

# RETAILER FACTSHEET 5

## Ban on display of tobacco and smoking products in retail outlets

Section 9 of the *Public Health (Tobacco) Act 2008* prohibits the display of tobacco products, non-tobacco smoking products and smoking accessories.

Large retailers (more than 50 employees) must now comply.  
Small retailers (50 or fewer employees) must comply by 1 July 2010.

### Why is the law changing to ban the display of tobacco products?

Research suggests that tobacco displays can influence children's perceptions about the availability and accessibility of cigarettes in their community and can also make it harder for intending quitters to quit.

In 2008, a NSW Government public consultation process found that over half of the submissions received indicated support for a proposal to place tobacco out of sight in retail outlets.

### What does a display ban mean?

In NSW the display of tobacco products, non tobacco smoking products and smoking accessories will be phased out in shops and retail outlets, including specialist tobacconists, and tobacco vending machines.

Tobacco retailers will need to ensure that tobacco products, non-tobacco smoking products and smoking accessories **cannot be seen by the public from inside or outside the premises.**

The exceptions are where:

- ✓ a member of the public displays their own tobacco or smoking products; or
- ✓ a tobacco or smoking product or products is displayed to a customer at his or her direct request, including during the actual transaction/sale.

It is also acknowledged that retailers may need to periodically restock their tobacco storage units and that there may be some unavoidable display of tobacco products, non-tobacco smoking products or smoking accessories in this process. (See page 5 of the FAQs).

### What types of smoking accessories are covered by the display ban?

The types of smoking accessories covered by the display ban are defined in the Act and include cigarette papers, pipes, cigarette holders, hookahs, water pipes or any other smoking implements. Matches and lighters are not covered by the display ban and therefore may continue to be displayed.

### How will the changes affect my business?

Removing tobacco products from sight in premises may require some retailers to make changes to their premises. Therefore, the Act allows for a staged phase-in providing existing retailers with time to plan and make any relevant changes. See over

Tobacco retailers that employed 50 employees or less as at 25 September 2008 (the date of the introduction of the *Public Health (Tobacco) Bill 2008*) will need to comply with the display ban by 1 July 2010. Retailers that employed more than 50 employees as at 25 September 2008 must now comply with the display ban. New tobacco retailing businesses need to comply with the display ban from 1 July 2009 and therefore do not receive any additional implementation time.

### **How can retailers be sure they comply with the display ban requirements?**

All tobacco retailers need to ensure they are aware of their obligations introduced by the display ban under the *Public Health (Tobacco) Act 2008*.

There is a variety of ways in which premises retailing tobacco and smoking products may be configured. The key performance measure underpinning the display ban is that **tobacco and smoking products cannot be seen by members of the public from inside or outside the premises.**

Tobacco retailers need to therefore determine how best to meet the display ban performance measure in their specific premises and operating environment to ensure compliance with the legislation. Tobacco retailers are encouraged to apply the following test when undertaking compliance self-assessment: **Can members of the public see any tobacco or smoking products from inside or outside my premises?**

### **Is general information about implementing the display ban available?**

Different types of retail outlets may require different storage configurations for storing their tobacco products. Some retailers may need to amend their tobacco storage units in order to ensure that products are kept out of sight. In general, any option that could allow for the exposure of tobacco or smoking products during business operating hours, including incidental exposure, is not allowed. (Refer to the exceptions on page 1. See the FAQ attachment with further descriptions. Photos will be available in the near future).

Some general tips for tobacco retailers are provided below:

- ✓ Arrangements should minimise exposure of tobacco products during a retail transaction, the use of a large public-facing tobacco storage device with a single opening is unlikely to comply;
- ✓ Tobacco storage devices should not be left open for a period of time allowing tobacco products to be displayed to members of the public (see the FAQ attachment regarding customer transactions);
- ✓ Tobacco products should not be shown to a customer to help in product selection, except when requested by the customer;
- ✓ Retailers need to ensure that members of the public are not exposed to tobacco or smoking products when multi-facing storage devices are used in retail premises (Refer to the exceptions on page 1. See the FAQ attachment which provides additional context);
- ✓ Retailers need to ensure that members of the public are not exposed to tobacco or smoking products when accepting inventory (Refer to the exceptions on page 1. See the FAQ attachment which provides additional context); and
- ✓ Retailers should not allow any broken storage devices, which allow the display of tobacco products to members of the public, to remain unrepaired.

