), and supermarkets. There are no licensing requirements for retailing tobacco, and the only retailing restrictions appear to have been imposed by District Health Boards, which ban tobacco sales on their premises. For small stores, tobacco sales may on average produce about 35-40% of revenue, and about a quarter of the gross profits

Tobacco companies and retailers have consistently opposed tobacco retailing restrictions in New Zealand. Their arguments include ones on legitimacy and 'rights' (of both retailers and customers), financial and employment effects, unequal effects between large and small retailers, the 'lack of evidence' for health effects, and arguments about increased theft and risk. A well designed website in November 2007 started to focus retailer concerns and arguments.

1 Introduction

This report reviews the tobacco retail environment in New Zealand and as such is based on primary documents, media reports, and the published literature. It also explores the experience of recent interventions to reduce point of sale (POS) marketing of tobacco in selected overseas countries, using documents and interviews.

In particular, it aims to record and discuss the available evidence on:

- The role the retail setting plays in the marketing strategy of tobacco companies in New Zealand.
- The factors influencing the development of New Zealand policies on tobacco retailing, particularly the role of the tobacco and retailing industries.
- The retailer and tobacco industry arguments and tactics, and health counter-arguments that have been used in New Zealand and elsewhere.
- Recent experiences of those jurisdictions that have introduced or are about to introduce point of sale (POS) display bans and other significant retail interventions.
- The experience in Australia, where many of the factors relevant to the regulation of tobacco retailing are similar to those in New Zealand.

The major focus within these areas is on retail displays, but attention is also given to policies such as retail licensing. The report does not cover the regulation or politics of youth tobacco supply.

The areas covered are:

- The structure of the New Zealand tobacco retail industry, and the relationships between retailers and tobacco manufacturers (sections 3.1, 3.2, and 3.4).
- The public positions taken by the New Zealand government, and political parties and organisations (section 3.3).
- Commercial policies of the tobacco industry in New Zealand, and retailers. This includes the focus by tobacco manufacturing companies on marketing through the retail sector (section 4.1).
- Industry reactions and responses to proposed changes in the regulation of sales of tobacco products in New Zealand and elsewhere (sections 4.2, 4.3).
- The advocacy and regulatory experiences and arguments in other countries (section 5).

2 Methods

2.1 Documentary research

The documentary sources used included:

- Submissions to the Health Select Committee 2001, from the tobacco industry and related businesses. Some were obtained from the Smokefree Coalition this year, and others from attendees of hearings in 2001-2002. Without a complete list of submissions, it is not clear whether all such submissions were covered.
- The Tobacco.org, Legacy and the USCF BAT archive websites for internal tobacco industry documents were searched using a large range of search words, including 'Zealand', 'Petone', 'BP', 'Shell', 'supermarkets', 'retail' and 'marketing'.
- The websites of the retail trade organisations were searched to obtain information on the policies and views of these organisations on POS marketing. The organisations included the New Zealand Association of Convenience Stores, the National Association of Retail Grocers and Supermarkets of New Zealand, Foodstuffs, Progressive Enterprises and Woolworths Australia.
- Parliamentary reports: The 2003 Health Select committee report on the Smoke-free Environments (Enhanced Protection) Amendment Bill.
- An Official Information Act request was made in June for 21 documents in Ministry of Health files. Fifteen were received on November 29, 2007, and six were withheld from release.
- Media reports in newspapers and trade magazines: The four principal New Zealand retail trade journals (*C-Store*, *New Zealand Retail*, *Grocers' Review*, *Retail Today/FMCG*) were hand-searched for the period from 1999-June 2007 for articles or advertisements mentioning tobacco companies, products or marketing. The New Zealand region of the Factiva database was searched from 1999, using the words 'tobacco', 'smoking', 'retail' and 'marketing'.
- Literature on developments in tobacco market regulation and smoking: Medline and Google Scholar searches were made, using the words 'tobacco', 'smoking', 'retail' and 'marketing'.

The search for and analysis of the material was guided by several themes. These formed around issues that arose in the documents; in particular those raised by the retail sector, in the course of changes in the regulation of the market for tobacco products in New Zealand. Developments in Canada, Iceland, Ireland, Thailand and Australia were studied because of their progress towards retail display bans in recent years.

2.2 Interviews

In preparation for telephone interviews with health officials and advocates in Canada, Australia, and Ireland, searches for relevant documents were made, using the websites of health authorities and health advocacy organizations in these countries. The Factiva database of media items was searched from 1999 for each country, using the words 'tobacco', 'smoking', 'retail' and 'marketing'. Medline and Google Scholar searches were made for literature on developments in tobacco retail market regulation in the

countries, using the words ‘tobacco’, ‘smoking’, ‘retail’ and ‘marketing’. This material was used in the preparation of a preliminary report on the documentary evidence, and in preparing chronologies for each country.

The documentary evidence was used to prepare a semi-structured interview schedule (adapted for each country). While a number of questions addressed particular topics (the groups involved, tactics, arguments used, implementation, and evaluations) the interview approach allowed interviewees to raise aspects that the interviewer might not otherwise have canvassed. At the conclusion of the interview, further open questions were used to identify topic areas that had not been explored.

The purposive selection of potential interviewees was made by reference to the documents found, and in consultation with researchers and advocates in New Zealand and elsewhere who had had some contact with tobacco control workers in the target countries. It was also guided by recommendations from the initial interviewees in each country. The criteria for selection included active involvement in some aspect of tobacco retailing regulation, or particular knowledge of aspects of tobacco retailing regulation.

The interviewees were approached by email, and an interview time arranged. For Canada, five were emailed, with one non-reply, one unavailable (moving) and three interviewed. For Ireland, four were emailed, one was unavailable and three were interviewed. For Australia, seven were emailed, two were unavailable, one email address was no longer valid, and four were interviewed. The interviewees included five health advocates and five officials. However, one advocate was an ex-official, and three officials had either worked as advocates in the past, or were also active in advocacy organisations in addition to their official jobs.

The participants were promised anonymity, as the interview purpose was to identify the issues and experiences in the countries examined, rather than ascribe information and opinions to particular people or organisations. The ten interviews took an average of about 30-40 minutes and were recorded to allow transcription of the data. Sheena Hudson and George Thomson conducted the interviews.

Interviewees provided further documents, and suggested further documentary sources. These included the parliamentary records for jurisdictions in the three countries, some of which could be searched electronically.

The transcripts were analysed for issues and themes. Nearly all interviewees made general recommendations for health sector work on tobacco retail restrictions and licensing.

3 Results - Background and Context

The section covers the international setting for tobacco retailing (sections 3.1, 3.2). It then describes the background of New Zealand legislation and political statements on tobacco retailing up to 2007 (3.3). Section 3.4 describes the types of tobacco retailers in New Zealand, and aspects of the role of tobacco in the overall retailing scene.

3.1 International trends in tobacco retailing and regulation

The attitudes and behaviour of tobacco retailers and manufacturers operating in New Zealand reflect trends evident elsewhere in tobacco product marketing. These trends result from increased restrictions on other forms of tobacco marketing, such as advertising and sponsorship, and the increased awareness by manufacturers of retailing's effectiveness. These international trends have increased the importance of the relationship between tobacco retailers and manufacturers, including exchanges of information, and payments for store display access.²⁻⁴ Tobacco industry retail sales representatives, responsible for ensuring that payments and incentives produce optimum display spaces and sales volumes for their brands, have become even more important.⁵

In 1995, British American Tobacco (BAT) recognised that the rival companies Philip Morris and RJ Reynolds had 'extensive consumer and trade research programmes worldwide' that helped them assist retailers to 'develop total category sales and profitability.' This was done by working with retailers to ensure they had the most profitable brands and variants, the optimal control of their tobacco inventory, the best use of the retail space, and the best service in terms of advice, product supply and equipment.⁶

In 1995, BAT spent 77 million pounds worldwide on point of sale material, and 184 million pounds on contract payments to retailers. It forecast investing almost two and a half billion pounds in 'below the line' (promotions, direct marketing, retail material) retail marketing spending during 1995-2000.⁶ Tobacco companies in the USA, Canada and Australia invest in point of sale space, display cabinets, volume discounts, and their commercial relationships with retailers.^{5, 7-10}

In Canada, tobacco companies' average payment to retailers increased by over 50% between early 2001 and early 2004.¹¹ Between 1996 and 2005, in the period that media advertising and sponsorship was banned, manufacturers' spending on display payments and display setups appears to have risen from \$C15.4 million to \$C118 million.^{12, 13} A BAT Canada announcement made at the time of the ban on tobacco sponsorship in 2003 stated that: '[retail] placement has become the focal point of Imperial Tobacco Canada's new [marketing] initiatives'.¹⁴

The importance of direct contact with retailers is shown by BAT's Canadian branch, which in 2006 decided to sell directly to retailers, in competition with wholesalers. BAT Canada reportedly planned to sell to retailers at a lower cost than wholesalers. The president of BAT Canada was reported as saying that the direct-to-retailer supply 'will enable us to be more effective at managing our products from manufacture to delivery and in protecting our competitive position.'¹⁵

Worldwide, tobacco companies invest in research on how best to reach customers at the point of purchase. For example, in the 1990s BAT's 'Project Insight' included research on impulse buying and shop layouts.¹⁶ In 1996, New Zealand was one of the test markets for the supply chain part of BAT's Project RIO.¹⁷ The worldwide aim of the overall Project Rio was to 'To reach our target consumers in the most efficient and effective manner by becoming the benchmark supplier to the trade within strategic channels in every market where we do business.'¹⁸ In 1997, BAT proposed spending 1.5 million pounds on worldwide Point of Purchase research.¹⁹

The high visibility and easy physical accessibility of tobacco brands and products in retail outlets helps reinforce smokers' loyalty, sensitises youth to brands, normalises the availability of tobacco products and may prompt impulse purchases.^{5, 7-10} During 1995, BAT research in three European countries found that 8% of cigarette purchases were made on impulse. This research, conducted in European supermarkets, indicated that up to 40% of tobacco purchasing was influenced by the retail environment, through impulse buying, buying more than intended, buying less, or, to a lesser extent, through brand switching. Switching brands appeared to account for 3% or less of the purchases.⁶

Retail display bans have recently been implemented in Iceland (2001), Thailand (2005) and six Canadian provinces and territories. The ban in Saskatchewan, Manitoba and the Northwest Territories applies to outlets frequented by those aged under 18. Ontario and Quebec plan to introduce display bans in 2008. Ireland has passed legislation, but has yet to announce a date for their retail display ban. Further detail on the experience and arguments in these overseas jurisdictions is given in section 5 below.

3.2 International strategic relationships between retailers and tobacco manufacturers

Industry documents reveal high level strategic partnerships developed between tobacco manufacturers and major national and multi-national retailers. Many of the relationships between the major retailers and the tobacco manufacturers appear to be determined at an international level. For instance, a British American Tobacco (BAT) international report of 1996 noted that there are 'key strategic international accounts trading across BAT Regional boundaries' which included the Shell, BP and Esso oil companies and a number of the very large international retail companies such as K Mart, Wal Mart and Carrefour.²⁰ Another 1996 BAT memo on marketing notes:

'A meeting with BP Oil Senior Management was held in Staines to discuss how BAT-BP can best exploit their mutual business. BP are very interested in working closely with BAT initially within the area of Space Management in their retail outlets.'²¹

The benefits tobacco manufacturers and retailers accrue from these relationships include (for the retailers) the profitability of tobacco sales,²⁰ and (for the manufacturers) the opportunity to ensure that their products are widely available in the retail environment, to get economies of scale, and to maximise the fit between

stores' customer profiles and manufacturers' marketing plans. The BAT 1996 report states:

‘The outlets belonging to these accounts normally attract a high share of ABC, YAUS and, accordingly, are key for BAT’s strategic international brands.’²⁰
(ABC and YAUS are customer groups - YUAS is Young Urban Adult Single, ABC refers to the top three of five income streams – A,B,C,D and E).

