



# **ASH Scotland – Submission of written evidence on the Tobacco and Primary Medical Services (Scotland) Bill to the Health and Sport Committee**

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## Introduction

1. ASH Scotland led the preparation and drafting of the written evidence submitted by the Scottish Coalition on Tobacco (SCOT); the evidence contained within this submission should be seen as complementary to the SCOT submission.
2. Smoking accounts for almost 13,500 deaths every year (24% of all deaths in Scotland);<sup>1</sup> around 15,000 young Scots begin smoking each year<sup>2</sup>, with around two-thirds of them starting to smoke under the age of 18.<sup>3</sup> More evidence on smoking and young people can be found in the SCOT evidence submission.

## Factors affecting youth smoking initiation: high visibility and perceived attractiveness of tobacco

3. In spite of the tobacco industry's insistence that it does not seek to recruit under-age smokers<sup>4</sup>, there is compelling evidence that the industry's marketing is in fact heavily oriented towards presenting smoking as a glamorous, aspirational and youthful lifestyle choice.<sup>5 6 7</sup>
4. Numerous academic studies have investigated the role of tobacco marketing, including retail and promotional tobacco displays, in youth smoking initiation. There is a wealth of compelling evidence indicating that young people are highly impressionable and disproportionately influenced by such marketing activity.<sup>8 9 10 11</sup>
5. The effectiveness of retail displays as a successful marketing tool will come as no surprise to anyone within the advertising industry. One agency acknowledges point of sale displays as "*a vital component of any marketing strategy or advertising campaign.*"<sup>12</sup>
6. But while retail tobacco displays undoubtedly have a significant impact on young people and new smokers, surveys suggest that they have only limited impact on established smokers, the very group that the tobacco industry claims to be targeting. A recent survey commissioned by Cancer Research UK shows that over 85% of adult smokers always buy the same brand, with only 6.4% deciding what to buy based on the point of sale display.<sup>13</sup> For retailers, devoting a large area of display space to a product that offers such slender profit margins is a waste of valuable resources. Heavy investment in the large stocks needed to fill the gantry also represents a diversion of assets.
7. A recently published meta-analysis reviewed a number of existing longitudinal and cross-sectional studies examining the role of retail tobacco marketing in youth attitudes towards smoking, and concluded that: "*given the addictiveness of tobacco, the severity of the health hazards posed by smoking, the evidence that tobacco promotion encourages children to start smoking, and the consistency of even the limited evidence available that [point of sale] marketing influences children's smoking, we believe that there is ample justification for a ban on PoS marketing, including retail displays, of all smoked tobacco products.*"<sup>14</sup>
8. A small number of countries and jurisdictions have done just that. Thailand, Iceland and most Canadian provinces have legislated to remove tobacco marketing displays at the point of sale. A similar ban will come into force in the Republic of Ireland in July 2009.
9. Since these display bans have largely been introduced as part of a package of tobacco control measures – in Iceland, the ban was accompanied by a form of retail tobacco licensing and a comprehensive tobacco advertising ban – it is very difficult to disaggregate the impacts of individual tobacco control measures.
10. However, in both Iceland and Canada, official government sources indicate that tobacco display bans – as part of a comprehensive suite of tobacco control policies – have contributed to youth smoking prevalence falling at a faster rate than in Scotland.<sup>15</sup>
11. It is important to note that no tobacco retailers, in either Iceland or Canada, are been shown to have gone out of business or suffered disproportionate economic harm as a result of a tobacco display ban. This has not stopped the UK tobacco industry from warning of dire economic consequences if such a law is passed here.<sup>16</sup>
12. The Framework Convention on Tobacco Control (FCTC) – a piece of binding international law to which the UK is a signatory – calls on all parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. Recently adopted guidelines point out that if only a partial ban is introduced: "*the tobacco industry inevitably shifts its expenditure to other advertising, promotion and sponsorship strategies, using creative, indirect ways to promote tobacco products and tobacco use, especially among young people.*"<sup>17</sup> See Appendix 1.
13. This has already happened within the UK. Since the implementation of the Tobacco Advertising and Promotion Act 2002 – which permits the promotional display of tobacco at the point of sale – the

tobacco industry has shifted the focus of its marketing activities towards retail tobacco displays and cigarette packaging.<sup>18</sup>

