



# **Out of sight:**

## **Tobacco retail issues and arguments in Canada, Australia and Ireland**

**Report for the Cancer Society of New Zealand and ASH New Zealand**

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## **Summary**

### **Introduction**

This report examines the experience of tobacco product display bans and licensing in the retail sector from three countries. In Canada a number of provinces and territories have tobacco-free retail displays, notably the Canadian province of Saskatchewan had a display ban during 2002-2003, and then again from January 2005. In Ireland a retail tobacco display ban is being prepared; whilst in Australia tobacco retail display restrictions short of a complete ban have recently been planned or implemented in a number of states. There are tobacco retail or wholesale licensing systems in a number of the provinces and states in Canada and Australia, and Ireland is preparing for a register of licensed retailers. In addition, a number of Canadian jurisdictions ban or will ban tobacco sales in particular types of places, including a Quebec and Nova Scotian ban where alcohol is sold.

### **Methods**

The information comes from official and other documents, media reports, and ten interviews with officials and health advocates in the three countries.

### **Arguments and tactics during policy development and introduction**

In Canada and Australia, retailers and the tobacco industry have argued that a substantial proportion of small stores would close if there was a display ban or restriction, with job losses and ruined businesses. Other predictions in at least one of the two countries have been of increased theft in shops, and a reduced ability to have sufficient tobacco products on hand. Other arguments by retailers and the tobacco industry against change have been that there was no evidence that display bans or restrictions would result in better health outcomes, that the bans would limit the ability to communicate with customers, and that tobacco products are 'normal' and 'legal'. Small retailers have predicted that display bans would make smokers unsure about whether small stores carried tobacco products, or particular tobacco products, and would go to larger stores to ensure getting tobacco, or the particular product they wanted. In both Canada and Ireland, legal action by the tobacco industry has been used to delay the implementation of tobacco display bans.

In Canada and Australia, health advocates have recommended that advocacy should emphasise the benefits to children from tobacco retail display bans, and that advocates need to assemble evidence of wide spread public support for change. In all three countries, advocates and officials stressed the need to gather information about the tobacco industry and retailer activities. In Canada, this was facilitated by legislation that requires the tobacco industry to supply marketing information to government; and in Ireland, tobacco industry internal document research and parliamentary inquiries helped reveal industry practices and attitudes.

Key recommendations from interviewees about policies for display bans included: (i) There should be no exceptions from display bans; (ii) There should be tight restriction on the display of tobacco price lists after a display ban, with the optimum requirement being for price lists only made available on request from customers; (iii) Tobacco product storage areas should not be visible to customers when open, and the storage

area should not become a marketing device in itself or a means of displaying the availability of tobacco products. .

### **Evaluation of display bans and licensing of tobacco retailing**

Most display bans have been only recently introduced, so evaluation evidence is limited. The best evidence comes from Saskatchewan, where the predictions of the tobacco industry and retailer groups have been found to be incorrect. Health Canada surveys have found very high compliance with the Saskatchewan bans, and there has been no or minimal costs to retailers reported from health, tobacco industry, and retailer sources. No reports were found of store closures, or job losses due to the bans. Evidence from Health Canada indicates that payments from tobacco companies to retailers continued at 90% of previous levels, in the two years 2005-2006 (ie. after the display ban).

### **Conclusions**

The experience from jurisdictions in Canada, Australia and Ireland suggests the likely range of strategies and arguments that the tobacco industry and retailer groups may use to oppose tobacco product display bans and licensing of tobacco retailers in New Zealand. Advocacy strategies could incorporate lessons learnt from these countries. Evaluation evidence is limited, but generally refutes the evidence of dire economic consequences predicted by the tobacco industry and retailer organisations.



Before and after the display ban in Saskatchewan, Canada.<sup>1</sup>

## 1 Introduction

This document reports on the evidence relating to the development, implementation and outcomes of tobacco retail display bans and the licensing of tobacco retailers, from Canada, Ireland and Australia. In particular, it aims to explore and discuss the available evidence on:

- The recent experience and plans of similar jurisdictions (in Canada and Ireland) that have introduced or are about to introduce point of sale 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 retailer and tobacco industry arguments and tactics, and some health counter-arguments that have been used in these jurisdictions.

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 and politics of the supply of tobacco to youth.

## 2 Methods

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 writing 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 there were a number of questions directed at 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, by consultation with researchers and advocates in New Zealand and elsewhere who had had some contact with tobacco control workers in the target countries, and by recommendations from the initial interviewees in each country. The criteria for selection included active involvement in some aspects 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 interviews were on the basis of anonymity. The intention was to find the issues and experience in the countries, 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**

Common themes across these countries included:

- Efforts by tobacco companies to secure retailer's participation in and demonstration of 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.

