



# **Master Grocers Australia Ltd**

Trading as:  
**MGA Independent Retailers**

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**Submission to Senate Select Committee on the effect of restrictions  
and prohibitions (red tape) on the economy and the community.**

**Tobacco retail**

**April 2017**

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## 1. ABOUT MASTER GROCERS AUSTRALIA (MGA INDEPENDENT RETAILERS)

MGA Independent Retailers (MGA) is a national registered employer industry association representing independent grocery, liquor and other retail outlets including hardware, in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, accounting for approximately \$15 billion in retail sales.<sup>1</sup>

There are 2,700 branded independent grocery stores, trading under brand names such as: Farmer Jacks, Foodland, FoodWorks, Friendly Grocers, IGA, IGA Xpress, SPAR and Supa IGA, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as: Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor, which are either single or multi-store owners. These stores which collectively employ more than 115,000 staff are comparatively much smaller when juxtaposed against the large supermarket chains of Coles and Woolworths which combined, represent approximately 80 per cent of the retail supermarket industry.

MGA supports the Government view that the public should be discouraged from smoking in the interests of health and well - being and therefore supports a regulatory framework which acts as a deterrent to taking up the smoking habit. MGA also agrees that families should be protected from the harmful effects of smoking products and agrees with the principle of protecting children in particular. However, MGA points out that the retail sale of tobacco products is one that is legal and it is a matter of choice from the consumers' perspective as to whether they make such legal purchases or not.

A substantial number of MGA members in the independent supermarket and liquor sector have been adversely affected by the imposition on them of many tobacco sales regulations that have become an unnecessary burden in their day to day business operations. These regulations have included the introduction of plain paper packaging, retail display bans,

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<sup>1</sup> PricewaterhouseCoopers, *The economic contribution of small to medium-sized grocery retailers to the Australian economy, with a particular focus on Western Australia* (June 2007), p iv

licensing schemes, limits on store licences, restrictive licensing regimes and the ban on e-cigarettes containing nicotine. Such barriers to the freedom to do business without restrictions acts as a disincentive, particularly for small business owners and also has the added disadvantage of driving an element of criminality into an industry that previously traded without fear of any such impediment.

MGA recognises that many restrictions and red tape processes are a fact of government regulation but the tobacco industry in particular, which is a legitimate source of business for retailers has undergone many restrictive red tape processes which have inhibited growth in the industry.

MGA thanks the Federal Government for this opportunity to make comment on the impact of red tape restrictions and prohibitions, which have in most cases been detrimental.

## **2. EXECUTIVE SUMMARY**

There are a number of restrictions that impact on the tobacco industry, some restrictions are imposed by State Governments and others by the Federal Government. Therefore retailers are required to cope with a number of dual restrictions that require their compliance, which in many cases prove costly and stifling for their business prosperity.

The bans on the displays of tobacco products have caused considerable hardships for many stores both in terms of additional staff responsibilities and the financial burden of changing store layouts.

The introduction of plain packaging has been burdensome in stores because it is the staff who have to carry the problems of sorting the various kinds of products that are available for sale, which often causes them and their customers varying degrees of angst,

Perhaps the more serious repercussions of the red tape factor on retail tobacco is the increased excise tax. Whilst the intent may have been to deter smoking in the community, the introduction of a prohibitive cost hike has had the deleterious effect of sending a large part of tobacco sales into the arms of criminals. There have been massive increases in illegal importations of illicit tobacco products. The sales of these products are underground and often hard to detect. Cigarettes have become a lucrative source of theft and the thieves sell them cheaply on the black market. Consequently, burglaries in stores, leading to a massive increase in the crime rate in many states, is the end result. Retailers suffer massive

losses, their stores are wrecked, their insurance premiums rise and these criminals return many times as retailers are seen as vulnerable targets. The crime rate in stolen tobacco goods is rising as criminals destroy the businesses of hard working retailers.

The prospect of restricting the number of stores that are allowed to sell tobacco products has been discussed in some states and the licensing of retailers to sell tobacco is also a major source of revenue for Governments. The prospect of losing a significant part of their business is a constant worry for retailers.

The ability to sell a legal product has become increasingly arduous and a disincentive to small businesses to remain in their industry.

### **3. THE EFFECT OF RED TAPE ON THE TOBACCO INDUSTRY**

#### **a. Ban on retail display of cigarettes.**

The introduction of varying laws across the Australian states and territories has largely resulted in the requirement that smoking products be kept from public view entirely and / or that they can only be purchased from one point of sale. This has already placed a significant financial burden on small businesses. The imposition of removing smoking products from view has imposed a cost burden on retailers who have been required in many cases to reconfigure the front end and point of sale sections of their stores and retrain staff at a considerable expense. In addition the renewed training of staff has proved particularly costly. There are up to 200 brands of cigarette products which have to be searched for by staff on a regular basis and staff now have less indicators enabling them to distinguish between products. In addition to the variety of brands available each brand also has a number of differences between them such as content, taste and size which will also need to be identified. The training of staff not only comes at a significant wages cost to our stores, but also creates a noteworthy rostering disadvantage, removing staff from other areas of the store where they are often required.

