



MTA Submission

To the Health Committee on the
“Smokefree Environments and Regulated
Products (Smoked Tobacco) Amendment
Bill” consultation

22 August 2022

Dear Sir / Madam

Submission: Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

This submission is from:

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Thank you for the opportunity for MTA to provide comment on the “Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill” regarding the views of and its effect on the automotive industry.

Yours sincerely,

Michael Wells
Legal and Policy Advisor

Introduction

The Motor Trade Association (Inc) (MTA) was founded in 1917 and in 2017 celebrated 100 years of trust with the NZ motoring community. MTA currently represents approximately 3,800 businesses within the New Zealand automotive industry and its allied services. Members of our Association operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and vehicle sales. The automotive industry employs 57,000 New Zealanders and contributes around \$3.7 billion to the New Zealand economy.

MTA service station members represent 71 percent of the sector, with 836 service station members.

Background

MTA recognises the problems caused by smoking in New Zealand and understands the Government's introduction of public health objectives of reducing harm and deaths from smoking. MTA's submission is based on its commitment to see positive outcomes for New Zealand and its experience as the leading representative of small businesses in the automotive industry.

In preparing this submission, the MTA consulted with its service station members (2022 survey). MTA refers to its 2021 submission on the "Proposals for a Smokefree Aotearoa 2025 Action Plan" consultation. As part of that 2021 submission MTA also consulted with its service station members (2021 survey). We present the results of both surveys and our analysis of the issues in this submission.

Summary

MTA's key recommendations are:

- The MTA continue to be involved in discussion around the criteria of an "approved smoked tobacco retailer" and the maximum numbers of approved smoked tobacco retailers in an area
- That service stations satisfy the role of "smoked tobacco retailers" to sell tobacco products and are well placed to do so
- That restricted tobacco sales outlets be permitted to sell a wider range of vape liquids and products than is currently allowed or planned
- That Government work with existing service station retail programme organisations to ensure best practice controls are agreed and in place for tobacco sales.

We expand on these recommendations further in our submission below.

MTA's feedback on Part 1B: Regulation of entry into smoked tobacco and vaping products markets

Reducing the retail availability of tobacco products through approved smoked tobacco retailers

Given the impressive results of the Smokefree campaign to-date, it is not clear that reducing retail availability is necessary when the education programme has done so well. As such, in the first instance MTA does not support reducing the availability of smoked tobacco products by significantly restricting the retailers who can sell tobacco products under section 20G of the Bill, or the imposition of a maximum number of approved smoked tobacco retailers in an area under section 20M of the Bill.

However, should the Government take this step, MTA believes that the network coverage and current operating protocols of service stations make them best placed to take the role of approved smoked tobacco retailers.

The MTA therefore submits that the Director General consult and engage with service stations and the MTA when determining the application process for the approval of smoked tobacco retailers as under section 20L, and when determining the maximum numbers of approved smoked tobacco retailers in an area under section 20M. Service stations are best placed to meet the criteria the Director General must consider before approving an application as a smoked tobacco retailer under section 20I of the Bill.

Selling tobacco products in accordance with current legislative requirements demands a high level of responsibility and awareness by the retailer (such as ensuring staff are following these rules in terms of age verification and ID checks). Complying with product display and advertising restriction requires a structured business operating model.

If the Government is looking to make significant reductions in the number of retail sites able to retail tobacco products, the service station sector is well placed to step in and abide by and provide the controls proposed by the Government.

- Service stations are less likely to be a casual shopping destination for all ages (compared to dairies or supermarkets with wider, more general product mixes¹).
- There is an industry trend towards unmanned fuelling sites, so the industry is not set to expand shopping sites significantly.
- The move towards a low carbon future will also see reduced retail footprint in many areas, including reduced need for patrons to visit service stations.

Our 2022 survey indicated if the Government decides to restrict the sale of smoked tobacco products to approved tobacco retailers only, 84 percent of service stations would want to be one of those retailers.

A substantial proportion of service stations operate a convenience store and are aligned with either their fuel brand supplier, tobacco products supplier and a retail programme covering

¹ As well, the primary customers of service stations are vehicle drivers, who must be at least 16 to hold a learner's licence and will generally be 18 or older when responsible for a vehicle.

the supply of other convenience store products as well as tobacco. These multiple points of contact between the business operator provide a multi-level compliance scheme covering the sale of tobacco products. In most cases, the fuel supplier, tobacco supplier and retail programme operator carry out audits on the retailer to make sure all aspects of the sale of tobacco are being observed.