## How will customers know what brands and types of tobacco are available in a retail outlet?

Tobacco retailers may choose only one method to display basic information about tobacco products, such as prices and names, through the use of:

- ✓ price tickets; or
- ✓ a single price board.

Retailers may use one or the other of the above methods but NOT both. Therefore the same method of displaying prices and product names must be used for all product lines carried by your business.

The use of tobacco and smoking product catalogues is not allowed. Information about how prices of tobacco products may be displayed is contained in the *Public Health (Tobacco) Regulation 2009*.

### Requirements for price tickets

If tobacco retailers choose to use price tickets, they must ensure that they:

- ✓ only use two colours - one for the ticket and one for the price;
- ✓ are not coloured in fluorescent colours or in a more distinctive manner than price tickets used for other merchandise in the retail outlet;
- ✓ are not highlighted by any lighting;
- ✓ are no larger than 35 square centimetres in area;
- ✓ contain lettering not more than two centimetres in height and not more than 1.5 centimetres in width;
- ✓ do not contain information other than the name of the product line, a bar code or other identifying codes, the price and a symbol indicating the country of origin;
- ✓ display the price and product name only once for each product line carried by the retailer;
- ✓ have no other article or thing attached to them; and
- ✓ are not arranged with other price tickets so as to create an image or visual effect from the arrangement that would be incomplete if any one ticket were removed.

### Requirements for a price board

If tobacco retailers choose to use a price board, they must ensure that they only use one and it must:

- ✓ not contain information other than the names of the product lines and prices;
- ✓ be no larger than 2,000 square centimetres in area;
- ✓ have a black background with white lettering or a white background with black lettering (but not both);
- ✓ contain lettering that is not more than two centimetres in height and not more than 1.5 centimetres in width;
- ✓ display the price and product name only once for each product line carried by the retailer;
- ✓ have no other article or thing attached to it; and
- ✓ not be highlighted by any lighting.

## FREQUENTLY ASKED QUESTIONS

### **Q: What type of storage unit can I use to comply with the ban on the retail display of tobacco products?**

**A:** Section 9 of the *Public Health (Tobacco) Act 2008* provides that retailers must ensure that tobacco products, non-tobacco smoking products and smoking accessories must not be visible to members of the public from inside or outside the retailer's premises. It is understood that retailers are considering a range of different storage arrangements to meet their obligations under the new law.

In storing tobacco products, retailers will choose an arrangement that suits their business needs, but must also ensure that the arrangements meet the legislative obligation. The NSW Health website will soon include pictures of storage arrangements viewed by NSW Health and considered likely to comply with the legislation. Of course it will remain for the individual retailer to ensure that the configuration and use of any particular storage unit in their premises allows for compliance with the intent of the legislation.

Questions have been asked by retailers about storage arrangements which involve public-facing cupboards with opening doors. These arrangements generally mean that opening a cupboard in order to select a particular item would also involve a display of the tobacco products stored in the cupboard, which would not be in the spirit of the legislation. The use of public-facing cupboards with large opening doors means that there is likely to be a substantial and repeated display of products throughout business hours. A further concern with these arrangements is that such displays could potentially remain in view for longer periods of time through error or oversight in failing to close off the displayed products to view. This would place retailers at a higher risk of prosecution.

Retailers choosing to use such an arrangement need to recognise the greater risk and undertake appropriate action to mitigate against it – for example by training staff, placing cupboards in a location which is not facing the public; using cupboards with a larger number of smaller doors; using self closing cupboard doors; using curtains or other shrouding behind any cupboard doors; or looking at more cautious designs such as “flipper arrangements” which conceal almost all of the surface of the product package, but still allow access to the products for sales purposes. Some examples of these arrangements will soon be available on the website.