The BAT report saw the importance of these major retailers as growing, partly through alliances between the oil companies and other retailers, and partly by geographic expansion. The importance of the relationships can be seen in the following quotation from the BAT report:

‘BAT should foster close trading relationships with these key accounts at both Head Office and Regional level and seek to gain a competitive advantage by positioning itself as the ‘consultant’ within the tobacco category.’²⁰

An example of the value of such strategic relationships is a research project run by Wills Australia (BAT) with a ‘large petrol retailer/convenience’ operator (eg. a company such as British Petroleum). The project was able to show that a greater focus on tobacco product sales could help increase the overall sales per customer, and thus profit, for each retail site. The results also suggested that tobacco products were the leader in sales per square metre of retail space.²²

3.3 The background of NZ legislation and government policy 1990-2007

New Zealand has few, if any, legislated limits on *where* tobacco is sold, or on *who* can sell tobacco. Not only is tobacco available in virtually all dairies, convenience stores, service stations and supermarkets, but the only regulation on the location of sales outlets appears to have been imposed by District Health Boards, which have banned tobacco retail outlets on their premises.

The display of tobacco products by retailers was unregulated in New Zealand until 1990. Legislation that year prohibited the display of tobacco products within a shop if this could be seen from outside (s.23 (1)(a)).²³ In 1997, there was a further limitation on the types of notices within shops about the sale of tobacco products (s.23 (3,4)). There was also an attempt to prevent companies offering retailers incentives for selling tobacco, or placing it in particular display areas. Section 28 of the Act was amended so:

‘(2) no person may (b) offer to any retailer, any gift or cash rebate ... as an inducement or reward in relation to
(i) the purchase or sale of tobacco products by the retailer; ...
(iii) the location of tobacco products in a particular part of that retailer’s place of business.’

However, this seemed to be at least partly contradicted by another clause in Section 28:

‘(3) Nothing in ..(2) prohibits the giving of any normal trade discount or normal trade rebate.’

The apparent prevention of payments for the favourable location of tobacco products appears to have been (possibly legally) sidestepped by the tobacco manufacturers. There is some evidence that payments to retailers are made for display space, in apparent contravention of Section 28 (2 iii).^{24, 25} In 1999, Rothman New Zealand’s was reported as saying that their:

‘agreements, which varied from retailer to retailer, paid a rental to shopowners for the display practice.’²⁶

The managing director of BAT New Zealand (BATNZ) said that they had ‘similar - and totally legal – arrangements.’²⁶

The major event in the regulation of tobacco retail sales since the 1990 Smoke-free Environments Act was the passing of Smoke-free Environments Amendment Act 2003. The first step towards this major legislation was the member’s bill, introduced by Tukuoirangi Morgan in 1999. This bill included an amendment to the 1990 statute that would ban displays of tobacco products in retail stores, if these were either visible from outside the store and/or at the checkout counter or other points of sale in the store.²⁷ It is unclear whether the Bill aimed to ban all displays, and the wording allowed the interpretation of allowing displays away from points of sale.

In February 2000, the Minister of Health, Annette King, was reported as saying that she ‘supported banning point of sale displays of cigarettes’, saying tobacco companies had got around advertising bans by providing display counters at dairies that resulted in ‘one great big wall of cigarettes.’²⁸ In March and April 2000, the Ministry of Health provided advice to the Minister of Health on tobacco display and licensing options.^{29, 30}

The Minister then asked Ministry officials to discuss tobacco display options with ‘a selection of retail groups’ including the Retail Merchants Association, Foodstuffs, and the National Association of Retail Grocers and Supermarkets of NZ.³¹ She then proposed to the Social Policy and Health Committee of Cabinet the limited display rules that would be adopted by the government. A feature of the briefing to the Cabinet committee was the estimated compliance and implementation costs of change to retailers, of up to \$2.4 million.³¹ There appears to have been no recognition of the likely role of tobacco companies in providing new display units.

In the Supplementary Order Paper No. 148 of June 2001,³² the proposed ban was replaced by permission to display limited numbers of tobacco products. There were restrictions on the location (with regard to children’s products or other tobacco displays at other points of sale in the same store), and limits on the number of packages (100) and cartons (40), and on the number of packages or cartons of the same brand that could be displayed. There was also a requirement to have a sign ‘SMOKING KILLS Ka mate koe te kai hikareti’ displayed at points of sale where tobacco were displayed. The limits on the number of tobacco packs and cartons did not apply to tobacconists.

Evidence of the policy change during 2000-2001 is also evident from the 2003 report back to the House on the Smoke-free Environments Amendment Bill by the Health Select Committee.³³ This noted the incorporation in the revised bill of some (but not all) amendments suggested in the Supplementary Order Paper,³² including a revision of the draft clauses concerning the display of tobacco products in retail stores. The Select Committee in their 2003 report noted that:

‘The bill originally proposed banning completely the display of tobacco products. We consider the restriction proposed is an acceptable compromise. We note that the restriction was negotiated between the Ministry of Health and the retail industry.’³³

The Bill was finally passed in December 2003, with the display regulations to come into force in December 2004. The regulations continue to allow large displays of tobacco products, for instance up to 300 packets in a wall display behind a counter with three cash tills.³⁴

In 2006 the Associate Minister of Health, Damien O’Connor, stated he was determined to clamp down on retailer non-compliance with display regulations, as reported in a recent Otago University study, and had asked the ministry to follow this up.³⁵ In 2007, a petition to the government for a total display ban in stores was ‘welcomed’ by O’Connor, who noted that the government ‘was continuing to investigate the effectiveness’ of the existing controls. The Maori and Green Parties supported the idea of a total display ban, but the National Party, while it would share the health goal of ‘reducing tobacco use’, saw support for a total display ban as a matter for individual Member of Parliaments’ conscience.³⁶

On November 28, 2007, Government tabled a discussion document at a Select Committee hearing on the petition. The document was for release on December 3, but was on the Stay Display website (<http://www.staydisplays.co.nz/>) on November 29th. The options offered were: (i) The status quo with greater retailer education and enforcement; (ii) Limiting the *size* of the display, as well as the number of packets allowed, limiting the number of displays per shop to one, and requiring graphic health warnings; (iii) Either ban displays where there are those under 18, or ban displays completely.³⁷

3.4 The New Zealand tobacco retailing environment

3.4.1 The place of tobacco in New Zealand retailing

Tobacco is sold in nearly all New Zealand convenience stores (dairies, chain convenience stores, service stations), supermarkets, and in some bars, cafes and restaurants. BATNZ reported in 2007 that there are about 8600 tobacco retail outlets in New Zealand.³⁸ The Wills 1997 marketing plan stated that 72% of their total sales were through convenience stores. Within that group, 24% of the total was through ‘convenience organised’ (largely oil company service stations) and 48% of the total was in ‘independent convenience’ mostly small stores.³⁹ It should be noted that, at

that stage, Wills New Zealand had less than 20% of the market, and the spread of its sales between types of stores may not reflect the overall balance between the volumes of tobacco sales in store types.

In 2003, one trade publication reported that ‘61% of the \$1.4 billion a year tobacco and cigarette sales in New Zealand are through 5,000 dairies’.⁴⁰ If this report is correct, there may have been some shift in tobacco sales volumes to supermarkets since then. The NZTUS survey of 2006 reported that 25% of tobacco products currently smoked came from supermarkets, 23% from service stations, and 43% from dairies/other.⁴¹

For convenience stores, in 2002 tobacco contributed to almost 40% of sales, and 22% of gross profits.³⁸ In 2007, tobacco was reported to contribute 37% of convenience store revenue, and reportedly had a 14% gross profit margin (compared to 23.6% average margin). For convenience stores, tobacco sales were about equal to the sum of the next four items by percentage size; beverages (12%), telephone cards (11%), fast food (8%) and confectionary (7%).⁴²

The 14% gross profit margin indicates that \$100 of tobacco sales generate less gross profit for the stores than the average \$100 of overall sales. However, tobacco sales may give higher profit *per sale item*, due to the large size of the sales (\$9 per item or more compared to under \$4 for most soft drinks, pies and ice creams), and higher profits *per shop floor area unit or display area unit*.

For supermarkets, tobacco products represented about 3-4% of sales in 2001,⁴³ and, in 2005, tobacco was the top non-oil derived product sold in service stations.⁴⁴ Tobacco control in general (beyond retail restrictions) is of concern to oil companies. In 2005, a British Petroleum spokesperson argued that new New Zealand smokefree places laws had influenced falling sales: ‘We expect a six percent decrease in tobacco sales not because people are not buying from service stations but, because of the law, people will be forced to smoke less when they have to smoke outside.’⁴⁵ There appears to be some tension between profits for supermarkets from confectionary and tobacco, with some supermarket tobacco displays covered to enable confectionary to be displayed at checkouts.

There is a small but significant section of the retail market that might sell tobacco but does not. The Warehouse chain, while selling confectionary, does not sell tobacco, even at their hypermarkets. A tiny number of dairies (usually less than five at any one time) deliberately do not sell tobacco. In a 2006 survey of 288 convenience stores and supermarkets in the lower North Island, all sold tobacco.³⁴

The tobacco companies are significant, though not the largest, suppliers of products to the grocery industry (largely supermarkets). In 2006 BATNZ was the seventh largest, with almost \$222 million volume. Imperial Tobacco was the 32nd sized supplier, at \$54 million.⁴⁶

Besides the direct profit gained from tobacco sales, there may be indirect benefits to retailers that result from other purchases made during visits to purchase tobacco products. In addition to sales profits and related benefits, retailers’ concerns about further regulation may include the effect this could have on display location fees from

manufacturers, the convenience of supply, business and personal costs in inventory security, and their ability to comply with government regulations.

Tobacco manufacturers have been insistent that displays are needed, eg. stating that ‘you can’t sell if the consumer can’t see cigarettes because they are kept behind a perspex glare’.⁴⁷ On the other hand, the tobacco industry and retailers have claimed that cigarette buyers know what they intend to buy before they reach the store, and the tobacco retail display does no more than communicate to the availability and cost of brands.⁴⁷ This argument asserts that the effect of the product display is not to increase net sales in the overall market, or to offset declining demand, but to shift existing sales between brands, a function that has no effect on adult non-smokers.

In 2005, a radio interview with Carrick Graham of BATNZ demonstrated the tobacco industry’s reluctance to admit that retail displays help sell tobacco. Graham said: ‘I think it’s probably stretching it a bit far to say that just because the product is displayed it’s going to race out the door,’ but agreed that payments by BAT ensured sales ‘otherwise the product wouldn’t be displayed by anyone’. However, when asked ‘if you prominently display cigarettes in dairies, do you sell more?’, he answered: ‘No, I don’t think it does increase demand.’⁴⁸

3.4.2 Tobacco retailers and representative organisations in New Zealand

Large groups

Tobacco retailing in New Zealand involves the two major supermarket groups (Foodstuffs and Progressive Enterprises), and the four main oil companies (BP, Mobil, Shell, and Caltex).

