

MTA Submission

To Ministry of Health on the Proposals for the Smoked Tobacco
Regulatory Regime

Date: 15/03/2023



Tēnā koutou

Submission Name: Proposals for the Smoked Tobacco Regulatory Regime

This submission is from:
Motor Trade Association (Inc)
PO Box 9244
Marion Square
Wellington 6141

The contact person in respect of this submission is:

Name: Mathew Alderdice
Title: Sector Manager – Energy and Heavy Vehicles
Phone: +64 4 381 8843
Email: Mathew.Alderdice@mta.org.nz

Thank you for the opportunity for MTA to provide comment on the Proposals for the Smoked Tobacco Regulatory Regime regarding the views of and its effect on the automotive industry.

Ngā mihi

Mathew Alderdice
Sector Manager – Energy and Heavy Vehicles

Introduction

The Motor Trade Association (Inc) (MTA) was founded in 1917 and has maintained over 100 years of trust with the NZ motoring community. MTA currently represents over 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 approximately 60,000 New Zealanders and contributes around \$3.5 billion to the New Zealand economy.

Submission

MTA welcomes the opportunity to consult on the Proposals for the Smoked Tobacco Regulatory Regime (the Regulations). 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, MTA met with its members to discuss the impact of the Regulations on their business, and how they can best support the Government and the Ministry of Health (the Ministry) in achieving its goal of a smoke free Aotearoa.

Summary

MTA's feedback on the Regulations is as follows:

- Service stations are best placed to satisfy the role smoked tobacco retailers
- MTA fully supports fair distribution of smoked tobacco retail premises throughout New Zealand.
- MTA recommends clarity on the boundary between urban and rural areas to avoid confusion.
- MTA supports the principle that smoked tobacco retailers should be fit and proper persons but suggests clarity on who within the business needs to meet this requirement.
- MTA endorses the minimum requirements laid out in the Regulations to operate as a retail premises that can sell smoked tobacco products and recommends that the Ministry consider factors of the service station business model when finalising the minimum requirements for approval as a smoked tobacco retailer.
- MTA acknowledges the importance of a robust retailer application process and suggests the Ministry considers aspects of the service station business model that may be useful for evaluating a tied application.

MTA's feedback on Proposal 1a – Number of smoked tobacco retail premises and their distribution across Aotearoa

MTA fully supports the fair distribution of smoked tobacco retail premises throughout Aotearoa, with no opposition to classifying these settings as either urban or rural. However, the methodology

employed to allocate maximum numbers of retail premises in these areas raises some concerns for MTA.

Currently, there is vagueness around whether a retail premises on the edge of an urban halo will be considered rural or urban. While the Regulations suggest that 'urban' areas extend an agreed distance in drive time of 10 minutes along a state highway, referred to as the 'urban halo,' under this methodology a retailer just two minutes outside of an urban area only accessible by a 'non state highway' road would be considered rural. However, the Regulations also state that areas most easily accessed via roads connecting to an urban area, not just state highways, are treated as an extension of that urban area. This raises uncertainty regarding which roads can extend the urban halo, and thus where a retail store located on this boundary would sit.

To prevent confusion for retailers, MTA recommends that the finalised Regulations clearly outline the boundary between the urban and rural areas. This will provide clarity and help ensure that all retailers are properly classified according to their location.

MTA's feedback on Proposal 1b – Minimum requirements for approval as a smoked tobacco retailer

Fit and proper person

MTA supports the principle that smoked tobacco retailers should meet the requirement of being fit and proper persons in order to sell smoked tobacco products. MTA's service station members would easily be able to satisfy this requirement. However, the current Regulations lack clarity on who within the business needs to meet this requirement. Is it the business owner, the store manager, or all employees of the business? This ambiguity needs to be addressed in order to ensure compliance. MTA recommends that the Ministry provides further clarity on this matter to avoid confusion and enable retailers to understand who needs to meet this requirement in the final version of the Regulations.

Minimum requirements

MTA endorses the minimum requirements laid out in the Regulations to operate as a retail premises that can sell smoked tobacco products, acknowledging their pivotal role in guaranteeing the effectiveness of the retail scheme and ultimately the achievement of Smokefree Aotearoa 2025. MTA recognises the gravity of the government's objective and affirms our commitment to playing our part in reaching this goal. As a collective body, MTA's members are best placed to meet the stipulated requirements and even exceeding them, in order to ensure the success of the retail programme.

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 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.

Other factors that the service station business model offer that the Ministry should consider as minimum requirements for approval as smoked tobacco retailers 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

MTA recommends that the Ministry consider these factors in mind when finalising the minimum requirements for approval as a smoked tobacco retailer. The strong regulatory and operating protocols of service stations make them best placed to take the role of approved smoked tobacco retailers.

MTA's feedback on Proposal 1c – Approval processes and decision-making criteria

Decision making and ranking process

MTA acknowledges the importance of a robust retailer application process. 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. In this regard, service stations are well-positioned due to the business model they offer.

