

To the House Standing Committee Health and Ageing
20th July 2011
Canberra
ACT

Submission No. 3 (Plain Packaging Bill) A.O.C. Date: 21/03/2011
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Dear Sirs,

Master Grocers Australia / Liquor Retailers Australia (MGA/LRA) is a National Employer Industry Association representing Independent Grocery and Liquor Supermarkets in Victoria, New South Wales, ACT, Western Australia, South Australia, Tasmania, Queensland and the Northern Territory. Independent Supermarkets trade under brand names, such as IGA, Foodland, FoodWorks, Friendly Grocers and SPAR, and they range in size from small, to medium and large businesses.

Independent Supermarkets play a major role in the retail industry and make a substantial contribution to the communities in which they trade. In Australia there are 2,100 independently owned IGA, Foodland, FoodWorks, Friendly Grocers and SPAR branded supermarkets employing over 88,000 full time, part time and casual staff, representing \$13.5 billion in retail sales. Many MGA members are small family businesses, employing 25 or fewer staff.

MGA makes this submission to the Community Affairs Legislation Committee (the Committee) in the interests of retailers who would be required to address changes in their businesses should the proposed Tobacco Plain Packaging Bill 2011 (the Bill) become law in Australia. These changes will impose a financial burden and create practical difficulties for independent supermarket retailers without achieving any substantial gains for the community. MGA has concerns that the Bill could have other damaging effects on independent supermarkets, liquor stores and the community generally, if the Bill becomes law.

MGA agrees with that the community should be discouraged from smoking in the interests of public health and well being and therefore supports a regulatory framework which acts as a deterrent to taking up the smoking habit. MGA has stated on numerous occasions, in earlier submissions to various State and Territory Governments, that MGA is concerned about the impact of smoking in the community. However, MGA has also pointed out the impracticality of many of the legal restrictions that have been placed on retailers who provide smoking products to the community. Retailers have already been burdened with increased costs as a result of the passing of laws, to remove tobacco from display, in the States and Territories and now the Bill that is proposed by the Commonwealth is likely to place a further significant burden on to small businesses.

MGA welcomes the opportunity to comment on the Tobacco Plain Packaging Bill 2011 as MGA believes there are a number of problematic issues raised

by the proposed legislation. Such issues could adversely affect the businesses of independent supermarket retailers and we have identified these issues in this submission.

MGA thanks the House Standing Committee for this opportunity to comment on the Bill.

Yours sincerely



Jos de Bruin

CEO

Master Grocers Australia

Liquor Retailers Australia

20th July 2011

House Standing Committee on Health and Ageing

Tobacco Plain Packaging Bill 2011

**SUBMISSION BY
MASTER GROCERS AUSTRALIA /
LIQUOR RETAILERS AUSTRALIA**

July 2011

Submission to the House Standing Committee on Health and Ageing (Tobacco Plain Packaging Bill 2011)

Introduction

Master Grocers Australia / Liquor retailers Australia (MGA/LRA) appreciates, and understands, the concerns of the Australian Government in relation to the impact of smoking on the health of the community and in particular the cost of smoking related diseases to the Australian taxpayer. In introducing the Tobacco Plain Packaging Bill (the Bill) the Government is aiming to make tobacco products less attractive, draw the attention of smokers and potential smokers to the likely health damages associated with smoking, reduce the likelihood of packaging to mislead consumers and that hopefully these measures will see a reduction in smoking rates

The intention of the proposed new laws is to remove any semblance of attraction that may be associated with cigarette packaging, which in turn may lead to smoking addiction. It is assumed that cigarettes are in some way made more attractive by the packaging and that this could be a stimulus that induces a person to make a particular purchase.

It is obviously hoped that as a consequence of removing colourful logos or distinguishing trade marks from packages there will be a significant reduction in the number of adults who smoke and that it will also act as a preventative to children becoming smokers.

The specific objects are stated in the Bill as:

- reducing the initiation of tobacco use,
- enhancing the effectiveness of package warnings and
- removing the packages ability to mislead and deceive.

MGA is as equally concerned as many other organisations and individuals of the serious effects of smoking on the community. However, there are a number of valid reasons as to why the Bill that is being proposed should not become law in this country. MGA submits that the Bill should not become law because it will be impractical to administer and monitor sales in stores. The lack of identification of products will create confusion and impact on productivity, which will result in additional cost to the retailers. Further, the subject of plain packaging has been debated and considered in other Countries, including the United States and the United Kingdom and these countries have chosen not to adopt similar legislation. The main reason for their decision not to pass such laws is that after making enquiries, they believe that other more beneficial education schemes have been, or can be, adopted to deter and discourage smoking and also because there is a strong possibility that disguising cigarette

packaging could lead to other harmful illegal substances being used in the community. In addition, other damaging legal infringements could occur such as breaches of copyright and intellectual property rights.

