



Submission to the Consultation on Standardised Tobacco Products and Packaging Draft Regulations in New Zealand

28 July 2016

1. INTRODUCTION

1.1 Japan Tobacco International (JTI), a member of the Japan Tobacco Group of Companies, is a leading international tobacco manufacturer. It markets world-renowned brands such as Camel, Winston and Mevius. Other global brands include Benson & Hedges, Silk Cut, Sobranie, Glamour and LD. With headquarters in Geneva, Switzerland, and about 26,000 employees worldwide, we have operations in more than 120 countries. For more information, visit www.jti.com.

1.2 JTI does not have a corporate presence in New Zealand, and its products, which represent only a limited share of the New Zealand market, are distributed by a third party.

1.3 JTI has previously expressed its serious concerns on the standardised (“plain”) packaging measure in its responses to the Ministry of Health’s **(MoH)** 2012 Consultation on the Plain Packaging of Tobacco Products in New Zealand and the Health Committee’s 2014 Consultation on the Smoke-Free Environments (Tobacco Plain Packaging) Amendment Bill.

1.4 It now appears that the New Zealand government has made-up its mind to pursue this flawed policy, which has failed in Australia and will not work in New Zealand.

1.5 In line with our previous responses and given the critical importance of the plain packaging measure, JTI feels it necessary to respond to the MoH’s Consultation on Standardised Tobacco Products and Packaging Draft Regulations **(Draft Regulations)**.

1.6 JTI does not make detailed comments in respect of each clause of the Draft Regulations and will only focus on a few aspects of the Consultation Document and the Draft Regulations based on factual evidence.

2. GENERAL PRINCIPLES AND THE INTENT OF THE STANDARDIZATION REQUIREMENTS SET BY THE DRAFT REGULATIONS

2.1 JTI remains categorically opposed to the mandated standardisation of tobacco packaging in whatever form. The evidence in Australia, the only country where plain packaging has been in place long enough to measure its effects, demonstrates that plain packaging is an unjustified ban on branding with no real health benefits.

2.2 The Consultation Document refers to general principles which were used in developing the Draft Regulations, including:¹

- *“Alignment of New Zealand requirements with those applying in Australia as the starting point for standardised packaging”; and*
- *“Consistency with New Zealand’s international obligations and commitments”.*

2.3 The Consultation Document reveals that the tobacco product packaging and labelling regimes in Australia and New Zealand will be broadly aligned.² It therefore

appears that the New Zealand government has pre-determined that plain packaging is the policy it wants to pursue despite that fact that it has failed in Australia.

- The Australian Department of Health's Post-Implementation Review (**PIR**), which relies on a questionable selection of reports, makes speculative conclusions about the real effects of the measure. On the one hand, the PIR states that plain packaging "*is achieving its aim of improving public health in Australia*".³ On the other, the PIR is unable to separate the (supposed) effects of plain packaging from other regulatory measures, which came into force during the same period.⁴
- The real evidence that emerged from Australia, including the data from the Australian Bureau of Statistics,⁵ reveals that plain packaging has not accelerated the existing downward trend in smoking prevalence.
- Yet, it has negatively impacted the competitive landscape and market dynamics where price has become the most important aspect of competition/product selection. More specifically, plain packaging has resulted in an increase in down trading, with premium brands losing market share to the value-end of the category.⁶
- Furthermore and despite the Consultation claiming that there is no evidence that illicit trade in tobacco products has increased in Australia,⁷ it remains a fact that, whereas illicit trade in Australia prior to plain packaging was relatively low, the level of illicit tobacco consumption has increased since the implementation of the measure in Australia. The Consultation dismisses the KPMG data which demonstrate that the level of illicit tobacco consumption reached 14% of total consumption in 2015 compared to 11.5% in 2012 prior to the enactment of plain packaging.⁸ It is noteworthy, that a representative of the Australian Institute of Health and Welfare acknowledged in the Australian Senate that KPMG's methodology "*is probably the most appropriate way of collecting that type of information and tracking it over time*".⁹

2.4 JTI draws attention to the above-referred principle of consistency with international obligations and commitments which was considered in developing the Draft Regulations.

- The "*international obligations and commitments*" presumably include New Zealand's obligations under the World Trade Organization's (**WTO**) Agreements to which it is a signatory. It appears that New Zealand has pre-empted the legality of plain packaging before a WTO ruling on the Australian measure is issued. In this regard, JTI wishes to emphasize that the compatibility of any plain packaging proposal with WTO obligations can only be answered by the WTO Dispute Settlement Body and that anticipating any conclusions by New Zealand prior to the latter reaching its decision would be wrong.
- Furthermore, JTI wishes to emphasize New Zealand's "*international obligations and commitments*" under free trade agreements to which New Zealand is a party. As highlighted in JTI's 2012 response (paragraphs 6.32-6.34), the Draft Regulations risk breaching New Zealand's obligations under these agreements and the certainty provided to foreign investors.