14. The FCTC guidelines also make clear that: *“Display of tobacco products at points of sale in itself constitutes advertising and promotion. Display of products is a key means of promoting tobacco products and tobacco use, including by stimulating impulse purchases of tobacco products, giving the impression that tobacco use is socially acceptable and making it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.”*<sup>19</sup>

- 15. ASH Scotland believes that there is good evidence to support the introduction of a retail tobacco display ban in Scotland, and very little evidence to suggest that retailers will be harmed by such a move.**
- 16. The FCTC considers that tobacco displays constitute advertising, and recommends that they be banned.<sup>20</sup> ASH Scotland strongly supports this.**
- 17. ASH Scotland recognises that consideration should be given to specialist tobacconists, but does not believe that any tobacco branding should be visible to children from the street.**
- 18. We accept that smaller shops should be given more time to comply with a display ban than larger outlets, but do not consider that Scotland should automatically adopt the same timescale as England. The Northern Ireland Assembly has already expressed the hope that the province’s display ban can be implemented in advance of England.<sup>21</sup>**
- 19. The regulations which will follow the Bill must speedily deliver the core policy objectives, to reduce the availability and attractiveness of tobacco to young people.**

### **Factors affecting youth smoking initiation: easy availability of tobacco**

20. Studies show that over 80% of 15 year old smokers, and almost half of 13 year old smokers, report buying their own cigarettes from shops.<sup>22</sup> Furthermore, test-purchasing activity routinely demonstrates that between one-third and one-quarter of tobacco retailers are prepared to sell tobacco to under-age customers<sup>23 24 25</sup>; during a test purchasing exercise in West Renfrewshire in late 2008, 80% of shops tested were willing to sell cigarettes to a 15 year old girl.<sup>26</sup>
21. Licensing or registration schemes that require the active engagement of retailers have the potential to dramatically reduce this easy access to tobacco – one scheme in Tasmania increased compliance with the law to 95% when backed up with highly visible enforcement activity.<sup>27</sup> But following a drop off in enforcement, compliance levels fell once again.<sup>28</sup>

- 22. ASH Scotland has previously called for a system of positive licensing to be introduced.<sup>29</sup> However, we accept that a system of negative licensing with a register of tobacco retailers provides many of the same advantages. If effectively and regularly enforced, such a scheme could significantly reduce the availability of tobacco products to young people.**
- 23. ASH Scotland considers that any such scheme should be operated in a transparent and accountable fashion, and that the continued ability to sell tobacco should be dependent on compliance both with the age restrictions and with regulations governing tobacco displays.**
- 24. Should a system of registration not facilitate effective enforcement, ASH Scotland considers that powers to impose positive licensing should be provided for as an option.**

### **Tobacco industry attempts to counter tobacco control policies**

25. Effective tobacco control is fundamentally incompatible with the commercial success of the tobacco industry, and the tobacco industry has a track record – going back several decades – of attempting to avoid, prevent, weaken and delay effective tobacco control policies.<sup>30 31</sup> In spite of a supposedly comprehensive advertising ban, the tobacco industry continues to spend billions of pounds<sup>32</sup> on distribution, sales and marketing activity<sup>33</sup>.
26. The youth smoking prevention measures contained within the Tobacco and Primary Medical Services Bill are designed to reduce the numbers of young people becoming smokers; given the high proportion of smokers who take up the habit as adolescents, this should – in the long term – translate into reduced numbers of adult smokers. As such an outcome can only be detrimental to the economic prospects of the wider tobacco industry, it is entirely predictable that the industry and

\* Imperial Tobacco's 2008 financial statement reveals that the company deducted £1,462 million from their pre-tax profit for "distribution, advertising and selling costs".

its allies are doing all they can to counter the Scottish Government's health-oriented tobacco control policies.