MGA will address these various issues and requests that the House Standing Committee considers these submissions in the interests of independent supermarkets and the community generally.

The reasons why the Bill should not become law

1. Impractical aspects of the Bill

In many Australian States and Territories a retailer is not allowed to display cigarette products in a store. Where these laws do not currently exist it is likely that this requirement will become law in the near future. It is a requirement in some States that smoking products are kept from public view and/or they can only be purchased from one point of sale. They are often kept behind a closed door or they are “curtained off” from the public view.

The introduction of these laws has already placed a significant financial burden on small businesses. Retailers were required in many cases to reconfigure the front end and point of sale sections of their stores, retrain staff and in many cases deal with the strong objections of customers who believed that it was the staff and the store that were attempting to thwart the purchase of their cigarettes. It is too early to tell whether keeping smoking products out of sight has reduced or eliminated the incidence of smoking in the community. However, MGA maintains that engaging in covert practices to make the sale of a legal product more difficult is not a satisfactory way to express health concerns or deter smokers from purchasing tobacco products. MGA maintains that education is a more beneficial and preferred method of eliminating or deterring the smoking habit.

The main question that arises from the proposals raised in the Bill is, “will plain packaging reduce or deter members of the public from smoking?” MGA submits that the wrapping of smoking products in plain packaging will not deter the community from smoking. Members of the public will continue to demand a particular brand of cigarettes and will expect them to be available. Engaging in hiding a particular product from a person by wrapping it in plain paper will not necessarily act as a deterrent to a person who wishes to make a legitimate purchase. The result will be confusion for retailers and their staff and members of the public, without achieving any likely benefit for the health of the consumer. Retailers will be forced to train staff to identify the products by name only. There are up to 200 brands of cigarette products which will have to be searched for by staff on a regular basis. Sales staff will be expected to find the items promptly and will have to cope with finding a required item from containers which must also be concealed from sight. Customers can be very demanding and they expect sales assistants to be able to deal with their requests promptly. The training of staff, the reduction in productivity and the incidence of employee stress are issues that will inevitably emerge

and the problems associated with these demands demonstrate the impracticality of this proposed Bill.

Not only are there likely to be difficulties for retailers at the store level and in particular, at the point of sale, but also from the time the smoking items are placed into the warehouse. Retailers will be confronted with mass confusion on an ongoing basis. Apart from the training of store staff and coping with irate customers, they will also have to deal with problems that wholesalers and transport companies will encounter as they try to identify and keep track of goods that are not properly labelled. The confusion will occur throughout the entire supply chain – store ordering, warehouse picking and packing, delivery, checking loads at delivery point, filling fixtures and finally serving the customers.

There has already been considerable time, money and effort spent by retailers and their employees into ensuring compliance with various State and Territory laws but if this Bill becomes law, it will place further burdens on retailers in operating their businesses. There is already a plethora of red tape that retailers deal with on an everyday basis and this Bill, if it becomes law will be an additional impractical and costly burden for them.

2. Plain packaging for other supermarket lines?

Where do we draw the line in relation to plain packaging in the retail industry? If plain packaging is introduced for tobacco products it could be only a matter of time before the same principles that are being used to introduce this Bill are applied to other store items. If the main objective of the Bill is to disguise cigarette packets in order to deter members of the public from purchasing cigarettes on the grounds of endangerment to health, could not this same principle also logically be applied to other items? There are other equally perceived “dangerous” items on supermarkets shelves. The introduction of plain packaging for cigarette products could be the beginning of plain packaging for a much wider variety of goods such as soft drinks, alcohol and fast food. Such items are often portrayed as being a health risk. They too could be regulated in the same way as tobacco products packaging if we use the criteria associated with the “good health principles” that are being used to justify the introduction of plain wrapping for cigarettes.

The confusion and imposition of plain packaging on the supermarket industry could reach unprecedented proportions if plain packaging was extended beyond smoking products. Unfortunately, that would be the reality of the situation because the principles behind the introduction of plain wrapping for cigarette products in this Bill are no different to many other items that are being sold in supermarkets.

The detrimental effects on the economy of such a “snow balling” effect are difficult to estimate. Apart from the aspects of competition, copyright, intellectual property rights and trade there is also the survival of the small independent retailer to consider in this potentially concerning situation.

In their article titled, “Global Push for “Plain Packaging on Consumer Products will burn Intellectual Property rights” by Tracy-Gene Durkin and Jeremy M. Klass¹ they too posed the question as to why stop at just plain packaging for cigarettes, why not target other perceived dangerous health items such as fast food and they go further adding that “the agriculture and livestock industries upon which the fast food industry depends are harmful to the environment.” The article refers to the fact that it is difficult to draw the line once a program of implementing plain packaging is introduced in any form. It is suggested that rather than start a process of introducing the concept of plain packaging, and keeping in mind the consequences if it is introduced, it is better not to start the process in any form at all. It is suggested that there are much worthier ways to restrict access to tobacco products than commencing what could be a radical and destructive process.

