

TSG Franchise Management Pty. Ltd.
Level 7, 89 High Street
KEW, Victoria 3101
03 9855 1060
andrew@tobaccosg.com

30 January 2009

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

Via email laehsc@parliament.wa.gov.au

Att: Dr David Worth

Dear Dr Worth,

This submission is from a Specialist Tobacco Retailer Group – TSG Franchise Management Pty. Ltd. (trading as) “The Tobacco Station Group” (TSG) which have 16 Franchised locations through out Western Australia and 245 Franchised locations across Australia.

We are against the Bill proposing to change the current Act.
Comments below indicate which parts of the Bill we oppose and the reasons why.
We have also summarised the changes requested below and why.

All Franchisees are effectively Small Businesses that rely on support from, not only our group, but the Tobacco companies to compete in a competitive industry which is dominated by major supermarket chains. Some of the changes proposed in the Tobacco Products Control Amendment Bill would threaten the existence of individual Small Businesses on a number of levels.

As you can see by the attached comments, the main issue that TSG have with regards to the proposal is the reforms for the tobacco point-of-sale displays in retail outlets.

We support that, as Specialist Tobacconists, we require some compensation compared to general retailers. They need to ensure that their primary source of income is protected and our customers can purchase the products they want in a normal retail environment, after making an informed decision to smoke.

I thank you for reading the submission from our group and trust that the comments are reviewed before the Bill is passed that would severely disadvantage a significant number of Small Businesses in Western Australia. I would also be available to discuss this submission further should that be appropriate.

Yours Sincerely

ANDREW WHITE
General Manager

Please note comments below regarding the proposed Tobacco Control Amendment Bill 2008

Clause 5

Relating to sect 22 Display of tobacco products

The following points need to be considered when proposing to ban tobacco point-of-sale displays in retail outlets:-

Previous Bill recently introduced

The current Tobacco Products Control Act 2006 is still settling in and the impacts of the changes made in 2006 are only being realised now. The process of implementing new restrictions on display were drawn out and costly for all involved. It is impractical to keep changing the rules every 2 years and the changes made previously took nearly 12 months to finalise before full introduction. It is onerous on retailers to disrupt their business on a regular basis and change the rules before the full impact of the previous changes can be assessed and measured.

Impact in other states

It seems that the Western Australian Government just wants to “keep up with the Jones’s” after NSW and Tasmania have proposed tougher legislation and banning display of tobacco products to be introduced in possibly 2013 and 2011 respectively. The impacts of this legislation has not yet been realised and any speculation in the reduction in smoking prevalence is, just that, speculation. No one knows what will happen to retailers or smokers when blackout of products is implemented. It is pertinent to note that both states gave compensation to Specialist Tobacconist businesses. NSW is proposing to give a 4 year dispensation to Specialist Tobacconists to reduce the impact on their livelihood. Tasmanian legislation has no plans to ban display of tobacco products in specialist stores. For Western Australia to go to a total ban now, would be an uninformed and “knee jerk” reaction to follow (or overtake) other states without proper justification.

Impracticality for Retailers

Our Franchised group of Tobacconists are high volume, low margin retailers that provide expert customer service in the Tobacco category. The average volume of cigarettes across our outlets is more than 500,000 “sticks” (or cigarettes) per month. This equates to over 600 packets per day. The reality of selling 600 packets of cigarettes that need to be taken from a drawer or from a cupboard is very impractical for the retailer.

Our stores are set up in a plan-o-grammed manor that allows the storage of Tobacco products in a visible manor for both the consumers to view the products available, as well as allowing the retailer easy access to the most popular products. To cover all products or relocate products into cupboards or drawers would severely disadvantage our Franchisees in stock replenishment and ease of transaction. Not only would this potentially increase labour hours to manage a store, but could implicate Occupational Health and Safety issues in store depending on the restrictions and configurations required at a store level.

Costs of Changes

TSG on behalf of our Franchised stores currently have agreements with Tobacco Manufacturers for storage and supply of Tobacco Storage units. The Tobacco Companies pay for the supply and installation of the Tobacco Storage units that our Franchisees currently have in stores. For a total Blackout of Product, it is highly unlikely that in future Tobacco Companies would supply Tobacco Storage units, or make changes to the current units to meet the proposed legislation changes. This would put undue financial strain on our Franchisees to make changes necessary to meet legislation, which may even warrant a new shop fit in stores costing tens of thousands of dollars to accommodate.

In reality, Manufacturers in all industries pay for shelving or display products that allow their products to be seen in a Retail environment. I don't know of any that support retailers to cover their products so they cannot be seen. The costs and responsibility of changing retail environments to accommodate these changes will run into thousands of dollars that would be onerous on our Franchisees.