Foodstuffs New Zealand operates New World, Pak’n Save, and Write Price supermarkets, and is essentially a retailers’ cooperative (collectively in New Zealand’s top ten companies). The three regional groups that make up Foodstuffs had a 2004 turnover of over \$6000 million (about half of the New Zealand supermarket turnover), with over \$1600 million of assets.⁴⁹ In addition, Foodstuffs controls three wholesalers (Gilmours, Toops and Trents), which distribute tobacco to supermarkets and convenience stores (see Appendix One). It also operates the Four Square and On The Spot convenience stores.⁵⁰

Progressive Enterprises is owned by Woolworths Australia, and operates Woolworths, Foodtown, Countdown, SuperValue, FreshChoice, Big Fresh and Price Chopper stores, with about 45% of the New Zealand supermarket volume (ie at least \$5000 million annual turnover). The size of their parent company is indicated by Woolworths Australia’s 2006 turnover of over \$A38 billion.⁵¹

It is likely that there may soon be penetration of the New Zealand retail tobacco market by the even larger US and European-based supermarket chains. This could come through a takeover of Progressive Enterprises, and/or a move to open competing stores. Aldi, a large German-based chain, is at present expanding in Australia.⁵²

Besides the wholesalers controlled by Foodstuffs, other tobacco wholesalers and distributors include Red Arrow.

Organisations

There are a number of different organisations representing retailers. These include the New Zealand Association of Convenience Stores (NZACS), and NARGON, the National Association of Retail Grocers and Supermarkets of New Zealand. NARGON is a major lobbyist with government on behalf of tobacco retailers. Other groups are the New Zealand Retailers' Association, and the Retailers' and Mixed Businesses' Association of New Zealand. While there have been New Zealand meetings of NZACS, (and the New Zealand chapter of the Australasian Association of Convenience Stores),⁵³ the NZACS website has a Melbourne address as its contact point.

Big versus small stores

Small retailers in New Zealand (and in many other countries) are increasingly exposed to competition from larger stores and supermarket chains, and also, as some retailers see it, from the service station stores.⁵⁴ The changes in retailing include the increasing 'blurring of retail channels'.⁴⁵

In comparison to small retailers, big stores sell a wide and expanding range of products, including alcohol and (increasingly) fuel, and thus cigarette sales comprise a smaller proportion of total revenue. Big stores have a larger business to absorb any costs associated with tobacco regulation. Larger stores have more checkout points, and a greater ability to display a wider range of products.

General concern about the ability of small New Zealand shops to survive against competition from large operators has prompted retail publication comments such as: 'Dairies are being squashed by supermarkets that are now open 24/7 and fuel stations that incorporate a convenience store' and asked 'Are dairies doomed to die?'.⁴⁵ The answer in the article was that these stores had special advantages enabling them to survive and flourish, including convenience, availability, rapid purchase, personal service, and location, on which they could capitalise.

3.4.3 Strategic relationships between tobacco manufacturers and NZ retailers

The international strategic relationships between tobacco manufacturers and retail groups are evident in New Zealand. For example, the Wills New Zealand (the then BAT firm in New Zealand) Trade Marketing Plan for 1997-1999 notes that there was an agreement with the Foodstuffs supermarket group, and that Wills intended to 'drive' the agreement 'to gain share improvement in this channel'.³⁹ The plan noted that while a 'category plan' was 'in place with Shell, this concept needs to be extended', that Wills intended to 'build relationship with BP' and 'grow relationships with Mobil and Caltex.' The plan indicated that Wills would 'seek to develop partnering relationships with Woolworth's group'.

Tobacco companies have been active in the New Zealand chapter of the Australasian Association of Convenience Stores, with John Anderson of BATNZ serving on the chapter's management committee in 2001.⁵³

3.5 Summary of the international and local context

There is an increasing worldwide focus within tobacco marketing on the retail environment. This focus is supported by research for the tobacco companies, and by their continual development of relationships with all levels of retailers.

In New Zealand, there is a limited number of tobacco retail restrictions, allowing the over 8000 retailers to continue with displays of up to 300 cigarette packets or more. Virtually all dairies, supermarkets, and service stations sell tobacco. About half the tobacco sold in New Zealand is controlled in some way by the two supermarket groups (Progressive and Foodstuffs) and the four oil companies.

While tobacco products have a lower than average gross profit margin per dollar compared to average margins, they may have a much higher profit per shop area unit. Tobacco sales are significant for convenience stores, on average constituting almost 40% of their trade. New Zealand government attempts to prevent tobacco company payments to retailers, to carry or display tobacco products, appear to have failed.

4 Results: Industry and retailer activities and arguments

Section 4.1 examines efforts made by tobacco manufacturers to use the retail environment in New Zealand to increase sales and build relationships with retailers. Section 4.2 outlines the main business sector arguments about tobacco sales regulation. Section 4.3 examines some of the political tactics used by the industry and retailers in New Zealand.

This report does not aim to provide coverage of evidence from the health sector for limiting retail tobacco marketing. Examples of health sector arguments are that (i) tobacco displays reduce the ability of smokers to quit, (ii) reduce the ability of former smokers to stay smokefree, and (iii) expose children and youth are exposed to point-of-sale advertising and promotions, thereby increasing the likelihood that they will smoke.^{55, 56} Arguments for a display ban as the optimal display option include:

- The option is the most consistent with health and other government aims. Any display erodes the ability of government to achieve its health, social and economic aims.
- The option is the simplest, and therefore easiest and most cost-effective to implement by health authorities.

A thoughtful summary of arguments that counter tobacco industry and retailer arguments is provided in the Tasmanian government 2006 proposals, which outline at least nine points whose application extends beyond Australia.⁵⁷ A separate summary by us of some counterarguments to met the points that the tobacco industry and retailers make.

A number of other governments have taken stances against retail tobacco displays. For instance, the Canadian Government, through Health Canada, appears to be view retail tobacco displays as contravening a purpose of the Canadian *Tobacco Act*: ‘to protect young persons and others from inducements to use tobacco products and the consequent dependence on them.’ Health Canada states that the ‘ubiquitous presence’ of promotional efforts such as retail displays ‘means that they reach young people, including former smokers and smokers trying to quit.’¹³

4.1 Industry efforts to improve their retail marketing and ties with retailers

The retail environment is increasingly seen as the primary point of communication between the tobacco industry and consumers in NZ. Tobacco companies’ interest in this relationship extends back to the 1970s or beyond,⁵⁸ as companies have reached for ‘the heart of the retail business.’¹⁰ In 1997, BAT New Zealand spent \$3 million in retail ‘trade investment’, and \$677,000 on ‘hardware’ for retail outlets (eg. display stands).³⁹

Even before regulation curtailing traditional mass media advertising by them, the industry had incentives to develop retail relationships in order to fine tune their marketing activities. As in other markets, the emphasis in New Zealand has increased on ‘push marketing’ (e.g. sales calls, trade allowances, slotting fees, display fees, price discounts) rather than advertising and sponsorship, which became less effective

once media advertising had been prohibited.^{5, 10, 59, 60} The retail mechanisms reflected basic elements of marketing policy, described in 1998 by Rothmans New Zealand as critical to driving sales. These included internal service and convenience for shoppers, including displays, which fostered the perception that a wide range of brands was available. Industry involvement and assistance included providing the means to develop this service and convenience.⁴⁷

The importance of retail marketing efforts for tobacco companies can be seen in the Wills New Zealand Brand Marketing Plan for 1997-1999. For instance, of the nine planned marketing activities listed for the Benson & Hedges brand, five involved retail outlets. These activities included 'stock presence campaigns in all relevant channels' and 'value added offers'.⁶¹ For roll your own tobacco, the first planned activity was to 'launch partners in profit as a category management tool ... with Convenience and Independent Grocery.'⁶¹ By 1997, the means to get sales for Wills included the placement of over 600 'back wall units' (presumably display units where Wills's brands would get preferred display positions).³⁹ The 1997 Wills Trade Marketing Plan noted that 'Wills' impulse [buying] units [are] now seen as leading edge in Grocery.'³⁹ In 2005, BATNZ started to pay the retail trade magazine C-Store for a column space called 'Tobacco issues'. This was described by the magazine editor as 'a vehicle to communicate with retailers.' The Ministry of Health was reported to be investigating the status of the column.⁶²

Steps by BATNZ to sustain their sales in the face of a declining market included:

- *Supply chain efforts:* These seek improved efficiency and market control in distribution. Recent developments include a Quatro Four online supply chain system being tested in NZ in February 2005.⁶³ This is an ordering and sales control system, which is used for communicating with suppliers and tracking consumer buying patterns. The costs are paid for by suppliers rather than retailers. In 2007, BATNZ appears to be setting up a separate direct manufacturer-small retailer distribution system that will bypass tobacco wholesalers such as Red Arrow. A BATNZ advertisement informed retailers of the new arrangement.⁶⁴
- *POS efforts:* Restrictions on tobacco product advertising and sponsorship in New Zealand (as in some other countries) sharpened the focus on the design and management of POS activities, where communication and influence over tobacco sales (volume and brand choice, stimulus to impulse buying) is at its most effective.^{5, 10, 59, 60} BATNZ has been building up POS activities to gain 'cut through and a point of difference at retail channels',³⁹ and promoted sales using POS displays to prompt impulse buying. The strategy to expand market share for RYOs included working with retailer 'partners in profit' in the trade to help retailers better sell tobacco.³⁹
- *Type of product efforts:* New Zealand premium brands were promoted to retailers as having a much higher profit margin, in a market where revenue has tended to come from sales volume rather than the size of the profit margin.^{42, 65} On the other hand, the display of price information was suggested in the Australasian Association of Convenience Stores (AACS) magazine as a means of promoting lower cost brands in local stores and attracting price sensitive customers away from larger outlets.⁶⁶

These efforts included advice and support offered to retailers, on ways to improve their business:

- Ways to sell and to stock and display products matching customer bases ('channelling demographics') as well as capitalising on the location of small stores in neighbourhoods.^{67, 68}
- Selling premium products, whose buyers are less price sensitive and more affluent, or are giving themselves a 'special treat –usually an impulse purchase.'⁶⁵
- Display of price information and price discounting for high volumes (cartons) to attract business from price sensitive customers.
- Advice re maximising use of store space.⁶⁷
- Assistance with display including secure display units.⁶⁹
- Leasing of store space to display cigarettes (see section 3.3 above)

This focus on the retail environment involved considerable contact between tobacco manufacturer marketing staff and retailers. In conversations with retailers while conducting the 2006 Otago University survey on compliance of tobacco display requirements, the survey staff noted a number of routine processes and incentives by tobacco companies:

'Several retailers noted that tobacco companies checked their displays. One commented that tobacco companies checked their displays once a week, whilst another commented that the tobacco companies visited the stores once a month to check the displays.'³⁴

However, the manufacturers appear to have been careful that *compliance* with tobacco retail regulations was seen as a retailer responsibility, and not associated in any way with them. BATNZ strongly recommended that any doubts, disagreement or confusion about compliance be addressed by asking the Ministry of Health directly.

4.2 Industry arguments on tobacco retailing restrictions

This section first details some general arguments (4.2.1) and then describes in more detail some of the current arguments put forward on the Stay Displays website in New Zealand (4.2.2).

