



February 2, 2009

The Principal Research Officer  
Education and Health Standing Committee  
Legislative Assembly  
Parliament House  
PERTH WA 6000

Dear Dr Worth

**Re: Tobacco Products Control Amendment Bill 2008**

Our organisation is one of the State's largest retailer industry bodies representing the interests of independent small business operators, many of whom stock tobacco products, on a range of issues including trading hours, business taxation and health regulations.

An issue which is causing our members grave concern is the proposed Bill. In the attached document, IRO has summarised its significant concerns, about a total ban on the display of tobacco products.

We ask that these be given serious consideration before any decision is made in respect of the proposed display ban.

I would be pleased to discuss this matter with you and ask that you not hesitate to contact me (08) 9330 7175 at your earliest convenience.

Yours sincerely

Bob Stanton  
Chairman



**SUBMISSION**

**THE TOBACCO PRODUCTS CONTROL  
AMENDMENT 2008 BILL**

**PREPARED BY**

**INDEPENDENT RETAILERS ORGANISATION INC**

## **EXECUTIVE SUMMARY**

While the Independent Retailers Organisation Inc. (IRO) supports the need for regulation of the tobacco industry, we have strong concerns about key aspects of the Tobacco Products Control Amendment Bill 2008, particularly the proposed total ban on point-of-sale displays.

We believe this display ban has the potential to drive a number of Western Australia's 3,500 small retailers out of business. For many independent corner stores, milk bars, newsagents, service stations and minimarts, tobacco products represent up to 30 per cent of gross sales revenues.

Independent retailers have already complied with the 1 square metre display restrictions introduced just two years ago under the Tobacco Products Control Act 2006 by refitting their stores at considerable cost.

A total ban on POS display would involve owners in further costs and loss of business at a time of deepening recession, causing them further financial strain and forcing a number of them to consider closing their businesses.

As every retailer knows, the ability to display consumer goods of any kind is a key factor when it comes to competing in the retail marketplace.

We maintain that a total ban on the display of tobacco products is likely to further distort competition by encouraging consumers to shift to larger stores to make their purchases, in the belief that these retailers stock a wider range of products.

We submit that it would be unreasonable to deprive small businesses of a core means of competition unless it has been demonstrated beyond reasonable doubt that a total ban on tobacco product display will advance the government's health objectives.

We do not believe there is any sound evidence to support the notion that the visibility of tobacco products at point-of-sale encourages adults to continue buying tobacco products or minors to take up smoking. Nor has the effect of total bans been adequately researched.

We will highlight examples across the globe where total display bans have not succeeded in reducing smoking, particularly among the young.

Jurisdictions claiming their total display bans have directly reduced tobacco consumption rarely consider that this reduction may be due to other factors.

A Norwegian Health Ministry consultation document<sup>1</sup> released in 2007 after public hearings noted: *"there are no indications to prove that this reduction is a result of the ban, more than other tobacco preventative measures introduced at the same time."*

It is also worth noting that the British Government recently decided to delay plans for an immediate ban on tobacco displays.

Rightly, in our view, the British Government recognised the plight of small retailers across Britain and decided to shelve its planned legislation on this issue to allow it to focus on more significant matters – namely the appalling state of the UK economy.

The IRO believes that rather than moving to a total display ban, the Education and Health Standing Committee should undertake a review to research the effectiveness of the existing POS display restrictions, in consultation with the tobacco industry.

We support the establishment of science-based standards for tobacco products.

Furthermore IRO has worked constructively with Government agencies on measures such as age identification and retailer licensing.

We stand ready to assist the Standing Committee to ensure that regulation of tobacco retailers can be effective and enforceable while maintaining the livelihood of small traders.

<sup>1</sup> Ministry of Health and Care Services, Public Hearing of a proposal on a ban against visible display of tobacco products at point of sale. March 2007, p.5 (Norwegian Consultation Document)

## **Cost to the industry**

The cost to WA small businesses of refitting their shops to comply with the display restrictions introduced in 2006 has forced many owners to consider whether they should close down.

Although it is difficult to estimate the costs of complying with the proposed legislative approach, the Tobacco Retailers Alliance in the UK, where the government intends to introduce a total POS display ban on tobacco products by 2013, represents 25,000 independent retailers. The Alliance believes the total ban will impact on small traders in five ways:

1. Cost of compliance estimated at £2,000-£5,000 (AUD\$4,240-AUD\$10,600) per shop
2. Trade to be displaced to larger retail outlets
3. Black market in tobacco products to be boosted
4. Retail efficiency to be undermined
5. Shop security to be threatened.