Changes would put Small Business Existence in Jeopardy

The Tobacco Station Group Franchise network (TSG) has been set up on a business that supports our Franchisees and the Tobacco industry as a whole. Our agreements with the Tobacco Manufacturers is complex, yet relies on our Franchisees receiving payments for a number of compliances to Trading Terms with the Tobacco Companies. The Tobacco Companies pay our Franchisees rebates for, among other things, placements of products in the Tobacco Storage units. This is obviously reliant on the positioning of their products that are visible to customers. The proposed changes would jeopardise the future of the rebate payments. If rebate payments are ceased or reduced from Tobacco Companies, not only is the financial future of each individual store threatened, but the attraction to a Franchised Group like The Tobacco Station would also be jeopardised. Please understand that whole Franchised Tobacconist industry is reliant on these rebate payments and would not only our 16 Franchised Tobacconist stores in Western Australia face extinction, so too could our company as a result.

Reduction of Range and Smaller Brands

TSG, as Specialist Tobacconists have a competitive advantage over Supermarkets and other mass retailers by stocking specialist products that are not available in all outlets that retail tobacco. Should a complete cover up of products happen, the smaller, lower volume brands will decrease in volume, as will the competitive advantage that our Specialists currently have. This is particularly applicable to cigars as there are a large number of cigars available on the market that need to be seen to be appreciated by consumers. To have these items illustrated in a catalogue at the point of sale would not do them justice. Our stores would substantially drop in sales and this would restrict the sales of specialty brands.

"Grocery Organised" Businesses have potential to squash Small Businesses

As TSG has approximately 6% of the total Tobacco market, we are effectively a small player. If you then treat each individual Franchisee as a single business, which they are, then they are very vulnerable to being put out of business should a price war start in Western Australia on Tobacco products. As mentioned, our stores are currently supported by Tobacco companies for ensuring that we stock all brands and provide specialist advice to consumers. The addition of specialty knowledge and Customer Service bolsters the viability of specialists and provides a point of difference to Tobacco

consumers who require help in making informed purchases. Our stores work on low retail margins and any predatory pricing that could come into play by major retailers would wipe out the existence of Tobacconists who cannot subsidise losses from either other stores or other categories. If a full cover up is regulated, the only retail advantage would be on price. History has shown that the major supermarkets have targeted categories and taken heavy losses for sustained periods until competition folds and then margins slowly creep up to compensate. It would be a shame if this were encouraged in Western Australia through the cover up of Tobacco products.

Ignorance of range and product knowledge

As Tobacco is a consumable product, the customer purchasing the product has a need to view the product they are purchasing. Could you imagine a Green Grocer not displaying their produce? If you look around all retailers in a Shopping Centre one of the most striking features that can give stores a competitive advantage is their displays. Often a retailer's brand is ignored and a consumer will only see the products rather than the signs or Point of Sale information. Tobacco retailers who cater for all smokers needs have a right to display products to their customers so they can make an informed decision on purchase. The proposed legislation is a restriction of trade for Specialist Tobacconists who sell a legal product to consumers. Consumers will not be aware that TSG stores stock full ranging and potentially will limit the range of products available. This may affect sales of "milder" or "lighter" Tobacco Products that are not in mainstream sales volumes and manufacturers may be forced to delete these products due to sales drops. TSG are not ignorant of the effects of current QUIT campaign stating that "All cigarettes are doing you damage", however it could be argued that the products with less tar and nicotine are "less bad for you". Consumers could be unaware that retailers actually sell these low tar and nicotine products and purchase the mainstream "heavier" products.

Negative Impact of Blacking out Tobacco Products

There has been no plan to cater for smokers to ensure that they can find their products to purchase. Imagine coming to a new area and looking for a packet of cigarettes in a shopping centre that you were unfamiliar with. With the ban on display as well as legislative restrictions on advertising and signage, it would be very difficult to find the products that they were looking for. This would lead to frustration by the consumer to purchase a legal product not to mention that once they found the products, trying to compare products and prices to ensure that the consumer is treated fairly as they are with other products under TPA and ACCC guidelines. It could be argued that this would substantially reduce competition in the market place and have legal ramifications from the ACCC by following legislation.

Australian Market

There has been much discussion on the affects of reduction in display of tobacco products in different parts of the world. The various studies and outcomes may be relevant to similar environments, however there is no concrete information that can guarantee how consumers in Western Australia will react to the proposed legislation. It is well documented that Australians are a "Weird Mob" and have individual needs and habits. The reactions to changes in various parts of the world could bear no resemblance to the way that locals in Western Australia will react to changes in their local shopping centre. Obviously by the States having jurisdiction on their localities and the Federal Government not addressing these issues at a National level, shows that various parts of Australia have differing opinions on the matter. To compare Western

Australia to the provinces of Canada is, in our opinion, not relevant to how Western Australians will react.