2.5 JTI also refers to the general intent of the Draft Regulations, i.e. standardisation of tobacco and tobacco packaging design features, which is to avoid the “*attempt to create consumer appeal*”.¹⁰

- As JTI stressed in its previous responses, basing policy on the arbitrary concept of the “*appeal*” of tobacco products cannot justify the introduction of a ban on branding.
- It is too simplistic to imply that tobacco packaging is “*appealing*” especially when packs currently sold in New Zealand are printed with prescribed large graphic health warnings. Finding an aspect of a product's packaging “*appealing*” is not the same as finding the actual product and its use “*appealing*” and to start smoking as a result.
- As JTI explained in its previous responses, the decision to smoke or not is influenced by a range of well-documented external factors, such as parental influence and peer behaviour, and not by tobacco packaging. Even experts engaged by Australia for the WTO dispute are aligned with regard to the factors of smoking initiation: “*it is highly improbable that an adolescent who is interested in smoking will decline a cigarette from a friend because of the packaging*”.¹¹

2.6 Lastly, JTI refers to the coverage of the Draft Regulations and notes that the regulations are not supported by reliable evidence. Based on the Australian experience and expert views (reflected in JTI's previous responses), JTI strongly believes that the tobacco product and packaging standardization requirements, set by the Draft Regulations, will lead to widespread negative effects in New Zealand:

- The standardisation requirements will damage competition, erode brand equity and disproportionately impact premium brands, ultimately resulting in down trading to the value end of the market. In a down trading environment, where price becomes the key factor of product selection, manufacturers of premium brands – like JTI's Camel brand – would be disproportionately affected compared to tobacco manufacturers whose market share in New Zealand consists largely of non-premium brands.
- They will create barriers for new market entries and prevent the introduction of new brands other than on the basis of price alone. Particularly as New Zealand has a retail display ban in place and, as expert analysis demonstrates, existing adult smokers will be even more likely to request and purchase only those brands and products familiar to them.¹²
- They risk damaging the legitimate economic interests of tobacco product manufacturers and competition: this particularly concerns those manufacturers, like JTI, who have both a limited market share and sell a small number of brands in New Zealand and could be simply forced out of the market as a result of increased market concentration.
- The standardisation of tobacco products and packaging will limit opportunities to differentiate between products, thus tending towards commoditization.
- While JTI appreciates that the level of illicit trade is relatively low in New Zealand (as it was the case in Australia before the introduction of plain packaging), the introduction of the standardisation requirements is likely to drive up existing levels of illicit trade.

3. THE CONTENT OF THE DRAFT REGULATIONS

3.1 The Draft Regulations,¹³ which broadly replicate the requirements of the Australian legislation and propose some additional measures, include the following:

- standardised shape and appearance of tobacco product packaging with prescribed quantity of tobacco products in the pack and larger health warnings on the pack;
- restricted shape, size and appearance of cigarette sticks with specified minimum and maximum length and diameter; and
- introduction of anti-counterfeiting marks on tobacco product packaging for tracking and tracing purposes.

Standardisation of design and colour of tobacco product packaging

3.2 There is no evidence that the standardisation of design features and colours of tobacco packaging has public health benefits. The *“unattractive dark green/brown colour”*¹⁴ of a cigarette pack (“Pantone 448C” in the Draft Regulations) along with a ban on ‘stylized elements’ have not led to smoking reduction in Australia either amongst minors or adults. Smokers continue buying cigarettes in plain packs with large health warnings. As JTI explained in its 2014 response (paragraphs 4.20 - 4.22), JTI and other tobacco manufacturers use pack colours to enable consumers to differentiate between products and brand styles. In addition, the use of colours and ‘stylized elements’ of branding is one of the factors that makes it difficult to produce counterfeit packaging as it increases the complexity entailed in producing counterfeit goods due to techniques that can be more easily implemented by legitimate manufacturers. Such techniques are far less economical and more complex to implement on a smaller clandestine scale.

3.3 The Draft Regulations impose an unjustified ban on branding and lead to an infringement of the fundamental legal rights of manufacturers, including trade mark rights, property rights, freedom of expression and trade, that are protected under national and international law. Forcing brand names to be written in a standard type face, colour and size, without any non-alphanumeric elements, is also a fundamental and entirely unjustified restriction on the normal and fair use of word trade marks. JTI’s concerns on the legality of plain packaging in New Zealand are detailed in its previous responses (Part 6, JTI 2012 Response).

Restricted shape, size and appearance of cigarette sticks with specified minimum and maximum length and diameter

3.4 JTI does not agree with the proposal to restrict the dimensions of cigarette sticks by setting a minimum and maximum length and diameter. No evidence supports the notion that introducing “product standards” for cigarette sticks would result in any significant change in smoking rates. A recent study reported a lack of association between the market share of “slim” cigarettes and smoking prevalence rates.¹⁵ Its authors concluded that *“policy measures aimed at restricting the sales of slim cigarettes are unlikely to be effective at reducing smoking prevalence.”*

3.5 Additionally and contrary to the claim in the Consultation Document that cigarettes are “*the main focus of tobacco industry to appeal to consumers*”,¹⁶ no scientific criteria have been developed to assess the so called “*appeal*” of a specific cigarette shape or size. As emphasized in this response, the concept of “*appeal*” is not a valid basis for regulation because of its inherently uncertain, subjective and arbitrary nature. Implementing “product standards” for cigarette sticks would completely remove consumer choice, without having any benefits to public health. Furthermore, cigarette stick design standardization would create actual opportunities for illicit trade.

