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My Submission is on behalf of:

FREECHOICE Stores – Tobacconist

FREECHOICE – Vending

PROTECTING CHILDREN FROM TOBACCO NSW DISCUSSION PAPER

We would like to commence our submission response by expressing our gratitude to the NSW government for providing everyone the opportunity to submit a submission in relation to the discussion paper and express their thoughts and concerns on each of the options in this paper. This is a positive move forward and progresses on from the discussion and concerns raised by FREECHOICE Stores – Tobacconists during the Independent Senate select committee in May 2006 and the inclusion of an exemption for tobacconists in relation to display written in the official governments response released in January 2007.

A brief insight of the businesses in NSW that will be affected by a negative outcome of this discussion paper

FREECHOICE Stores - Tobacconists currently have 162 franchised Tobacconist Stores Nationally 61 of them being in NSW, all of which are operated by the owner or owner's family with assistance from additional employees over 180 people in total are employed directly.

FREECHOICE Vending we currently have 270 vending machines Nationally 150 of them being in NSW

Option 1

Do you support banning smoking in cars where children under the age of 18 years are present?

Support

As a parent to five (5) I personally back this initiative and on behalf of all our franchisees in NSW I am confident they will feel the same way in relation to this.

This ban was introduced in Tasmania in January 2008 and as part of our commitment to this initiative we requested from the Tasmanian Government a large amount of flyers that we would hand out to our customers when they came into a FREECHOICE Stores – Tobacconist to purchase tobacco products. This to us was seen as a service to our customers informing them of the new law and the penalties, whilst at the same time reinforcing the importance of protecting minors from second hand smoke whilst travelling in a motor vehicle.

South Australia has also introduced a ban on smoking with Children in cars under the age of 16 under their latest legislation changes

Option 2

Do you support removing tobacco product displays out of sight in retail outlets?

Don't support

As you have raised the following in your discussion paper it is important for us to clarify the following 2 points

1. Whilst it is correct that Tasmania has banned tobacco displays in general retail from February 2011 (which we do not agree with), it is also important to acknowledge that an exemption has been given to **Tobacconists of 4m2 in display**.
2. The ACT government did table a bill in parliament on 6th March 2008, relating to the total ban on display, but this was before any consultation with retailers. Since the Bill was tabled we had a meeting with Ms Katy Gallagher to express our concerns as small business over the proposed total ban. To the governments credit they acknowledged that the consultation process was not acceptable and as a result of this they will be revisiting the entire process based on feed back they have received, and as a result of this potentially make modifications to the bill prior to it being debated in parliament. We have openly offered to be involved in the ACT process as we have been in Qld, WA, SA and Tasmania over recent years.

As it currently stands whenever a change in legislation comes into effect on the displaying of Tobacco products the restrictions are initially recommended to go across the board with no exemptions given at all. This is despite the major differences between businesses and the influence they have on under age and non smokers.

To back this point up I would like to use the Supermarket compared to a tobacconist analogy.

Supermarkets as they currently stand in NSW have their tobacco products displayed in the prime location within their store, being a kiosk in the front of the premises; this can be seen from all angles. The number of underage persons who go past this point on any given day is endless; the percentage of people who walk past this site who are adult smokers could only be equivalent to the smoking population which is 20%.

Supermarkets promote themselves as "The Fresh Food People" Always fresh etc. Tobacco products only account for small % of their total turnover, with them having over 50,000 other products which they sell. Supermarkets are able to use major cigarette brands as loss leaders to encourage consumers to shop in their stores, much the same as they do with Coca Cola, Cadbury's Kelloggs etc. 5 of the top 10 selling products (\$ turnover) in the major supermarket chains are cigarettes.

Despite the above facts supermarkets are still treated exactly the same as a Tobacconist when it comes to display in NSW. (This has now changed in Queensland, Western Australia, South Australia and Tasmania) even though a Tobacconist has the following characteristics. Over 80% of turnover is derived from the sale of tobacco products, 80% of the clientele who enter a tobacconist are adult smokers who have are looking at purchasing a tobacco product. Once in the store the products on display only assist them in making a decision on what brand they will smoke, the remaining 20% of customers may be looking at the small selection of giftware they have available to sell. The majority of this giftware is targeted at the adult consumer. The business is generally owner operated and therefore they will be more attuned to the current legislation and requirements.

