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Submission No. 19
(Plain Packaging Bill)
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Committee Secretary
Standing Committee on Health and Ageing
House of Representatives
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The Alliance of Australian Retailers Submission to House Standing Committee on Health and Ageing Inquiry into Tobacco Plain Packaging

The Alliance of Australian Retailers Pty Ltd (**AAR**) together with its member associations comprising the Australian Newsagents' Federation Ltd, National Independent Retailers Association and the Service Station Association Pty Ltd represents around 15,000 individual small retailers around Australia. The AAR's member associations represent independent service stations and convenience stores, newsagencies, milk bars and local corner stores.

The AAR opposes the Federal Government's Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 (the **Bills**). The AAR submits that the Government's Bills are not supported by real evidence that plain packaging will reduce smoking rates and we believe, if introduced, will create negative consequences for small business and the community. Plain packaging of tobacco products, as prescribed in the Bills introduced by the Minister for Health and Ageing on 6 July 2011 and in the draft Tobacco Plain Packaging Regulations 2011 contained in the Minister's Second Reading Speech, fails to take into account both the potential harmful impacts of plain packaging on legitimate small business retailers and the growing trade in illicit tobacco.

The AAR submits that plain packaging will create negative consequences for legitimate small business retailers by impacting sale and stock management processes which have already been complicated by point of sale display bans in most States and Territories. The AAR believes plain packaged tobacco products will lead to unnecessary confusion, longer queues and inconvenience to customers. This will detrimentally impact our retailers who generally market themselves as convenience destinations. We also believe that plain packaging will make counterfeiting cigarette packets even easier, thereby shifting legitimate sales to the illicit tobacco market.

The AAR supports evidence-based measures to reduce smoking in the community given that plain packaging has not been implemented anywhere in the world and the Federal Government has failed to produce real world evidence that plain packaging will reduce smoking rates in Australia, we consider the Bills to be unreasonable and excessive. We believe that the Government should adopt evidence-based measures that are proven to work to further reduce smoking rates in Australia. The AAR opposes this 'experimental' measure.

No real evidence that plain packaging will reduce smoking rates

The AAR maintains that the Federal Government has provided no real evidence that plain packaging will help smokers quit or prevent people from taking up smoking.

In fact the Federal Minister for Health concedes that the Government is embarking on 'some level of experiment'¹ and at a press conference on 24 May 2011 admitted that the Government has no real evidence:

*"The sort of proof they're looking for doesn't exist when this hasn't been introduced around the world."*²

In addition, the Minister's own department in Senate Supplementary Budget Estimates conceded that it was not possible to quantify the reduction in smoking rates from the plain packaging measure.³

In a Berenberg Bank Analyst Report on plain packaging, Erik Bloomquist, reports that plain packaging is unlikely to have an impact on reducing smoking prevalence, consumption, initiation or enhancing quitting and *"the limited research evidence on the effects of plain packaged cigarettes (research that asks subjects to compare plainly packaged cigarettes with the current branded environment, which is a bogus research technique since one needs to know how subjects would behave in an environment in which there were ONLY plain packaged cigarettes) consistently failed to show that PP would have any effect on smoking uptake, prevalence, and consumption."*⁴

The Berenberg Bank Analyst Report also found limitations in the studies cited by tobacco control advocates that suggest that plain packaging will prevent initiation and encourage cessation: *"Invariably the PP studies fail to address the only pertinent policy question, namely, how an environment with only plain packaged cigarettes would prevent and reduce smoking."*⁵

Negative impact on small business

A report by Deloitte commissioned by the AAR and published in 2010 on the potential impact on retailers due to the introduction of plain packaging found that plain packaging would have direct operational costs and indirect impacts on small business.⁶

¹ 3AW, Neil Mitchell mornings, 8 April 2011

² The Hon Nicola Roxon, Minister for Health and Ageing, Press Conference, Canberra, 24 May 2011

³ Proof Committee Hansard, Senate, Community Affairs Legislation Committee Estimates (Supplementary Budget Estimates), Wednesday 20 October, Canberra, p. 98.

⁴ Erik Bloomquist, Berenberg Bank, "Global Tobacco, The Plain Risk to Global Tobacco", 21 March 2011, p. 15

⁵ Ibid, p. 68

⁶ Deloitte, "Potential impact on retailers from the introduction of plain tobacco packaging", October 2010

The 2010 Deloitte report shows that plain packaging could cost small business retailers up to \$34,000 annually in lost time.⁷ These impacts include increased:

- Stock management – could double and take an additional 10 - 45 minutes spent per day costing between \$1,200 and \$5,500 depending on the outlet;
- Sales transaction times - up to 45 seconds for every cigarette transaction, alone costing retailers up to \$27,500 per year depending on the outlet, and resulting in not being able to offer the convenience that customers expect from our retailers' stores; and
- Product selection errors – resulting in increased transaction times from completing a second transaction and stock shrinkage.⁸

These factors coupled with the recent additional cost burden on our retailers' businesses as a result of point of sale display bans in most States and Territories mean that those retailers who are already financially constrained will be put under further strain.

