

Committee Secretary
Parliamentary Joint Committee on Law Enforcement
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24th of January 2017

Re: Inquiry into illicit tobacco

We write as a coalition of retailers who sell tobacco products committed to stamping out the illicit tobacco trade in Australia. Please find below our submission to the Parliamentary Joint Committee on Law Enforcement (PJCLE) Inquiry into Illicit Tobacco.

As retailers of tobacco products, we are at the front line of this battle against smugglers, where our businesses and staff are directly impacted by the illicit trade problem in the community. Not only does the availability and supply of illicit tobacco hurt our businesses, but it denies the government \$1.49 billion lawful revenue,¹ provides a lucrative income stream for organised crime² and undermines tobacco control policy.³

Below, we address the Terms of Reference from our unique retailer perspective, providing an important view of how the trade in illicit tobacco products has a severe and detrimental impact on the retail sector, including those we employ. Unfortunately, the effect of excessive tax increases and prohibitive regulations seemingly incentivises and rewards smuggling, fraud, violent crime and lawlessness.

We acknowledge and support the Government's objective to reduce harm from the consumption of tobacco. However, we would also encourage policymakers to consider the related harms and unintended consequences of prohibitive regulations, especially those designed and implemented in an environment of selective denial about the existence of illicit trade and therefore without any planning for the unintended consequences which flow directly onto our sector.

We thank the Committee for the opportunity to present our view on illicit trade in Australia, and the impact that the availability and supply of illicit tobacco has, especially on retailers. If it would assist the inquiry, many of our members would be pleased to appear before the Committee to provide further detail or clarification on any of the points raised in this submission.

Yours sincerely

¹ KPMG, 'Illicit Tobacco in Australia' (Full Year Report, KPMG LLP, 4 April 2016) 6.

² Australian Federal Police, Submission No 161 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into Illicit Tobacco*, 04 May 2016, 2.

³ Department of Immigration and Border Protection, Submission No 77 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into Illicit Tobacco*, 04 May 2016, 3.

Mr George Georgas Managing Director	
Ms Cristie Bowler Operations Manager	
Fred Harrison Chief Executive Officer	
Carlo Cavallaro Director	
Michael Daly Director	
Bryn Sharp General Manager	
Lucy Soud Business & Operations Manager	
Mr Simon Ritte General Manager	
Robert Anderson Director	
Tony Ingpen Owner	<u>Mt. Evelyn IGA Supermarket</u>

The coalition represented by the businesses and brand owners on the previous page, has formed in response to a growing concern about the illicit tobacco trade in the retail community, and the escalating level of violence and property crime being felt by those working within the retail sector. We are focused on matters concerning the illicit tobacco trade and want to advocate for policy measures that will assist us to stamp out illicit trade in the retail sector.

Illicit trade has become an entrenched or 'normalised' part of the Australian tobacco market. While significant of itself, the problem has moved beyond customs and excise. If we do not take immediate and decisive action against the illicit tobacco supply, we believe the future of our industry will be determined by syndicates, criminals, gangs and smugglers – something we stand united against.

Key Statistics

- Australians consumed 17.4 million kg of tobacco last year, and 2.4 million kg was illicit.⁴
- The illicit tobacco market accounts for 14% of all tobacco consumed in Australia,⁵ representing a significant silent competitor with the legal retail industry.
- Australian tobacco prices are on average 85% higher than the third most expensive market in the region.⁶
- In 2015 Australian retailers received over \$15.2 billion in revenue from tobacco product sales.⁷
- Supermarkets and grocery stores are the largest retailers of tobacco products – over 50% of all tobacco retail sales in 2015.⁸
- Cigarettes typically represent over 37% of a convenience store's sales, and over 27% of a store's total income.⁹
- We estimate that approximately \$1.25 billion in retail sales revenue was lost to the illicit market.
- The petroleum and convenience retail sector estimates that it lost approximately \$416 million (including GST) alone.¹⁰

Tobacco Retail Environment - Regulation

The environment confronting tobacco retailers has never been more difficult. Plain packaging removed external quality markers, transforming a clearly identified and distinct, trademarked, manufactured and packaged product back into a commodity. Combined with large tobacco excise tax increases, this has caused consumers to lose brand loyalty, perceive less value, down trading to cheaper brands – effectively a price cut for legal tobacco products which makes them indistinguishable from many illicit products. Those who cannot afford to continue smoking their preferred brand are purchasing these cheaper products, often finding illicit alternatives.

⁴ KPMG, 'Illicit Tobacco in Australia' (Full Year Report, KPMG LLP, 4 April 2016) 6.

⁵ Ibid.

⁶ Ibid, 25.