4.2.1 General arguments

The general array of arguments by the tobacco industry and retailers about retail restrictions, in New Zealand and elsewhere, includes:

Argument One

That tobacco is a ‘normal’ and ‘legal’ product, and thus display restrictions are unjustified.⁷⁰

Worldwide, tobacco retailers have attempted to position themselves as responsible businesses, while working with tobacco companies to try to increase sales.^{10, 71} Proposed restrictions or bans on tobacco displays have been described by them as commercial ‘confiscation’ by health authorities, and as a ‘paternalistic “it’s for your own good” approach’.⁷² The New Zealand website Stay Display describes a display ban as ‘draconian’. (http://www.staydisplays.co.nz/the_issue.htm)

Argument Two

There would be financial loss to retailers from display restrictions and bans, resulting from lost tobacco and other sales, lost payments from tobacco companies, and costs of capital and other elements of implementing changes.^{59, 73} The consequences would include ruined businesses and staff losses. This is a long standing theme. For instance in Australia:

‘The Federation of Australian Retail Tobacco Trade Associations noted that such restrictions would deprive many retail outlets of a significant source of their income. The Federation stated that ‘in some cases the loss of the right to sell these products would be catastrophic. In others, it would mean loss of income and possible reductions in staff numbers’.^{74p.86}

In Canada, retailers predicted profit losses.⁷⁵⁻⁷⁸ The New Zealand website Stay Display states that a display ban would: ‘hit the lowest building blocks of the economy and could severely restrict retailers, even put some out of work ... [and retailers would] incur significant costs changing their shop layout and furniture’. (<http://www.staydisplays.co.nz/concerns.htm>)

Argument Three

That restrictions or bans on tobacco display would disadvantage smaller retail outlets compared to larger ones. This theme has emerged in New Zealand, as well as Australia and Canada. For instance, the Australasian Association of Convenience Stores stated in 2001 the New Zealand Health Select committee was ‘unable to appreciate the aggressive impact of the proposed legislation on convenience and service station stores’.⁷⁹ In 2003, one trade report noted, ‘Behind the uneasiness felt by small retailers [about new display restrictions] is a fear that they will lose money and perhaps be forced to close their source of livelihood’.⁴⁰ In 2004, British American Tobacco New Zealand (BATNZ) suggested that the demands of the new 2003 legislation ‘will impact on the little owner/operator who doesn’t have much display space’.⁸⁰

One of the arguments made by small retailers suggests that a ban on displays would mean that smokers could not be sure that small shops would carry tobacco,

and so would be more likely to purchase tobacco from supermarkets or service station chains where they could be more certain that tobacco products would be stocked. The argument then suggests that the consequence of being bypassed by smokers would ruin many small shops (not just lower profits), and thus there would be lost jobs, failed businesses, and ensuing loss of services to the suburban and rural areas. The New Zealand website Stay Display states ‘A ban would distort free competition because consumers could perceive bigger retail outlets have a wider range of products ... [and] could easily result in less income for smaller, locally owned retailers, many of who already struggle and work very hard to keep their businesses viable’. (<http://www.staydisplays.co.nz/concerns.htm>)

The National Business Manager of Imperial Tobacco Australia has articulated the argument:

‘Customers expect a supermarket to stock a big range but in a convenience store, if they don't see their preferred variant, they may assume it is not there’.⁸¹

In Queensland, the 2004 proposal to have a limit of one square metre display of tobacco products was described by retail group officials as having ‘disastrous economic consequences’, which would ‘crush the local store’, with a ‘potential cost of thousands of Queensland jobs’.⁸²

In Canada, the Ontario Convenience Store Association suggested that ‘30% to 40% of all c-stores will shut their doors’ if there a display ban was introduced.^{78p.47} The 7-Eleven Stores convenience store chain argued that:

‘The logistical, technical, human resource and technological implications of making substantial changes to [tobacco storage at the point of sale of small shops] are significant relative to the size and economic realities of these establishments’.⁷⁶

The Canadian Federation of Independent Business argued:

‘Many small businesses simply do not have the room to move their existing stock of cigarettes under the counter. This space is already occupied with computer equipment, other supplies to the cash register and often a safe. Lacking the extra counter space, many businesses will be faced with storing the cigarettes in a separate room which raises additional concerns related to safety’.⁷⁶

Argument Four

There is a ‘lack of evidence’ about the health gains from display bans or restrictions. Variations on this argument include assertions that displays have no effect on anyone but smokers, do not affect children, do not increase sales, and that displays are not ‘advertising’.^{13, 70, 72} Imperial Tobacco New Zealand Ltd stated in 2001 that they were not aware of any evidence that reducing the number

of products displayed would result in a reduction of tobacco consumption or in the initiation of smoking.⁸³

In 2006 the NATR Chairman, David Killeen (also Executive Director, Australian Association of Convenience Stores) was reported as saying:

‘Restrictions assume that display encourages people to start buying tobacco products and to start smoking.

We have asked different state governments for evidence of this but we have never received anything that justifies display restrictions. On the contrary, 80% of the adult population does not smoke and they pass by displays all the time without changing their behaviour.

We believe adult smokers make the decision to smoke (and what to smoke) miles away from the shop, and when they get to the shop they know what they want. The display means they can see if their selection is available’.⁸¹

The New Zealand website Stay Display suggests:

‘There is currently no reliable evidence showing a ban would be effective – There is no proven link between tobacco displays and reduced levels of smoking, particularly among youth. ... The display itself has no real effect on people’s buying patterns. ... Similar bans are already in place in other countries, including Canada and Iceland. It is too early to say if it works, but early evidence suggests it does not.’
(<http://www.staydisplays.co.nz/concerns.htm>)

‘informal assessments suggest no indications that a point of sale marketing ban is having the desired affect of reducing tobacco consumption in either country’
(<http://www.staydisplays.co.nz/qanda.htm>)

Argument Five

That there would be increased in-store theft and risk to retail staff, due to the ‘distraction’ of using out-of-sight tobacco storage. The New Zealand website Stay Display suggests that a display ban could cause ‘a higher risk of shoplifting. If we have to spend longer turning our backs on customers, we believe the shoplifting rate will increase’ (<http://www.staydisplays.co.nz/concerns.htm>)

4.2.2 Arguments on the Stay Displays website

This section details the further arguments against a display ban that are used by New Zealand tobacco retailers on the Stay Display website (<http://www.staydisplays.co.nz/>) and that do not directly duplicate those above. The website appears to have started to focus retailer concerns in November 2007.

General arguments used on the website include that a display ban would:

- Add to ‘our obligations as retailers’.
- That a display ban ‘is not a smoking issue. It is about our rights as retailers to maintain autonomy over our own businesses and how we run them, ...’ (http://www.staydisplays.co.nz/the_issue.htm)

The argument that a display ban ‘is not a smoking issue’ repeats Argument One in 4.2.1 above. Here, an added dimension is the phrase ‘our rights as retailers to maintain autonomy over our own businesses’. This suggests that selling tobacco is a ‘right’.

Particular arguments used on the website include:

Practicality and effectiveness

- ‘There are less restrictive and more effective ways of reducing smoking such as strict enforcement of minimum age laws which all responsible retailers promote and enforce.’
- The alleged practical difficulties: ‘We cannot spend our day bending down to get products from under the counter nor can be continually lift heavy shutters each time we sell one of these products.’ ‘If we are made to place tobacco products under the counter, we are likely to be bending over dozens of times a day just to sell one product.’ The ‘bending’ argument was also used in attempts to prevent the Irish legislation for a display ban.
- ‘A ban might make tobacco products “forbidden fruit” in the eyes of some youth, making the ban counter-productive.’

Customer rights and needs

- A display ban ‘would deprive customers of their basic right to information on products for sale, and the pricing of those products ... [and displays are about] ‘the right to inform our customers of the range and price of products we sell’
- ‘Consumers would lose the opportunity to choose from a full range of tobacco products.’

Health information

- A display ban ‘would deprive health authorities and retailers of the ability to inform customers of the health risks of tobacco products before they are purchased.’ Retailers seek ‘the opportunity to inform customers of the health risks posed by tobacco products before they purchase’. This appears to relate to the graphic warnings on packages, rather than warnings separate from tobacco displays.

Other

- ‘A ban may lead to an increase in sales of illegal tobacco products.’

4.3 Industry political tactics on tobacco retailing in New Zealand

Internationally, there appears to be very little published literature on the arguments and political tactics around retail tobacco displays, although more on retail supply to youth. This limited literature suggests that tobacco manufacturers attempt to position themselves as responsible businesses, while vigorously using the POS environment to attempt to increase sales.^{10, 71}

While tobacco companies and the tobacco retail industry consistently oppose retail regulation, they also attempt to position themselves as working with government. For instance, in 2000, a BATNZ spokesperson said the company had been involved in talks with the government ‘in order to improve education for retailers on cigarette retail regulations.’⁸⁴

The tobacco industry’s use of their retailer relationships includes the joint opposition to tobacco control measures. For instance, in 1995, Wills New Zealand conducted a survey ‘regarding the Government’s proposals to change the Smoke-free Environments Act’. According to a letter from Wills sent to retailers, ‘nearly 2300 retailers participated in the survey.’⁸⁵ The letter encouraged the retailers to continue to ‘make their views known to Parliamentarians.’

The use of retailers to express opinions favourable to the tobacco industry should be seen in the context of a long history of the aiding of allies against tobacco regulation. This history includes the extensive use of front groups.⁸⁶⁻⁸⁹

4.3.1 *The lobby and submission process during 2000-2002*

In 2001 the tobacco manufacturers in New Zealand helped form a coalition of retailers, the New Zealand branch of the Australasian Association of Convenience Stores (AACS).⁹⁰ BATNZ, the founding driver of the coalition, urged retailers to make representations to the government and Members of Parliament on the proposed changes to retail display regulations, and took out advertising space in retail magazines to promote this action.⁹¹ This appears to have been part of its international and local policy (commercial and political) of forming close relationships with the retail sector (see sections 3.2; 3.4.3). The policy paid off, with support for tobacco industry positions from the retail sector, who outlined their views in trade publications and submissions to the Health Select Committee.

BATNZ took out a large advertisement on C-Store in October and November 2001 to describe how the new legislation would affect retailers.⁹¹ This put forward the idea that New Zealand already had ‘one of the most restrictive tobacco display regimes in the world’.

4.4 Summary of industry and retailer activity and arguments

Tobacco companies in New Zealand have a wide range of activities to improve tobacco marketing in shops. These include close attention to effective supply systems to the shops, advice on the most profitable brands for each shop, help with and payments for display space, and help on shop inventory control.

The tobacco industry and retailers attempt to portray tobacco displays as changing brand preferences, but not increasing overall sales. They have consistently opposed retail display restrictions or bans, and retail health warnings, portraying them as causing difficulties for businesses, unjustified, and/or ineffective.

5 Overseas experience

This section covers the experience in Canada (section 5.1), Ireland (5.2), Australia (5.3) and Thailand and Iceland (5.4, 5.5). Section 5.6 covers the experience and issues around the licensing of tobacco retail sales (which is also covered in 5.1.7 and 5.3.2).

5.1 Canada

5.1.1 Background

After a number of steps during the previous 15 years, most tobacco advertising and sponsorship was banned in Canada by 2003.⁹² An apparent consequence of this was an increase in the importance of the retail marketing environment. For example, between 1996 and 2005, tobacco manufacturers' expenditure on retail display payments and display setups appears to have risen from \$C15.4 million to \$C118 million.^{12, 13} A BAT Canada announcement, made at the time of the ban on tobacco sponsorship in 2003, stated that 'placement has become the focal point of Imperial Tobacco Canada's new [marketing] initiatives'.¹⁴

The increased importance of the retail marketing environment has meant a greater focus by tobacco companies on their relationships with retailers. The importance of direct contact with retailers is shown by BAT's Canadian company in 2006. BAT Canada decided to compete head-on with wholesalers by selling directly to retailers, and was reportedly planning to sell to retailers at a lower cost than wholesalers. The president of BAT Canada was reported as saying that the direct-to-retailer supply 'will enable us to be more effective at managing our products from manufacture to delivery and in protecting our competitive position'.¹⁵ This increased direct contact with retailers is similar to a move by BATNZ to set up a separate direct manufacturer-small retailer distribution system that will bypass tobacco wholesalers.⁶⁴

Because of the focus within Health Canada on tobacco control research, there is considerable research information on the place of tobacco retailing in smoking. This evidence (from surveys) indicates that convenience, particularly proximity to smokers' homes, is an important criterion that governs where they purchase tobacco products. This finding is particularly striking for those aged under 35 years.⁹³

Survey evidence from Health Canada also reveals the public (including smokers), support retail display restrictions and tobacco retail licensing. Over 75% of those surveyed in 2005 considered tobacco displays a form of advertising, and over half agreed that they would encourage young people to smoke.⁹³ Seventeen percent of smokers aged 18-34 said that displays made them want to purchase cigarettes more often.