Not only has the Government failed to take the views of small business into account it has failed to take into account existing State and Territory specific legislative requirements in drafting the Bill.

For example, blockers are widely used in tobacco display multichutes in order to comply with State and Territory legislative requirements. The proposed package design will make it near impossible to identify a customer's requested products where blockers are used to comply with State and Territory laws.

Since plain packaging was announced in April 2010, the Government has failed to conduct a robust consultation process with stakeholders, including the AAR, our member associations and the retailers we represent. Since a Regulatory Impact Study was not completed, the need for consultation is greater. On what basis does the Government believe that it understands our retailers' business better than we do?

Given that the retailers that our member associations represent are regarded 'as the backbone of the Australian economy' we are very disappointed that the Federal Government has not put evidence-based options on the table for consideration that are proven to reduce smoking rates.

The Bills demonstrate that the Government does not understand the tobacco retail business, has failed to take small business concerns into consideration and has ignored the small business community as a significant stakeholder.

Channel Shift

The AAR submits that the Bills, if implemented, will impact on the viability of thousands of small businesses who are already doing it tough.

Our retailers' point of difference is the convenience they offer to customers. We believe that the Bills, if implemented, will result in price based competition driving customers to the large retail chains.

⁷ Ibid, p. 5

⁸ Ibid, p.10-14

The Service Station Association, in a submission to the Senate Inquiry into Senator Fielding's plain packaging Bill, stated:

*"A service station's point of difference is its convenience. In fact, it's our core product that drives the essential non-fuel part of the business. Customers want to be able to buy what they want quickly and be on their way, and are prepared to pay a little more for that privilege... The damage to the "quick and easy" customer expectation requirement will be significant and remove the incentive to shop there. "If I am going to have to wait, I might as well go to a supermarket whether the product is cheaper," is a likely scenario. In other words, damage to service station business with no reduction in tobacco consumption!"*⁹

A report by Deloitte in June 2011 undertook a study examining the potential of consumers shifting away from smaller retailers to larger outlets such as supermarkets (channel shift) as a result of plain packaging.¹⁰ This study included an in depth survey of over 70 small retailers across the country and 481 consumers (tobacco and non-tobacco) who typically shop at smaller retailers.

The Deloitte study found that retailers believed if plain packaging was introduced there was a real risk of consumers shifting away from smaller outlets to larger retailers due to one or more of the following:

- The increase in time required to complete a tobacco related transaction would lead to customers becoming increasingly frustrated due to delays and longer queuing time.
- The knowledge that a larger retailer e.g. a major supermarket with a broader range of products would always have what they require.¹¹

The findings from the consumer survey verified the concerns of retailers with 34% of tobacco consumers and 18% of non-tobacco consumers surveyed indicating that they would be likely (somewhat and very) to change where they shop as a result of plain packaging. A significant proportion of those consumers who said they would shop elsewhere indicated that they would go to a large supermarket.¹²

According to the June 2011 Deloitte report, if 34% of tobacco consumers (as identified by the survey) shifted away from smaller retailers this could mean a loss of approximately 63 tobacco related transactions and up to \$1,880 in weekly revenue lost for a typical convenience store. It could also mean a loss of approximately 36 transactions and up to \$940 in lost weekly revenue for a typical service station.¹³

Furthermore, the report mentioned above illustrates an example whereby if 18% of non-tobacco consumers (as identified by the survey) shifted away from typical convenience stores as a result of plain packaging, this could equate to a loss of approximately 166 non-tobacco related transactions, representing approximately \$2,300 in lost revenue per week.¹⁴

⁹ Service Station Association Submission to the Australian Senate Community Affairs Legislation Committee Inquiry into the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009, 18 January 2010, p. 2

¹⁰ Deloitte, "Plain packaging and channel shift", June 2011

¹¹ Ibid, p.5

¹² Ibid, p. 28

¹³ Ibid, p.8

¹⁴ Ibid, p.8

Concerns about the growing illicit trade in tobacco products

It is well documented that the illicit tobacco trade is a growing problem in Australia. Recent reports by Deloitte published in February 2011¹⁵ and updated in June 2011¹⁶ found that illicit tobacco's share of the market has grown significantly in the past 18 months, now representing the equivalent of approximately 15.6% of the total quantity of the legal tobacco consumed in Australia. The June 2011 report found that in the past 6 months illegal counterfeit cigarettes had doubled, from 4% to 8%.¹⁷ The reports also highlight that the Federal Government has lost tobacco excise annual revenue of approximately \$1.1 billion as a result of the growing black market.¹⁸