Sales staff, many of whom lack advanced literacy skills are expected to find the tobacco items requested by a customer promptly, which has become gradually more difficult. Customers can be very demanding and they expect sales assistants to be able to deal with their requests quickly. Conflict between employees and customers has led to a noticeable reduction in productivity and an increase in incidence of employee stress.

Stores have seen a significant cost increase following the introduction of these measures. Additional training is now required to be provided to all staff that manage and/or sell tobacco related products. This can vary in time ranging from 1 to 3 hours per staff member with some stores having to train upwards of 100 employees. Due to the serious ramifications of an error occurring during the sale of tobacco, in the event that a staff member is likely to be required to sell tobacco or tobacco related products, extra training must be provided.

Additional costs also accrue as a result of the additional time required to serve customers. Our members advise that it takes roughly an additional 30 seconds to 1 minute of service per customer. We have therefore relied upon roughly 45 seconds per customer for the purpose of the following calculation; As an example a store may sell 2500 packets of cigarettes per week, which if it takes 45 seconds extra per customer, equates to an extra 31.25 hours. Where a retail employee level 1 is at the point of sale that equates to \$578.71 per week however in most instances, the point of sale will be serviced by a higher level employee. This also does not take into consideration penalty rates.

#### **b. Plain packaging of tobacco products**

The introduction of plain packaging has also resulted in a higher number of incorrect products being provided to customers. This has increased levels of shrinkage where customers have received a higher valued product for the incorrect monetary sum and resulted in an increase in returned products, where customers have returned an incorrectly provided product, often making it unable to be resold. It is difficult to quantify these losses in financial terms but they have become increasingly prevalent with the introduction of plain packaging.

There is also the additional financial loss caused by the increasing black market / illicit tobacco industry in Australia, which is also difficult to quantify. The increased costs associated with selling tobacco must be passed on to customers, further encouraging the trade in black market tobacco where costs are significantly lower, enabling consumers to purchase significantly cheaper products. This has the added detriment of reducing tax revenue received from tobacco products and increasing required costs to regulate the illegal trade of black market products.

MGA has received a number of reports from our members that customers have been frustrated by the consequences of plain packaging, often blaming the checkout operator or sales assistant whom they believe to be thwarting their attempt to purchase cigarettes.

The introduction of plain packaging has also resulted in additional time being spent by staff members on administrative tasks such as case replenishment, stock ordering, receiving invoices and marking of stock. The tasks listed must be performed by experienced managerial staff, who under the General Retail Industry Award earn roughly \$19.64 per hour but under management salaries often earn up to \$39.27 per hour.

MGA maintains that the tobacco plain packaging measure has been ineffective in encouraging people to give up smoking and to stop using tobacco products. It would be an overly simplistic presumption to conclude that smokers will be encouraged to stop smoking as a result of the colour of their packet of tobacco. As witnessed by our members the colour of the packet is unlikely to be a deterrent to any person who wishes to smoke.

The packaging is not the reason for the purchase, and the colour of the packaging is unlikely to bare any influence over a smoker's decision to continue smoking. A 2011 report that was commissioned from Deloitte on packaging regulation showed that neither increasing the size of health warnings on packets nor introducing graphic images over a number of years led directly to reduced tobacco consumption. This is consistent with the feedback we are receiving from our members.

### **c. The effects of increased excise taxes on cigarettes**

In 2016 the Treasurer, the Honourable, Mr. Scott Morrison announced that that the excise increase of 12.5 % imposed on cigarettes would continue for a period of four years, with further increases to be imposed on the product. What may have appeared to be a satisfactory deterrent to the smoking habit and a revenue raiser for Government has had some devastating effects on increasing criminality in Australia. A price hike was unlikely to drive smokers to reform. Instead they looked for cheaper options and criminal groups have been only too happy to oblige.

The result has been an increase in illicit importation of cut price cigarettes. “As much as 14.3 per cent of tobacco in Australia is bought through the black market taking \$1.4 billion out of revenue earned from taxes each year”<sup>2</sup>

Although there was a slight reduction in the illicit consumption of tobacco in 2015, the level of contraband increased slightly.<sup>3</sup> However this was prior to the 2016 Budget and the increased excise tax.

There is no doubt that over the last 12 months there has been an increase in the levels of criminality in the tobacco industry. The Australian Border Force has reported that in January 2017, 5 million illegal cigarettes were found in The International Mail Centre in Sydney, mainly from Asia and that equated to \$21 million in lost Government revenue. The cigarettes that were imported were generally hidden in clothing and children’s toys.<sup>4</sup>

MGA members frequently report incidences of how their businesses are affected by the illegal sales of imported cigarettes but there are difficulties in proving these sales outlets are acting illegally. Unless there is absolute proof of what is happening it is very difficult to mount a successful case against rogue retailers. Additionally gangs of criminals are forming themselves in cities and regions throughout Australia and they are becoming more sophisticated and they are a serious threat to the viability of our members businesses.