Most Tobacconists display over and above the required Health Warning signs to discourage minors from trying to purchase tobacco products from the store.

Tobacconists have less than 2% of the product diversification of a supermarket and more than 80% of their revenue is derived from the selling of Tobacco Products to Adult consumers who have made the decision to smoke. Tobacconist are not in a position to inadvertently promote tobacco products to underage smokers and non smokers as they seldom enter the premises as they have no need to.

The above scenario will also apply to other tobacco retailers (Convenience stores, Service stations Newsagencies etc) as with supermarkets, but just to a lesser extent as there diversification is not as big as the supermarkets.

What South Australia has done to get around the placement of Cigarette Kiosks in the major supermarket chains is introduce, that any outlet greater than 200m² can not have tobacco products seen from a public place.

Tobacconists carry on average 3-4 times the product range of any other tobacco retailer, covering all of these products would be a practical nightmare and a concern to workplace health and safety as a result of having to continuously turn your back on the customer to find a product. Over 80% of a Tobacconists turnover is tobacco product related this is a minimum of 2 times the turnover of other tobacco retailers.

We would like to list the following licensed and over 18 products and premises which are being allowed an uneven playing field, by government control and restrictions on who is entitled to sell or provide the products and or services.

- Alcohol.
- Pharmaceuticals
- Poker Machines and Casinos
- Betting agencies (TAB)
- Lotto agencies.

We believe that tobacconists should be considered for similar allowances at least in relation to product location exemptions for the products they sell as the above businesses because, if you were to prevent the right of any of the above businesses to promote, advertise let alone display their products their businesses would find it very difficult to survive. The major reason for this is because over 80% of the outlets income is derived from a product or service that can only be provided or sold to a person over the age of 18 as is the case with a tobacconist. A number of our stores would need to make a business decision as to what they want to focus on.

To meet the Specialist Tobacconist definition many stores will be required to remove a number of non tobacco related products to ensure they can meet the 80% requirement and be eligible for the additional product location allowance recommended in this submission.

The consumer make up of people in tobacconists is greatly different to the consumer make up of convenience stores, supermarkets etc. There are a very limited number of minors who enter a tobacconist and of the adults who enter a tobacconist they have already made the decision to smoke. The product location is their to give the adult consumer who has already made the decision to smoke the ability to look at the products available for sale and make a decision based on a visual sighting, as is the case with every other legal consumable product in the market place.

Making the above recommendation as to why a tobacconist should be treated differently does not distract from our thoughts that all stores should have the legal right to have a product location to display the tobacco products they sell, although we believe in a reduced

capacity. Queensland, Western Australia, South Australia and Tasmania have agreed with these thoughts and allowed between 3m² - 4m² for tobacconists and 1m² for all other tobacco retailers. We feel that this is a fair and reasonable request and we are offering to sit down with the NSW government and discuss the most practical way of putting this into place through out the NSW market place.

Option 3

Do you support the introduction of a licensing scheme for tobacco retailers?

Support

We fully support the introduction of a license scheme for all tobacco retailers and for that license to be subject to terms and conditions as indicated in the discussion paper. Retailers who are caught selling to minors on more than 1 occasion should have their licence revoked for a period of time, this is over and above suffering heavy fines for the breaches, this should act as a deterrent in the market place, particularly within specialist tobacconist who derives 80% of their turnover and profitability from Tobacco products.

We would like to suggest the introduction of a Specialist Tobacconist license, this license may cost a little more than the standard license, but it enables a Specialist Tobacconist (a store in which 80% or more of their gross turnover is tobacco related and is not a shop within a shop) to retail and wholesale tobacco products. This Specialist Tobacconist license would also provide the holder with an exemption on the amount of Tobacco products they can display, eg a Specialist Tobacconist can display 3m² of Cigarettes and Roll Your Own and 1m² of Cigars within their premises, but can not display more than 2 packets of any product line and are not permitted to display cartons. The reason for the display exemption is because a standard Tobacconist carries more than 3 times the product range than the supermarkets or general retail trade and the average turnover is significantly higher as a result of it being their core business.

