



AUGUST 19, 2015

COMMENTS FOR SUBMISSION

PERSONAL CHOICE AND COMMUNITY IMPACTS

RE: PLAIN PACKAGING LAWS

SUBMITTED TO THE SENATE STANDING COMMITTEES ON ECONOMICS  
ON BEHALF OF THE TAXPAYERS PROTECTION ALLIANCE (UNITED  
STATES)

EXECUTIVE SUMMARY:

The comments submitted to the Senate Standing Committees on Economics are in response to inquiries on personal choice and community impacts. These comments are being submitted for the purpose of calling attention to the harmful impacts that plain packaging laws are having on Australia. The comments seek to show that taxpayers, consumers, and businesses in Australia are not benefitting as a result of these laws. The comments outline the negative consequences that plain packaging laws have had over the last few years since first being implemented.

The comments focus on these specific issues, which highlight the problems with Australia's plain packaging laws:

- Introduction
- Consumption: Overall level of tobacco consumption in Australia was higher after one full year of plain packaging being implemented
- Taxpayers: Tax revenue from tobacco has decreased and taxpayers are at risk from legal action that could cost millions (USD) of dollars
- Businesses: Businesses in Australia and abroad could be harmed when Intellectual Property isn't protected
- Illicit Trade: Illicit trade for cigarettes increased by 30 percent from 2013 to 2014. Terrorism & Organized Crime is funded by way of increased illicit trade
- Conclusion



Senate Standing Committees on Economics  
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The Taxpayers Protection Alliance (TPA) is submitting the following comments to the Australian Parliament's Senate Standing Committees on Economics in response to inquiries regarding personal choice and community impacts, specifically *plain packaging* laws in Australia. TPA, a non-profit organization based in the United States, is concerned about Australian plain packaging regulations because of the fiscal implications in Australia and around the world.

## Introduction

The Tobacco Plain Packaging Act of 2011<sup>1</sup> was passed in December of 2011, making Australia the first country in the world to adopt plain packaging rules for tobacco products. In 2012, the Australian government instituted plain packaging policies that were aimed at curbing the use of tobacco products by preventing "tobacco advertising and promotion of tobacco products and tobacco product packaging by making it an offence to sell, supply, purchase, package or manufacture tobacco products or packaging for retail sale that are not compliant with plain packaging requirements." The intentions of those who pushed for plain packaging may have been focused on prevention and revenue, but it is clear that the policy harms taxpayers, consumers, and businesses.

## Consumption

There have been multiple reports analyzing the impact of plain packaging in Australia and these reports have been instrumental in highlighting the negative results that these laws have wrought on the nation. Australia's Treasury Department released figures showing in the first 12 months following the implementation of plain packaging, legal tobacco volumes increased by 0.5 percent or about 115 million sticks.<sup>2</sup>

Three independent studies have also shown the adverse impact plain packaging has had in Australia.

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<sup>1</sup> Australian Government, ComLaw. "Tobacco Plain Packaging Act 2011." December 14, 2011. <<https://www.comlaw.gov.au/Details/C2011A00148>>

<sup>2</sup> Australian Government, The Treasury. "TOTAL TOBACCO CLEARANCES DATA." 2015. <<http://www.treasury.gov.au/Access-to-Information/DisclosureLog/2015/1703>>



*KPMG LLC – October 2013*

The first study was a half-year analysis done by the accounting firm KPMG LLP, *Illicit Tobacco in Australia*, contained key findings regarding lost revenue, and increase in illicit trade only six months after plain packaging laws had been implemented.<sup>3</sup>

*London Economics Study – November 2013*

A study released in November of 2013 by London Economics detailed their findings of the effects of plain packaging on cigarette smoking since the law had been implemented in December of 2012. The key findings of this study show that plain packaging has done little to deter individuals from purchasing cigarettes.<sup>4</sup>

*KPMG LLC – April 2014*

A second KPMG study, released in April of 2014, included a full report one year's worth of analysis. The results continue to highlight exactly the types of negative consequences that many have been warning about for years; increased consumption, and increased black market activity:

- The overall level of tobacco consumption in Australia was approximately 17.7 million kilograms in the full year 2013 (higher than in 2012 and half-year 2013)<sup>5</sup>
- Illegal consumption increased to 13.9% of total consumption (higher than in 2012 and half-year 2013)<sup>6</sup>

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<sup>3</sup> "Talking Point: Tobacco gangs push black market" *The Mercury*, 30 Dec 2014 Web. Aug. 2015  
<<http://www.themercury.com.au/news/opinion/talking-point-tobacco-gangs-push-black-market/story-fnj4f64i-1227169434737>>

<sup>4</sup> London Economics. *An analysis of smoking prevalence in Australia (Final)*. Nov. 2013 <<http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf>>