Increasing the size of health warnings on tobacco product packages

3.6 JTI strongly believes that there is no need and justification to introduce larger health warnings on tobacco product packages, including the requirement to increase the size of health warnings to cover 75% of the front of cigarette packs:¹⁷

- JTI reiterates its view that reducing legal manufacturers’ space on the pack to increase the size of health warnings will not impact smoking prevalence in New Zealand, but will harm their commercial and legal rights and unjustifiably interfere with adult smokers’ rights to differentiate between available products and to choose the products they prefer.
- The introduction of larger graphic health warnings along with plain packaging in Australia increased the “prominence” of health warnings, but this hasn’t led to a reduction in smoking prevalence amongst minors and adults. Increasing the “prominence” of health warning messages and images on tobacco packaging is not, of itself, capable of justifying a ban on branding in New Zealand or elsewhere.

Introduction of anti-counterfeiting marks on tobacco product packaging for tracking and tracing purposes

3.7 JTI supports the implementation of tracking and tracing solutions for all manufacturers of tobacco products, regardless of their size, as this will assist law enforcement in addressing smuggling of tobacco products.

3.8 While a tracking and tracing solution is an essential component to fight illicit trade in any country, JTI believes that it is insufficient on its own to eradicate the illegal trade in tobacco products.

4. CONCLUSIONS

4.1 JTI previously raised its serious concerns in relation to any attempt to introduce plain packaging legislation in New Zealand. The Draft Regulations, which seek to bring forward this flawed policy in addition to an excessive layering of regulations, do nothing to change our views.

4.2 JTI’s core principles include reducing the uptake of smoking by minors, preventing minors from obtaining tobacco products and ensuring that adult smokers are reminded about the health risks of smoking. We regret that the less restrictive, more targeted and proportionate alternative solutions to achieve these objectives that

JTI proposed to the New Zealand government in Part 8 of the JTI 2012 Response and Part 9 of the JTI 2014 Response were dismissed.

4.3 It appears that the New Zealand government has pre-determined to introduce plain packaging despite its failure and negative consequences in Australia.

4.4 For all the reasons stated in this submission, JTI opposes the standardisation requirements set by the Draft Regulations and urges the New Zealand government not to pursue with an unjustified ban on branding. **It will not work in New Zealand or elsewhere.**

JTI

28 July 2016

ENDNOTES

- ¹ “Standardised Tobacco Products and Packaging Draft Regulations”, Consultation Document (**Consultation Document**), May 2016, page 5. Available at: http://www.health.govt.nz/system/files/documents/publications/standardised-tobacco-products-packaging-draft-regulations-consultation-may16_1.pdf
- ² Consultation Document, page 3
- ³ Post-Implementation Review, Tobacco Plain Packaging (**Post Implementation Review**), 2016, page 4. Available at: <http://ris.dpmpc.gov.au/2016/02/26/tobacco-plain-packaging/>
- ⁴ Post-Implementation Review, page 4
- ⁵ Australian Bureau of Statistics: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.001~2014-15~Main%20Features~Smoking~24>
- ⁶ The KPMG October 2015 report shows how the market share of value brands has increased from 32% in 2012 to over 50% by mid-2015. See KPMG Half Year Report “*Illicit tobacco in Australia*”, October 2015, available at: http://kpmg.co.uk/creategraphics/2015/10_2015/LTM_H1_2015_Report/index.html
- ⁷ Consultation Document, page 11
- ⁸ KPMG 2015 Full Year Report “*Illicit tobacco in Australia*”, April 2016. Available at: <https://home.kpmg.com/content/dam/kpmg/pdf/2016/04/australia-illicit-tobacco-2015.pdf>
- ⁹ Dr. Tim Beard, the AIHW Australian Institute of Health and Welfare, Parliamentary Joint Committee on Law Enforcement, illicit tobacco, 4 March 2016, page 33. The AIHW is in charge for the NDSHS. See more on NDSHS at: <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>
- ¹⁰ Consultation Document, page 6
- ¹¹ Integrated Summary of the Dominican Republic's Submissions to the WTO Dispute Settlement Panel, 23 March 2016, paragraph 90. Available at: [http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20\(EN\).pdf](http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20(EN).pdf)
- ¹² See, notably, the reports by Dr Andrew Lilico: a) “*Economic Analysis of a Plain Packs Requirement in the UK, A report by Europe Economics*” dated June 2012; b) “*Economic Analysis of Restrictions on the Display of Tobacco Products – 2009 Canadian Annual Smoking Data*” dated November 2010; c) “*The impacts of restrictions on the display of tobacco products – a supplemental report by Europe Economics*” dated October 2009; and d) “*Economic Analysis of a Display Ban and/or a Plain Packs Requirement in the UK*” dated September 2008. Available at: <http://www.itl.com/how-we-do-business/key-regulatory-submissions>
- ¹³ Smoke-Free (Standardisation of Tobacco Packaging and Tobacco Products) Regulations, Draft for Consultation (**Draft Regulations**), 31 May 2016. Available at: http://www.health.govt.nz/system/files/documents/publications/regulations_standardised_packaging-draft-for-consultation.pdf
- ¹⁴ Consultation Document, page 6
- ¹⁵ Slater, A. “*Cross-Sectional Relations Between Slim Cigarettes and Smoking Prevalence*”. Beitrage zur Tabakforschung International/Contributions to Tobacco Research 27(2): 75-99, April 2016. Available at: [http://www.degruyter.com/dg/viewarticle.fullcontentlink:pdfeventlink/\\$002fj\\$002fcctr.2016.27.issue-2\\$002fcctr-2016-0010\\$002fcctr-2016-0010.pdf/cctr-2016-0010.pdf?t:ac=j\\$002fcctr.2016.27.issue-2\\$002fcctr-2016-0010\\$002fcctr-2016-0010.xml](http://www.degruyter.com/dg/viewarticle.fullcontentlink:pdfeventlink/$002fj$002fcctr.2016.27.issue-2$002fcctr-2016-0010$002fcctr-2016-0010.pdf/cctr-2016-0010.pdf?t:ac=j$002fcctr.2016.27.issue-2$002fcctr-2016-0010$002fcctr-2016-0010.xml)
- ¹⁶ Consultation Document, page 6
- ¹⁷ Draft Regulations, Part 2, clause 24