27. Tobacco manufacturers have historically used allies and funded front groups in an attempt to give their viewpoints added credibility. Central to efforts to oppose the current youth smoking prevention measures proposed by both the Scottish and UK Governments is the Tobacco Retailers' Alliance<sup>34</sup> which has been campaigning against proposals to remove point of sale displays as part of its "Responsible Retailers" initiative.
28. During late 2008, MPs received postcards labelled "Save our Shops". While appearing to be from a group of independent retailers, the campaign was in fact orchestrated by the Tobacco Retailers' Alliance (TRA), which is itself funded by the Tobacco Manufacturers' Association (TMA)<sup>35</sup>. Many parliamentarians were reportedly angered by what they saw as tobacco industry "dirty tricks".<sup>36</sup>
29. The TRA – an organisation claiming to represent independent retailers while being almost wholly funded by the tobacco industry<sup>37</sup> – also posted a petition<sup>38</sup> on the Prime Minister's website calling for him to reconsider proposals to ban point of sale displays in England and Wales. The petition made a number of misleading or inaccurate claims.<sup>39</sup>

**30. ASH Scotland asks the committee to consider Article 5.3 of the Framework Convention on Tobacco Control.<sup>40</sup> This article – together with recently agreed guidelines<sup>41</sup> for its application – seeks to prevent the tobacco industry from interfering in the setting and implementation of public health policy. See Appendix 1 for details.**

### Industry arguments against removing retail tobacco displays

31. The arguments put forward by the tobacco industry and its representatives against government proposals to remove tobacco displays from the point of sale fall into a limited number of categories. While these claims may appear superficially plausible, none of them stands up to scrutiny.
32. It is noteworthy that many of these arguments were made in advance of the introduction of tobacco display bans in other countries (see Appendix 2). In Saskatchewan, Canada, in 2001, a tobacco industry initiative sent a fax to tobacco retailers, warning them that the planned display ban would fail to address youth smoking, would risk putting retailers out of business, and would compromise security.<sup>42</sup> The fact that none of these warnings were borne out by events has not stopped similar claims being made in this country by the UK tobacco industry and its representatives.<sup>43</sup>
33. We recognise that retailers have legitimate concerns about the impact that these measures may have on their livelihoods; however, we believe that these concerns have been amplified by their exposure to tobacco industry misinformation.
34. **Industry argument 1: "There is no international evidence to support the contention that removing tobacco displays helps to reduce youth smoking prevalence."**  
Tobacco display bans must be seen as part of a wider mix of tobacco control measures aimed at reducing the overall visibility, availability and affordability of tobacco to young people. As such, it is extremely difficult to disaggregate the individual impacts of any one individual policy. Measures designed to reduce the visibility of tobacco products within society cannot be expected to show results overnight – a young person who begins smoking aged 15 will have been exposed to ubiquitous retail tobacco marketing for at least ten years by that age. We shall have to wait a decade or more to reap the full benefits of such a policy. However, jurisdictions that have removed their tobacco displays have seen further declines in youth smoking prevalence<sup>44 45</sup>.
35. **Industry argument 2: "Removing tobacco displays will cause retailers disproportionate economic hardship."**  
There is no evidence to suggest that tobacco retailers suffer undue economic hardship as a result of display bans. In spite of this, the UK tobacco industry continues to claim that up to 15,000 shops could close across the UK if such a law is passed here.<sup>46</sup>
36. Recent uncorroborated claims that display bans are causing many Canadian shops to close are not borne out by official Canadian bankruptcy statistics.<sup>47</sup> In addition, since the introduction of tobacco display bans, tobacco industry payments to Canadian retailers have risen.<sup>48</sup>
37. International experience shows that immediate costs to retailers (replacement of displays) are likely to be subsidised by tobacco companies. Longer term costs will include decreasing tobacco sales as fewer young people take up the habit. These costs will be partly off-set by ongoing tobacco industry payments to retailers. However, tobacco has long been a declining market in the UK.
38. **Industry argument 3: "Removing tobacco displays compromises security."**  
Security concerns must be taken seriously. But out of sight containers are available that do not

involve the shopkeeper's eye being taken off the shop – unlike the present situation whereby a shop assistant must turn round to access the gantry. The careful use of out of sight containers could improve security. See Appendix 2 of the SCOT submission for pictures of out of sight tobacco containers in use.