Drawers and shelves may also be used, as long as the products are shielded from view by covering any transparent surfaces with a covering material. The issues to consider in relation to cupboards also apply to drawers and shelves, including placement of storage units.

Roller doors and security devices can be used to ensure products are kept safely. However, due to the greater risk of such devices being left open, it may be appropriate to use mechanisms other than roller doors and security devices to comply with the limitations on displaying products.

In the event NSW Health undertakes an inspection, the efforts made to comply with the law and the nature of the work undertaken in this regard will be considered in any compliance action undertaken.

### **Q: What about if a customer requests to view a tobacco product?**

**A:** The legislation allows retailers to display tobacco products, non-tobacco smoking products and smoking accessories to a customer at the customer's request. The retailer should ensure that only those products requested by the customer are displayed to that customer, and products which are not purchased are returned to the storage unit before completing the transaction and moving to the next transaction.

### **Q: How about when I give the product to the customer?**

**A:** The legislation expressly allows for the display of a tobacco product to a customer at his or her request and the Department of Health interprets this to include for the duration of any relevant transaction with the customer. Once the transaction is complete there is no prohibition on the customer displaying his or her tobacco product or products and no retailer liability if a customer does so.

### **Q: What happens when I have to restock my tobacco storage unit?**

**A:** Retailers undertaking restocking of their tobacco storage units should ensure that exposure of tobacco products, non-tobacco smoking products and smoking accessories to customers is minimised. It is understood that some unavoidable exposure to products may occur during restocking, however retailers should take care to actively minimise the exposure of tobacco products to the public, whether inside or outside the premises.

### **Q: What do I do if part of my storage unit breaks or the unit needs to be replaced?**

**A:** From time to time storage units will need to be replaced or repaired. At these times, retailers should take care to ensure that exposure of products to customers is minimised – for example, repairs could be made during hours when the store is not open to customers, or products could be removed while repairs are made. Retailers should not allow any broken storage units, which allow the display of products to customers and other people, to remain unrepaired.

### **Q: Does the Act prevent multiple-user vending machines?**

**A:** Section 12(2) of the *Public Health (Tobacco) Act 2008* provides that not more than one vending machine may be placed in a hotel, club premises, or casino.

Section 10(1) of the *Public Health (Tobacco) Act 2008* provides that tobacco products, non-tobacco smoking products and smoking accessories may only be sold from a single point of sale in any retail premises.

Section 10(2) provides that "point of sale" includes a cash register but does not include a tobacco vending machine. In addition neither the Act nor the *Public Health (Tobacco) Regulation 2009* regulates the configuration of tobacco vending machines in terms of the number of people who may use them simultaneously.

Section 9 of the *Public Health (Tobacco) Act 2008* provides that retailers must ensure that tobacco products, non-tobacco smoking products and smoking accessories must not be visible to members of the public from inside or outside the retailer's premises. This applies to vending machines in the same fashion as all other storage solutions.

**Q: I have a hotel and a bottle shop on the same premises. Can I sell tobacco and smoking products from the hotel and from the bottle shop?**

**A:** There is a variety of ways in which premises retailing tobacco and smoking products may be configured. All retailers of tobacco and smoking products need to refer to relevant provisions of the Act, including section 10, to determine how best to apply the requirement for a single point of sale in their specific premises and operating environment to ensure compliance with the legislation.

However, as general information only, premises which may have a shared roof or wall or are located within the same building but which otherwise operate independently would be likely to be considered separate premises for the point of sale requirement.

Operating independently would include the following characteristics:

- ✓ different entry and egress points; and
- ✓ different staff; and
- ✓ different service areas that do not sell each other's products.

These situations may include both a hotel and a bottle shop on the same premises, or a supermarket and a bottle shop on the same premises.

**Q: What types of products are covered by the display restrictions? What about matches and lighters?**

**A:** "Tobacco products", "non-tobacco smoking products" and "smoking accessories" are all captured by the new law which requires these products to be kept out of sight of customers and other people inside or outside the premises.