⁷ M Scollo and M Bayly, '10.3 Retail value and volume of the market', in Scollo and Winstanley (eds), Tobacco in Australia: Facts and issues (Melbourne: Cancer Council Victoria, 2016).
<<http://www.tobaccoinaustralia.org.au/chapter-10-tobacco-industry/10-3-retail-value-and-volume-of-the-market>>.

⁸ Ibid.

⁹ Australasian Association of Convenience Stores, 'State of the Industry Report 2015' (AACS, 2016).
<<http://www.aacs.org.au/wp-content/uploads/2016/05/AACS-report-2015.pdf>>.

¹⁰ Ibid.

Government policy-driven excise increases driving up the price of legal tobacco products in the current environment has created a two-tier system of legal and illicit products, which government policy through plain packaging has largely encouraged to look the same – the smugglers can obtain the packaging template from the Department of Health website. This has really opened the door for illicit trade by creating a perfect storm in an ‘efficient market’: lucrative profit to be made by criminals and gangs who flout the law without risk, supplying consumer demand for widely available cheaper alternatives to legal products.

That illicit tobacco smugglers do not pay excise/customs duty or bear the cost of compliance with other relevant laws, enables them to pass on a greater share of the profit to their supply chain, and ensures their position as the cheapest in the market and most profitable for all involved, including retailers. This is an unfair advantage illicit suppliers have over the legal industry, and it will always be the case while cigarette taxes are so high and so easily evaded.

Tobacco Retail Environment – Related Crime

The price of tobacco makes retailers a significant target for violent crime, robbery, theft and ram raids (see Appendix A). Criminals and gangs are increasingly turning their focus on supplying and trading in smuggled or stolen tobacco.

Following recent meetings between retailers and Victoria Police, there is no doubt that robberies are at an all-time high, and that young offenders (ranging between 10-24 years old) are a growing concern. We are also concerned that these small groups pose a larger threat to our and our employees’ personal safety, as these offenders are often armed with blunt objects, hammers, bladed weapons and firearms.¹¹

Victoria Police Chief Commissioner Graham Ashton said “we're seeing more robberies on supermarkets, 7-Elevens, service stations, really targeting cigarettes.”¹²

¹¹ Aleks Devic, ‘Police pushed to the limit as teenage thugs inflict reign of terror with frightening series of armed robberies across city’, *Herald Sun* (online) 3 June 2013 <<http://www.heraldsun.com.au/news/law-order/police-pushed-to-the-limit-as-teenage-thugs-inflict-reign-of-terror-with-frightening-series-of-armed-robberies-across-city/story-fni0fee2-1226655467639>>; Krystal Johnson, ‘Armed youths terrorise staff in Melbourne Woolworths robbery’, *Yahoo7 News* (online) 6 October 2016 <<https://au.news.yahoo.com/a/32815206/melbourne-robbery-armed-youths-terrorise-staff-in-oakleigh-south-woolworths-robbery/#page1>>.

¹² Victoria Police Chief Commissioner Graham Ashton, interview with Neil Mitchell, Radio 3AW, 27 October 2016

According to Crime Statistics Agency data published in the Herald Sun, cigarette thefts have increased by nearly 20% in Victoria since 2011:

“Crime Statistics Agency figures for the past five years show that from July 2011 to June 2012 a total of 536 incidents in which cigarettes were stolen were recorded. For the period July 2015 to June 2016, the number of recorded cigarette thefts rose to 639.”¹³

To us, this number feels low and we would suggest from our own experience that the numbers are much higher – barely a day goes past without a violent crime against retailers from criminals whose focus is the theft of tobacco products. In November this year, some of our members participated in an informal survey of Victorian retailers in our immediate network:

- Approximately 120 retailers responded;
- Loss estimates range between \$300 - \$300,000 per event; and
- The cost of theft (including property damage) totalled more than \$2.5 million

Crime during working hours (robbery) – 24 responses:

- 22 provided an estimate of loss
- Total impact over \$145,000*

Crime outside working hours (theft/ram raid) – 92 responses:

- 77 provided an estimate of loss
- Total impact over \$2.3 million*

* The figures provided above do not include indirect loss due to insurance premium increases, or store closures during repairs and restocking.

We acknowledge that smoking prevalence may have reduced, but we would strongly encourage policy makers to reconsider policies which raise tobacco excise taxes further – it won't be long before someone in the retail sector gets seriously hurt or even killed. Further, urgent consideration must be given to an effective, comprehensive, national response to illicit trade and other crimes related to tobacco.

Tobacco Retail Environment – Law Enforcement

As retailers, we note that there is insufficient retail level enforcement against the illicit tobacco trade. The low risk of being caught ensures the continuation of illicit trade in the retail sector. The profit to be made from supplying illicit tobacco far outweighs the risk of being caught by authorities.