There are therefore aspects of the service station business model that the Director General may find useful to consider when evaluating a tied application:

- Service stations are less likely to be a casual shopping destination for all ages (compared to dairies or supermarkets with wider, more general product mixes
- There is an industry trend towards unmanned fuelling sites, so the industry is not set to expand shopping sites significantly.
- 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.
- Service stations have a 'gold standard' history of compliance in the selling of smoked tobacco products.

MTA recommends that the Ministry consider these factors when finalising the decision making and ranking processes that the Director General needs to consider when evaluating a tied application.

To ensure transparency and fairness in the decision-making process of the Regulations, MTA believes it's important to provide unsuccessful applicants with an opportunity to appeal their application. Failing that, retailers should at least be informed of the specific reasons why their application was unsuccessful. Without a clear and transparent appeal process, it may be difficult for applicants to understand the criteria used to evaluate their application. As such, MTA strongly recommends the Ministry to consider implementing an appeal process to help ensure that the Regulations are applied consistently and fairly to all applicants.

Retail support

MTA and its member welcome the possibility of financial support from the Government for retailers who can no longer sell smoked tobacco products. In order to offset the possible loss of revenue from the sale of smoked tobacco products, many of MTA's members are considering the addition or extension of food services as a means to offset lost revenue. However, it should be noted that the regulatory scheme for food safety compliance can be costly and may require additional staffing resources. While café food may be an option to diversify income streams, many MTA members have indicated that a reduction in staff numbers may be more likely, simply due to the fact that they will be unable to afford paying them. Furthermore, given the current market climate which has been heavily influenced by the COVID-19 pandemic and subsequent restrictions on public mobility, the shift towards food delivery models may present additional challenges for those seeking to implement new product lines.

MTA would therefore recommend the Government consider the provision of targeted support in the form of financial assistance or streamlined regulatory processes for those seeking to add or extend food services. This could help to alleviate the costs associated with regulatory compliance and enable businesses to pivot towards new revenue streams more quickly and without a reduction in staff. This would also go a long way in ensuring New Zealand's service station infrastructure continues to operate successfully.

Additionally, the Government should explore alternative support options for those who may not have the resources or capacity to pursue food services as a viable replacement for lost revenue. This support could be offered in a number of ways, such as subsidised employee wages, or by allowing retailers to become specialized vape retailers.

Online sales

MTA's position is that online sales of smoked tobacco products do not align with the principle of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act (the Act). The Act aims to restrict the sale of smoked tobacco products to young and old and New Zealanders alike. The problem with online sales is that it presents a significant compliance risk, as retailers can easily gain access to the entire New Zealand market without a strong and robust process in place. This poses a risk of perverting the intentions of the Act by allowing for the sale of smoked tobacco products to individuals who should not have access to them.

While MTA acknowledges that there may be situations where there is inadequate access to smoked tobacco products, and online sales may seem like an easy solution to this issue, it is important for the Ministry to consider the risks associated with a lack of oversight that online sales can allow for. MTA recommends that the Ministry carefully evaluate the risks and benefits of allowing online sales of smoked tobacco products before making a final decision.

MTA's feedback on Regulatory proposal 3: Fees

MTA's feedback is specifically focused on the assessment fee for applications to become an approved smoked tobacco retailer. It is MTA's position that these fee range of \$500-\$2000 as outlined in the

Regulations is too high. While successful applicants may be able to recover the cost of this application from consumers, the majority of unsuccessful applicants will be unable to do so. This may impact their ability to operate as a business.

MTA recommends that the Ministry consider alternative options to make the application process more feasible for aspiring retailers. One option could be to make the application free of cost or set it at the lowest suggested cost of \$500. Alternatively, the Ministry could consider waiving the initial application fee and instead charging a fee only when a retailer is granted approval. Another possibility is to establish a feebate scheme, whereby part or all of the application fee is reimbursed to retailers.

MTA's feedback on Regulatory proposal 4: Notification requirements

MTA agrees with the proposal that distributors and general retailers are required to re-register annually.

Closing remarks

MTA appreciates the opportunity to provide feedback on the Proposals for the Smoked Tobacco Regulatory Regime. As the leading representative of small businesses in the automotive industry, MTA recognizes the importance of reducing harm and deaths from smoking in New Zealand. Overall, MTA is committed to working with the Government and the Ministry of Health to achieve a smoke-free Aotearoa. MTA believes that service stations, are best placed support the Government in achieving this public health outcomes.

MTA recommends that the Ministry consider the unique aspects of the service station business model when finalizing the regulations to ensure fair distribution of smoked tobacco retail premises and to facilitate a robust retailer application process.

MTA appreciates the opportunity to submit on Proposals for the Smoked Tobacco Regulatory Regime



NATIONAL CONTACT DETAILS

Postal address: PO Box 9244, Marion Square, Wellington 6141

Phone: 0800 00 11 44 | **Email:** mta@mta.org.nz | **Website:** www.mta.org.nz