Based on the current NSW environment there would be around 300 outlets that would meet the 80% requirement as recommended above and be entitled to a Specialist tobacconist License. NSW has the largest tobacconist network in the country, having almost 2 times the amount of tobacconists as the next biggest state Victoria, therefore the introduction of such a license in NSW would almost be self funded by the Specialist Tobacconists annual fees.

Maintaining a standard license with some monetary value to all other retailers should also assist in reducing the amount of retailers that sell tobacco products as they need to weigh up the cost of a license compared to the return they get from selling tobacco products. The revenue the government gets from having these 2 types of tobacco licenses will assist in self

funding the complete licensing scheme, whilst enabling the government to have better control on the industry.

Tobacco products are one of the most regulated and legislated products in the market place, yet any outlet can sell them. All other 18+ items have restrictions on whom and where they can be sold eg. Alcohol, lotto tickets, poker machines, betting agencies (TAB) introducing a complete 2 pronged license system as recommended above would enable a clear separation moving forward between general retailers who sell tobacco products and Specialist Tobacconist whose business is derived from the sale of Tobacco products as is the case with the 18+ products listed above. This separation should assist if any future changes are considered to the availability of Tobacco products.

Option 4

Do you support retailers being required to ask all customers that appear under 25 years of age for identification if intending to purchase a tobacco product?

Support

We support this recommendation also, during our submission prior to the Joint Senate Committee hearing we recommended that an interchangeable sign be designed and produced, which would be located in each Specialist Tobacconist premises, the sign would read something like below

IF YOU WERE NOT BORN BEFORE

12th April 1990

WE CAN NOT AND WILL NOT SUPPLY YOU WITH ANY TOBACCO PRODUCTS FROM THESE PREMISES.

IDENTIFICATION WILL BE ASKED FOR IF THERE IS ANY DOUBT.

ACCEPTABLE ID

18+ CARD

DRIVERS LICENSE

PASSPORT

These posters can be laminated and placed on a stand at the entrance to all tobacconist stores; the date component of the signage is interchangeable and is required to be changed on a daily basis. The interchangeable component can be made of magnetic pieces, what each store would require is numbers from 1 – 10 and the months of the year.

The signage needs to stand out, so the design component is very important, we would be more than happy to assist the government in designing such a poster.

As over 80% of a tobacconist turnover is derived from selling tobacco products, it would not be unfair to request the placement of such information at the front of all stores and possibly at the main serving point depending on the layout of the store. However if a tobacconist is going to provide this information to prevent underage smoking, they need to be given allowances for product location within their outlet compared to other tobacco retailers as previously expressed.

Option 5

Do you support having restrictions on employees who are under 18 years of age from selling tobacco products?

Support

This is a very difficult one, as the majority of our franchisees are owner operators and would at times have their children assist them in the store. This new legislation is working on protecting Children from Tobacco so allowing children under the age of 18 years to sell tobacco products, certainly tends to be a contradiction to the policy and discussion paper you have released.

Instead of restricting employees from under the age of 18 selling tobacco products completely and thus eliminating the ability for children to assist their parents in the family business, why not introduce that person under the age of 18 can sell tobacco products provided, they are in the presence of a parent or guardian, this will certainly help small businesses out as the children are generally already in the store. But will eliminate non supervised minors from being able to sell Tobacco products.

Option 6

Do you support limiting retail outlets to one point of sale for tobacco products?

Support

You should not require more than 1 point of sale in any retail store, but we need to completely understand what constitutes a point of sale.

Example: A store that has a doorway in the middle of two cigarette cabinets is this classified as 1 point of sale or is it classified as 2.

Option 7

Do you support banning tobacco sales from vending machines?

Don't Support

We believe it is important for the government to have a better understanding of the financial commitment made by vending operators in the state of NSW to provide a service in restricted areas of licensed venues for adult consumers who have made the conscious decision to purchase a tobacco product.

The NSW vending market place has only one manufacture physically involved, in the supply and servicing of Cigarette vending machines, this company is British America Tobacco, neither Philip Morris or Imperial Tobacco have vending machines in the NSW market place. British America Tobacco is the largest operator in the market place, but there are a large number of independent vendors who have outlaid extremely large amounts of capital by purchasing Cigarette Vending Machines to place in licensed premises within NSW.