Proposals for tobacco retail display restrictions or bans arose at the national level in 1999, with a Health Canada discussion paper and consultation process. The health sector response in 1999 included calls for progress to display bans.¹³

5.1.2 *The experience since 1999*

Retail display bans have been implemented in six Canadian provinces and territories since 2002 (Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island, Nunavut and the Northwest Territories). The ban in Saskatchewan, Manitoba and the Northwest Territories is for places that permit people under 18. Ontario, Quebec and British Columbia plan to introduce display bans in 2008. Alberta's law is receiving final approval and is expected to come into force in 2008.

The adoption of display bans in Canadian provinces has generally occurred through single steps in legislation, from a base of much less retail regulation than currently exists in New Zealand. The main exception has been Ontario, where (besides the municipal bylaws) a two-stage process occurred, with some restrictions introduced in May 2006 and the display ban due in May 2008.

5.1.3 *Saskatchewan*

Much of the information available about the experience in Canada is from Saskatchewan, as it is the province where tobacco displays have been banned for the longest period. The legislation there was reported to have come from an bi-partisan committee recommendation, and to have been passed unanimously by the provincial parliament.⁹⁴ The ban in Saskatchewan began in March 2002, and an evaluation in mid 2002 by AC Nielson for Health Canada found that over 90% of Saskatchewan city retailers complied with the tobacco retail display ban.⁹⁵

After a period of allowing displays again during court appeals (October 2003-January 2005), the displays were banned again by a court decision upholding the law. During the 2003-2005 period when displays were allowed, over 30% of retailers were reported to have not displayed tobacco products, partly because of the increased security gained by keeping all such products out of sight.⁷⁵ By 2006, there were tobacco displays in less than 2% of shops surveyed in the main Saskatchewan cities.⁹⁶

Financial and other effects

The impact of the display ban on payments to Saskatchewan retailers from tobacco companies, has been tracked by Health Canada. In the July-December period before the 2002 ban, the total payments for a six month period were over \$C800,000, and this dropped to \$C450,000 for July-December 2002. The payments rose back to \$874,000 for the period in 2004, but after the replacement of the ban in January 2005, the payments did not drop significantly, as in January-June the payments were \$857,000.^{13 pp.11-12} The annual payments to Saskatchewan retailers from tobacco companies that were reported to Health Canada dropped 3% between 2004 and 2005, and a further 8% between 2005 and 2006.⁹⁷ Thus tobacco companies appear to be continuing to pay retailers just to *handle and sell* their products, rather than to display them.

The six Health Canada tobacco enforcement officers in Saskatchewan by August 2002 reported they had found the restrictions resulted in 'minimal cost to retailers', with no stores closed and no staff laid off.⁹⁴ The Saskatchewan Coalition for Tobacco Reduction reported in April 2005 that there had been no thefts due to the ban, and that

any costs to retailers appeared to be minimal, with no stores closed, and no staff laid off.⁷⁵

The director of the Western Convenience Stores Association was reported in a retail magazine in 2006 to say that the Saskatchewan display ban ‘has not impaired sales’.^{78p.51} The Rothmans Benson & Hedges spokesperson was also reported then as saying ‘I do not believe the display ban will have a significant effect on total sales’.^{78p.51}

Health Canada reported that during the 2002-2003 display ban, 16% of retailers ‘prohibited young people from entering their premises’.^{13p.12} This includes bars. By 2007, enforcement officers were reported by an interviewee to estimate that, outside of bars, only approximately six to ten service stations and tobacconists in the province are age-restricted.

5.1.4 Other provinces

By November 2007, a tobacco retail display ban was in effect in Manitoba and Nunnavut (2005), Prince Edward Island (2006), and Nova Scotia and the Northwest Territories (2007). Nova Scotia’s new ban on retail display restricted storage in self-closing display cabinets showing only the health warning panels of tobacco product /cigarette packages.⁹⁸ In Alberta, Bill 45 banning retail tobacco displays is expected to pass in November 2007, and to come into force in 2008. The May 2008 retail ban in Quebec will allow a few speciality shops to continue displays, but bans all tobacco sales in colleges, universities, bars, restaurants and temporary locations. The ban at the same time in Ontario will be for all shops.⁹⁹

5.1.5 The arguments and tactics used by retailers and the tobacco industry

The response to the 1999 Health Canada paper included opposition from retailers and the tobacco industry on the basis of:

- The potential impacts on profits and employment.
- The alleged lack of evidence that display restrictions would affect smoking prevalence and consumption.¹³

The three main tobacco companies encouraged individual retailers and retailer groups to oppose display restrictions, predicting profit losses, and increased shoplifting of other products while staff were accessing tobacco products.⁷⁵⁻⁷⁸ The companies indicated that payments they made to retailers (ostensibly for display space) would be at risk; in addition, retailers would face extra costs for new display and storage equipment. Significant problems were predicted for the inventory control of retailers, who would allegedly have a reduced ability to maintain inventory (their ability to have sufficient stock on hand). This was because retailers suggested that they would have a smaller storage space for tobacco products.

BAT Canada was reported as stating that ‘even limiting the size of tobacco displays at point-of-sale or banning countertop displays would “make it next to impossible to communicate with customers about new products or changes in products”’,^{100p.20}

These tactics appear to have been very successful in stalling progress at a national level in 1999, and idea of display restrictions did not progress at the national level until 2006.

A group called the Canadian Coalition for Responsible Tobacco Retailing appears to be one of the fronts for the tobacco industry in opposing tobacco retail display bans. The Coalition combines with the tobacco companies to run a retail program called Operation ID, which describes itself as a ‘program designed to help retailers and their staff uphold the law and put an end to the illegal sale of tobacco to minors’. A number of grocery and convenience store associations are members of the Coalition.¹⁰¹ A subcommittee of the Coalition was active in opposing the Saskatchewan display ban.⁷⁵ Canadian tobacco retail groups have opposed tobacco control measures since 1988 or before, even where these are unrelated to retailing.^{78p.44} The potential for opposition to retail tobacco restrictions by other groups is indicated by the 1996 call for a slower pace of change by a large Canadian retail staff union.¹⁰²

Tobacco industry opposition to proposed tobacco control changes in Ontario, (which featured the display ban) included a ‘smokers’ rights group’: My Choice. This argued that the government was ‘out to punish smokers’ and ‘trampling on the rights of people to make their own choices about their lives.’ The group was in 2004 ‘launched with \$2.5 million from the Canadian Tobacco Manufacturers Council’.⁷⁷ The Ontario Convenience Store Association suggested that ‘30% to 40% of all c-stores will shut their doors’ if there was a display ban.^{78p.47} One of the particular arguments by convenience store groups in Ontario was that their staff would be at risk if they had to turn away from customers to access tobacco products.

Examples of the arguments used by retailers, speaking to the Manitoba Legislative Assembly Standing Committee on Law Amendments in 2002,⁷⁶ are from:

- The representative of the 7-Eleven Stores convenience store chain:

‘Tobacco products are, in most cases, housed near the busiest part of the store, adjacent to the cash registers, computers, links to gasoline pumps and other important equipment for security reasons. The logistical, technical, human resource and technological implications of making substantial changes to these parts of the store are significant relative to the size and economic realities of these establishments.

If the law contains provisions that preclude the display of tobacco, a legal product, not only are retailers faced with the cost of retrofit in the areas as described, but also the loss of income that the display of this product generates. The committee should be aware that displays are income generated for small business and are not isolated to tobacco displays. Other manufacturers pay display allowances to ensure their products are prominently displayed. The inclusion of such a section in the law would assume that youth will come to a retailer that sells tobacco products and the display would create an impulse to purchase tobacco.’

Shelly Wiseman of the Canadian Federation of Independent Business:

‘Many small businesses simply do not have the room to move their existing stock of cigarettes under the counter. This space is already occupied with computer equipment, other supplies to the cash register and often a safe.

Lacking the extra counter space, many businesses will be faced with storing the cigarettes in a separate room which raises additional concerns related to safety. The safety risk of clerks who will now have to retrieve cigarettes and leave the cash register unattended may prove to be a recipe for additional robberies and shoplifting. Business owners would not be able to afford to simply hire an additional employee to cover those employees who would need to retrieve the cigarettes from the other room.

Overall, we believe the main impact of the requirement will be to give large tobacco retailers an added advantage over small retailers and have no beneficial effect on underage tobacco consumption.’

- Luc Martial of the National Convenience Store Distributors Association:

‘Our concerns regarding good public policy development standards: The Non-Smokers Health Protection Act provides the Minister of Health (Mr. Chomiak) with the authority to act once the necessary research and policy foundation is in place. To the best of our knowledge this foundation has yet to be developed. Despite its good intentions, the Government's strong commitment to tobacco control does not in any way dispense the department from being thorough and accountable in its approach.

Aside from this necessary research and policy foundation, the Manitoba Health Department has yet to present any clear expectations regarding the proposed measures. Without any measurement tools or pre-established measurable results, the present initiative should not be allowed to move forward. Moving forward would be tantamount to irresponsible public policy development. ...

Our concerns regarding the impact on business community stakeholders: Wholesalers and retailers will be unjustifiably, unnecessarily penalized.

Considering the present highly competitive marketplace for hundreds of stores, the loss of tobacco manufacturers' display allowances, resulting from a prohibition on tobacco displays, will greatly impact their livelihoods. In the retail market of today every dollar of income is important. These small businesses, mostly located in rural areas, would be decimated by the loss of such a major revenue stream. For the ones for which that shortfall would not result in store closure in the short term, prices on all other product categories would have to be raised to compensate for losses, de facto undermining the operator's ability to effectively compete with larger corporate operations. In short, the proposed regulations would favour large corporations at the expense of independent ones owned by Manitobans. Repercussions at the retail level will carry over to distributors operating in Manitoba.’

Several themes can be seen in this last statement:

- The need to have ‘proof’ of policy effects and research on business and health outcomes before any change.
- The potential damage to rural stores.
- An appeal for small stores battling against big corporations

5.1.6 The evidence from interviews

Evidence and ideas about progressing retail display bans that emerged from the interviews and documentary sources included:

Health sector tactics

Interviewees stressed:

- The importance of mobilising widespread public support for a change. The display bans can be very effectively framed as protecting children. In Ontario, the development of local authority bylaws on tobacco control helped involve a wider range of people in tobacco control issues, and prepared the grounds for provincial legislation.
- The importance of demonstrating the commercial interests of tobacco companies as driving the opposition to display bans.
- The importance of the bi-partisan nature of the Saskatchewan display ban, with a recommendation from all-party parliamentary committee which was passed unanimously by the Legislative Assembly.⁹⁴
- The usefulness of having the data on payments from tobacco companies to retailers (as is required to be disclosed to government in Canada, for all marketing spending and planning) as this can show the nature of the relationship, and what happens after display bans.

Some particular successful health sector tactics included:

- Advocates enabled a number of children to speak and answer questions in the Ontario legislative hearings. They also made a video with children talking about their experience in shops. This was used to show to community groups and for use by the media (video clips).
- After March 2002, the use of the positive implementation experience in Saskatchewan, in persuading other provinces to follow suit.

Tobacco industry tactics and health sector responses

Interviewees summarized the arguments used by pro-tobacco groups in Canada since 1999 as:

- Financial harm to businesses.
- Increased in-store theft and risk to retail staff, due to the ‘distraction’ of using out of sight tobacco storage.
- The lack of evidence tying restrictions to better health (reduced sales).

The health sector responses were summarized as:

- Retailers *could* easily recover losses by adding a small extra margin to the sale price of tobacco products (in the order of a few cents per pack).
- The experience of Saskatchewan in 2002-2003, showed that:

- Retailers were not damaged in the short term.
- Theft and risks to staff did not increase.
- Implementation was easier than any group expected.