Our 2021 survey indicated that sixty-three percent of respondents were participating in retail programmes that cover the supply and sale of tobacco products.

Other factors that place service stations in a good position to help the Government achieve its objectives under the Bill while ensuring a high level of confidence that these outlets continue to meet all compliance requirements are:

- familiarity with regulatory compliance Health & Safety regulations, hazardous substances, security systems, reporting etc,
- the current location of service stations support rural and remote communities and are situated to suit these conditions,
- customers tend to be of legal age to purchase tobacco due to age restrictions on driver licensing; and
- enhanced security systems such as CCTV, fog emitting devices, safe zones for staff, monitored alarm systems and structured staff training systems.

Given the growing 'ram-raid' culture in New Zealand, we asked our members whether they would feel safer not selling smoked tobacco products. An overwhelming majority (72 percent) indicated that they would feel safe selling smoked tobacco products.

Impact on small businesses that sell smoked tobacco products

Should service stations not meet the application requirements of approved smoked tobacco retailers, the impact on these businesses will be devastating.

Our 2022 survey asked members what the impact on their business would be if they were unable to sell smoked tobacco products. An overwhelming 75 percent of members illustrated that should the revenue from these sales disappear, the impact on the business would be significant and would place the business in jeopardy. To ensure viability, laying off staff would be a decision they would need to make quickly.

Our 2022 survey revealed that the average shop sales from smoked tobacco products contributed to well over 30 percent of service station revenue. Other expert opinion suggests that the average shops sales from tobacco and associated products account for between 55 percent and 60 percent of all shop sales by value.

Most members indicated they would look to add a new food service or extend an existing one but the cost of regulatory scheme for food safety compliance can be expensive and possible require addition staffing resource. Adding a new product line that replaces lost revenue of around \$40k per month is going to be challenging, especially in a market that has moved to a food delivery model in the wake of COVID-19 and restrictions on public mobility.

Another factor to bear in mind is that smoked tobacco products take up a relatively small space and, finding other revenue streams to replace these products may take up more physical space and potentially require more staffing that may not be available.

The service station sector is already under pressure from shrinking margins and reduction in volumes not only due to COVID-19, but wider Government policies around climate change. If Government wants the existing service station network to invest in low emission fuel delivery, they will need to consider how they can support them through the transition phase to low emission vehicles.

Around 50 percent of the sector are independent operators but the price they pay for fuel is controlled by their larger fuel wholesaler, giving them little control over their margins on fuel sales. Replacing lost revenue from the sale of tobacco with increased margins on the sale of fuel will need to be considered.

With the recent Fuel Regulation changes not giving independent resellers the same benefits as those that apply to distributors, locking them into long term existing supply contracts, the independents have no ability to go to market for a more competitive fuel supply deal in order to adjust fuel sale margins and stay competitive.

MTA urges caution around the planned reduction in retail sites allowed to sell tobacco products. With the majority of Specialist Vape Retailers (SVRs) based in the larger centres, further restricting access to the full range of vaping liquids would seem counterproductive to the goals of the Bill, and, in many cases, deny remote rural communities from the opportunity to transition from tobacco to vaping.

Our 2022 survey revealed that vapes currently only make up 5 percent of sales compared to the sales of smoked tobacco products. With the coverage of service stations extending to all areas, allowing these retail sites to sell a full range of flavours would support more tobacco smokers to transition to a safer vaping scheme.

The MTA submits that allowing general vaper retailers (GVR - service stations) to sell a wider range of flavours would deliver positive outcomes to New Zealanders. We support the role of the SVRs to be the place for consumer enquiries over best vape device etc to switch from tobacco, but flavours need to be accessible at GVR outlets. The extra sales could replace lost sales from tobacco as well as encourage retailers to stop selling tobacco all together.

Should the Government decide to limit the number of retail sites selling tobacco, MTA urges the Ministry to stagger this process over a period of two years as opposed to 18 months under Part 3, section 17 of the Bill. This would see the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill coming into force on 1 January 2025. This will provide these small businesses with time to prepare for the lost tobacco sales and to put in place new products or services to replace lost revenue.

