

6th May 2009

Submitted by email to

Iain Martin, Manager Legislation
Legal and Legislative Services
NSW Department of Health

Dear Sir

Public Health (Tobacco) Regulation 2009

Thank you for the opportunity to comment on the proposed regulations which were recently published in draft form.

We have considered the regulations in depth and have the following concerns.

- the impact on the viability of small businesses
- the lack of clarity in some of the definitions contained in the Regulation.

It is disturbing that a Government will introduce regulations that could have huge negative impacts on small business and with no proven benefit to the community without a well researched impact study.

Convenience stores are small format shops which sell a variety of goods (in some cases fuel). They trade, not surprisingly, on their "convenience", in other words, their ability to provide a customer's needs quickly and efficiently.

This submission presents evidence quantifying the costs of the Regulation for NSW retailers – costs they will have to incur for no benefit in return.

According to estimates, which are based on our research, experience in the market and following discussions across a broad range of our industry partners, NSW retailers will be disadvantaged by the Regulation to the tune of:

- \$127 Million as a one-off compliance cost; and
- \$262 Million as a recurring annual cost.

Evidence quantifying costs to NSW retailers

AACS undertook an analysis estimating the impact of retail display bans on NSW retailers. Table 1 outlines the details of our analysis.

Table 1 Impact of retail display bans on NSW retailers

Identified source of cost	Estimated scale of impact
Reconfiguring existing shop displays	\$7,000
Increased transaction time for the sale of tobacco products	20 seconds extra time
Restocking of tobacco and related products	60 minutes extra time per day
Staff training	60 minutes extra time per staff member

The Initial and Ongoing Cost of Compliance

The capital cost associated with reconfiguring existing shop displays is estimated to be \$7K per NSW retailer. This amounts to a one-off capital cost of \$126M for all NSW retailers (in aggregate).

There will also be a one-off compliance cost associated with training staff (in order to familiarise and comply with the new regulation). An extra hour of staff training per store would amount to \$720K across the State.

Total one-off compliance costs would therefore amount to over \$127M, spread across all NSW retailers.

Notwithstanding one-off compliance costs, there are also recurring annual costs.

These include:

- the increased time it takes NSW retailers to process a transaction – this is estimated at 20 seconds per transaction, or one hour extra per day; and
- the increased time it takes NSW retailers to restock their product (in accordance with the Regulation) – this is estimated at one hour per day.

In combination, this will cost an individual retailer in NSW about \$15K per annum.

This amounts to an ongoing cost of more than \$262M spread across all NSW retailers each year.

This is a significant economic cost and does not take into account the threat of loss of business that may result from customer frustration with in store delays

Transaction speeds

Selling any product efficiently depends on a number of things including

- Customer being able to identify what is for sale
- Staff being able to find the product quickly and process the sale
- Unnecessary questioning by customer minimised (price, availability etc)
- Staff being able to constantly ensure that stock levels are maintained at point of sale
- Dealing with all customers equally regardless of what products they are attempting to purchase

A typical convenience store has between 150 and 250 transactions per day involving tobacco. The increase in transaction times as a result of the regulations has been calculated at 20 seconds. The increased time therefore per day based on 200 transactions is 66 minutes. Staff cost on average \$20 per hour so the annual increased costs of labour is \$8111 per store.

Providing information to the customer

The regulations only provide for a price ticket **OR** a price board and no provision has been made in the regulations for a price booklet/information list.

The impact of this is that customers will not easily be able to identify what they want or how much they will have to pay.

We recommend amending part of Clause 15 (1) (of the Regulations) as follows:

- a. price tickets that comply with subclause (2); AND
- b. a single price board that complies with subclause (3); AND
- c. a price catalogue/booklet*.

(*A price booklet is a publication containing details about tobacco products including the name and colour picture of the product line, a bar code (or other identifying code), a price and a symbol indicating country of origin.)

AACS has estimated that the regulations will lead to an increase in transaction times of 20 seconds (as explained further in this document) which equates to one extra hour per day.

This translates into an ongoing cost of more than \$8,000 per annum for an individual retailer in NSW.

Allowance for Incidental Exposure

Given management of stock is crucial to surviving these changes, incidental exposure to restock and serve customers must be allowed for. We estimate that the increased time associated with restocking to avoid customers seeing the product is 60 minutes per day.

To improve clarity concerning incidental exposure "other circumstances" (*as prescribed by the Regulation*) should include:

- Dispensing of tobacco products; and
- Stocking of tobacco products.

By accepting the above recommendation, the NSW Government immediately delivers savings of over \$7,000 for every individual retailer in NSW (by avoiding the costs associated with incidental exposure).