The AAR submits that plain packaging will make it easier for counterfeiters to copy tobacco packages. The Washington Legal Foundation, in a legal opinion letter, noted that *"Counterfeiters are likely the only group that would benefit from a switch to plain packaging. Without the need to copy tobacco packaging, counterfeit tobacco packaging would become virtually impossible to detect."*¹⁹

The International Chamber of Commerce warned that plain packaging makes it easier for packaging to be copied by counterfeiters. In a recent press release they urged the Federal Government to *"consider policy alternatives to the 'plain packaging' proposal, that would further the government's health policy goals without creating a dangerous precedent with negative consequences that go far beyond the aims of the new rules."*²⁰

Business Action to Stop Counterfeiting and Piracy (BASCAP) also raised concern that plain packaging *"... would increase the prevalence of counterfeit goods in the market because counterfeit products will become easier to make, distribute and sell. Further, plain packaging enables the counterfeit industry to 'adopt' brand imagery: both counterfeiters and contraband operators would assume, correctly, that plain packaging would result in a significant increase in demand for illicit products in particular amongst sections of society that many regulatory measures seek to protect most."*²¹

Even major global packaging supplier, AMCOR, warned that the introduction of plain packaging *"would make it significantly easier for counterfeiters to reproduce less complex and less sophisticated packaging, thereby increasing the problem of counterfeit tobacco products and illicit trade in Australia."*²²

The AAR maintains that plain packaging will further increase the amount of illicit and counterfeit tobacco in Australia, increasing the risk of teenagers getting hold of illegal tobacco.

There is also growing concern that tobacco smuggling is linked to organised crime. A PricewaterhouseCoopers report into the illegal tobacco market in Australia found tobacco

¹⁵ Deloitte, "Illicit Trade of Tobacco in Australia", February 2011, p. 2

¹⁶ Deloitte, "Illicit Trade of tobacco in Australia – June 2011 update", p. 2

¹⁷ Ibid, p.3

¹⁸ Ibid, p.2

¹⁹ T.G. Durkin and J.M Klass, Global Push for "Plain Packaging" on Consumer Products will Burn Intellectual Property Rights", Washington Legal Foundation, Vol.18 No.20, 11 September 2009, pg 2.

²⁰ International Chamber of Commerce, Media Release, ICC Says Proposed Australian Plain Packaging Regulation 'Bad Public Policy', 28 May 2011

²¹ Business Action to Stop Counterfeiting and Piracy Submission to the Australian Senate Community Affairs Legislation Committee Inquiry into the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009, p. 1

²² AMCOR Submission to the Australian Senate Community Affairs Legislation Committee Inquiry into the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009, 26 February 2010, p. 2

smuggling to be linked to organised crime in Australia, including drugs, money laundering, identity fraud and stolen car rackets.²³

In a recent report on organised crime in Australia, the Australian Crime Commission found that organised crime networks have been linked to the importation of counterfeit cigarettes and loose tobacco.²⁴

Even the World Health Organisation has highlighted that the sale of smuggled cigarettes may overtake legal tobacco sales by 2020.²⁵

Given that the Government has provided no real evidence that plain packaging will reduce smoking rates, the AAR submits that there is no public health benefit in a government policy which results in consumers shifting from buying tobacco products from legitimate small businesses to instead buying unregulated and illegal tobacco from the black market. Opening the door wider for the growing trade in illicit tobacco just makes it harder for honest retailers to compete in the Australian market.

We further submit that there is no public health benefit when cheaper, unregulated illicit tobacco is readily available to Australians, including teenagers.

Conclusion

The AAR opposes the Bills. Small business who are already doing it tough in difficult and uncertain economic times will be put under further strain as the unintended consequences of the Bills will negatively impact on the operation and viability of their businesses. These businesses are often the cornerstone of their local communities; so when their viability is threatened, the whole community suffers.

The AAR concludes that the Government has provided no real evidence that the Bills, if implemented, will reduce smoking rates. Rather, the Bills will create significant unintended adverse consequences for small business retailers and merely shift their business to the large retail chains and to the illicit tobacco market.

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Alliance of Australian Retailers Pty Ltd

²³ PricewaterhouseCoopers, "Australia's Illegal Tobacco Market: Counting the Cost of Australia's Black Market", 8 February 2010, p. 12

²⁴ Australian Crime Commission, "Organised Crime in Australia", 2011, p. 18

²⁵ Dr Judith Mackay & Dr Michael Eriksen, "The Tobacco Atlas", World Health Organization, 2002 at: <http://www.who.int/tobacco/en/atlas38.pdf>