

# Chapter 1

## Introduction

### Establishment

1.1 On 11 October 2016, the Senate established the Select Committee on Red Tape (committee) to inquire into and report on the effect of restrictions and prohibitions on business (red tape) on the economy and community, by 1 December 2017, with particular reference to:

- a. the effects on compliance costs (in hours and money), economic output, employment and government revenue, with particular attention to industries, such as mining, manufacturing, tourism and agriculture, and small business;
- b. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
- c. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
- d. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
- e. the adequacy of current institutional structures (such as Regulation Impact Statements, the Office of Best Practice Regulation and red tape repeal days) for achieving genuine and permanent reductions to red tape;
- f. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
- g. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
- h. any related matters.<sup>1</sup>

1.2 The committee decided to conduct its inquiry by focusing on specific areas. This report presents the committee's findings and conclusions about the effect of red tape on tobacco retail (tobacco inquiry).

### Conduct of the tobacco inquiry and acknowledgement

1.3 The committee advertised the tobacco inquiry on its website and wrote to a number of organisations, inviting submissions by 28 April 2017. The committee continued to accept submissions after this date. In total, the committee received 19 submissions, which are listed at Appendix 1, and 11 form letters.

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1 *Journals of the Senate*, No. 9–11 October 2016, pp. 290–291.

1.4 The committee held a public hearing in Sydney on 16 May 2017. The witnesses who appeared before the committee are listed at Appendix 2.

1.5 The committee thanks the individuals and organisations who made submissions and who gave evidence to assist the committee with its tobacco inquiry.

### **Scope of the report**

1.6 Chapter one provides broad background information to set the regulatory context for the tobacco inquiry. Chapter two then examines some of the evidence presented to the committee, which may be drawn upon in the committee's final report.

### **Australia's regulatory framework for tobacco retail**

1.7 In Australia, tobacco retail is regulated by a number of health and social policy frameworks, as well as tobacco control policies at the national and international levels. For example:

- the World Health Organization *Framework Convention on Tobacco Control* (Convention)—the Convention provides a framework for tobacco control measures at the national, regional and international levels to reduce the prevalence of tobacco use and exposure to tobacco smoke;<sup>2</sup>
- the *National Drug Strategy 2010–2015* (NDS)—the NDS aims to build safe and healthy communities by minimising alcohol, tobacco and other drug-related harms;<sup>3</sup> and
- the *National Tobacco Strategy 2012–2018* (NTS)—the NTS sets out a national framework to reduce tobacco-related harm, including objectives and targets for tobacco control.<sup>4</sup>

1.8 Under the NTS, the Commonwealth, states and territories have identified responsibilities in nine priority areas. Within these areas, the Australian Government is primarily responsible for continuing to reduce the affordability of tobacco products (Priority Area 3). Australian, state and territory governments are jointly responsible for eliminating advertising, promotion and sponsorship of tobacco products (Priority Area 6), and for considering further regulation of the contents, product disclosure and supply of tobacco products and alternative nicotine delivery systems (Priority Area 7).

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2 World Health Organization, *Framework Convention on Tobacco Control* (Convention), <http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1> (accessed 13 June 2017).

3 Ministerial Council on Drug Strategy, *National Drug Strategy, 2010–2015*, 25 February 2011, [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/DB4076D49F13309FCA257854007BAF30/\\$File/nds2015.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/DB4076D49F13309FCA257854007BAF30/$File/nds2015.pdf) (accessed 13 June 2017).

4 Intergovernmental Committee on Drugs, *National Tobacco Strategy, 2012–2018* (NTS), 2012, [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/D4E3727950BDBAE4CA257AE70003730C/\\$File/National%20Tobacco%20Strategy%202012-2018.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/D4E3727950BDBAE4CA257AE70003730C/$File/National%20Tobacco%20Strategy%202012-2018.pdf) (accessed 13 June 2017).

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## ***Australian Government regulation***

1.9 The Australian Government's regulatory responsibilities include plain packaging/labelling and advertising/promotion/sponsorship (Action 6.6), and taxation (Action 6.3.2).<sup>5</sup>

### *Plain packaging and labelling*

1.10 Australia has implemented measures relating to the packaging and labelling of tobacco products. These measures aim to prevent the promotion of tobacco products through false, misleading or deceptive packaging and labelling, and to display health warnings that describe the harmful effects of tobacco use.<sup>6</sup>

1.11 Since 1 December 2012, all tobacco products sold, offered for sale or otherwise supplied in Australia must be in plain packaging and labelled with updated and expanded health warnings (*Tobacco Plain Packaging Act 2011* (Cth) (Plain Packaging Act); Tobacco Plain Packaging Regulations 2011 (Cth)).<sup>7</sup>

1.12 The Department of Health (Department) is responsible for administering the Plain Packaging Act, with the National Measurement Institute, a division within the Department of Industry, Innovation and Science, undertaking plain packaging compliance and enforcement activities on the Department's behalf:

If non-compliance is identified...enforcement activities are proportionate to the seriousness of the non-compliance and can range from education and written warnings, through to infringement notices and/or civil or criminal proceedings.<sup>8</sup>

1.13 The Australian Competition and Consumer Commission administers the *Competition and Consumer (Tobacco) Information Standard 2011*. This Standard specifies the updated and expanded health warnings that are required on all tobacco retail packaging.