FREECHOICE Stores Vending has 300 vending machines in licensed premises and in our warehouse within New South Wales, we have 4 fulltime staff employed, have a lease on a warehouse and leases on 4 company vehicles. At an average replacement cost of \$5000 per machine we have up to \$1,800,000.00 tied up in capital. FREECHOICE Vending is not the only Independent vending operator in NSW either, there are a further 15 independent vendors in the state of NSW with a further 1000 vending machines in the market place (estimate only). An extreme capital investment has been made by all of these small businesses in the state of NSW based on an association with an 18+ product being sold in an 18+ venue.

The banning of Cigarette Vending Machines in licensed premises does not make sense; the association with an 18+ product in an 18+ venue is the most sensible combination in the market place. We understand the concerns that have been raised in relation to Vending

machines being accessed by minors, but incorporating one or two basic changes to the legislation would greatly eliminate these concerns.

The suggestions are as follows

1. Ensuring that all machines are within 5 meters of the bar and in clear site of the staff at all times (current legislation in Queensland) and
2. Incorporate a token system (which has just recently been implemented in South Australia). How this works is that a person wishing to purchase a packet of cigarettes from a vending machine has to go to the staff behind the bar and request a token, the only way a token can be given is for the staff member to sight identification, if they believe the person to be under 18. The person then places the token into the machine to activate it; they then place their money in and purchase the product.

I understand that there is no fool proof way to 100% stop the sale of Tobacco products to minors as there is no fool proof way to completely prevent anything, but placing these conditions on all Vending machines will reduce the chance of this happening to a minimum, there would be more restraints in place by doing this than a minor going to the local store and trying to purchase tobacco products from the young person working behind the counter. It is important to remember that licensed premises are predominantly visited by adult consumers and when minors are in the premises it is a requirement that they are supervised by an adult patron in and around the licensed area as a condition of entry. Minors should not be entering these areas of the premises without adult supervision, as it is against the law. A token system would however eliminate the potential of this machine being accessed by minors without going to the bar first.

We can assure you that we do not use the vending machines as a marketing tool, as marketing tobacco products out of our machines does not pay the wages and loan repayments, what we offer as a vending operator is the ability for an adult consumer (in a licensed premises only) who has made the decision to purchase a tobacco product the ability to do so in a responsible way. You would have to ask the other vending operators if they work on the same philosophy, but I am sure they all would.

In the discussion paper you indicate that vending machines are still available in dedicated staff amenity areas in workplaces, we fully support the banning of vending machines in these locations and restricting all future vending machines to designated areas in licensed premises ONLY. (Within 5 meters of a bar)

Option 8

Do you support banning tobacco products from inclusion in shopper loyalty programs for example where accumulating points result in gifts or benefits for example fuel discount vouchers?

Support

As a tobacconist we have not been able to offer any loyalty programs on tobacco products for years, there is however currently a loop hole in the NSW legislation that enables the major supermarkets to provide discounted fuel vouchers and fly buys on tobacco product purchases. This loop hole was closed in 2006 in Queensland and in 2007 in South Australia, so we are aware that the POS program of the major supermarket chains can easily implement these changes should this be banned, as we believe it should. Supermarkets have been the major players in the loyalty program schemes on Tobacco products with the 4 cents a litre discount if you spend more than \$30.00 in any in store.

SUMMARY

Protecting Children from Tobacco and stopping the underage consumption of tobacco products needs to be a multi pronged attack, not just a single pronged attack directed at the retailer/business operator as appears to be the case in this discussion paper, with all Options except Option 1 having a direct effect on the retailer and a magnified, potentially business destroying effect on the Specialist Tobacconist retailer and Vending operator.

We believe it is imperative that legislation is implemented that permits law enforcement officers the ability to confiscate immediately any tobacco products found in the possession of a minor, this does not necessarily have to result in any further action, but the legislation needs to allow law officers and health inspectors the authority to confiscate tobacco products. More controls need to be put in place to deter minors from attempting to purchase tobacco products in the first place.