39. **Industry argument 4: “Removing tobacco displays compromises health and safety”**  
The health and safety argument is frequently made by retailers' organisations. Retailers in other countries have installed simple but effective solutions such as drawers beneath the counter, or overhead containers. There are no reports of an increase in injuries resulting from their use. See Appendix 2 of the SCOT submission.
40. **Industry argument 5: “Removing tobacco displays will increase the supply of smuggled tobacco.”**  
Fears over an increase in the supply of smuggled and illicit tobacco have arisen within the retail sector. Retailers will still be able to show a list of brands stocked together with prices, so it is unclear why removing tobacco displays should divert customers towards the illicit trade. Again, there are no reports of an increase in smuggling resulting from the removal of retail tobacco displays in other countries.
41. **Industry argument 6: “Removing tobacco displays will make tobacco more, not less, appealing to young people.”**  
This argument – which has not been borne out in other countries that have removed tobacco displays – runs counter to the prevailing theory of marketing. That highly-visible tobacco displays, underpinned by tobacco industry payments to retailers and filled with colourful and attractively packaged cigarette packs, remain in every shop is surely testament to their power as an effective marketing tool.<sup>49</sup>
42. **Industry argument 7: “Tobacco is a legal product, so displaying it should be legal as well.”**  
While tobacco is a legal product, its uniquely harmful and addictive nature has led to it being subject to a range of restrictions on its distribution, promotion, sale and use over the last four decades. The proposal to remove tobacco displays is entirely compatible with existing tobacco control legislation. Any remaining loophole will be exploited by the industry – a full ban is essential.
- 43. ASH Scotland considers that the tobacco industry must be aware that the arguments it is putting forward are misleading and inaccurate. We would urge the committee to examine the claims made by the tobacco industry and its allies very carefully, and to consider that the retail sector is heavily influenced by the arguments of the tobacco industry.**

## Public support for relevant tobacco control policies

44. Public opinion surveys have shown a high degree of support for the tobacco control policies included in the Tobacco and Primary Medical Services (Scotland) Bill. ASH Scotland commissioned YouGov to question 1000 Scottish adults on their views in March 2009.
45. The survey showed very strong support for a tobacco retailer licensing scheme, and strong support for a ban on both retail tobacco displays and vending machines. See Appendix 3 for details of the survey's findings.

## Conclusion

46. The easy availability and high visibility of tobacco products are both important factors in a young person's choice to start smoking. By requiring tobacco retailers to engage with a registration scheme, and by removing tobacco displays from the point of sale, the Scottish Parliament can help to prevent a new generation of young people from becoming smokers. Inevitably, the success of these measures will hinge on dedicated enforcement by local trading standards services.
47. Such measures have been introduced in other parts of the world, and, when backed up with effective and regular enforcement action, have been shown to contribute to lower levels of youth access to tobacco, and to reduced youth smoking prevalence.
48. But this track record of success has not prevented the tobacco industry and its allies from continuing to disseminate misleading, inaccurate and unsubstantiated claims about the Scottish Government's tobacco control policies.
49. ASH Scotland urges the committee to support the general principles of the tobacco control measures included in the Tobacco and Primary Medical Services (Scotland) Bill, to take account of the influence of the tobacco industry on the retail sector's expressed concerns, and to subject the claims of the tobacco industry itself to very close scrutiny.

## **Appendix 1 – Extracts from the Framework Convention on Tobacco Control**

*Extracts from the text of the Framework Convention on Tobacco Control, and from the recently adopted guidelines on the implementation of the treaty. The UK, in signing and ratifying the treaty, has agreed to be bound by its articles.*

### **Article 5** *General obligations*

1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.

2. Towards this end, each Party shall, in accordance with its capabilities:

(a) establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control;

and

(b) adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

#### *Guidelines on the implementation of Article 5.3*

13. The tobacco industry produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

14. Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.

#### *Recommendations*

Parties should, in consideration of Article 12 of the Convention, inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.

Parties should, in addition, raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.

### **Article 13** *Tobacco advertising, promotion and sponsorship*

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.