The interviewees stressed:

- The highly skilled and organised nature of tobacco industry tactics to oppose the retail display bans. This included:
 - In Saskatchewan, sending faxes to individual retailers, with information to provoke them to contact politicians and oppose the move. This was estimated to have cost \$C10,000.⁹⁴
 - The industry alleged that Saskatchewan retailers had used shower curtains to hide tobacco products, in an attempt to trivialise the issue. Saskatchewan tobacco control workers report that few if any retailers *had* used shower curtains.¹⁰³
 - The (incorrect) threat that retailers might lose all the tobacco company payments to the retailers, if there was a display ban.

Implementation issues and details

- After display bans, the remaining tobacco price lists and the signs prohibiting sales to minors may provide a signal of tobacco availability that is counterproductive to health aims. Product availability lists and price notices in shops should be banned or highly restricted. They could be made available as government approved catalogues, only in response to requests from customers.
- If tobacco sales are banned where minors are present, some retailers may ban minors to enable tobacco displays to continue (this rule allows an exception to the total ban of displays, and should be avoided). Interviewees stressed that no exceptions to display bans should be made for any type of store, including duty free ones.
- There is a need to eliminate the visibility of storage areas, where the products can be seen by customers when the areas are opened. Also, there is a need to ensure that the storage area does not become the signal of tobacco availability, by its prominence or design
- Tobacco sales can be separated from alcohol - Quebec and Nova Scotia legislation bans tobacco sales in places that have a licence to sell alcohol.

5.1.7 Retail tobacco licensing

While a number of provinces require licences to sell tobacco, at present the fee is nominal or non-existent. Ontario and Alberta arrange the licensing at the local authority level. Interviewees emphasised:

- The need for a substantial licence fee (possibly phased in). The size could help emphasise the serious harm and risks from the product, and its non-normality, and could offset immediate and downstream official and community costs. If the fee was sufficiently large, it could help reduce the number of tobacco outlets.
- Conditions on licences (besides a fee) could be used to limit the number of tobacco outlets.

5.1.8 Recommendations

The suggestions from those interviewed included:

- The need to educate policymakers and the public about the effects of tobacco displays (eg. to frame displays as a significant factor in youth smoking uptake).
- The need for pre-emptive education of retailers about the minimal short term financial impacts from display bans.
- The need for the health sector to learn of retailer and tobacco industry activities, and to devote resources to anticipating and pre-empting retailer and tobacco industry arguments.
- The need for an eventual stage of tobacco-only stores.

5.2 Ireland

5.2.1 *Background*

With the removal of tobacco manufacturing capacity from Ireland over the last ten years by the multinational owners, the tobacco industry has a relatively small presence in Ireland in terms of staff and capital investment (outside of brand values). The tobacco industry had, up to the 1990s, a relatively cordial relationship with the Irish Health Department, and had been consulted ‘on everything’. Ireland is one of the few countries to have held effective parliamentary inquiries into the tobacco industry. These took place in 1998-99 and in 2000-2001. The information from the inquiries, and the bi-partisan nature of the recommendations, has been important in forming the political support for rapid progress.

Internal tobacco industry documents produced at the 1999 inquiry helped erode the standing of the tobacco industry, and their ability to influence policy. The industry’s use of English industry officials, who appeared to condescend to the Irish parliamentarians at the inquiry, further damaged the industry’s standing.

In 2000, the parliamentary committee conducting the inquiries wrote to the tobacco companies operating in Ireland, asking for ‘complete documentation of what they knew about the dangers and addiction of tobacco—and when they knew it—as well as details of their marketing strategies, especially those aimed at young people’.¹⁰⁴ When the industry refused to provide the information, or to appear before the 2001 inquiry, tobacco companies’ credibility was further eroded. This meant that it was very difficult for any Irish politician to support industry arguments, as the tobacco companies had been seen to snub a bi-partisan parliamentary committee.

5.2.2 *The experience since 2000 in Ireland*

While a very small group of health advocates and officials had introduced tobacco control ideas to policymakers during the 1990s, these had not included specific ideas about a retail display ban. With the change of Health Minister in 2000 to Micheál Martin, there was a window of opportunity for change. The new minister was energetic, politically astute, ambitious and popular, and interested in tobacco control.

Significant tobacco control changes were presented and accepted as major gains that could be achieved by the Minister, with some options that would be seen as firsts at a national, European and international level. The Minister ‘ran with it’ with little or no opposition at a party level, and strong support from some officials.

At that stage, the conflicts over the part of the legislation regarding retail display appears to have been partly overshadowed by the larger struggle around smokefree bars. The legislation passed in March 2002 (amended in 2004) allows for a register of tobacco retailers and a registration fee, and requires retailers to ensure that tobacco products ‘are kept in a closed container or dispenser that is not visible or accessible’ (s.43) to customers (ie. a display ban). The implementation of these provisions has been on hold since then. There appears to be some provision for exemptions, but

exempted shops can be regulated on ‘the minimum size of premises’ and the exemption may require that *only* tobacco be sold on the premises (s.44).¹⁰⁵

To oppose the retail display ban, the tobacco industry has worked through retailer organisations to lobby government, and used legal delay tactics. Legal action was taken in June 2002 by tobacco and allied companies against the legislation that allowed a retail ban. The action was on a number of aspects of the law, including the display ban.¹⁰⁶ The action was dropped in January 2007, just before it went to court.¹⁰⁷

In the interim period since 2002, tobacco product vending machines have been widely installed in tobacco retailing premises. Since the action by the tobacco industry was withdrawn earlier this year, some opposition has been voiced by retailer organizations to the retail provisions. The industry has been largely silent on the issue in the public arena, but has made their views known to retailers through trade communication channels, where they have highlighted the potential loss of sales. There has been strong public support for tobacco control measures (including the display bans and the retail register) as indicated by surveys commissioned by the Irish Office of Tobacco Control and undertaken by independent research agency.

In September 2004, Martin was replaced as health minister by Mary Harney. She announced in early October 2007 that she ‘intends to commence further provisions’ of the Irish tobacco control legislation, including a:

1. ‘ban on all in-store/point-of-sale advertising of tobacco products,
2. ban on the display of tobacco products in retail premises,
3. introduction of a closed container / dispenser provision
4. tighter controls on the location and operation of tobacco vending machines,
5. introduction of a retailer register’¹⁰⁸ which can be used for a licence system.

The arguments used against the introduction of display bans included lower profits for retailers, and arguments that staff would suffer backache from using ‘under the counter’ storage cupboards. One tobacco company stated that a display ban

‘would prevent consumers from knowing what products were available and stop them getting other information about available products. Carroll’s believes that such restrictions would be anti-competitive and would limit consumer choice.’^{100p.25}

5.2.3 The lessons taken from the experience in Ireland

These included:

- The advantages of having information (partly from tobacco industry documents and then parliamentary inquiries) on the relationships between tobacco companies and retailers, and consequent payments and services to retailers.
- The need to ensure, where possible, that legal action does not stall progress on tobacco retail changes.

- The need to communicate widely (to the political arena, media and the public) the strong public support for tobacco control measures (including display bans and the retail register, as indicated by surveys).
- That political drive and support were crucial in getting the legislation passed in the first instance, but also remain critical to bringing the various provisions into effect.

5.3 Australia

5.3.1 Background

At present, there is a range of restrictions on retail tobacco displays in different Australian states. There are display area limits (eg. Tasmania, Northern Territory and Victoria - four square metres, South Australia - three square metres, and Queensland - one square metre). There are different state requirements for the measurement of this area, different text and graphic health warning requirements, and different requirements for the size and text size on tobacco price notices.¹⁰⁹ Tasmania will ban displays in February 2011, except for the four specialist tobacconists in the state. These will continue to be able to have four square metres of display. Specialist tobacconists in Tasmania are not allowed to sell any other product, just tobacco..

At least two states (South Australia in November 2007, Tasmania since 2004) require graphic health warnings where there are tobacco displays.^{81, 110} New South Wales does not restrict the size of display, but does have restrictions on the display unit, facings, pack sizes, and carton sizes.

In some states supermarkets have moved to having tobacco displays and storage at one point (a 'kiosk'). In Tasmania, there is a requirement that 'products can only be displayed and purchased at one point in a retail outlet'.¹¹¹ In South Australia, except for places with liquor licences, the regulations limit tobacco sales to one counter per shop (a counter that may have several cash registers).⁸¹

In South Australia, there are no display restrictions until November 2007. There had been an intention to include a display ban in the 2004 smokefree legislation, but the proposal was rejected by the Cabinet, and the subject of displays was taken out of the legislation. Health groups managed to get displays back on the political agenda in 2006, and a consultation document was issued, suggesting a maximum of three square metres of tobacco display space, with an A3 graphic health warning. Regulations requiring this were passed by the South Australia Cabinet in 2007.⁸¹

The Tasmanian state government first attempted to use its 1997 tobacco control legislation in 1998 to set guidelines on tobacco displays. This included limiting displays to five packs per brand. Tobacco companies used court action to overturn the guidelines, and the Tasmanian cabinet in 1999 decided to pass new legislation on tobacco retailing, including limiting displays to one pack per brand.¹¹² Currently, in October 2007, a Bill is before the Tasmanian parliament to restrict retail tobacco displays to one square metre, except for specialist tobacconists.¹¹³

From 2004 or before, a number of Australian states have considered tobacco display bans.⁵⁹ The proposed ban in New South Wales (suggested by a government Minister in February 2004) was reported to have been shelved within nine months. This change followed a meeting between officials and retailers. The Minister, Frank Sartor, was reported to have provided a number of possible reasons for the policy change, including:

- 'the Federal Government was about to introduce large, graphic visual warnings on cigarette packets showing pictures of cancers [and this was] was the prime reason for the ban being shelved';

- 'I thought, wouldn't it be great if the packets [with the warnings] were on display,' he said. 'Let's see how that goes before I go around annoying every tobacconist and retailer around the state.'
- 'the policy was a "marginal issue" compared with the ban on smoking in pubs and clubs'.¹¹⁴

5.3.2 *Issues and arguments in Australia*

The general array of arguments is seen in section 4.2 above. In Australia, the National Alliance of Tobacco Retailers (NATR) described the potential requirement to display health warnings as 'confiscation' of commercial space.⁷² The NATR president wrote of some New South Wales government Select Committee members who wanted tobacco retailing restrictions: 'The attitude of these politicians is entirely paternalistic. It is all about trying to control what responsible adults do.'¹¹⁵ In Queensland, the 2004 proposal to have a limit of one square metre display of tobacco products was described by retail group officials as having 'disastrous economic consequences', which would 'crush the local store', with a 'potential cost of thousands of Queensland jobs'.⁸²

A West Australian survey in 2001 of 236 retailers reported that 71% felt tobacco products were 'important in attracting passing trade', and 88% felt that 'at least half the time, somebody buying cigarettes would buy something else'.¹¹⁶ There appears to have been very little research anywhere on the reactions of individual retailers to proposed or potential restrictions. The West Australian retailer survey noted that only 13% supported storing tobacco products 'under the counter'.¹¹⁶

A major concern evident in documentary comments and interviews is the role of commercial interests in slowing or halting restrictions on retail controls. There appears to have been some media suggestion that the halting of progress on display restrictions in South Australia during 2004-2006 may have been related to the state Labor Party's acceptance of 'up to \$15,000 in donations from a tobacco retailer in 2004'.¹¹⁷ In another case, the Green Party leader in the Tasmanian parliament said in 2006 that her:

'understanding is that the Government is experiencing sustained lobbying from the retail sector to renege on a ban on display and to go down to simply limiting the size of the tobacco display instead.'¹

Arguments about loss of jobs and profits appear to have been particularly powerful in situations where states had perceived economic problems (lower than average economic growth, higher than average unemployment). The argument by small retailers that they will be disadvantaged by display bans also appears to work well with many politicians. One interviewee suggested that politicians have been particularly vulnerable to arguments that change will hurt 'small struggling Aussie businesses, little family businesses, no politician want to be seen as anti-small business'.