Has the government considered that if a minor has no consequences for their actions then they will attempt as many times as possible to purchase tobacco products until they finally come across a rogue retailer who is willing to break the law. Placing an onus on the minor in the form of a fine for misrepresenting their age will act as a deterrent to many minors from attempting to misrepresent their age and purchase tobacco products. (This type of legislation was introduced in Queensland in 2006.) We understand that this will not work with all minors, but it would certainly reduce the number of minors trying to purchase tobacco product from retailers, thus reducing the amount of abuse the honest retailer has to deal with as a result of being a responsible retailer.

FREECHOICE Stores -Tobacconist as responsible retailers would like to work with the government to reduce the number of underage kids smoking, this can be in the form of

signage, that clearly stipulates that if you are under 18 you will not be served and advise them of the acceptable forms of ID and reducing the amount of products that are attractive to children within Specialist Tobacconist premises.

From our interpretation it appears that the laws and regulations in relation to tobacco products are very similar to that of liquor licenses in relation to penalties for selling to underage, yet the penalties to a minor misrepresenting their age and possession of an 18+ product has been ignored in this discussion paper.

In summary we would like to be given the opportunity to present our thoughts in person to the appropriate department prior to any legislation being finalised, we trust that the above submission gives sufficient in-site to warrant such a meeting in the near future. As indicated in our introduction we have been actively involved in the legislation process in Queensland, Western Australia, South Australia, Tasmania and New South Wales during its complete review process dating back to 2004. We wish to have the same involvement with the New South Wales legislation moving forward.

You can contact the writer on 07 5537 6276 or 0419 605 387 or you can e-mail me on simon@freechoice.com

Regards,

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New South Wales Select Committee hearing refresher in light of new Tobacco discussion paper.

To whom it may concern

We have just been informed that the NSW Government has released a discussion paper which suggests introducing radical changes to Tobacco Legislation with the intention of making it the strictest in the country. This new stance in certain areas contradicts the governments response to the findings released as part of the Legislative Council Joint Select committee held in 2006. The Joint Select committee hearing process was a massive undertaking by the NSW government with the intention of finding out a fair and equitable way of moving forward with tobacco reform, with the intention of reducing the smoking rate in NSW, whilst not sacrificing the livelihood of 1000's of small retailers in the state of NSW.

The report was 196 pages at its completion and the Governments response to this independent report was a further 26 pages released in 2007.

FREECHOICE Stores - Tobacconists were heavily involved in the Legislative Council Joint Select committee, we sat on the panel held on 5th May 2006 to discuss the effects any proposed changes would have on the retail sector of the market. We were representing 59 FREECHOICE Stores tobacconists in NSW and indirectly a further 280+ Tobacconists not associated with FREECHOICE Stores in NSW, but tobacconist outlets.

As indicated above this was a massive undertaking by the NSW Government, which ended in a 196 page report and then a further 26 page response report from the NSW Government released in early 2007.

Of the 26 recommendations we agree in principle and as responsible retailers are committed to complying with all of them, but we would like to provide more in depth feed back on the following recommendations than just a blanketed yes or no.

Recommendation 19, 20, 21, 22, 23, 25 and 26

Recommendation 19

Sale of Tobacco products to minors

As the franchisor of a Tobacconist chain, we are 100% behind anything the NSW Government introduces that strengthens the laws that prohibits the sale of Tobacco products to all persons under the age of 18.

We think that a licence should be required and introduced to sell Tobacco Products and anyone found guilty of the blatant sale of Tobacco products to a minor should have their licence suspended for a 3 month period, any subsequent prosecutions should result in the licence being banned permanently, this would be on top of a very heavy fine for each offence.

Another area that we believe should be introduced is the ability to fine a minor who attempts to misrepresent their age and purchase Tobacco products from a retail shop. If a minor does not have to take responsibility for their actions then there is no reason for them to stop trying to break the law. The ability to fine minors for this was introduced into legislation by the Queensland government after consultation with retailers in 2006.

We believe it is important that as responsible retailers we believe in the right to supply Adult consumers who have made the decision to smoke, and this should also include the ability to have product placement of all Tobacco products sold from a tobacconist.

Recommendation 20

Banning of Fruit Flavoured tobacco products

We are aware that this ban has already been implemented, but it was clearly stated during our previous submission and discussions at the panel that we were 100% behind this decision, as these types of products were only new to the market place. It is important to highlight that none of the 3 major manufactures in the Australian market place being Philip Morris, Imperial Tobacco and British America Tobacco produced or distributed these products into the Australian market place.

