

## **AUSTRALIAN ASSOCIATION OF CONVENIENCE STORES (AACS)**

Submission to the Senate Legislative Committee on

Public Health (Tobacco and Other Products) Legislation 2023

September 2023

## **AACS Introduction**

Established in 1990, the Australian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia. Nationally, the industry employs over 80,000 frontline staff across 7,000 stores.

The majority of these stores operate as small, family-run businesses, often under licence or a franchise agreement, or with independent ownership. They regularly employ family members and people from the local communities in which they operate. The AACS represents the interests of these small businesses - their owners, staff, suppliers and customers.

Each year the AACS commissions an independent body to measure key metrics in the sector, which is published as the State of the Industry Report . Turnover in the convenience industry in Australia was valued at approximately \$10.2 billion annually in 2022, the latest figure for which data is available.

### **Introduction**

As community retailers our members are at the forefront of the battle with illicit tobacco syndicates, so they know better than anyone that selling illicit tobacco is not a victimless crime. It enables other criminal activity, erodes the growth of small businesses and strips funding away from vital government services.

The Government has opened consultation on a suite of legislation to refocus the tobacco controls in Australia, and directly target small and often family owned businesses. While there are many aspects of the Government's proposed legislation with which AACS supports, we have significant concerns for our members with some elements of the proposed legislation.

Building on this legislation, the Government has also proposed a 5% per year increase to the excise tax rate on legal tobacco products – that is the ones they can actually tax – for the next three years. While we note this is not part of the current consultation, this legislation must be considered in the context of these tax rises when Australians have been dealing with a cost of living crisis and are looking for ways to save money.

A common approach for anyone trying to find savings in a household budget is to switch to a cheaper substitute. This change, combined with the proposed product and packaging changes, will only embolden criminals to keep selling illicit tobacco to anyone who will buy it, including children, while inflicting irreparable damage to small local businesses owned by hard-working Australian families.

**We ask that the Senate consider the AACS submission here and abandon its proposed excise tax raise to protect local business from illicit tobacco syndicates. Beyond this, the recommendations made by the Parliamentary Joint Committee on Law Enforcement Inquiry into Illicit Tobacco in 2021 should be implemented as a priority.**

### **Current state of illicit tobacco in Australia**

The illegal tobacco market in Australia is bigger than most realise. In 2022 around 23.5% of all cigarettes were sold illegally, this is a dramatic increase from 14% in 2018 and equates to 1 in 4 packets of cigarettes being sold. This is a result of extreme growth in the illicit tobacco market that has been fueled by an unsustainable tobacco policy and insufficient enforcement measures & misalignment between the Federal & State Government legislative frameworks.

Illicit tobacco is now a multi-billion-dollar business for criminals. The higher taxes mean higher prices for legitimate retailers which forces regular Australians to purchase from illicit vendors. These black-market dealers can sell fake cigarettes, cheap imports, and illegally grown local crops for significantly less by illegally evading taxes and product packaging and advertising requirements.

An estimated 2.6 million kilograms of illicit tobacco was sold in Australia in 2022, the vast majority of which is bought in from overseas. While the Australian Border Force attempts to keep up with this pace, they are under resourced and unprepared to stop the sheer volume of contraband coming into the country.

Similarly state police forces already have domestic issues to contend with and to saddle them with more enforcement duties means diverting significant police resources away from tasks like community safety, contending with burglary, and responding to domestic violence.

On top of putting a strain on law enforcement resources, illicit tobacco is costing Australian taxpayers an estimated \$4 billion in lost excise taxes. This is money that if earned legally and contributing to general revenue, could be diverted to fund important public services such as healthcare and education.

It is our view that the government is turning a blind eye to this growing illegal activity in pursuit of narrow policy outcomes. Public policy should never be to the benefit of criminals.

### **Direct impacts of illicit tobacco in Australia**

#### **Crime and Communities**

The extreme growth of the illicit tobacco trade has fueled organised crime in Australia. The profits of illicit tobacco trade are often used to fund other illegal activities. This brings further crime to our communities and makes families unsafe. It also impacts local businesses who sell cigarettes, with AACS members reporting having been the victims of violence and stand over tactics from criminals looking to be the only ones selling any form of tobacco in the area.

#### **Lost Tax Revenue**

The illicit tobacco trade not only brings crime but also strips Australian taxpayers by up to as much as \$4.2 billion per year in lost excise taxes. On top of this Independent Economics estimates that an additional \$506 million of tax revenue could be generated from wholesalers, retailers and those involved in logistics if the illicit tobacco trade was completely eradicated in Australia and was replaced by legitimate trade.

### **Childhood access**

We know from our experience with the illegal e-cigarette trade that prohibition does not work. In making a product artificially unattainable it will inevitably attract a black market, with criminal syndicates benefitting and choosing to sell to anyone, including children. The experience with e-cigarettes will be mirrored with illicit tobacco, and in making legal tobacco unaffordable via increased taxes, a black market trade will be encouraged.

## **Public Health (Tobacco and Other Products) 2023 Bill**

### **Commencement**

AACS does not support the proposed transition periods put forth in the legislation and regulations by the Department of Health. Our members, who represent the majority of retailers in Australia have expressly stated there needs to be a minimum 6-12 month transition period for retail outlets. We support our member's voices who believe that 3-months is not an adequate period to sell through stock and prepare new ordering forecasts.

This time frame is significant to the retail industry as it allows further time for staff to be educated in the new legislation and regulations, make substantive store changes to ensure they are equipped to meet the new requirements, but also to allow time for retailers and consumers alike to understand the changes that have been made to the marketplace.