On the rare occasion where enforcement action has been taken in the past, the stores have often resumed illicit trade in a matter of days following the enforcement activity.¹⁴ Retailers view the current range of penalties inadequate to deter illicit tobacco suppliers or punish those who break the law.

¹³ David Hurley and Andrea Hamblin, 'Criminal gangs behind spike in brazen cigarette thefts', *Herald Sun* (online) 29 November 2016 <<http://www.heraldsun.com.au/news/law-order/criminal-gangs-behind-spike-in-brazen-cigarette-thefts/news-story/b4811e9a46611330d772ce4a070332da>>.

¹⁴ Rural City of Wangaratta, Submission No 1 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into Illicit Tobacco*, 04 May 2016, 3.

Retailers need all government departments to acknowledge the illicit tobacco problem, and understand that it has impacts far beyond customs and revenue. We acknowledge that the Australian Border Force Tobacco Strike Team has made a significant contribution and, to date, has proven to be the most capable agency fighting to stop illicit trade. However, there is a need for a whole-of-government approach, owned and led by revenue departments, involving their enforcement agencies and other departments to get a more in-depth understanding of the illicit market, and allocate an appropriate level of strategic focus and additional resources to address the problem.

Other Retailer Concerns

- As further evidence of the level of crime impacting retailers, tobacco has become prohibitively expensive to insure, leaving retailers out-of-pocket when their shop is targeted by criminals.
- Retailers report an increase in trade advertising featuring “100% legal” cheap cigarettes. However, these cigarettes are being offered below ‘tax price’ of revenues owed to government, let alone cost of goods sold.¹⁵ Which government department is responsible for investigating suspicious trading activity? All and none is the practical experience.
- Consumers and some retailers falsely believe cigarettes in plain packaging must be ‘de-facto’ compliant. The combined presence of plain packaging and the government mandated health warnings are being considered a seal of authenticity. Alarming, we have already seen a significant amount of plain packaged illicit tobacco in Australia – earlier this year the ABF shut down a syndicate that was responsible for importing about 200 shipments (30 million cigarettes) of plain packaged ‘Spoonbill’ tobacco.¹⁶
- There is a need for community and retailer awareness of the trade in illicit tobacco – How to identify suspected illicit products, and who they should report illicit trade to (authority responsible to retail enforcement). We would encourage an awareness campaign, perhaps working with relevant government agencies and Crime Stoppers. We would be pleased for our members to participate with government in such a campaign.

Summary Position

- We believe tobacco taxes should be frozen or reduced until an adequate policy and law enforcement solution is found to address the illicit tobacco problem. The high price of tobacco makes Australia an attractive cigarette smuggling jurisdiction, and makes retailers a more pronounced target for theft, ram raids, and armed robbery.
- Government must dramatically increase retail level enforcement of the illicit tobacco trade, increase fines, and implement stricter (or even mandatory) penalties for serious (or repeated)

¹⁵ Retail Traders Association, ‘Price lists–cigarettes’ (2016) 99 *Australian Retail Tobacconist* 1, 11-18.

¹⁶ Department of Immigration and Border Protection, ‘Major strike delivered to illegal cigarette smuggling’ 12 *DIBP Newsroom* (online) February 2016 <<http://newsroom.border.gov.au/releases/major-strike-delivered-to-illegal-cigarette-smuggling>>.

breaches of the law. In addition, the power to enforce Plain Packaging laws should be extended to dedicated federal law enforcement agencies (ABF/AFP).

- We want enforcement made easier. Allow local police to act when they come across obviously illegal tobacco.
- We support the further expansion of the Australian Border Force Tobacco Strike Team, and their powers of investigation to adequately deal with illicit tobacco.
- We encourage the development of a whole-of-government illicit tobacco strategy, owned in a policy sense by The Treasury and Department of Immigration and Border Protection, collaboratively and effectively enforced by their agencies and involving all of the appropriate government agencies.

Conclusion

The combined impact of prohibitively large tax increases, plain packaging, and other regulations have created a very challenging market for retail tobacco products. However, the very same conditions have made Australia the perfect destination for smuggling tobacco. Now that retailers are increasingly being targeted by criminals, syndicates, and gangs – it is time to re-evaluate the tobacco policy environment. The role of legal tobacco sales for the entire retail sector in Australia should not be underestimated or dismissed. Tobacco sales revenue underpins the viability of the entire retail sector. Tobacco retailers generated over \$15.2 billion in revenue from tobacco product sales, with over 50% of tobacco volume sold through supermarkets and grocery stores. The retail sector is a significant employer, and its future profitability should be a key priority for government. We don't just sell tobacco products, we operate across other product categories and when our small and medium businesses are impacted by smuggling or crime on tobacco, it threatens the viability of our business, which can impact employment and, in regional Australia, whole towns who rely on us to bring food, groceries and other essentials to them.