*Guidelines on the implementation of Article 13*

5. A ban on tobacco advertising, promotion and sponsorship is effective only if it has a broad scope. Contemporary marketing communication involves an integrated approach to advertising and promoting the purchase and sale of goods, including direct marketing, public relations, sales promotion, personal selling and online interactive marketing methods. If only certain forms of direct tobacco advertising are prohibited, the tobacco industry inevitably shifts its expenditure to other advertising, promotion and sponsorship strategies, using creative, indirect ways to promote tobacco products and tobacco use, especially among young people.

6. Therefore, the effect of a partial advertising ban on tobacco consumption is limited. This is recognized in Article 13 of the Convention, which lays down the basic obligation to ban tobacco advertising, promotion and sponsorship. According to Article 13.1 of the Convention, "Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products".

12. Display of tobacco products at points of sale in itself constitutes advertising and promotion. Display of products is a key means of promoting tobacco products and tobacco use, including by stimulating impulse purchases of tobacco products, giving the impression that tobacco use is socially acceptable and making it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.

13. To ensure that points of sale of tobacco products do not have any promotional elements, Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale, including fixed retail outlets and street vendors. Only the textual listing of products and their prices, without any promotional elements, would be allowed.

14. Vending machines should be banned because they constitute by their very presence a means of advertising or promotion under the terms of the Convention.

*Recommendation*

Display and visibility of tobacco products at points of sale constitutes advertising and promotion and should therefore be banned. Vending machines should be banned because they constitute, by their very presence, a means of advertising and promotion.

## Appendix 2 – Extracts from Australian public consultation on tobacco control

*Extracts from the public consultation forum on the next steps to reduce tobacco-related harm 2008.*<sup>50</sup>  
*New South Wales Department of Health – Protecting Children from Tobacco*

“By displaying products, important advertising objectives are achieved in a more direct way than can be achieved through paid media. Advertising by display achieves brand awareness, a fundamental goal of advertising. Like all effective advertising, it helps put the product and the category and the brand in the mind of the prospect.”

John Bevins (*Advertising executive, JB Associates*)

“In 2002 I was working in Canada when Saskatchewan became the first province in the entire world to implement a tobacco display ban and as you can well imagine the tobacco industry did not just sit back and allow this to happen. The same tired and transparently self-interested arguments about the closing of small local businesses, massive increases in theft, expensive shop fitouts, rights to display a legal product, et cetera, et cetera, were all tarted out there as well.”

Becky Freeman (*Tobacco researcher, University of Sydney*)

“What motivates a child to smoke? Is it seeing their favourite role model blowing rings of smoke on the big screen or is it seeing their parents smoke in the car on the way to the supermarket? Perhaps it is simply peer pressure or maybe it is the constant bombardment of cigarette brands they see as they line up to buy some credit for their phone or as they line up with mum to pay for petrol at their local service station. Maybe it is the candy-like vending machines they see in clubs and pubs as they accompany mum and dad to dinner. There are so many issues you deal with as a child, and placing tobacco products in eyesight is unnecessary and something we should restrict and further control.”

Joshua Patten (*Youth advocacy campaigner, Smoke Screening*)

