



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
07 3221 2040 | F 07 3221 2000 | President@qls.com.au | qls.com.au

Office of the President

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Our ref: KS:GA

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Sophie

Inquiry into the Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019 [Provisions]

Thank you for the opportunity to provide comments to the Inquiry into the Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019 [Provisions] (the Bill). The Queensland Law Society (QLS) appreciates being consulted on this issue.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

In advocating for good law, QLS supports the creation of laws which are evidence based and subject to scrutiny by relevant stakeholders. In this regard, we have concerns about the limited time for consultation, noting the Senate referred the Bill to the Legal and Constitutional Affairs Legislation Committee (the Committee) on 4 July 2019, our response invited on 8 July 2019 and the deadline for submissions closing 11 July 2019. With effectively 3 days to provide our response, we provide the following brief observations.

While we support measures which seek to eliminate illicit tobacco and any criminal activity related to its importation and subsequent distribution in the market, we have some concern this Bill may have some unintended impacts. We note the background of these reforms lies in the Government's Black Economy Package – Combatting Illicit Tobacco (the Black Economy Package) which adopted some of the recommendations from the Black Economy Taskforce's final report (the Black Economy report).

We understand these reforms also coincide with the implementation of the Government's illicit tobacco reforms including the prohibition of tobacco products imports under the Customs (Prohibited Imports) Regulations 1956, from 1 July 2019. In particular 'customs duty will apply

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to tobacco products as soon they are imported, removing the ability of tobacco importers to defer taxation using warehousing arrangements¹.

The intent of the subject Bill is to 'empower the Comptroller-General of Customs to cause tobacco products seized as *prohibited imports* to be dealt with in a manner he or she considers appropriate, including the immediate destruction of the goods'². In this regard we note from the Explanatory Memorandum that the Government is seeking to extend similar controls which exist for 'Prohibited psychoactive substances and prohibited serious drug alternatives' under section 206(2A) of the *Customs Act 1901* (the Customs Act).

As noted above, from 1 July 2019 most tobacco products are a prohibited import unless a permit has been obtained and transitional arrangements apply for tobacco goods in warehousing *provided* an amount is paid for security by way of bank guarantee or cash deposit. Under section 229(1)(b) of the Customs Act 'forfeited goods' includes 'all prohibited imports'. In circumstances where this Bill includes 'tobacco products' generally, i.e. is not confined to illicit tobacco products solely, we are concerned tobacco products which may have been imported legally prior to 1 July 2019 may be destroyed without due process.

The uncertainty created, in our view, is due to the differing nature of the purported offences which are 'put together' by the proposed bill. That is, on the one hand the importation of illegal substances (prohibited psychoactive substance or prohibited serious drug alternatives) (a question of fact) and the illegal importation of legal substances (tobacco products) which have been imported without a permit (a question of law). We are concerned about the potential implications where goods may be destroyed prematurely and where the obtaining of compensation is limited to the circumstances set out in section 206 of the Customs Act.

We also query if the seizure of otherwise legal tobacco products without warrant is an acquisition of property on just terms?

While we note the Government is seeking to reduce the 'administrative burden of the Black Economy Package', where other prohibited imports under the Customs Act must be stored for a minimum of 30 days before they can be disposed of, in our respectful submission, control measures and related powers must be appropriately targeted and evidence based; particularly in light of the recent changes to permit and duty requirements impacting importers of tobacco products generally.

Yours faithfully

Bill Potts
President

¹ Hawkins, P, Tobacco; Budget Review 2018-19 Index, available at <
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201819/Tobacco>.

² Explanatory Memorandum, 'Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019', p 2.