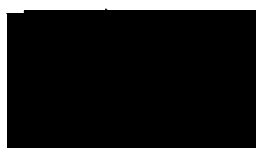
July 28, 2016

Standardised Tobacco Products and Packaging Draft Regulations
Ministry of Health
Wellington

Standardised Tobacco Products and Packaging Draft Regulations

1. Thank you for the opportunity to comment on the draft regulations.
2. The Public Health Association of New Zealand (PHA) is a national association, with members from the public, private and voluntary sectors, which provides a forum for information and debate about public health in Aotearoa New Zealand. Our organisation's vision is 'Good health for all - health equity in Aotearoa', or 'Hauora mō te katoa – oranga mō te Ao', and we work to increase health equity. The PHA is a long-standing supporter of tobacco control.
3. We strongly support standardised packaging of all tobacco products, as a part of a package of policies and actions, and as a key step in denormalising tobacco use in Aotearoa New Zealand. We really appreciate the hard work done by Ministry of Health staff and others in developing these strong and well thought-through draft regulations.
4. We support the recommendations made in the detailed submission by ASPIRE 2025. We ask the Ministry of Health to adopt their recommendations, which are based both on their original research and on their analysis of research from Australia and other countries.
5. We would like to see New Zealand recognised internationally as having the best regulations for tobacco products and packaging. For this reason, we urge the Ministry to take the time needed to include the regulatory improvements proposed by ASPIRE 2025

Yours sincerely





SUBMISSION ON:

Smokefree Standardisation of Tobacco Packaging and Tobacco Products Regulations

July 2016

1. Submitter background

- 1.1.** The Waikato District Health Board (Waikato DHB) serves a population of nearly 360,000 people within 10 territorial authorities and two regional councils, stretching from the northern tip of Coromandel Peninsula to south of National Park and from Raglan and Awakino in the west to Waihi in the east. About 39% of its population live in Hamilton, the Waikato regions only city.¹
- 1.2.** Of the 360,000 people living in the Waikato DHB region, 17% of those 15 years and over are regular smokers. The prevalence rate for smoking is proportionately lower for European (15%) population groups and greater for Māori (35%) and Pasifika (24%) population groups².
- 1.3.** The Waikato DHB has five hospitals and two continuing care facilities; community services, older persons and rehabilitation service, population health service and mental health and addiction services (collectively known as its provider arm Health Waikato). It directly employs around 6083 doctors, nurses, allied health professionals and support staff.
- 1.4.** The Waikato DHB also funds and monitors (through contracts) a large number of other health and disability services that are delivered by independent providers such as GPs and practice nurses, rest homes, community laboratories, dentists, iwi health services, Pacific peoples' health services, and many other non-government organisations and agencies.
- 1.5.** The Waikato DHB is extensively engaged in providing services in the region both directly through the provider wing of the organisation and indirectly through other providers. These include personal health services and public health or population based health services

¹ Waikato District Health Board. (2015). Future Focus: Health profiles of territorial authorities within the Waikato DHB health district: Hamilton City. Retrieved from: <http://www.waikatodhb.health.nz/assets/about-us/Future-focus/Hamilton-City-Profile-Final.pdf>

² Waikato District Health Board. (2015). Future Focus: Health profiles of territorial authorities within the Waikato DHB health district: Waikato DHB. Retrieved from: <http://www.waikatodhb.health.nz/assets/about-us/Future-focus/Waikato-DHB-Profile-Final.pdf>

- 1.6.** Waikato DHB Population Health is focused on providing early intervention services that improve, promote and protect the health of population groups within the Waikato DHB region.
- 1.7.** The following submission represents the views of Population Health Waikato DHB. Population Health is focused on providing early intervention and prevention services that improve, promote and protect the health of population groups within the Waikato DHB region. It works to help ensure all people in the Waikato have opportunities to access services and make choices that enable them to live long and healthy lives.

2. Acknowledgement

- 2.1** Thank you for the opportunity to comment on Smokefree (Standardised Tobacco Products and Packaging Draft Regulations) Consultation Document prepared by the Ministry of Health.
- 2.2** Population Health congratulates the Government for its commitment to expedite standardised tobacco products and packaging. This is a consistent, evidence driven and important step in preventing young people from experimenting with tobacco products and becoming addicted to nicotine, and helps to protect the health of all New Zealanders.