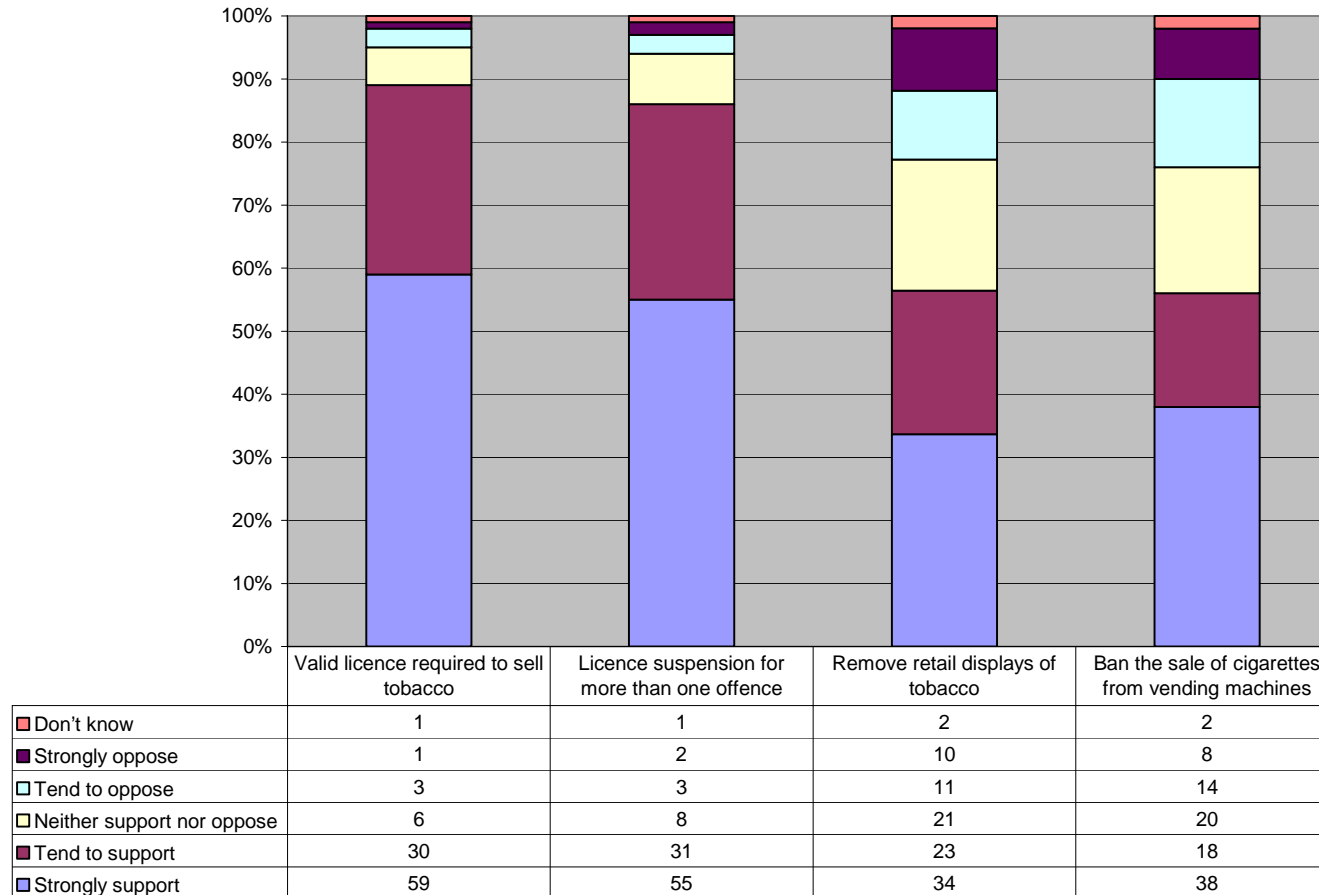
“This quote from the Point of Purchase Advertising Industry's web site<sup>51</sup> says it all:

*‘Retail marketing is persuasive. Serving as the last three feet of the marketing plan, P-O-P advertising is the only mass medium executed at the critical point where products, consumers and money to purchase the product all meet at the same time. It is no coincidence that with 74 percent of all purchase decisions in mass merchandisers made in store, an increasing number of brand marketers and retailers invest in this medium.’”*

Andrew Penman (*Cancer Council, New South Wales*)

### Appendix 3 – Public support for various youth smoking prevention measures

(All respondents, March 2009)



**Respondents asked to state their support or opposition to the following acts:** i) *Requiring businesses to have a valid licence to sell tobacco which can be removed if they are caught selling to underage smokers;* ii) *Suspending the right to sell tobacco for businesses found to have sold or supplied tobacco to under-18s more than once;* iii) *Banning the display of tobacco products in the places where they are sold;* iv) *Ban the sale of cigarettes from vending machines.*

Figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1157 adults. Fieldwork was undertaken between 25th - 27th March 2009. The survey was carried out online. The figures have been weighted and are representative of all Scottish adults (aged 18+).

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