MTA would like to continue to be engaged and involved in discussions with officials about the criteria of an approved retailer and any discussions about maximum numbers of retailers in any area as the proposed Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill is implemented.

Licensing structure

The Bill is currently silent on whether a costed licencing structure (like that of the current liquor licence structure) will be required as an element of being an approved smoked tobacco retailer. Should such a scheme be developed, MTA would like to engage with officials on the development of licensing rules.

Our 2022 survey results showed around only 38 percent support for some form of licensing structure with 62 percent against. This being said, it is clear from our members feedback that while they may not support a licensing structure, they would still participate in a licensing arrangement to ensure ongoing sales of smoked tobacco products.

As part of our 2021 survey, we asked members to indicate what an acceptable cost would be and used the existing liquor licensing costs as a comparator and a range of indicative costs from less than \$800 to over \$1,000 as an annual fee.

80 percent supported a licensing cost of less than \$800. Without knowing what this licensing scheme might look like, it is difficult to judge whether this cost threshold is realistic.

MTA's feedback on Part 3A: Requirements for smoked tobacco product

Section 57H of the Bill proposes that limits on nicotine to be prescribed for smoked tobacco products within 21 months of the commencement of Section 31 Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022. MTA does not feel it has the necessary skills or expertise to make valid comment on this topic other than accepting that these are valid ways of influencing the demand for and impact of these products.

From both our 2021 and 2022 survey, we did receive verbatim comments around possible unintended consequences of the proposed options to make tobacco products less addictive and less appealing. These comments related to the possible creation of a black market for full strength tobacco products.

It is also worth noting that restricting the sale of smoked tobacco products to just liquor stores would just compound any safety issues by making these retail outlets a more attractive target for criminals.

The research linking increased smoking rates to alcohol consumption would seem to support the decoupling of the sale of tobacco from where alcohol is also sold.

The harder it is to access tobacco; the more underground black-market activity it will likely support. We should focus efforts on reducing the demand for tobacco products and the supply side of the market will shrink.

Section 40A and 40B restrict the smokefree generation (those born on or after 1 January 2009) from being able to sold, supplied or delivered smoked tobacco products. However, the purpose of these sections arguably conflict with section 67 of the Customs and Excise Act 2018, which permits individuals over the age of 18 to manufacture their own tobacco for personal use.

Further considerations

While not directly considered in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill, the MTA believes there are several further factors that the Health Committee should bear in mind when reviewing the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill.

Compliance and enforcement activity

As part of the 2021 submission on the Proposals for a Smokefree Aotearoa 2025 Action Plan the MTA asked its members whether they thought the existing fines and penalties for not complying with current sale of tobacco rules needed to be increased to improve compliance.

- 74 percent of respondents stated they did not need to be increased,
- 12 percent felt an increase was needed, and
- A further 12 percent were not sure.

Time did not permit detailed research of the history of any enforcement activity around the sale of tobacco products. News media articles found on the internet reported that where retailers had been fined, these were corner dairies and not service stations.

Some members expressed concern that the proposed restrictions on the sale of tobacco may support the growth of 'black-market' supply. Any black-market activity would need to be addressed to ensure a level playing field for retailers selling tobacco products legally.

MTA recommends the Government take no immediate action but keep changes to enforcement as a "watching brief" given its proposal to alter the composition of the market. With a reduced number of retail sites, as proposed, the Government would have a smaller retail footprint to monitor, and any enforcement action will be amplified by the mere fact of this concentration. MTA has observed in various regulated markets that changing potential penalties does not move the compliance needle; rather the active investigation and sanction of non-compliance (i.e., being seen to take corrective action) is more impactful.

Setting a minimum price for tobacco

Our 2021 survey asked a direct question as to whether members supported minimum pricing of tobacco products. Results were mixed with 40 percent indicating that they wouldn't support minimum pricing, 22 percent would support, and 38 percent were unsure.

MTA does not support setting a minimum price for tobacco. Those living in low socio-economic areas are unfairly disadvantaged through the tobacco excise scheme, with many families buying tobacco over necessities. The Government has already taken significant steps in this area, and tobacco products are already very expensive in New Zealand, and in our belief, this tactic has run its course. Setting a minimum price will lead to more harm in the most deprived areas of the country.

Setting a minimum price for all tobacco products would likely lead to increased retail crime and as addressed above, increase underground black-market activity.