A study conducted for the Alliance by the Centre for Economic and Business Research predicted that if small traders were compelled to hide tobacco products out of sight, 2,600 shops would cease to be profitable, causing the loss of some 8,000 jobs.

If this prediction were to be applied to Western Australia's 3,500 small retail businesses, that would equate to more than 360 small retailers closing their stores statewide, and almost 1,000 employees losing their jobs.

### **Britain defers POS ban till 2013**

The introduction of a proposed ban on the display of tobacco products at point-of-sale in the UK has been postponed for four years, with Government Ministers conceding there is not enough evidence to support the proposal and concluding that it would not be in the nation's interest to press ahead at a time of financial crisis.

The decision late last year followed pressure from Labour backbenchers and trade groups, who argued that there was little evidence to show a total POS display ban would have health benefits. Both opposition parties opposed the ban.

Shadow health minister Mike Penning said there was no evidence that it would reduce the sales of tobacco products, and there was a lot of evidence that it would destroy local corner shops and newsagents who were already suffering now.

"It's a legal product," he said. "Why are we pushing it under the counter? It's not the answer to the problem."

*The Times* newspaper reported that the Labour Government's legislative program in the Queen's Speech had been slimmed down with a number of measures being left out because they looked "irrelevant or even self-indulgent" in view of the economic crisis.

### **Overseas Display bans Ineffective**

The IRO believes prohibiting retailers from displaying their products is anti-competitive and display bans overseas have not been effective in reducing smoking.

For example, Saskatchewan was the first Canadian Province to prohibit tobacco displays in 2004 – yet the percentage of smokers actually increased from 21 per cent to 24 per cent during the ban's first 19 months.

In 2006, the Canadian federal government's Department of Health noted: "It is possible that restrictions on tobacco displays will have an impact on this trend (tobacco incidence), but this remains very speculative at this time."<sup>2</sup>

The Canadian Convenience Stores Association said there was no evidence that the removal of tobacco displays had had an impact on the sale of tobacco, adding sales had remained consistent in the four years since the ban was introduced.

The Association also said that teen smoking rates appeared to be on the rise as a result of rampant illegal contraband tobacco sales and that the display ban had led to an unprecedented growth in illegal tobacco, with one in every two cigarettes sold sourced through the black market.

### **The drive against youth smoking**

The idea that the sight of displayed tobacco products influences those who currently use tobacco products to increase their consumption, encourages people to start smoking, or encourages quitters to start smoking again, has not been substantiated.

Research<sup>3</sup> by the Australian Institute of Health and Welfare shows that young people obtain cigarettes more often from friends, members of their family and even parents than they do from retail outlets.

One survey found that two out of three smokers and three out of four ex-smokers aged 12-15 obtained their first cigarette from a friend or acquaintance.

<sup>2</sup> Health Canada, *A Proposal to Regulate the Display and Promotion of Tobacco and Tobacco-related Products at Retail: Consultation Document* 2006

<sup>3</sup> Australian Institute of Health and Welfare, *2004 National Drug Strategy Household Survey – Detailed Findings*, Canberra, October 2005, p. 108

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Another 2005 study by the Drug Strategy Branch of the Department of Health and Ageing found that 77 per cent of young smokers did not buy their last cigarette. Most of those surveyed (58 per cent) obtained their cigarette from friends, family or the home, or by asking someone else to buy it for them (16 per cent).

Tobacco retailers already play their part in strictly enforcing laws which make it illegal to sell or buy tobacco products for a person under 18 years old through stringent age verification checks. It may be that these laws need stronger enforcement.



## **Recommendations**

In our view, the effectiveness of total POS bans elsewhere in Australia and the rest of the world has not been proven, and with the economy in such a parlous state, it is not an appropriate time to introduce such a measure in Western Australia.

We would respectfully request that amendments to Section 22 which you are planning in the Tobacco Products Control Amendment Bill 2008 be shelved for the time being to allow a thoroughly researched review of the effectiveness, or otherwise, of the display restrictions introduced in the Tobacco Products Control Act 2006.

The IRO would welcome the opportunity of working with any review committee in this matter and stands ready to be of assistance.

We have no objections to the other amendments contained in the Bill.