Whilst Australia is obviously giving serious consideration to the prospect of plain packaging for smoking products it is interesting to note that no other country has adopted this measure in any legislation. In 2009 a “Public Tobacco Consultation” was undertaken in Britain which elicited a 100,000 responses and the question of plain packaging for tobacco products was raised. Although it revealed that there was some evidence of packaging increasing brand awareness there is no study that revealed that plain packaging would reduce smoking amongst young people or assist smokers to quit the habit. The report stated that, “ Given the impact that plain packaging would have on intellectual property rights the Government would need strong and convincing evidence showing the health benefits of this policy before it would be acceptable at an international level” ².

MGA reiterates that it does not underestimate the importance of reducing the incidence of smoking in the community but points out that there are many other significant factors that the Senate should take into account when considering this Bill. There are more far reaching issues which have as yet not been fully explored which could impact on the community and retailers in particular if this Bill becomes law. These include the rights of those who have developed trademarks and designers which could mean that the Government would be taking away their intellectual property rights. This is likely to result in an economic fiasco if compensation was sought by trade mark owners.

¹ Global Push for Plain Packaging on consumer products will burn intellectual property rights Washington Legal Foundation Legal Opinion letter Sept 11 2009

² UK Government Response Written Ministerial Statement 9 December 2010 www.number10.gov.uk

The administrative burden to retailers if this Bill is introduced has already been mentioned and the possibility of its principles being extended to other supermarket areas should not be overlooked. Other countries have investigated the issues surrounding the introduction of similar legislation and they are obviously considering the need for further research before even considering its introduction. MGA urges the Senate to carefully consider the far reaching repercussions of this Bill, and to also consider whether more time is needed given its possible consequences and therefore not to support its passage through the Parliament at this stage.

3. Removal of Brands can have a detrimental affect on the purchase of reputable goods

What protection for the community does the branding on cigarette packets have? Packaging obviously identifies a particular brand and as stated previously it is questionable whether a smoker is attracted to the packaging or not. There is no hard evidence to suggest that packet colours or logos necessarily attract a smoker. However, what branding does achieve is the protection of the community against the introduction of inferior and even illicit tobacco from coming on to the market. Correct labelling and packaging are indications that the contents are manufactured by a reputable company. If branding is removed there is likely to be an increase in the illicit trading in illegal tobacco activity and without branding it will become almost impossible to determine counterfeit tobacco products from legitimate products. Research undertaken by Price Waterhouse Coopers in 2007 estimated that 1.8 million kilograms of illegal tobacco was in circulation in Australia³. This is likely to increase if plain packaging is introduced.

If branding is removed tobacco companies will reduce their prices because of the competition in the market and smokers may move to smoking illegal or unbranded “chop chop” or smuggled cigarettes. There is ample overseas evidence which demonstrates that illicit sale of contraband tobacco is widespread in other countries such as Canada and the United States. In its report in 2008 on Contraband Tobacco Enforcement Strategy, the Canadian Royal Mounted Police⁴ at page 2 stated that contraband tobacco is “any tobacco product that does not comply with the provisions of all applicable federal and provincial statutes. This includes importation, stamping, marking manufacturing, distributing and payment of duties and taxes.” This clearly indicates that there is a need to distinguish between tobacco products that are clearly legal and identifiable when they enter the country so as to ensure that they are legally distributed nationwide rather than having unmarked products sold without proper statutory control which could easily become an even greater danger to community health.

³ Price Waterhouse Coopers :Illegal tobacco trade: costing Australia millions –Strategies to curb the supply and use of illegal tobacco products. August 2007

⁴ 2008 Contraband Tobacco Enforcement Strategy- Royal Canadian Mounted Police, Canada

The issue of pricing for both manufacturers and retailers is obviously an important factor when considering the impact of the removal of branding and this could have the effect of pushing the consumer into the direction of cheaper inferior tobacco products which will inevitably swamp the market placing more people at risk.

Conclusion

It appears from the evidence that the damaging effects of the Tobacco Plain Packaging Bill 2011 are extremely high with out any apparent benefit being achieved.

In summary, if this Bill becomes law, it will impose a further cost burden on small businesses and it will cause widespread confusion for retailers, wholesalers and the community generally. It is likely to be the forerunner of similar changes to other items in supermarkets which are also perceived as likely to have detrimental public health effects.

The Bill could also see the increased introduction of unmarked, cheaper and illegal tobacco products into this country, which could have even more serious harmful effects than those which currently exist.

If there were any beneficial aspects to this legislation then MGA would not be so strongly opposed to its introduction. The passage of this Bill through the Federal Parliament is unlikely to have any benefits to community health and MGA does not support the Bill for the above reasons.

On behalf of our members, MGA will is willingly available, upon request at any time for consultation and discussion.

Jos de Bruin



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