### *Advertising, promotion and sponsorship*

1.14 Australia has recognised that 'a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products'.<sup>9</sup> Since the 1970s, restrictions have been progressively introduced. In 1973, the broadcast of

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5 Chapter two discusses two additional Commonwealth responsibilities: enforcement efforts to prevent the illegal importation and illegal supply of tobacco (Action 6.3.6, administered by the Department of Immigration and Border Protection and the Department of Health); and commissioning research on alternative nicotine delivery systems (Action 6.7.5, administered by the Department of Health).

6 Article 11 of the Convention.

7 Also see: World Health Organization, *Guidelines for implementation, Article 5.3, Article 8, Articles 9 and 10, Article 11, Article 12, Article 13, Article 14*, 2013 edition, p. 63, [http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf?ua=1) (accessed 7 June 2017).

8 Department of Health, *Submission 16*, p. 2.

9 Article 13 of the Convention.

tobacco advertisements was banned (effective from 1976),<sup>10</sup> followed by a ban on tobacco advertising in the print media in 1989 (effective from 1990).<sup>11</sup>

1.15 In 1992, the *Tobacco Advertising Prohibition Act 1992* (Cth) (Advertising Prohibition Act) was enacted. This Act provided for the earlier broadcasting and publication bans, and extended the latter to include billboards, illuminated signs and other outdoor signs. The Advertising Prohibition Act also introduced a ban on most forms of tobacco sponsorship.<sup>12</sup> The Department administers this Act.

### Taxation

1.16 Australia's tobacco taxation policy is underpinned by Article 6 of the Convention and recognises that 'price and tax measures are an effective and important means of reducing tobacco consumption'. Accordingly, the *Customs Tariff Act 1995* (Cth) imposes customs duty on imported tobacco. The rates of duty are equivalent to the excise duty that would be charged on domestic products under the *Excise Tariff Act 1921* (Cth).<sup>13</sup>

### Tobacco rates

Tariff item	Description	Rate from 1 September 2016	Rate from 1 March 2017
<b>5</b>	<b>Tobacco, cigars, cigarettes and snuff*</b>		
5.1	In stick form not exceeding in weight 0.8 grams per stick actual tobacco content	\$ 0.61054 per stick	\$ 0.61726 per stick
5.5	Other	\$ 763.20 per kilogram of tobacco content	\$ 771.60 per kilogram of tobacco content

\*The sale of snuff is banned in Australia.

Source: Australian Taxation Office, *Excise Rates for Tobacco*, <https://www.ato.gov.au/Business/Excise-and-excise-equivalent-goods/Tobacco-excise/Excise-rates-for-tobacco/> (accessed 13 June 2017).

10 *Broadcasting Act 1942* (Cth).

11 *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989* (Cth).

12 Section 18 of the *Tobacco Advertising Prohibition Act 1992* (Cth) allows an exemption for sporting or cultural events of international significant that would otherwise result in the event not being held in Australia.

13 There are no longer any legally produced or manufactured tobacco products in Australia.

1.17 The rates of duty are indexed biannually based on average weekly ordinary time earnings. In addition, the rate is currently subject to annual increases of 12.5 per cent on 1 September from 2017 to 2020 (inclusive).

1.18 The Australian Taxation Office administers an excise remissions process for tobacco products destroyed before delivery into the domestic market. The Department of Immigration and Border Protection administers an excise refund (drawback) process for tobacco products that need to be re-exported.<sup>14</sup>

### ***State and territory regulation***

1.19 Tobacco retail is predominantly regulated by state and territory governments. Each jurisdiction has a regulatory regime that is consistent with national and international tobacco control policies.<sup>15</sup> Accordingly, the states and territories have many responsibilities aimed at achieving outcomes identified in the NTS.<sup>16</sup> For example:

- running effective mass media campaigns at levels of reach and frequency demonstrated to reduce smoking and based on current best practice principles (Action 6.2.1);
- expanding effective programs and frameworks to reduce smoking among populations with a high prevalence of smoking (Action 6.5.2);
- exploring regulatory options to eliminate any remaining forms of tobacco promotion, such as advertising of price specials (Action 6.6.5); and
- enforcing existing smoke-free legislation and working toward all workplaces (indoor and outdoor) being smoke free (Action 6.8.5).

1.20 In particular, all governments have fulfilled their responsibility to consider and develop regulatory options to prohibit the display of tobacco products at point of sale (Action 6.6.6 of the NTS).<sup>17</sup>

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14 Australian Taxation Office, *Submission 11*, p. 7.

15 *Tobacco Products Control Act 2006* (WA); *Tobacco and Other Smoking Products Act 1927* (ACT); *Public Health (Tobacco) Act 2008* (NSW); *Tobacco Control Act* (NT); *Tobacco and Other Smoking Products Act 1998* (Qld); *Tobacco Products Regulation Act 1997* (SA); *Public Health Act 1997* (Tas); *Tobacco Act 1987* (Vic). Also see, for example: Department of Health (WA), *Submission 4*, p. 3.

16 Priority Action Areas 6.1 to 6.9 of the NTS.

17 M.M. Scollo and M.H. Winstanley, *Tobacco in Australia: Facts and issues*, Cancer Council Victoria, 2016, chapter 11, <http://www.tobaccoinaustralia.org.au/chapter-11-advertising/11-4-state-and-territory-legislation#x11.4.8.2> (accessed 13 June 2017).