Clause 6

Relating to

- **Smoking in cars with children**
- **Smoking in outdoor eating and drinking areas**
- **Smoking in playing areas**
- **Smoking in safe swimming areas**

TSG have no issue with the introduction of laws relating to smoking in cars where minors are present and support this amendment. We also have no issue with banning of smoking in children's play areas or safe swimming areas.

TSG do however object to the proposal to ban smoking in outdoor eating or drinking areas.

The following points need to be considered when proposing to ban the use of tobacco products in an outdoor eating or drinking area:-

Cost of set up

With previous changes in legislation as recently as 31st July 2006, a number of venues have spent large amount of money in catering for smokers needs and have developed outdoor areas. These venues will become deserted and a waste of space and money. The reason that they are so popular is that smokers can socialise in these areas with other smokers and enjoy a meal or drink. There is a market for these areas by popular demand. If these areas are set to be smoke free, the smokers will stay at home and smoke in their own homes, reducing the likely hood of going out and keeping these venues viable.

People's Choice

Tobacco is still a legal product in Australia and in particular, Western Australia. People choose to smoke and have a huge number of resources to draw on if they wish to quit. Smokers should not be made to hide away in private to use their legal products. It is recognised that smoking in enclosed areas is not healthy for people around, however, eating and drinking establishments have set up special areas to cater for smokers and it known that these outdoor areas are designated. They are well ventilated and the rules cater to allow the smoke to dissipate and fresh air to get in. People need public areas to enjoy their smoking and must be allocated areas such as these to socialise.

Where do they go?

It seems that administrators are wishing to impinge on people's rights to use legal products. Will it get to a stage where it is illegal to smoke in a public place? These proposed steps are bordering on over-governing and clearly are stepping over the line an discriminating against smokers Do you expect to smoke in a tiny corner of their home or property as social lepers and not be allowed in public at all? I agree with protecting workers and children from passive smoke but surely smokers have rights too and as long as there are no health issues for people employed in those areas, it should be the responsibility of owners of restaurants and bars to provide an area for the smoking public. If you rescind this right we are getting to an area of governing for the

sake of it and there are no relevant health reasons for anyone other than the smoker, who makes his/her own informed decision to smoke.

Summary

In summary it is our belief that the proposed “Tobacco Products Control Amendment Bill 2008” would have a substantial negative impact on our business as well as that of our Franchisees for the following reasons:-

Clause 5 Relating to the Display of Tobacco Products

- The current Tobacco Products Control Act 2006 is still settling in and there can be no conclusion drawn from the impact of this in a short period
- Regulations in NSW have not been drawn up yet regarding banning display of Tobacco Products and are not expected to come into force until June 2009. These will then give Specialist Tobacconists 4 years to comply with a total cover up of product. Tasmania has an ongoing exemption for Specialist Tobacconists recognising that this is the heart of their income and existence
- The inconvenience of serving customers in high volume stores is a major concern for not only the extra time taken in transacting, but OH & S reasons and restocking of products.
- Changing the physical hardware in our stores would not only be onerous due to the costs, but would be aesthetically displeasing to consumers and place additional stress on small businesses
- The Financial sustainability of our Franchisees would be threatened and this would have a significant impact on our business as a result. This is due to a number of factors including reduced rebates from tobacco companies, price war potential and sustainability of a business reliant solely on the profit from the sales of tobacco products
- Competitive advantage of our stores would be lost due to ranging and the specialist status. If no products can be seen, then the public will not know what is for sale.
- This would pave the way for “big business” to get bigger and small businesses to die off. The potential for Supermarkets to crush specialist tobacconists in a price war would be increased substantially.
- Consumers would be unaware of the total range of products available to them. Consumers do not have time to “review a catalogue” prior to the purchase of tobacco products.
- The mystification of tobacco products for young people could have a significant increase in the “coolness” of smoking and increase the rate of uptake.
- Any expectations on how the Western Australian market will react to the proposed cover up, is merely speculation. Impacts of markets in various parts may or may not have similar effects in our unique retail market.

Clause 6 Relating to the Smoking in outdoor eating and drinking areas

- Huge money has recently been spent to set up these areas in the past 2 years when legislation changed July 2006 to cater for smokers due to changes in legislation less than 2 years ago. This would leave establishments with areas that are useless and they could still be paying them off from recent installations
- People frequent these areas by choice. They are populated by people who choose to smoke and like to socialise in designated areas that is not harmful to others
- It is bordering on do designate where, in public open areas, people can and can't smoke. Tobacco products are still legal and should be allowed to be used in public areas that have adequate ventilation.

Recommendations

It is TSG's recommendation that the only changes required is the implementation of clause 106A relating to the smoking of tobacco products in a passenger car with minors on board.

The other proposed changes should be removed and remain as per the Tobacco Products Control Act 2006.