### **3.1 Canada**

#### ***3.1.1 Background***

After a number of steps during the previous 15 years, most tobacco advertising and sponsorship was banned in Canada by 2003.<sup>2</sup> 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.<sup>3,4</sup> 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'.<sup>5</sup>

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.'<sup>6</sup> This move to 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.<sup>7</sup>

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.<sup>4</sup>

### ***3.1.2 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) there was a two-stage process, with some restrictions introduced in May 2006 and the display ban due in May 2008.

Evidence is most available for Saskatchewan, as it is the province where tobacco displays have been banned for the longest. The legislation there came from a bi-partisan committee recommendation, and was passed unanimously by the provincial legislative assembly.<sup>8</sup> The 2001 Saskatchewan tobacco legislation, as well as banning retail displays, also (s.8) prohibits the sale of tobacco in video arcades, amusement parks, and gives government the ability to proscribe other types of places by regulations.<sup>9</sup>

The tobacco retail display 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 were compliant with the ban.<sup>10</sup> The six Health Canada tobacco enforcement officers in Saskatchewan were in August 2002 reported to have found 'minimal cost to retailers' from compliance, with no stores closed and no staff laid off.<sup>8</sup>

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.<sup>11</sup>

By 2006, there were tobacco displays in less than 2% of shops surveyed in the main Saskatchewan cities.<sup>12</sup> The Saskatchewan Coalition for Tobacco Reduction reported in April 2005 that there had been no media or other reports of thefts due to the display ban, and that any cost to retailers appeared to be minimal, with no stores closed as a result of the display ban, and no staff laid off.<sup>11</sup>

#### *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.<sup>4 pp.11-12</sup> 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.<sup>13</sup> Thus tobacco companies appear to be continuing to pay retailers just to *handle and sell* their products, rather than to display them.

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’.<sup>14p.51</sup> 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’.<sup>14p.51</sup>

One other change in Saskatchewan was the move by some retailers to limit entry to their shops by those under 18. Health Canada reported that during the 2002-2003 display ban, 16% of retailers ‘prohibited young people from entering their premises’.<sup>4p.12</sup> 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.

#### *Other Canadian provinces*

By March 2007, a tobacco retail display ban was in effect or about to take effect in Manitoba and Nunavut (2005), Prince Edward Island (in 2006), and Nova Scotia and the Northwest Territories in 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.<sup>15</sup> 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.<sup>16</sup>

### ***3.1.3 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 proven evidence that display restrictions would affect smoking prevalence and consumption.<sup>4</sup>

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.<sup>11, 14, 17, 18</sup> 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”’.<sup>19p.20</sup> 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.

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’.<sup>18</sup> The Ontario Convenience Store Association suggested that ‘30% to 40% of all c-stores will shut their doors’ if there was a display ban.<sup>14p.47</sup> 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.

### ***3.1.4 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.<sup>8</sup>
- 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 those about:

- 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).
- After the experience of Saskatchewan in 2002-2003, 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.<sup>8</sup>
  - 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.<sup>20</sup>
  - 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.

### ***3.1.5 Retail tobacco licensing***

While a number of provinces require licences to sell tobacco, at present the fee is nominal or nothing. 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.

### ***3.1.6 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.

## **3.2 Ireland**

### ***3.2.1 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 that have had effective parliamentary inquiries into the tobacco industry. These were held 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'.<sup>21</sup> 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.

### **3.2.2 *The experience since 2000***

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).<sup>22</sup>

To oppose the retail display ban, the tobacco industry has been working through retailer organisations to lobby government, and using 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.<sup>23</sup> The action was dropped in January 2007, just before it went to court.<sup>24</sup>

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 have been making their views known to the retailers through trade communication, focusing on 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’<sup>25</sup> 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.’<sup>19p.25</sup>

### ***3.2.3 The lessons taken from the experience***

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.

### 3.3 Australia

#### 3.3.1 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.<sup>26</sup> At least two states (South Australia in November 2007, Tasmania since 2004) require graphic health warnings where there are tobacco displays.<sup>27, 28</sup> New South Wales does not restrict the size of display, but does have restrictions on the display unit, facings, pack sizes, and carton sizes.