The contradictions within two of the arguments by retailers were highlighted by a Tasmanian parliamentarian:

‘when they came to lobby me they actually could not resolve the logical contradiction at all. They come in and say, ‘We want people to stop smoking, we do not want to support the habit, we believe that it is an obnoxious habit and it pains us to be selling these products to people’. They appear to be genuine when they say it. They then turn around and say, ‘However, we do not want any restrictions on display that might reduce the amount of profit that we can make by people being unaware of the range of cigarette products that we have for them that they can buy’.

I put to them: if you actually believe that it is important to reduce smoking rates in Tasmania, then you must accept that that will inevitably lead to a drop in sales and a drop in profits from cigarette sales; there is no other logical outcome. To come to members of parliament and say, ‘We want to maintain the profits but we claim to be concerned about the impact of smoking’ is an extraordinary thing to do.’¹

Australian health advocates have found that having support from a wide range of national and community groups can ensure that their arguments are listened to by politicians to a greater extent. Support from parent, church, educational and other groups outside the health sector has been very useful.

A significant area of research in Australia has been opened up by Dr Craig Dalton. This work estimates the costs in life lost and medical expenses from the tobacco sold by particular retail groups (initially Coles supermarkets). The research also has wider implications, due to the collaboration between Coles and the Cancer Council of Australia, for the Cancer Council’s fundraising ‘Daffodil Day’.¹¹⁸

5.3.3 Tobacco retail licensing in Australia

All Australian states appear to have had some experience of tobacco retail licensing except Queensland (which has had licensing of wholesalers) but the systems were focused on revenue raising rather than being for health purposes.^{74p.89} By 1996, the licence fees were significant for the revenue of some states, being up to 100% of the wholesale value of sales.^{119p.11} However, a 1997 court ruling resulted in the states not being able to raise revenue for general tobacco control or for other general purposes. By 2002, only South Australia, Tasmania and Australian Capital Territory (ACT) were licensing tobacco retailers. These three jurisdictions varied in the fees set (currently up to \$208 per year), and the requirements for those holding the licence (Tasmania only gave licences to individuals rather than companies).^{119p.13}

All three jurisdictions now run the licence system through their health departments. In at least Tasmania and South Australia, the fee is indexed to the Consumer Price Index, and so increases with inflation. The fees in these states are sufficient to pay for regular inspections of premises to check on all regulations, including displays.

There have been arguments for the use of licensing by a number of parties in Australia. A major point made for licensing has been the opportunity, using simple administrative means, to give retailers an incentive to obey laws or lose the licence. A

second point made has been the opportunity a licence system gives to educate retailers on the law. The 1995 Australian Senate Inquiry on the tobacco industry recommended that:

‘That the licensing systems in all States and Territories provide for the suspension or revocation of a licence where retail outlets sell tobacco products to minors.’^{74p.90}

In 2002, a report was produced for the Australian Commonwealth by Allen Consulting Group. The report argued that two characteristics of tobacco indicated that licensing was necessary - the absence of a safe level of consumption, and the magnitude of the consequences of tobacco use across Australia.

The Allen report summarised the advantages of retailer licensing as including:

- Facilitating the enforcement of regulations on tobacco retailing, due to the better tracking of retailers, and the power of licence revocation.
- Helping emphasise that businesses do not have a right to sell tobacco.
- Enabling better communication by health authorities with retailers.¹¹⁹

Three options were considered, the licensing of wholesalers (who would be required to provide a record of retailers they supplied), the licensing of retailers, or requiring both to be licensed. The report argued that best practice would involve the third option, which enabled cross-checking to ensure that all retailers were licensed.

Particular recommendations included:

- A licence for each retail premise.
- The managers of tobacco retail premises need to demonstrate positive understanding of and intention to comply with tobacco retail regulations.¹¹⁹

Licensing and tobacco availability

Arguments for licensing have included the objective of reducing the availability of tobacco products. In turn, that availability was considered by some to be a factor in youth smoking uptake:

‘Some evidence to the [1995 Australian Senate] Committee suggested that the availability of cigarettes to juveniles could be reduced if the numbers of retail outlets selling tobacco products were reduced.’^{74p.86}

However, tobacco retailers attempted to refute this:

‘Some evidence from the retail sector suggested that reducing the number of retail outlets may not lead to a reduction in juvenile tobacco consumption. One submission noted that under-age smokers will still be able to obtain cigarettes through older friends, siblings and often parents who are prepared to purchase on their behalf. The submission also noted that juvenile alcohol use is still a major problem, yet all alcohol is sold through licensed outlets.’^{74p.86}

The Senate Committee recommended that ‘there be a reduction in the number of retail outlets permitted to sell tobacco products.’ Some of the means suggested in Australia for a reduction in tobacco availability has been a cap on the issuing of new licences (ASH Australia in 1995),^{74p.86} or by increases in retail licence fees. The 1995 Senate

Inquiry recommended that there be regular real increases in all fees and taxes related to tobacco, and ‘that the revenue from these taxation increases be directed to tobacco control and health promotion activities.’^{74p.84}

The suggestion of a cap on licence numbers was extended by a Tasmanian MP in 2006:

‘it is time that we seriously looked at stopping corner stores and service stations, and as many other businesses that are willing, from selling tobacco products. ...there should be no new licences issued, so that anyone who does a business plan for a new business does that and assesses its viability on the basis of selling products other than tobacco I then think that we should have a buy-back scheme to remove as many licences as possible, so that we have fewer outlets and can have better control.’¹²⁰

5.3.4 Recommendations from interviewees

The suggestions from those interviewed included:

- The crucial need for knowledge of the political climate when advocating for tobacco retail restrictions. In turn, this may require greater statutorily required clarity on political donations, and lobbying activities.
- The need for sufficient public and political support for change, and the ability to demonstrate this (eg. survey results, and evident support from many national and community groups).
- The need for strong arguments to counter suggestions of job and financial losses from retail restrictions. This suggestion came with some force from all those interviewed.
- The need to emphasise the effect of displays on children, as an argument that politicians will be more positive about than other health arguments.
- That tobacco retailer licensing is a practical option.

5.4 Thailand

The tobacco retail display ban in Thailand, in September 2005, was achieved by the application of Thailand's 1992 tobacco control legislation. Before the ban, threats of legal action were made by the tobacco companies operating in Thailand (BAT, Philip Morris, Japan Tobacco and the local government owned company).¹²¹ In practice, the most significant reported opposition to the ban came from the 7-Eleven group of convenience stores. They appear to have resisted implementing the ban, and in November 2005 their spokesman was reported as saying:

‘We are fighting for 500,000 shops that suffer from unfairness but do not have enough power to object to the officials’ abuse of authority.’¹²²

In December 2006 employees of a 7-Eleven store were reported to have been acquitted on a charge relating to display tobacco. The Public Health Ministry said that they would appeal the verdict.¹²³

5.5 Iceland

Tobacco product displays were banned in 2001, as part of a wider prohibition of tobacco promotion.¹⁰⁰ The ban as in 2003 challenged by legal action from Japan Tobacco International. They claimed that the law was contrary to European Union law.¹²⁴ This challenge appears to have failed. British American Tobacco Nordic also challenged the overall ban on tobacco product advertising, which includes the retail display ban, on constitutional grounds.^{100p.24}



Iceland¹⁰⁰

Supermarket, Reykjavik,



Service station, Reykjavik,

Iceland¹⁰⁰

Photos courtesy of Tobacco Control Task Force of Iceland

5.7 Summary and discussion of the overseas experience

Common themes across countries included:

- Efforts by tobacco companies to secure retailers' participation in opposition to display restrictions and bans.
- Allegations of potential financial losses by retailers, when tobacco display bans were proposed or introduced.
- The use of court actions by tobacco companies as a delaying tactic for display bans.

There is considerable evidence from the Canadian province of Saskatchewan that a retail display ban (for those places that admit people under 18 years) can have very high compliance, low or no costs to retailers, and little immediate effect on sales. In 2005 and 2006, payments by tobacco companies to Saskatchewan retailers have continued at close to the same levels. By May 2008, the large majority of Canada's population will have a provincial display ban.

There have been legal actions or threats by tobacco companies in every country where a display ban has been planned (Canada, Ireland, Thailand, and Iceland). None appear to have succeeded more than temporarily. A number of jurisdictions use tobacco retail licensing.

While Canada, Ireland and Australia are at different stages of restricting tobacco retail displays, there are a number of themes common to the three countries. First, commercial interests have predicted a range of problems for businesses, including commercial ruin (especially for small businesses). This suggested consequence has not eventuated in Saskatchewan, after over four years of experience of tobacco-free retail displays there. The sky does not fall with display bans – the consequences of any loss of sales, and loss of payments from tobacco companies to retailers, will be

gradual and something to which they can adapt. Lower spending over time on tobacco will in general result in higher spending on other goods, and some of this extra spending can be captured by retailers.

A second theme is the basic conflict between the need to reduce smoking, and retailers' defence of their ability either to directly profit from tobacco sales, or to base their businesses to a large extent on tobacco sales. This basic conflict is sometimes disguised in a number of ways, but underlies a great deal of the rhetoric and politics around tobacco retail restrictions. The non-sustainability of tobacco retailing, because of the consequent large scale net damage from tobacco use to the social and economic fabrics of countries, is a fundamental defect in arguments against tobacco-free retail displays.

Behind the immediate evidence from the three countries, is the reality that tobacco retail displays are just *part* of tobacco marketing. When the displays are banned, tobacco companies will move their efforts into other ways to attempt to reach customers, inside shops and elsewhere. Display bans will not remove the need by tobacco companies to focus on their relationships with retailers, so as to ensure that their brands are as available as possible to smokers, ex-smokers and would be smokers.

Thus some control on the availability of tobacco may be a necessary step to take, along with making displays tobacco-free, if the optimum progress in reducing smoking is to be achieved. A licence system offers one option for reducing the number of tobacco outlets; similarly, controlling the geographic location of the outlets could also reduce tobacco availability. Licensing can provide a means to control the behaviour of retailers, and, by definition, makes clear that tobacco retailing is a privilege, not a right. Another option would be to ban tobacco sales in particular types of places, for instance, where alcohol is sold.

6 Tobacco retail licensing

The focus of tobacco retail licensing in many jurisdictions has been on reducing sales to youth. However, licensing can also be used to allow the simple enforcement of other retailing regulations, as licenses could be removed by administrative rather than court processes. Licensing could also be used to limit the number of retailers, the type of premises used, and the ownership of the outlets. The advantages from licensing include being able to more easily locate tobacco retailers, providing a very strong sanction (license removal), and a possible revenue stream.⁷⁰

The best practice guidelines of the US Centers for Disease Control and Prevention suggest that:

‘For tobacco control laws and regulations to be adequately enforced, universal licensure of tobacco outlet sources is necessary. A graduated system of civil penalties on the retailer, including temporary revocation of the tobacco license in areas where tobacco retail licenses are required, has been shown to be an effective enforcement strategy. Fees from licensing of tobacco vendors can be used to fund enforcement activities and to develop and maintain active, large-scale programs.’¹²⁵

In California, there has been some movement to achieve local control over tobacco sales by city level licensing.^{126, 127} This is addition to California state level retail licensing, which is focused on the prevention of tobacco tax evasion, smuggling and counterfeiting.¹²⁸ In 2003, there were 34 American states that required licenses for tobacco retail sales.¹²⁹ New Jersey uses state retail licensing fees to pay for the age of purchase inspection system.¹³⁰

In Scotland, there is a recent (2007) proposal by the ruling Scottish National Party to introduce tobacco retail licensing.¹³¹ Licences are required in some Australian states (Tasmania, South Australia and Australian Capital Territory – see section 5.3.3 above) and some Canadian provinces (see section 5.1.7 above).