Recommendation 21

Licensing System

We have been firm believers of the introduction of a tobacco licence, for both the retailing and wholesaling of tobacco products. The tobacco industry is restricted in many areas harder than any other industry in the country, yet the product can be sold by almost anyone. The introduction of a licence will go a long way to better monitoring the sale of tobacco products, particularly if as stated above sales to minors could result in the suspension of such a licence.

WA introduced both a retail and wholesale licence in June 2007. This could be used as a guide when deciding on the go forward plan.

Recommendation 22

Point of Sale restrictions

As tobacconist retailers you would be aware and understand that this is the most important section of all recommendations put forward by the NSW Government, as any dramatic change to display will have a severely adverse effect on our franchisees business as well as all other tobacconists in NSW.

We have been actively involved in all state legislation changes over the past 10 years and all states in which we have been actively involved have had a definition of a tobacconist written into their

legislation, when changes were made and implemented. The definitions in Queensland, WA and SA are extremely similar (refer below)

“A tobacconist is a supplier who sells smoking products by retail to the public and the sale of smoking products makes up 80% or more of the business total retail sales (gross)

If your business sells smoking products, but the majority of sales is not derived from the sale of smoking products then you cannot be classed as a tobacconist.

The business must be conducted separately from, not in conjunction with, and not within the premises of any other business.”

Based on the above definition there would be around 300 stores who would be classified as a tobacconist in the state of New South Wales.

Anyone who meets this definition in Qld and SA gets 3m2 of display, with SA allowing an additional 1m2 for the display of cigars. In WA if you meet this definition you have unlimited display with the premises.

The exemption of tobacconists was included as part of this recommendation and we do not see any reason why this should not remain the same.

In other states the display outside of tobacconists is restricted to between 1m2 and 3m2 depending on your turnover and the size of the outlet.

Because of the large turnover of tobacco products within a Tobacconist it is also important that the way a product can be displayed is considered and written into the legislation to avoid confusion, in all states outside of Tasmania angled trays are permitted for the dispensing of products within Tobacconists and the tops and sides of these products are not classified as a facing, the definition in both the Queensland and South Australian legislation explains this best.

Recommendation 23

Loyalty programs

As a tobacconist we have not been able to offer any loyalty programs on tobacco products for years, there is however currently a loop hole in the NSW legislation that enables the major supermarkets to provide discounted fuel vouchers and fly buys on tobacco product purchases. This loop hole was closed in 2006 in Queensland, so we are aware that the POS program of the major supermarket chains can easily implement these changes should this be banned, as we believe it should.

Recommendation 25

Playgrounds to be smoke free

We certainly agree with this being changed

Recommendation 26

Smoking in Cars

We would like see the Government legislate to ban smoking in cars whilst children are present. This should be considered a natural progression in the protection of children, just as the introduction of DUI tests, child restraints and seat belts in cars over the years.

Smoking bans in cars has legislated by both the Tasmanian and South Australian Government in their latest legislation changes.

Conclusion

FREECHOICE Stores has been actively involved in all state legislations over the years and has spent a lot of time working with governments from all states with the intention of protecting the businesses of all FREECHOICE Stores tobacconist franchisees through out the country. We have ensured complete compliance to all government legislative changes once introduced and have encouraged the introduction of stronger penalties for those retailers caught supply tobacco products to minors.

FREECHOICE Stores are responsible retailers and are more than happy to work with all levels of government to ensure that FREECHOICE Stores – Tobacconists maintain the high levels we install. We however need to be able to work with the government to ensure that any legislation changes do not have a detrimental effect on our franchisees business and future earnings, in NSW alone FREECHOICE Store outlets employ over 150 people and the tobacconist sector employ over 900 people, all of them being small business operators.

We trust that you will follow the recommendations given by the Joint Select committee, in particular to stricter controls on sales to minors, the exemption to tobacconists in relation to display and the potential of introducing tobacco licences within the state.

FREECHOICE Stores are more than happy to work with the government and provide input based on what has been discussed and implemented for Tobacconists in other states, should you require assistance in this area you can contact the writer on 07 5537 6276 or 0419 605 387 or email simon@freechoice.com.au

Regards,

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