3. Introduction

Tobacco is a uniquely harmful consumer product where users not only experience gradually declining health over time; it also kills between 4500 and 5000 New Zealanders per year³. It remains the leading cause of avoidable morbidity, mortality and health inequalities⁴ and no other consumer product causes such widespread harm when used as intended⁵.

Historically New Zealand has been a world leader in tobacco control, continually taking innovative measures to reduce the harmful effects of smoking. Legislating standardised packaging is another step in the right direction and supports Smokefree Aotearoa 2025, a key Public Health goal.

Globally, there has been a shift towards standardised or 'plain' packaging, for example, United Kingdom, France, Ireland and Australia have all completed or are in the process of implementing standardised packaging legislation. New Zealand first introduced the idea of plain packaging in 1989 and now has the opportunity to implement unique controls in order to maximise its impact.

³ Ministry of Health. *Tobacco use in New Zealand: Key findings from the 2009 New Zealand Tobacco Use Survey*. Wellington: Ministry of Health, 2010.

⁴ Ministry of Health. *Health Loss in New Zealand: A report from the New Zealand Burden of Diseases, Injuries and Risk Factors Study, 2006-2016*. Wellington: Ministry of Health, 2013.

⁵ US Department of Health and Human Services. *The health consequences of smoking: a report on the Surgeon General*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health 2004; 62.

4. Submission

4.1 Population Health offers comment on the submission questions and also raises six key areas where standardised product and packaging regulations could be improved. Population Health recommends:

1. Improved health warnings on cigarette packages using a wider range of on-pack warnings that have a high impact with different cultures, are prominently located on packaging, and messages are continually developed and rotated to ensure they are not normalised to the target audience.
2. Disallowing capsule cigarettes which have greater appeal to young people experimenting with cigarettes.
3. Greater distinction of Quitline and cessation information so it is visually prominent and has a significant visual impact.
4. Stronger limits on variant names to discourage new variant names being introduced to the market in the future.
5. Inclusion of inserts with cessation information in all tobacco products, including rolling papers and filters used to construct roll your own cigarettes.
6. Requirement that a change be made to the appearance of all cigarette sticks and rolling papers to be coloured only with Pantone shade 448C.

5. Response to consultation questions 1-7: Size and Quantities of tobacco products

1. Population Health **supports** the proposal to limit the number of cigarettes in a pack to either 20 or 25 and the amount of loose tobacco to 30 or 50g. Specifying the number or weight of products limits the marketing affect of manufacturers to promote 'bonus' product.
2. Population Health **supports** the proposal to restrict the dimensions of cigarette sticks by setting a maximum and minimum length and diameter. Historically slim cigarettes have been marketed to females as sophisticated and feminine. Specifying minimum and maximum requirements for length and diameter eliminates variation that may result in a product having more market appeal.

Population Health **suggests** that a maximum and minimum length and diameter is set for filters and rolling papers used to make roll your own cigarettes which are popular with young people. Extending this standardised product requirement to all aspects of roll your own cigarettes creates consistency with the rationale of reducing the appeal of smoking tobacco products and discouraging young people from commencing smoking.

3. Population Health **supports** the proposal setting minimum and maximum height, width and depth of cigarette packs, consistent with limits on the number and size of cigarette sticks they contain. These requirements will create consistency among brands and limit market appeal of larger packaging.

4. Population Health **does not support** the proposal of loose tobacco being sold in rectangular soft pouches made of soft plastic. Plastic is an environmentally damaging product. Population Health suggests rigid, biodegradable and recyclable, rectangular containers of mandatory set sizing requirements. A rigid container will ensure health warning remain visible over the life of the tobacco being used. Soft pouches are folded as more tobacco product is used and health warnings become obscured and less effective.

5. Population Health **supports** the proposal to standardise cigar packaging, including the number of cigars that may be sold in a pack.

6. Population Health **supports** regulations to set a minimum size for all tobacco packages including cigar packages.

7. In addition Population Health **recommends** that there is a standardised shape and size for tobacco products and that only biodegradable and recyclable materials are able to be used for packaging these products.

6. Response to consultation questions 8-11: Permitted markings on tobacco packages

8. Population Health has no comment or suggestions regarding anti-counterfeiting marks. It does note 'smash and grab' style robberies of tobacco products are on the increase.

9. Population Health **suggests** anti-counterfeiting marks should remain on the inside of packaging to deter communicating marks with consumers and undermining intention of plain packaging.

10. Population Health **does not recommend** the permission of other marks and features on tobacco product packages for automated manufacturing and packaging processes.

11. Population Health does not support country of manufacture to be printed on tobacco products or packages. To allow country of origin or manufacture to be printed on tobacco products or packaging would create consumer appeal for certain products which would weaken the purpose of this legislation.

7. In summary:

Population Health **proposes** adopting inserts in cigarette and loose tobacco packets containing cessation information to support people to quit smoking, as is happening in Canada. This could be further innovated to include targeted health promotion messages.

Population Health **strongly recommends** that the legislation requires the appearance of cigarette sticks and rolling papers to be coloured Pantone shade 448C to diminish the appeal for young people to start smoking and enhance the impact of standardised packaging⁶.

⁶ Hoek, J., Gendall, P., Eckert, C., & Louviere, J. Dissuasive cigarette sticks: the next step in standardised ('plain') packaging? (2015). Retrieved from; <http://tobaccocontrol.bmj.com/content/early/2015/12/16/tobaccocontrol-2015-052533>

Population Health **suggests** limiting variant names to those currently on the market. Australia has seen an increase in variant names since introducing plain packaging in 2012, with the intent to increase appeal and consumer demand for their products by using variant names as a marketing tool.