The definitions of each of these terms is as follows:

**tobacco product** means tobacco, or a cigarette or cigar, or any other product containing tobacco and designed for human consumption or use.

**non-tobacco smoking product** means any product (other than a tobacco product) that is intended to be smoked, and includes any product known or described as herbal cigarettes.

**smoking accessory** includes cigarette papers, pipes, cigarette holders, hookahs, water pipes or any other smoking implement.

Matches, lighters and ashtrays are not included in the definition of smoking accessory and there is no restriction on their display.

**Q: When do the display restrictions commence?**

**A:** Retailers that employed more than 50 employees as at 25 September 2008 were required to comply with the display limitations from 1 January 2010.

Tobacco retailers that employed 50 employees or less as at 25 September 2008 are required to comply with the display limitations from 1 July 2010.

There was an extensive consultation period in developing the new laws affecting tobacco retailers. In April 2008, a public consultation received almost 12,000 submissions. The *Public Health (Tobacco) Bill 2008* was introduced to Parliament in September 2008, and passed in November 2008. In April 2009, another consultation process was undertaken to

develop the *Public Health (Tobacco) Regulation 2009*, and the Minister Assisting the Minister for Health (Cancer) announced the commencement date of the legislation as 1 July 2009, with phase-in periods applying to some provisions to enable retailers to have the necessary time to make alterations to their business infrastructure.

The Department of Health's Prosecution Policy and Guidelines (available on the NSW Health website) also make it clear that the fact these offences are new, would also be taken into account in any prosecution decisions.

### **Q: How will the Department of Health enforce the law?**

**A:** The NSW Health regulatory regimes focus on compliance. Public Health Units in each of the eight Area Health Services in NSW conduct regular compliance monitoring inspections, particularly in response to new regulatory requirements. Inspections also occur in response to complaints from members of the public.

NSW Health uses a range of strategies to encourage and enhance compliance including advice, formal warning notices, or prosecution. Prosecution is generally reserved for circumstances where there have been ongoing breaches, or a serious breach, of the legislation.

The Department of Health's Prosecution Policy and Guidelines (available on the NSW Health website) provide guidance on prosecutorial decisions, and clarify the nature of the issues which would be taken into account in making compliance monitoring and prosecution decisions.

### **Q: How is the impact on small business being minimised?**

**A:** Steps have been taken to reduce the impact of the new legislation on small business. In recognition of the impacts of the introduction of these new laws, the legislation has given significant implementation timeframes. For example, larger businesses have had from 1 July 2009 until 1 January 2010 to comply, and businesses with 50 employees or less have until 1 July 2010 to comply. Special arrangements are in place for limited display of products until 2013 for those businesses which apply, and are determined to be, "specialist tobacconists".

While the Government acknowledges the impact of these restrictions on business it is vital to also note the extremely high impact of tobacco-related disease on the NSW community. The extent of that impact can best be summarised as involving over 5,000 premature deaths, and more than 42,000 hospitalisations, each year, with the social cost of tobacco-related disease independently estimated to be more than \$6 billion a year in NSW alone.

### **Q: What is happening in other states/countries?**

**A:** The new laws in NSW follow from successful implementation of similar display restrictions in a range of other jurisdictions across the world. For example, display bans have been introduced in some parts of Canada and Thailand. The Australian Capital Territory is also presently introducing a retail display ban. Display ban legislation is now being considered by Parliaments in the United Kingdom.

Experience in these jurisdictions shows that retailers have been able to achieve a very high level of compliance with product display limitations in a short period of time, using practical measures such as flippers on cupboards, and under the counter and overhead drawers.

# THE FACTS

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#### **Further information**

For further information about the tobacco control reforms, please access the NSW Health website: [www.health.nsw.gov.au](http://www.health.nsw.gov.au) or call the Tobacco Information Line on 1800 357 412.

The Tobacco Information Line can be accessed by non-English speaking persons via the Translating and Interpreting Service (TIS) on 13 14 50.