Enhance existing initiatives

The SmokeFree Aotearoa 2025 Action Plan 2025 consultation document indicated that significant success had occurred with the programmes working with year 10 students over the past 20 years. The trend of adults (15+) and smoking cessation rates also seems to be tracking toward the desired goal.

Our 2021 survey revealed strong support for the Government to continue their efforts around education on the dangers associated with smoking namely:

- educating young people to discourage them from taking up smoking,
- providing more quit-smoking support systems for long term smokers, and
- focusing efforts at communities where there is a high level of smoking.

Closing remarks

In its 2021 submission on the Proposals for a Smokefree Aotearoa 2021 Action Plan, the MTA asked the Ministry of Health (the Ministry) to give consideration of recognising service stations as ‘specific store types’ able to sell tobacco products.

MTA continues to urge the Government to continue engage the MTA and the service station retail programme organisations to review the various controls that currently exist around ensuring the sale of tobacco legislation is adhered to, especially about the criteria of an approved retailer and any discussions about maximum numbers of retailers in any area.

To assist the Government in achieving the desired outcomes of the SmokeFree Aotearoa 2025 Action Plan and the successful implementation of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill, engagement with the retail programmes to explore what new processes and reporting systems could be implemented is encouraged.

MTA appreciates the opportunity to submit on the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill.

Appendix 1: Feedback from the MTA 2022 Survey

Question: Do you have any other comments on the sale of tobacco products?

“Losing tobacco sales will result in job losses within our business and ultimately possibly result in the business closing.”

“Our shop programme ensures we meet required legislation and staff are trained to meet the legal requirements. We would be an ideal option for the restricted sale of tobacco products.”

“We are a rural trader that serves the wider community. Open long hours and are a responsible reseller of tobacco products. If limited to 500 retailers’ small towns would not be able to sell these products.”

“Tobacco sales vs total shop revenue excluding fuel is actually 53.07%. Loss of this income will result in a major staff reduction.”

“The removal of the sale of tobacco and vaping products would result in staff redundancies. I would have to release 50% of my staff as the revenue generated from other products, including fuel, would be insufficient to maintain the cost of current staffing levels.”

“If we were to stop selling tobacco, we would have to lose a staff member as that is how much it would cost us in lost profit, 1 entire fulltime wage.”

“I will need to reduce staff numbers if tobacco products are lost from sales in our stores. If we are selected as a tobacco retailer, our business will need to increase its security as there will possibly be a higher risk due to being targeted for theft of tobacco. Black market will be "rife" with the restrictions. Service stations are a more suitable location to sell as they tend to have a more structured approach to compliance, & could be scrutinised by the oil companies, shop programme providers & tobacco suppliers to ensure compliance. Also, they tend to have an adult demographic due to the nature of the fuel they sell.”

“Cigarettes/tobacco need to be available 24/7.”

“The security of the product at service stations makes them a logical retailer.”

“Government support to make theft prevention measures more affordable.”

“If they make a tobacco license for certain retailers, there will be underground sales of tobacco products, where the Government will not get any revenue from.”

“Licensing will be costly and pointless.”

“If the Government stop selling smokes at retail stores, it will not make any difference to smokers. People still can buy smokes from vape stores. Only impact retail store sale Loss.”

“Tobacco as a product category allow us to maintain longer hours, and be open to provide other services, like grocery items. Many tobacco customers also buy other items while instore so the impact of not having these products will be far greater than the loss of direct tobacco revenue.”

“There is a real danger of counterfeit products coming to NZ, or home-grown products being sold.”

“Whilst there is risk with stocking tobacco products, there is reward also with the customer purchasing fuel or other shop related goods including coffee and hot food.”

“Well I think if you are going to ban than completely ban them no retailers at all.”

“I would prefer to not sell smokes but unfortunately, they do make up a large part of our business.”

“It’s creating a black market for these products.”

“We believe long-standing retailers like us with integrity are the best smokefree tool for the government because we are a relatively well-controlled point of sale for these restricted products, i.e. we verify ID and decline sales to customers under 18, and assist with advice on vaping then quitting vs tobacco.”

“The out-of-control points of sale are for instance online sales and some smaller trendy vape shops, which are a major problem and by far the main source for school kids who are buying for their mates using fake IDs.”



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