Population Health supports evaluating the impact of these regulations through regularly monitoring consumer behaviour by the Ministry of Health. The evidence gathered can then be used to support other nations who are considering standardised packaging of tobacco products legislation.

8. Contact address

Any comments on this submission or requests for further information should be addressed to:

[REDACTED]

[REDACTED]

Population Health

Waikato District Health Board

Private Bag 3200

Hamilton 3400

[REDACTED]



29 July 2016

Standardised Tobacco Regulations Consultation
Ministry of Health
PO Box 5013
Wellington 6145
NEW ZEALAND

Email: standardisedtobacco@moh.govt.nz

Dear Sir/Madam

The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the ***Standardised Tobacco Products and Packaging Draft Regulations: Consultation document***.

NZFGC is strongly supportive of encouraging healthy lifestyles and reducing harm in the community.

NZFGC supports all current laws and regulations relating to the production and selling of tobacco noting that these laws and regulations are extensive. The *Smoke-free Environments Act 1990* has been in operation in New Zealand for over 20 years and was a world leading piece of legislation when it was introduced. Further to these measures, New Zealand has been a party to the *World Health Organization Framework Convention on Tobacco Control* since its commencement in 2005.

Our view and position remains that legislation such as standardised packaging that removes a company's use of trademarks and associated on-pack branding is a significant precedent that disregards intellectual property rights and the commodity trading principles that provide the ability to distinguish goods and compete.

NZFGC recognises that a smoke-free New Zealand by 2025 is an aspirational goal but in the meantime, tobacco products are a consumer item for which practical considerations concerning design and sale are required.

General design

NZFGC notes that health warnings will be enlarged to 75% of the front and 90% of the back of a cigarette pack. The current proposal is that the standard font and size information identifying the product is at the bottom of the front of the pack. This will create a significant and unintended consequence.

Most standard dispensers in the retail trade have only the tops of cigarette boxes showing. This means the bottom of the packs with the name of the brand will be covered. As a result, in future the retailer will spend considerable time picking up boxes to see the bottom of the front of packs in order to identify the correct product for the customer. This presents a time issue

and extra safety risk for the retailer. During the time the retailer is checking for the cigarette pack requested, the retailer has their back to the customer. This increases both store and personal safety risks for theft and attack of a high value product especially for small business.

We recommend that the 25% brand and variant name be placed at the top of the front side of a pack to help staff locate products more efficiently and reduce exposure to attack and risk of theft and security issues while not facing the customer.

We understand that where similar Health Warning legislation exists in other countries, the product name appears at the top of the front face. Implementing packaging rules where brand names cannot be seen by retailers will create additional serving difficulties and delays for retailers, particularly for solitary shopkeepers in dairies and convenience stores. Given the current government's focus on improving health and safety for New Zealand workers and the recent legislative changes that have come into effect, we strongly recommend that the Ministry seek advice on all health and safety risks associated with these proposed regulations. Our concern remains that by requiring the name of the product to be printed on a section of the pack not visible to the retailer creates added workplace safety risk. The change we request, to move text from the bottom to the top of the pack, will help to reduce these difficulties and risks to the retailers without in any way impacting health policy objectives.

Annual rotation of health messages

The current law is that health messages rotate annually. During the 'health message rotation transition' (April and May each year) manufacturers, retailers and Government will all bear costs. Retailers will have to ensure the right health warning is sold, will have to withdraw product and either bear losses or wait for credits from manufacturers. Some manufacturers will have to re-package product. Government will have to enforce requirements across all retail outlets and Customs have to process claims for refund of duty stock prior to warnings.

NZFGC questions whether rotating health warnings annually serves public health goals when all it adds is considerable complexity and cost for manufacturers, retailers and Government alike. It also increases security risks for retailers who hold inflated inventory in store whilst awaiting collection of old stock for re-packaging or re-exportation by manufacturers and also causes cash flow issues. Countries like Denmark and Singapore have 14 health warnings that need not be rotated each calendar year. Their consumers still see all warnings equally but without the burden placed on retailers to identify, manage and return products with the previous set of warnings.

NZFGC recommends the obligation to print all warnings evenly across their portfolio each year should rest with manufacturers. Compliance is then limited to the portfolios of the few manufacturers. It is impractical to require regular withdrawals from the market. It makes more sense to rotate health warnings and allow stock to sell through the supply chain. This proposed change will not impact health policy objectives, but will do much to ease the burden and risks that fall on the retailers.

Transition

While the Bill covers transition periods, NZFGC recommends that manufacturers should be responsible for distributing compliant standardised packaged products by a certain date. Thereafter, retailers should be permitted to sell through branded stock to avoid retailers having to write off branded tobacco at a loss or seek refunds from manufacturers and to avoid re-packaging or re-exportation by manufacturers. The alternative is otherwise an unnecessarily cumbersome process. If the Government insists on retaining a hard cut-over date for retailers then this should be no less than 16 weeks after the date that manufacturers must start supplying standardised products.

