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The Senate Standing Committee on Economics
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**RE: SUBMISSION TO THE ECONOMICS REFERENCES COMMITTEE INQUIRY INTO THE
ECONOMIC AND SOCIAL IMPACT OF LEGISLATION, POLICIES OR COMMONWEALTH
GUIDELINES**

Imperial Tobacco Australia Limited (ITA) welcomes the opportunity to participate in the Inquiry via this submission and seeks the opportunity to appear before the Committee to provide further evidence.

Background

Imperial Tobacco Australia (ITA) is an Australian-based wholly owned subsidiary of Imperial Tobacco Group PLC, the world's fourth largest international tobacco company, listed on the London Stock Exchange.

ITA entered the Australian market in September 1999 at the request of the ACCC to ensure that competition was maintained following the global merger between British American Tobacco ("BAT") and Rothmans International.

We have a share of approximately 25% of the total tobacco market and approximately 60% of the loose (roll-your-own) market in Australia.

For the 2014/15 year, ITA will deliver almost \$3 billion to the Federal Treasury through excise duties on tobacco products (excluding GST). We employ approximately 360 people in Australia and makes further contributions to government through corporate taxation, employment taxes and other revenues of approximately \$18 million annually.

Submission

That government is best which governs least.

Henry David Thoreau
"Civil Disobedience" 1849

Australian governments at all levels have singled out tobacco for a vast plethora of regulation so specifically designed to place limits on the free choice of adult consumers as to approximate illegality. Urged on by zealous anti-tobacco activists, more often than not publicly funded in a curiously juxtaposed merry-go-round of financial collection and expenditure, the Australian political classes have come to view excessive tobacco regulation as reasonable and legitimate.

Direct radio and television advertising bans were implemented from 1973, sponsorship was phased out from 1995, smoking inside pubs and clubs was banned in every state from 2010 and in 2012 plain packaging was introduced.

Such has been the rush of regulators to claim their stake in restricting access to this legal product that policies have stumbled over one another to achieve blatantly perverse outcomes. Whilst Commonwealth authorities have demanded plain packaging and mandated graphic health warnings across the majority of pack surfaces, their state colleagues-in-arms have implemented display restrictions that ensure such warnings cannot be seen until the sale is all but concluded.

The urge to save humanity is almost always a false face for the urge to rule it.

H.L. Mencken.

The legion of regulators who would dictate to Australian adults what they can consume, how and where they can consume it and, indeed, where and how they can obtain a legal product generally justify their actions on the basis of "protecting" individuals. Yet, curiously, tobacco has been targeted to a far greater extent than other lifestyle choices – with no evidence to suggest that the regulation has been any more effective in curbing choices than against its peers.

Popular belief in this country holds that a sizeable problem with alcohol infests our society. The belief is possibly based on the proliferation of products available to the market, the vast array of outlets available in which to obtain and consume them, the all-pervasive cultural aspect of alcohol consumption and the control of the vast trade by the supermarket duopoly who's every action is viewed negatively. It may equally be based on the fact that advertising is not banned, branding on packaging remains pervasive and display is largely free of restriction. That is, the proliferation of tobacco regulation has certainly not been extended to the alcoholic beverages sector.

In defiance of conventional wisdom, then, is evidence of *decreasing* consumption of alcohol in Australia. Early this year, the Australian Bureau of Statistics (ABS) released data showing that consumption rates are now lower than at any time in the past 50 years on a per capita basis. At

2.1 standard drinks per person per day, we're now drinking less than Australians were in the early 1960s.

What's more, Australia does not rate highly as against international peers according to the World Health Organisation. Our incidence of heavy episodic drinking is lower than nations across all continents and fell within the category of "least risky drinking patterns." Our total consumption per person falls below that of the vast majority of Europe.

A similar pattern occurs in respect of tobacco consumption which has been on a long term downward trend in Australia for decades. In the face of a regulatory onslaught, the long term trend has scarcely deviated from its course. Even the dramatic regulatory impost of stripping away all on-pack branding has, in its first two years, singularly failed to redirect the long term trend in overall consumption. It has, however, led to a significant increase in underage smoking prevalence due to better affordability and easier accessibility for kids – the criminals running the growing illicit trade will always have the cheapest products as they don't collect taxes – and they sell to children.

Liberty means responsibility. That is why most men dread it.

George Bernard Shaw
Man and Superman.

The comparison between alcohol and tobacco is most telling. Consumption of both has been on a long term decline – a decline which continues in the absence of any show of abatement.

Statistics, properly tortured, will confess to anything. The simple and logical truth underlying the decline in both products has little to do with regulatory largesse – and more to do with the highly developed understanding of Australian consumers. They have recognised the implications – financial, societal and health – of consumption of both products and have *chosen* to restrict that use. Moreover, the relatively lax regulation of alcoholic beverages shows that adult consumers have made that choice of their own volition in the absence of government requirement. The absence of deviation from trend in respect of tobacco consumption must lead any logical, rational observer to conclude that similar choices are being made by tobacco consumers.