A feature of tobacco retailing in at least some states is that 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'.<sup>29</sup> 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).<sup>28</sup>

From 2004 or before, a number of Australian states have considered tobacco display bans.<sup>30</sup> 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'.<sup>31</sup>

In South Australia, there are no display restrictions until November 2007. There had been an intent 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.<sup>28</sup>

The Tasmanian state government first attempted to use its 1997 tobacco control legislation to in 1998 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.<sup>32</sup> Currently, in

October 2007, a Bill is before the Tasmanian parliament to restrict retail tobacco displays to one square metre, except for specialist tobacconists.<sup>33</sup>

### ***3.3.2 Issues and arguments in Australia***

#### *Industry and retailer arguments*

The general array of arguments by the tobacco industry and retailers about retail restrictions include:

- The need or right to ‘communicate’ to customers. Within this argument there are particular arguments about the need for the whole range of products to be seen, and the need to be able to communicate prices.<sup>34</sup>
- The ‘lack of evidence’ about the health gains from restrictions. Variations on this argument include assertions that displays have no affect on anyone but smokers, will not affect children, will not increase sales, and that displays are not ‘advertising’.<sup>34, 35</sup>
- That tobacco is a ‘normal’ and ‘legal’ product, and thus should not have any restrictions.<sup>34</sup>
- That there would be financial loss to retailers from restrictions, due to lost sales, and due to the capital and other costs of implementing changes.<sup>30</sup>
- That display restrictions would discriminate against small businesses.
- That display bans would make it difficult to manage the level of stock in shops.

Some of the particular framing of the arguments include the ideas of commercial ‘confiscation’ by health authorities, and a ‘paternalistic “its for your own good” approach’. 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.’<sup>36</sup>

The Australian National Alliance of Tobacco Retailers (NATR) described as ‘confiscation’ of commercial space, the potential requirement to display health warnings.<sup>35</sup> The NATR president wrote that some New South Wales government Select Committee members had ‘strong “moral” stances and also medical backgrounds. ... The attitude of these politicians is entirely paternalistic. It is all about trying to control what responsible adults do.’<sup>37</sup>

‘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’.<sup>38p.86</sup>

More recently, 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.'<sup>28</sup>

#### *Health sector counter arguments and tactics*

State governments have made arguments in support of display restricts. For instance, the Queensland government position is:

'Studies show that children overestimate the prevalence of smoking in the community. In part, they overestimate the level of smoking because they are exposed to tobacco product displays at virtually every retail outlet they enter. This reinforces the idea to young people that smoking is common and socially acceptable, and increases the risk of them taking up the habit.

It is also widely recognised that tobacco advertising has a significant influence on the uptake of smoking by young people. More than 80% of smokers take up the habit before the age of 18, then go on to regret it.'<sup>39</sup>

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.'<sup>40</sup>

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.

*Factors in delaying tobacco retail restrictions*

The factors behind the arguments against retail restrictions include the value given to tobacco sales by retailers, because of the profits, because of the payments and services provided by tobacco companies, and because of the perceived flow-on effects of stocking tobacco products. A West Australian survey in 2001 of 236 retailers reported that 71% thought that tobacco products were ‘important in attracting passing trade’, and 88% thought that ‘at least half the time, somebody buying cigarettes would buy something else.’<sup>41</sup>

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 business, no politician want to be seen as anti-small business’.

The small retailers’ argument suggests that no displays would mean that smokers would not be sure that small shops carry tobacco, and would tend to go to supermarkets or service station chains where they could be surer of getting tobacco products. 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, businesses and loss of services to the suburban and rural areas.

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.’<sup>28</sup>

This argument is separate from one that displays would mean less overall sales of tobacco products *in all outlets*. Thus counter-arguments on that point, such as that spending that did not go on tobacco products would go on other products, does not address the particular concerns of small retailers.

There appears to have been very little research anywhere on the reactions of individual retailers to proposed or potential restrictions. The 2001 West Australian retailer survey noted that only 13% supported storing tobacco products ‘under the counter’.<sup>41</sup>

A major issue from 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 may have been related to the state Labor Party’s acceptance of ‘up to \$15,000 in donations from a tobacco retailer in 2004’.<sup>42</sup> 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.’<sup>40</sup>

### 3.3.3 *Tobacco retail licensing*

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 for health purposes.<sup>38p.89</sup> By 1996, the licence fees were significant for the revenue of some states, being up to 100% of the wholesale value of sales.<sup>43p.11</sup> 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).<sup>43p.13</sup>

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. 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 ‘there be a reduction in the number of retail outlets permitted to sell tobacco products’ and 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.’<sup>38p.90</sup>

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.<sup>43</sup>

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.<sup>43</sup>

#### *Licensing and tobacco availability*

Part of the arguments for licensing has been to enable the reduction of 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.’<sup>38p.86</sup>

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.’<sup>38p.86</sup>

Some of the means suggested in Australia for a reduction in tobacco availability could be by a cap on the issuing of new licences (ASH Australia in 1995),<sup>38p.86</sup> 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.’<sup>38p.84</sup>

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.’<sup>44</sup>

#### **3.3.4 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.

## 4 Discussion

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 can be adapted to. 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 to either 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, or the geographic location of the outlets, as a way of reducing tobacco availability. Licensing also can provide a means to control the behaviour of retailers, and to ensure that tobacco retailing is explicitly a privilege, not a right. Another option would be to ban tobacco sales in particular types of places, for instance, where alcohol is sold.

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