Size and quantities of tobacco products

NZFGC notes the options considered are to limit the number of cigarettes per pack (20 or 25) and grams of tobacco per pouch (30 or 50), restrict the dimensions of cigarettes (min/max length or diameter) or restrict the dimensions of cigarette packs. NZFGC supports limiting the number of cigarettes per pack which should make it easier for the retailers to locate the correct product, in turn reducing security and service risks. Clearly this is inconsistent with Australian provisions which allow for greater variation in cigarette numbers per pack and we consider that for practical, trans-Tasman trade reasons, we should reflect the Australian approach in this area.

Because of the differences between cigarettes, restricting the dimensions of pack size so that packs can accommodate either 20 or 25 cigarettes is a more practical option. This is also the case with tobacco. However, NZFGC does not believe that a general provision for a minimum size for cigars meets the principal of practicality on the basis that there is no commonality amongst cigar sizes.

Permitted markings on tobacco packages

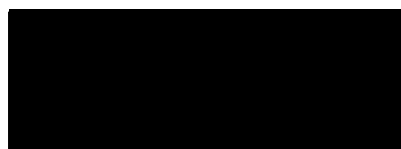
NZFGC understands there may be a black market in any high value consumer product but we believe New Zealand does not currently have the extent of problem with an illegal tobacco trade (specifically counterfeit or contraband) that other countries do, especially countries in Europe. The Ministry states that the shift to standardised packaging is unlikely to make any material difference to the prospect of counterfeiting. This has also been Australia's experience. Mandating identification marks in whatever form would therefore seem to place an unnecessary burden on the taxpayer to fund monitoring of the application of the system. Permitting their application would recognise consistency with Australia and a number of other countries with more porous borders. NZFGC is supportive of either approach.

The Ministry notes that the Australian regulations allow for a small number of features on tobacco product packages on the basis that these are required for automated manufacturing and packaging processes (inconspicuous calibration marks etc). For consistency and practicality, NZFGC supports the provision of similar marks under the Regulations.

NZFGC supports the provision allowing for the country of manufacture to be stated along with the manufacturer's name, contact details and identification codes on cigarette packs and other tobacco product packages in addition to provision for country of manufacture to be printed on a band around a single cigar. This wider provision provides for contact by consumers and information for retailers and government should products be faulty or recalls have to be initiated.

Nothing in this submission is confidential. As a representative of manufacturers of products sold in supermarkets and other retail outlets, NZFGC's membership includes a number of tobacco manufacturers.

Yours sincerely




New Zealand Association of Convenience Stores

Submission To Ministry Of Health's Consultation:

Standardised Tobacco Products and Packaging Draft Regulations

July 2016

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EXECUTIVE SUMMARY

The New Zealand Association of Convenience Stores (NZACS) welcomes the opportunity to submit to the Ministry of Health's Consultation '*Standardised Tobacco products and Packaging Draft Regulations*'.

The Ministry has stated that it is 'particularly interested in the impact and practical implications of the proposed regulations, including for compliance and enforcement'.

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NZACS represents more than 600 convenience stores and their suppliers across New Zealand and has consistently expressed a willingness to engage constructively with the Ministry over tobacco issues and how regulations impact a key category for these businesses.

As in previous submissions, while NZACS remain committed to engaging with the Ministry, particularly around issues of education and enforcement, NZACS believes this regulatory imposition continues to place further costs of compliance on businesses within the convenience store sector.

Do you have any direct or indirect links to the tobacco industry?

Yes. NZACS has membership open to both retailers within the convenience organised retail segment, as well to suppliers of goods to retailers. As such the three main tobacco companies are registered as supplier members.

NZACS understands that our submission may be requested under the Official Information Act 1982 and as such agrees to the release of NZACS details as provided in this submission. We would however request that should a request be made for the release of this submission, NZACS is advised that a request has been made and who the requestor is.

CONSULTATION QUESTIONS

NZACS provides the following comments to questions contained in the consultation paper that specifically relate to, or impact upon the convenience store sector and or businesses within this retail sector.

1. Size and quantities of tobacco products:

There are currently pack sizes of 20s, 21s, 25s, 26s, 30s and 40s cigarettes available in the New Zealand market, each brought by various consumers. Further to this, there are RYO pouches in 30gram, 40gram and 50gram variations.

NZACS members have expressed both support for and opposition to the introduction of a limit to the number of cigarettes in a pack.

2. Do you agree with the proposals to restrict the dimensions of cigarette sticks by setting minimum and maximum length and diameter?

NZACS does not support these restrictions as there are currently products that are above these restrictions and we would question how limiting the length of cigarette sticks will help reduce smoking prevalence. If the Government maintains this restriction, then we support setting a minimum and maximum cigarette stick length to be what is currently available in the market.

3. Do you agree with the proposals setting minimum and maximum height, width and depth of cigarette packs, consistent with the limits on the number and size of the cigarette sticks they contain?

NZACS does not support this proposal which incurs costs on retailers where these changes require changes to cabinets but will not impact smoking prevalence.

While this proposal specifically relates to the proposal to set pack sizes, there are possible flow-on effects and imposition of costs to the retail sector.

While it may seem minor to the Ministry, any changes to tobacco packaging results in retailers needing to ensure staff are informed about the changes and the practicalities of accessing and re-stocking the tobacco units.