Tobacco trends are not driven by excess regulations – they would be happening in their absence. Adult Australians are demonstrating responsibility with their free choice in the absence of alcohol regulations, yet governments perversely restrict tobacco consumers from exercising their own free choice.

The sole achievement of excess tobacco regulation is to remove the free choice of adult Australian consumers. It weighs down business with absurd levels of inefficiency whilst contributing entirely negligible good.

They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

Benjamin Franklin

The dramatic difference between the products lies at the regulatory level; tobacco has been the subject of much political posturing and personal aggrandisement whilst alcohol has escaped largely unscathed.

Both products can lead to consequences for consumers; a fact that, for tobacco in particular, is widely understood by users of legal product who exercise free choice. Zealous anti-tobacco advocates, perhaps recognising that their moralising was not having the absolute effect on consumers that they desired, turned regulatory attention some time ago to the spurious grounds of protecting others. Excellent examples have occurred recently in the banning of tobacco consumption within prisons in both Victoria and New South Wales, ostensibly to protect prison workers from Environmental Tobacco Smoke.

Environmental Tobacco Smoke (ETS), also known as second-hand smoke, is the aged and diluted combination of the smoke rising from the lit end of a cigarette and the smoke exhaled by the smoker into the ambient air. Public health authorities worldwide have concluded that ETS is a cause of smoking-related diseases in non-smokers. The public should be guided by the conclusions of those public health authorities regarding ETS. Adults who smoke should show consideration and courtesy to other people and in particular should exercise care to avoid smoking around children.

Public health of prison workers has been a puppet of the true motivation driving these draconian regulations. Media commentary from officials promoting the bans has invariably referred to high incidence rates of tobacco use among prison populations, revealing that the true motivation is a desire to interfere in the choices of others.

The objects of incarceration are twofold; punishment of the individual and protection of the society. The latter necessarily involves an element of rehabilitation. Liberty of movement and interaction is necessarily restricted, but the regulatory impost of removing liberty of personal choice is an extrapolation of state power to the extreme. It likely achieves little in the way of temporary safety, yet leads to disquiet, discomfort and disempowerment of inmates. It reinforces a mentality of “the state knows best”, contrary to the fundamentals of a liberal democratic society.

Prohibition... goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation and makes a crime out of things that are not crimes.

Abraham Lincoln

Gambling has attracted the attention of regulators in Australia over several decades. Regulation has severely restricted the locations in which gambling activity can occur and the license holder

under whose authority it can operate. Multinational casino groups have largely been the beneficiary of such regulation.

Such restrictive practice has been a contributor to the veritable explosion of online betting activity in Australia. An attempt to legislate against that natural market consequence has resulted in a shift to the illegal offshore gambling market. The Australian Productivity Commission Report on Gambling noted that by 2010, \$2 out of every \$3 spent by Australians gambling on the internet was with illegal offshore providers. As is the case in any illegal market, the Report concluded that many of the illegal operators have poor harm minimisation features and unscrupulous business practices.

There'd never been a more advantageous time to be a criminal in America than during the 13 years of Prohibition. At a stroke, the American government closed down the fifth largest industry in the United States - alcohol production - and just handed it to criminals - a pretty remarkable thing to do.

Bill Bryson

Over-regulation in gambling has created a classic “balloon” scenario – severe restrictions on consumers in one area has simply pushed them to another. An almost identical scenario has played out in tobacco. Purchase of this legal product by adult consumers has become, via excessive regulation, so difficult and expensive that turning to the illicit market has become both acceptable and affordable.

The KPMG *Illicit Tobacco in Australia* report confirms that the illicit tobacco market has grown dramatically in this country in recent years or rather, since the introduction of the most extreme of regulations, Plain Packaging. In a market where, in the absence of brands, competition can take place only on price, consumers will down-trade. In the end, the criminals running the growing illicit market will always have the cheapest products as they don't collect taxes. Domestic and international bodies confirm that the market has become so lucrative that it is, to a large extent, driven by well organised and orchestrated criminal gangs - and they sell to children, as documented in the significant parallel increase of underage smoking prevalence.

Excessive regulation in itself is sufficient to approach the concept of prohibition and the consequences that flow from it, as is shown by the move to offshore gambling. The addition of excessive financial burden on adult consumers of a legal product in the form of excess excise practically crosses what little gap remains between restriction and prohibition.

Conclusion

The most courageous act is still to think for yourself.

Coco Chanel

Australia considers itself a liberal, democratic nation that prides itself on freedom of the individual.

Yet the very basic freedom – the freedom to make one's own choices in the full knowledge of consequences – is dramatically undermined by absurdly excessive regulation on tobacco.

Our product is legal.

Our consumers are knowledgeable adults.

It is time for Australia to recognise that regulation of individual choice is incompatible with the fundamental character of our nation.

ENDS