In addition to the illegal importation of cigarettes there is a significant increase in the number of violent break - ins to stores being experienced by retailers. The theft of legal cigarettes has increased exponentially in the last few years. The break-ins are brazen and they are destructive. It is not uncommon for a ram raid to be experienced by shops that are located in shopping strips. The thieves are quick and well organised. The same retailers are often targeted repeatedly despite taking recommended measures to protect their stores. The police in all states are cognizant of the gangs and frequently issue warnings and give guidance to the retailers but they are outnumbered by the gangs and these criminals are not

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<sup>2</sup> <http://www.news.com.au/finance/economy/australianillegal-tobacco-industry-i-flourishing-inaustralia-as-government-hikes-taxes/news-story>

<sup>3</sup> Illicit tobacco in Australia Report 2015 KPMG Page 6

<sup>4</sup> <http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470>

deterred by the minor penalties that are imposed. The gangs are becoming more confident in their activities.

The increase in the excise tax on cigarettes has undoubtedly been significant and it does not stop there. A further increase is expected in 2017 and again in 2020. All the time the black market for cigarettes will grow even further. A few smokers may quit as the price hikes continue but so will the growth of illicit importations, as smokers clamour for cheaper cigarettes and gangs of criminals invade vulnerable retailers. Unless the Government changes the excise tax or invests massive amounts of money into the annihilation of illegal importation, and control of criminal gangs, criminality will continue to grow and revenue will be lost. Retailers will continue to suffer huge losses as they try to run their businesses against forces beyond their control.

#### **e. Licensing systems**

There is a plethora of operating compliance requirements already borne by retailers in order to operate their businesses. These requirements tie them up in masses of red tape that are both expensive and time consuming. The introduction of licensing systems in many states has resulted in imposing a massive regulatory burden on MGA member retailers and adds yet another cost to a retailer who is already weighed down by government rules.

Most retailers have been forced to restructure their stores to accommodate the sales of tobacco under new laws in various States. They have had to retrain staff and deal with irate customers as a result of the changes to the laws. All of these changes have resulted in a massive cost to retailers and MGA strongly opposes licensing systems that only impose a further cost burden on retailers. There is absolutely no sound reason for any proposal to introduce a retailer licence for the sale of tobacco products, it is of no benefit to the public generally. In fact it only reflects an attempt on the part of the Government and other bodies to be paternalistic and patronising.

There are many circumstances where licensing can be justified. For example, there are licences to sell liquor because there are legislative restrictions on the times that it can be sold. There is a necessity to have a driving licence to enforce safety on the roads. There are licences required for the sale of second hand jewellery to guard against the sale of stolen goods. However, the need for a licence to sell tobacco cannot be categorised in the

same way as the need for many other licences. Tobacco products are a legal commodity and any requirement to introduce licences for the selling of such a product cannot be categorised in the same way as requirements for other types of licences. A regulatory burden should not be forced on the seller of the product in an attempt to restrict the ability to make a purchase of tobacco products and could result in forcing illegal sales of the product.

In view of the number of red tape requirements that currently exist for retailers allowing such schemes to exist, it only perpetuates adding further costs to the compliance burden for retailers and is not likely to affect the purchase of tobacco products.

#### **f. Controls on Number of tobacco outlets**

It is questionable whether there are any benefits at all for the community if the numbers of tobacco outlets are restricted. There have been suggestions that the number of outlets able to sell cigarettes should be restricted. MGA submits that controlling the number of outlets of tobacco sales is fraught with danger. There would be a myriad of problems that would inevitably arise. Proposals to restrict the sale of any product is damaging to competition but, importantly, if there are laws to restrict its sale the end result is to encourage illegal sales.

There would obviously be debate and possible dispute as to which types of stores would be able to make sales and where these could be located. Small businesses are already struggling against the power of big businesses who want to dominate the retail industry, so the struggle by small family owned enterprises and privately owned businesses to maintain sales will be even more difficult. MGA urges the reconsideration of any proposal anywhere, to control the number of outlets able to sell tobacco products.

Furthermore, many retailers rely on legitimate sales of any product as a source of income in the business and to reduce a source of income at such a difficult economic time will result in financial hardship for many retailers.

Any proposal to limit outlets will create complexities in an industry that is already plagued by attempts to limit fair business growth.

## **CONCLUSION**

Independent supermarkets constantly experience competition and they struggle with increasingly higher wages and significantly, red tape only adds to their economic stress. The reduction in restrictions imposed by red tape would enable retailers to focus on their business survival and increase their ability to contribute to the Australian economy. There have been frequent references made to the important contribution that small family owned enterprises and privately owned businesses make to the Australian economy. If they were excused from worrying about the impact of restrictions that are constantly imposed on them by Governments, both Federal and State, then their contribution would be much greater.

MGA understands that issues such as licensing and bans on limiting displays of tobacco products are State issues but we strongly believe that the federal Government can influence changes to these laws MGA urges the Federal Government to consider reducing the excise tax on tobacco products, which would help relieve the burden on small retailers and reduce criminality in the industry.

MGA sincerely thanks the Senate Select Committee reviewing the effect of restrictions and prohibitions (red tape) on the economy and the community - (tobacco), for the opportunity to make this submission.

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**Jos de Bruin**

**CEO**

**Master Grocers Australia**

**April 2017**