NZACS wishes to point out that the proposed pack dimensions differ from the pack sizes mandated under the Australian Regulations which prescribes that packs be 85-125mm high, 55-82mm wide, and 20-42mm deep. There does not appear to be any sound reason for setting slightly different pack sizes to those made for the Australian market.

4. Do you agree with the proposal that loose tobacco should be sold only in rectangular pouches made of soft plastic?

NZACS has no comment on this.

- 5. Do you agree with the proposals to standardise cigar packaging, including the proposal to limit the number of cigars that may be sold in a pack?**

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Please see answer to 3 above.

- 6. Should the regulations include a general provision to set a minimum size for all tobacco packages, including cigar packages?**

NZACS has no comment on this.

- 7. Do you have any other suggestions for regulatory requirements to standardise the shape and size of tobacco products and tobacco product packages?**

Please see answer to 2 and 6 above.

Other comment on content of draft regulations:

- 8. NZACS wishes to restate our concern that these regulatory proposals will lead to further inconvenience for the retail sector. These concerns include:**
- At any one point in time it is estimated that there is approximately \$8 billion worth of tobacco in the New Zealand supply chain. Any changes to the Regs should reflect the ability of this supply chain to move and manage stock that would reflect the changes. NZACS believes a 6-12 month transition timeframe would allow sell-through of existing stock levels.
 - The Regulations will result in retailers experiencing increased customer transaction timeframes which is a key business issue for retail businesses. Of great concern is that the increase time to look for a product poses a security risk as the retailer has his/her back turned for longer whilst trying to locate the chosen product.
 - Product selection errors will occur during busy/peak times as retail staff endeavour to find a particular brand asked for behind the cabinet doors.
 - Customers will experience delays in retail outlets further reducing the appeal of NZACS members' key positioning – offering a fast, efficient convenience service. This has broader business and financial implications when multiplied across for example, 170 plus retail outlets under one brand banner i.e. Mobil Oil NZ. Tobacco is but one product these customers

purchase from our members and if they move to another retail channel this will have a negative impact on the convenience store sector.

- Retailers will end up bearing the brunt of customer frustration and annoyance at product selection errors experienced at the point of sale, with verbal abuse against younger staff members a growing concern amongst NZACS retail members.
- NZACS would also recommend the removal of the annual rotations of graphic health warnings as retailers have to undertake critical stock management to ensure the right warnings are sold. We question why retailers are penalised for this extra oversight when the onus could and should be placed on the manufacturers to ensure even printing of the warnings across their products in each calendar year. The removal of this rotation requirement would save retailers significant costs and time while having no adverse impact at all on health objectives. Furthermore, this requirement ties up retailer resources without any purpose at all. NZACS has been advised that many countries' health warning regulations operate in the way proposed above.
- In terms of S27 of the draft Regs, NZACS does not support this on the basis that some brand names are currently longer than what is being proposed and forcing manufactures to reduce the font size of the name of their product only makes it harder for retailers to distinguish one product from another.
- NZACS is also perplexed as to why the proposal for standardised plain packaging has the graphic health warning at the top front of the pack while the brand and brand variant name is at the bottom. If the positions were swapped around (i.e. 25% brand and variant name | 75% graphic health warning), the move would alleviate many of the concerns retailers have about locating and identifying the requested brand for our customers. We would suggest that such a move would bring renewed attention to the warnings as (a) they would be noticed, and (b) such a move would have no negative impact from a public health perspective as the warnings are still on the front face of packs.
- NZACS believes that the introduction of plain packaging will result in increased price competition as this will be the only means to compete. Cheaper cigarettes erodes retailer profits but does not reduce consumption. It also makes it harder to distinguish from black-market tobacco which becomes more attractive being the cheapest available.

While these concerns may not be 'material' for the Ministry, they are a very real business concern for New Zealand retailers who sell a product that currently represents more than 40% of their business turnover.

NZACS reiterates for the record the following likely results from the introduction of the Regs:

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- Increased Transaction times, i.e. adding 10 seconds per transactions for NZACS members results in an additional \$1.66 million cost to businesses in the convenience store sector alone.
- Increased this transaction time to 20 seconds per transactions for NZACS members results in an additional \$3.32 million cost to businesses in the convenience store sector alone.
- We have been advised by one NZACS member that the current customer transaction time is in the region of 40 seconds per customer. Searching for a particular tobacco brand behind the tobacco cabinet doors if all tobacco products are in plain packaging is likely to increase this transaction timeframe. The result is more direct costs to a business.
- Other direct costs include additional time for restocking to not only avoid incidental viewing as well as practical training of new and existing staff. The Ministry should be aware that staff turnover is approximately 30% in a convenience store, so these additional costs are ongoing, not one-offs.
- Potentially lead to greater security threats against our members' employees, who will be forced to search for tobacco products that adult consumers ask for.
- Increase the time it takes to complete a customer transaction which incurs costs onto a business, as well as leading to customer frustration and annoyance which is directed towards our members' employees.
- Impose increased transaction costs on individual convenience store businesses and the retail sector as a whole. Replicated across the entire retail sector selling tobacco this equates to additional million dollar costs being forced onto New Zealand businesses.

The convenience store retail sector is about providing customers with a fast, efficient and customer-focused service. The Regs do little to support this objective.

The proposed Regs, particularly in respect to Part 2, (20)(a)-(e), (22)(1), (23)(1)(a)-(d) and (29)(a) are specifically commented on above.