One Point of Sale

Clause 10 (*Public Health (Tobacco) Act 2008*) requires tobacco products to be sold from one place on the premises and defines a **point of sale** as including a cash register but does not include a tobacco vending machine.

This means that in a store, operators will only be able to serve customers who want to buy cigarettes from one cash register, which will cause serious problems in managing customers and severely impact service times as many stores use more than one till for most of the day.

- A single point of sale will lead to chaos, confusion and increase transaction processing times – for all consumer not just smokers.
- Clause 19 (*Public Health (Tobacco) Regulation 2009*) allows for a statement to be displayed advising that tobacco products may be purchased at a single cash register.
- The regulation also only provides for a very limited sign advising all consumers where tobacco products can be purchased.

Put simply, this provision is inadequate, will add to customer confusion and will affect all sales not just those involving tobacco products.

We recommend that the regulations be modified along the following lines:

- Revisit the decision legislating one point of sale and if this is not agreed to;
 - Less wording in order to focus on the key message which is "Tobacco only sold at this cash register";
 - Increased number and size of the signage; and
 - Increased flexibility for queue management (allowing for best practice in queue management strategies, snaking, footprints, etc)

The period allowed for compliance

Everybody needs to have the same view of when a particular retailer is expected to comply.

- The Act defines the meaning of "engaging in tobacco retailing" when explaining whether a retailer has 6 or 12 months to comply, however it remains unclear as to whether this refers

to a business group (i.e. a retail chain) or a single business operating at a specific location. Not all retailers operate using the same business model (banner groups, company operations, licensees etc)

- In these already uncertain times, with uncertain regulation, clarity is needed to adequately prepare for the implementation of the new rules.

We also recommend that the intention of the Act be better understood for example:

Is it the intention of the Act that where a business has been convicted of 2 offences, against the same provision, and at the same premises within a 3 year period, that:

- that business is prohibited from engaging in tobacco retailing for a 3 month period; or
- the entire chain to which the business is affiliated (is prohibited)?

Loss of business

The regulations do not allow for the fact that most retailers depend on sales of tobacco to the tune of 30%+ of total sales of merchandise (as opposed to fuel sales). Any regulations that can cause this share of sales to reduce are a serious concern, particularly as there is no evidence that display bans reduce smoking rates anywhere around the world. We expect that the customers of small format stores will become frustrated with slower transaction times and will take their business elsewhere. Total sales of tobacco in the community won't reduce but will migrate.

In some provinces in Canada, where tobacco display bans have been introduced, there has been a significant shift to other channels. Tobacco sales in Australia contribute around \$2100 per week in gross profit contribution to the shop owner.

A 5% shift in sales to other channels amounts to \$5460 per annum in lost profit. \$98.2m across NSW

In addition, we predict that there will be a reduction in other sales as customers become frustrated with slower transaction speeds brought about by others trying to purchase tobacco products (general queuing delays).

If this is of order 2% then the resulting loss of income will be \$10200 per annum. \$183.6m across NSW

Increased Security and stock losses

The regulations if implemented in current form will mean that retailers' staff will be spending more time answering questions and dealing with customer enquiries than is currently the case. Most stores operate with one person only on a shift. This will mean that there is a greater risk of in store theft as staff will be unable to maintain the levels of vigilance and surveillance of safety and security processes that are expected of them.

A 1% increase in theft to sales ratio is equivalent to \$14560 per annum per store. \$262m across NSW

CONCLUSION

In conclusion, this submission presents evidence quantifying the costs of the Regulation for NSW retailers. In total, NSW retailers are disadvantaged by the Regulation to the tune of:

- \$127 Million as a one-off compliance cost; and
- \$262 Million as a recurring annual cost (transaction speeds, training and restocking)

In addition, there will be a loss of business to other sales channels (e.g. supermarkets and specialist tobacconists) and increased stock losses in aggregate estimated at \$543 Million across NSW.

The impact on jobs is incalculable but real. Allowing for compliance costs alone amounts to some \$22000 per store in year one. Added to this the loss of business and increased stock losses brings the total to \$52000 in year one.

There will be reduced staff hours and there will be shop closures and there will be increased unemployment as a result of the Regulation. Retailers have already witnessed sales declining as a consequence of the current economic conditions.

If there are any queries concerning our submission please contact David Killeen on 0417 385931 or email at execdirector@aacs.org.au

Yours faithfully



David Killeen
Executive Director

Cc **Hon Nathan Rees Premier NSW**
Hon John Della Bosca MP Minister for Health
Hon Jodi McKay MP Minister Assisting the Minister for Health (Cancer)
Hon Steve Whan MP Minister for Small Business
Hon Joe Tripodi Minister for Regulatory Reform