AACS maintains the position that it is important to get these transition periods done right with proper time, instead of a rushed job. We have seen in the past the failures of rushed legislation, especially with regards to e-cigarettes. The result of this, like with e-cigarettes, sees consumers and retailers alike turn to the illicit market as a source of trade and consumption.

We request the Department of Health to hear the small business retail voice and extend the transition timeframe to a minimum 6-month time period but preferably 12 months period to ensure full and proper compliance as well as stopping any bleed to the illicit tobacco market.

### **Advertising and Sponsorships**

AACS notes the Government's position on tobacco advertising. Specifically, we note the exception for business signage and support this carve out, given many businesses - both AACS members and otherwise - may already have branding and trademarks approved which may be in contravention with Chapter two should this exception not be maintained.

AACS also supports the exception for notice of available regulated tobacco items for our members.

Beyond this, AACS considers that B2B communications should be considered contextually different to those between a business and customers. For this reason, it is imperative that the regulations surrounding business and trade communications for educational purposes is removed and replaced with a broader regulation that only bans B2B communications that are not factual and does not cut into retailer's rights to be informed by their suppliers about the products they are buying.

We request the Department of Health to hear the small business retail voice and remove the ban on educational B2B communications.

### **Packaging and Product Requirements**

AACS supports the Department of Health's position with regard to GHW rotations as this is an easy identification tool for illicit tobacco products in the marketplace.

However, AACS and its members do not support the standardisation of cigarette packets to 20 sticks. Currently, it is well known in the Australian tobacco retail industry that the overwhelming majority of illicit tobacco is sold in packs of 20. AACS does not understand why the Department of Health would ignore and overlook this as a significant issue in Australia.

The AACS believes that standardisation into a single pack size has no direct result on public health outcomes. Consumers that are used to consuming more than 20 cigarettes regularly (as in a packet of 30's, 40's or 50's) will simply make additional purchases at the same time.

This supports the goals set out by the Department of Health as well as acts as an easy identification tool for illicit tobacco and counterfeit tobacco that is being sold in Australia.

### **Banning certain tobacco products**

AACS and its members do not support the restrictions and banning of tobacco products that included capsules or menthol flavouring additives. From the perspective of the retailers, it is important that the Department of Health consider ways to discourage the black market of tobacco products in Australia, instead of creating new pathways for their revenue generation.

By prohibiting certain ingredients and capsules, small business retailers are the ones who are going to suffer significant revenue loss as the black market, which is already rife throughout Australia, will continue to grow and thrive.

AACS recommends that the Department of Health reconsider their position with regard to ingredients and capsules, and proposes that further research and investment be made into compliance and enforcement efforts, before enacting any change.

### **Reporting requirements of small business**

AACS members are made up of a broad group of businesses. Some members are wholesaling importers who are directly importing legal tobacco products.

Chapter 5 places new requirements on businesses to report to the Minister. For importing businesses and AACS retailer members, the added requirement to report places significant pressure on business operations, especially as many AACS members are small and family run businesses. While some requirements, like the total quantity of importation occurring may be more simple to gather, the impracticalities of reporting are significant and likely to severely impact both on the time of the business and that of the Government Minister and Secretary.

Specifically for businesses the reporting of total units sold creates market inequality and opens the business up to likely robberies and significant safety concerns.

Already, small businesses are targeted across the country by theft and criminal syndicates attempting stand over tactics. In reporting this information in an unsecure way, AACS

members will be placing themselves in significant danger, which is not complimented by enforcement personnel nor by this legislation.

Further, many of the requirements of reporting - both regarding importation, but also marketing activities - are already captured elsewhere. This is severe overreach and double up both for the Government and businesses. We note that resources are already incredibly stretched. The Government is not coping with the current levels of tobacco control.

The reporting obligations create further burden and require even more Government focus. AACS is concerned this will further reduce the work of genuine compliance and enforcement which must occur to crack down on illicit tobacco products and criminal syndicates.

### **Compliance and Enforcement**

Compliance and enforcement efforts should be targeted based on community tip offs or certain store profiles that are the most likely to be selling illicit tobacco. Enforcement should be the number one priority for the Government in ensuring that illicit tobacco is being stopped both at the borders and at store fronts.

AACS is concerned about retailer and staff safety, and this is something reiterated by local convenience stores Australia wide who already feel the pressure from illicit sellers and syndicates.

Ensuring enforcement is focused on both retailer and consumer safety is a priority. With proposed changes to packaging sizes, the likelihood of theft increases, and should be considered with all enforcement changes. AACS supports more streamlined enforcement, but also notes that deterrence is key here also, and this legislation does little to deter illegal operators from selling illicit tobacco in Australia.

Coupled with the Government's decision to increase legal tobacco excise, Australia will become a ripe market for even more illicit trade, and consumers will be eager to support it due to the higher costs of legal tobacco and cost of living generally. These are issues which need rectifying also to see a genuine change.

## **Conclusion**

Black market tobacco dealing is an insidious operation, but it often hides in plain sight in our communities.

Illicit tobacco is sold in the streets or under the counter at illegitimate businesses and illicit tobacco syndicates have been known to employ violence and stand over tactics on legitimate retailers to force them to stop selling tobacco products.

This puts communities at risk – something that no public policy should ever do in Australia.

The proposed tobacco control legislation does little to curb the illicit tobacco market, while simply applying more pressure to legitimate Australian businesses, who are operating within the legislation and working with enforcement to crack down on illicit operators to no avail.

To the contrary, we are concerned that this legislation will grow the illegal market. AACS is committed to continuing to work with the Government on practical and sensible solutions to this problem and trusts the responses provided to the Department of Health through this submission assist in the drafting and contemplating of the proposed legislation.