China appears to require licenses for tobacco retailers. The government has recently used this requirement to prevent foreign companies and companies with joint local-foreign ownership from retailing tobacco. Foreign supermarket companies, such as Wal-Mart, must rent areas to licensed Chinese retailers if they want to have tobacco sold in their premises. The *Cigarette Selling License Management Rule* also attempts to prevent tobacco retail licenses for sales near schools.¹³²

Ways to help address concerns about retailer licensing include:

- The staged introduction of the system and the fee increase, to allow for businesses to factor these costs into their budgets.
- Ensuring that licence fees cover all the administrative costs of running the system.
- Demonstrating the overwhelming public interest arguments that tobacco is a special case needing retail licensing.^{119p.x}

Arguments for a tobacco retailer licence system include:

- The need to identify and closely control places where dangerous, addictive drugs are sold.
- The ability that a licence system gives for (i) reductions in tobacco availability, (ii) local control of tobacco retailing, (iii) the enforcement of restrictions on retailing.
- There are a number of precedents in New Zealand and elsewhere for retailer licensing. Some dangerous products require a licence or registration for the retailer (eg some pharmaceuticals, alcohol) or both the retailer and the customer (eg. ammunition).

7 Discussion

7.1 Findings

Internationally and in New Zealand, retailing is a crucial aspect of tobacco marketing. Tobacco manufacturing and marketing companies have recognised this for many years, and invest very large resources in their relationships with tobacco retailers. This involves providing advice, payments and services to retailers, including equipment. The strategic relationships that exist internationally between tobacco companies and large retailers extend to New Zealand, for instance with oil companies that run or franchise service stations.

For smaller convenience stores and dairies, tobacco sales are of considerable importance. The sales may on average produce about 35-40% of revenue, and about a quarter of the gross profits. Both large and small retailers are likely to have strong institutional and financial reasons to resist a tobacco display ban. A well designed website in November 2007 started to focus New Zealand retailer concerns and arguments.

The experience in Saskatchewan, Canada, is that retailers comply with the display ban, and no significant financial changes have occurred for them. Crucially, tobacco companies appear to have continued payments to retailers in order to secure a retail presence for their brands. The Canadian experience indicates that the financial impacts on retailers of display bans are likely to occur slowly, and can be avoided, even for small stores. The overwhelming message from Canadian officials and advocates was that the implementation of a display ban was smooth, and far easier than envisaged. A particular and valuable precedent from some Canadian provinces is the banning of tobacco sales where alcohol is sold.

7.2 The arguments

The tobacco industry and retailers in New Zealand and elsewhere have used a wide array of arguments to counter retailing restrictions. These include 'legitimacy' and 'rights' (of both retailers and customers), financial and employment effects, unequal effects between large and small retailers, the 'lack of evidence' for health effects, and arguments about increased theft and risk. Particular arguments have been made about 'bending down' to under-counter drawers.

Particular arguments used in Australia and Canada that are likely to be used in New Zealand include appeals about the fate of rural and small stores, and projections of massive financial losses and small store closures. Successful health sector tactics overseas have emphasised the effect on children of displays, highlighted the tobacco industry role in objections, mobilised a very wide range of community support, and used public surveys to show support for change.

Generally, the tobacco retailer arguments do not recognise the extent to which tobacco is not a normal product, being both lethal when used as intended, and highly addictive. Much of the debate does not touch on the simplicity of compliance with a display ban, with the extent of compliance immediately evident to management, staff

and health officials. The financially-based arguments of retailers attempt to move the basis of policy from health gains to private profits. One of the most intriguing aspects their arguments is the contradiction between the statements that display bans will have no effect, and the concerns for lost sales.

7.2 Limitations

The range of official documents obtained was limited by the difficulties of the Official Information Act process, despite the best endeavours of Ministry of Health staff. The initial selection of documents to request was limited by the expected effect it would have on Ministry resources, and the absence of six documents requested could not be evaluated. The very short time available to analyse the documents received through the Official Information Act process meant that their use was restricted in this report.

No documents from New Zealand tobacco retailers were found within the tobacco industry document sources available. Apart from the Stay Display website, the only primary documents from New Zealand tobacco retailers that were used were submissions to the 2001-2002 Select Committee process. No requests were made to tobacco retailers for documents, and this is an avenue that could be pursued in further research.

The selection of overseas interviewees from a convenience and snowball sample meant that there may be a range of opinions and ideas that we were not able to access. A greater number of such interviewees might also have produced significant new information.

7.3 Further thoughts

The experience in Canada and Australia suggests that it is much more difficult to achieve tobacco retail restrictions when retailers get all of their information from tobacco companies and their agents. It appears from the Stay Display website that considerable effort is being given to focusing the concerns of retailers.

The interviews we have conducted with a sample of tobacco retailers (see a separate report in December 2007) indicates that there is a range of opinion on tobacco displays, in both large and small retailers. Thus there may be a limited opportunity for the health sector to counter tobacco industry information and ideas, by providing counter information and arguments, tailored for retailers' needs. Such provision directly to retailers, by mail and/or calls by health promoters, could erode the solidity of opposition to change.

8 Options and recommendations

8.1 Options

Policy options can aim to decrease or to eliminate tobacco promotion and marketing. The *elimination* of tobacco marketing for profit at the retail level appears to require some form of non-profit or government agency inserted into the market between tobacco manufacturers and retailers.^{133, 134} Generally, decreasing tobacco marketing at the retail level involves either decreasing the effectiveness of the promotion efforts, or decreasing the availability of tobacco.

The options for governments to achieve these aims include:

Restrictions can be put on:

1. The size and nature of displays (including no displays)
2. The number of places within a shop where tobacco is sold
3. The type and number of premises where tobacco is sold
4. The hours of sale for tobacco products
5. The payments and services supplied by the tobacco industry to retailers.

Requirements can be made for:

6. The nature and size of health warnings.
7. Notices about the age of purchasing.
8. The training and other attributes of staff and management involved in tobacco sales.
9. The products and provision of health services that are available where tobacco is sold (eg, nicotine replacement products, cessation help).

A further option is that incentives or help can be given to retailers, to move them away from tobacco retailing to more sustainable product lines. These incentives could include negative ones (eg, a flat licence, or one based on sales volume) or positive ones (eg, advice on alternative products).

Policy implementation options

At the policy implementation level, the options include variations on a licence system, on enforcement inspections, and on enforcement legal processes.

Options for licensing include:

- A. Local authority and/or national level licensing.

- B. Licenses obtained by individuals only, or by companies.
- C. Licences for each premise, or for all premises owned by a company.
- D. Requirements for licensees (eg, minimum age, minimum training).

Enforcement can be funded from licences, or from general revenue. The legal processes for enforcement can vary from spot fines given by inspectors, to court prosecutions.

8.2 Recommendations

Framing

1. That the change to a smokefree no-display situation be framed as ‘Getting tobacco out of sight’ and ‘Protecting children from tobacco promotion’, rather than ‘Banning displays’. A wider framing for the control of tobacco retailing could include: ‘Selling dangerous addictive products is not a sustainable business’.

Planning and regulatory principles to adopt

2. That tobacco marketing controls need to be integrated into an overall strategic tobacco control plan, which controls all aspects of tobacco supply and use.
3. That government should adopt an overall plan to control tobacco marketing, including a timetable to deal with all aspects, so that removing displays will not just see marketing efforts moved sideways into other areas. This plan should include controlling marketing by pack and product design.
4. That the legislation for change be as simple as possible, and should include all the provisions required where possible (rather than using regulations to be made later). An example of the desired simplicity is not having exemptions for any restrictions (eg for tobacconists, duty free shops, or for particular tobacco products.)
5. That contact between tobacco manufacturers and retailers is minimised, including the ending of all payments and services from manufacturers. The best way to accomplish this would be a non-commercial agency, in between tobacco manufacturers and retailers, which would be the sole source of tobacco supply to retailers.
6. The retail aspect of the marketing control plan should have a harm minimisation approach, which aims to supply tobacco products only as an interim measure while smokers find less dangerous sources of nicotine, or are aided to quit the use of nicotine products.

The retail marketing control should include provisions:

7. That the approach to tobacco retailing is changed to being clearly about the sale of an unusually dangerous and addictive product, with all the consequent safeguards.
8. That introduce a stepped approach that limits the number and location of places where tobacco is made available to customers, and that would move the supply of tobacco into a health-focused environment.
9. That associations between tobacco products and youth, and tobacco products and alcohol, be minimised.

Particular recommendations on retail displays and availability

10. *Tobacco products visibility:* No tobacco products should be displayed in retail or other commercial areas, or be seen by customers when storage areas are opened. Products would only be visible when storage areas are filled, or when the products are handed to customers after sale.
11. If displays are not banned, they should be minimal (less than one square metre) and there should be at least an equal size of area immediately next to the display, visible and at eye height, with one or more government issued graphic warnings of at least A2 size, changed regularly.
12. That the change to a smokefree no-display situation be framed as ‘Getting tobacco out of sight’ and ‘Protecting children from tobacco promotion’, rather than ‘Banning displays’. A wider framing for the control of tobacco retailing could include: ‘Selling dangerous addictive products is not a sustainable business’.
13. *Availability signals*
 - a. Tobacco storage areas must not be de facto advertisements of the availability of tobacco. To prevent this, there should not be stand-alone tobacco storage structures. The use of colour, lighting and other indirect signals of the availability of tobacco should be prevented. Such signals could include the identification of a tobacco company’s brands with parts of shops, other brands in shops, or particular whole shops or chains of shops. An example of the such ‘co-branding’ is the Top Traders brand that BAT use in Australia.⁵⁹
 - b. That there be no other signs of tobacco availability, including signs, price lists, or health warnings: The only information to be available should be booklets available when a customer asks for information: ie, government formatted booklets which include graphic health warnings, and brand and price information.

Appendix One: Letter from New Zealand wholesaler to retailers, 2007

Gilmours Toops Trents



Dear Valued Customers

Gilmours, Toops & Trents recently launched our new Exciting Convenience Independent program just for you.

We believe this group will become the Largest Convenience Group in New Zealand and with your support we will be able to negotiate even better pricing & exclusive opportunities on your behalf.

I felt it was very timely to provide a follow up letter outlining the key benefits to you of joining this group

GTT Partnership +++ Benefits

- 3.2% discount on all Imperial & Philip Morris Products
- New "Fortress" Tobacco unit
- Tobacco Planogram to accommodate all 3 major Tobacco Companies – BAT, Imperial and Philip Morris
- Facings payment from Philip Morris
- \$6500 worth of Scanning equipment to assist in your business, fully installed & training supplied
- Your very own Customer Loyalty Program, which benefits both your customers and your business with increase average spend per customer visit
- Promotional support from GTTPP Key Suppliers
- 4 – 5 key monthly promotions to help drive extra sales
- Special Every Day Low Price on Grocery, Confectionery, Snacks & Drinks
- 1% deferred payment on all Confectionery, Liquor & Phonecards
- 2% deferred payment on all Grocery, Drinks, Chilled/Frozen & Variety
- 6% deferred payment on all Farmgate Milk & Cream purchases
- Special discount rates from Banks, Insurance companies, EFTPOS & Fridge Companies (check these out you will get a pleasant surprise)
- Exclusive product lines from key suppliers that will only be offered to GTT+++ Members
- +++ Many more

Or call your friendly local Gilmours, Toops or Trents branch



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