<sup>5</sup> "Black market tobacco 'booming' in Australia: KPMG study" *The Age*, 12 April 2014 Web. Aug. 2015  
<<http://www.theage.com.au/victoria/black-market-tobacco-booming-in-australia-kpmg-study-20140411-36iea.html>>

<sup>6</sup> "Effects of mandatory packaging laws plain for all to see" *FreedomWatch*, 7 July 2015 Web. Aug. 2015  
<<http://freedomwatch.ipa.org.au/2015/07/effects-of-mandatory-packaging-laws-plain-for-all-to-see/>>



## **Taxpayer Risk**

### *Revenues*

Taxpayers are at extreme risk due to plain packaging. The increase in illicit trade represents a major loss in projected revenue. One estimate sets the total loss at \$1.35 billion. Taxpayers are likely to be the ones that will be required to make up for that revenue shortfall.<sup>7</sup>

### *Expenditures*

Legal action presents yet another risk for taxpayers. Lawsuits have been filed against the Australian government opposing plain packaging measures, and now those actions are headed to court where the potential cost to defend plain packaging will be upwards of \$50 million (USD).<sup>8</sup> That number represents just one lawsuit, with the possibility of more legal action to follow. There's no telling how much taxpayers in Australia will have to spend to defend laws that are failing on multiple metrics of success.

## **Business Implications**

The damage to the free-market that plain packaging has done cannot be denied. Businesses thrive on being unique and having a product that can be differentiated from the competition. Laws that deny any type of specific branding kill competition, and leave consumers without the freedom of choice. Intellectual Property (IP) is a key component of the free market economy and plain packaging is a direct attack on IP. Strong IP protections encourage competition and help provide incentives to innovators and creators. Protecting IP is a key component to ensuring that businesses have the ability to stand out and produce goods and services that consumers need and want. Australia's plain packaging laws weaken IP protections, which harms businesses and consumers.

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<sup>7</sup> "Illegal tobacco costs govt \$1.35bn" *The Australian*, 4 May 2015 Web. Aug. 2015  
<<http://www.theaustralian.com.au/business/latest/illegal-tobacco-costs-govt-135bn/story-e6frg90f-1227334265929>>

<sup>8</sup> "Tobacco giant sues Australia" *The West Australian*, 28 July 2015 Web. Aug. 2015  
<<https://au.news.yahoo.com/thewest/wa/a/29064155/tobacco-giant-sues-australia/>>



## Illicit Trade

Finally, one of the effects from these plain packaging laws is the increase of illicit trade in the region.<sup>9</sup> The increase in black market activity was noted in the reports

cited previously, but recently it's been shown that plain packaging has been linked to some groups that have been designated as terrorist organizations, including the South Armagh Provisional IRA.<sup>10</sup>

This is alarming on a number of levels, and lawmakers should be keenly aware of exactly the types of actors that are benefitting from illicit trade and the funding of terrorist groups as a result of plain packaging.<sup>11</sup>

## Conclusion

The consequences from plain packaging have been nothing short of a disaster for Australia. Consumers, businesses, and taxpayers see no benefit when illicit trade and regulatory measures take a toll on the economy and that is precisely what is happening as a result of these plain packaging measures. The Australian government is losing revenue they counted on from legal tobacco sales and taxpayers will have to make up the difference. Businesses have lost their ability to compete as well as their intellectual property, directly due to plain packaging laws. Smoking hasn't decreased in Australia since plain packaging was implemented. The increased black market activity has even contributed to groups that have been designated by some as terrorist organizations.

TPA urges the Senate Committee and all Australian lawmakers to consider the harmful impacts that plain packaging has caused.

David Williams  
President

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<sup>9</sup> "Black market tobacco now 14.5 per cent of all consumption, Illicit Tobacco in Australia report shows" *The Herald Sun*, 5 May 2015 Web. Aug. 2015 <<http://www.heraldsun.com.au/news/law-order/black-market-tobacco-now-145-per-cent-of-all-consumption-illicit-tobacco-in-australia-report-shows/story-fni0fee2-1227334216624>>

<sup>10</sup> "IRA smugglers behind Aussie cigarette racket" *The Independent*, 2 Jan 2015 Web. Aug. 2015 <<http://www.independent.ie/irish-news/politics/ira-smugglers-behind-aussie-cigarette-racket-30953918.html>>

<sup>11</sup> "The Illegal tobacco business is booming across Australia" *The Daily Telegraph*, 3 May 2015 Web. Aug. 2015 <<http://www.dailytelegraph.com.au/news/nsw/the-illegal-tobacco-business-is-booming-across-australia/story-fni0cx12-1227333175420>>