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Senate Select Committee on Red Tape  
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## **AACS submission re: The effect of red tape on tobacco retail**

To whom it may concern,

On behalf of members of the Australasian Association of Convenience Stores (AACCS), the peak body for the convenience industry in Australia, we make the following submission to the Senate Select Committee on Red Tape with regard to the inquiry into the effect of red tape on tobacco retail.

The focus of our submission is to emphasise the importance of legal tobacco to convenience stores, the majority of which are small business operating under licence or franchise agreement, or independent ownership.

We also seek to highlight the real world implications of excessive red tape when it comes to the sale of legal tobacco, while providing a unique perspective on the impact of increased Government regulation on the illicit tobacco market in Australia.

The rise in the market for illegal tobacco has coincided directly with the increase in regulation governing the sale of legal tobacco products.

Regulations like plain packaging, graphic health warnings and display bans have had major impacts on the tobacco retailing environment for small businesses in particular.

While these regulations are now synonymous with tobacco retailing, new regulations such as proposed licensing caps and regular excise increases mean convenience stores are continually faced with additional imposts.

Ever-changing tobacco regulations disproportionately impact small businesses. The major grocery chains which also sell legal tobacco are in a much stronger position to absorb the costs associated with increased regulation as small businesses are left to count the financial cost.

The majority of regulations surrounding the retailing of legal tobacco exist for the apparent purpose of improving health outcomes for society through reducing smoking.

But most consumers and politicians understand that these very regulations serve an actual main purpose of providing revenue for the Government.

The fact remains, tobacco remains a legal product that adult consumers can choose to buy. It is also an important product category for convenience stores.

Further, if tobacco regulations are genuinely designed to improve health outcomes, it is hypocritical for e-cigarettes - products viewed globally as being highly effective in helping people quit smoking - to be unable to be legally sold.

Only through a reduction in red tape, a moratorium on tobacco excise increases, and recognition of the potential for e-cigarettes to play a positive role, can Government achieve a balance in improving health outcomes as they relate to smoking without disadvantaging small businesses serving their customers a legal product.

The AACS welcomes the opportunity to be involved in this inquiry in whatever capacity the Committee deems fit. Please don't hesitate to contact me should you require anything further.

Thank you for your consideration of our submission.

**Jeff Rogut FAIM MAICD**  
**Chief Executive Officer**  
**Australasian Association of Convenience Stores Limited**

## About the AACS

Established in 1990, the Australasian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia.

Nationally, our industry employs over 40,000 people in over 6,000 stores. The majority of these stores operate as family run businesses, often under licence or franchise agreement, or 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.

The convenience industry in Australia was valued at approximately \$18 billion in 2015 according to companies contributing to the *2015 AACS Annual State of the Industry Report*. This report contains the most comprehensive information available on the convenience industry in Australia and we would be happy to provide a copy.

As an Association we enjoy strong ties with our international counterparts including the convenience stores associations in the US, Canada, the UK and New Zealand. We also visit similar stores in South East Asia to keep abreast of changing or emerging trends.

## Executive summary

In this submission, the AACS responds to select Terms of Reference, emphasising the impact of excessive regulation and red tape on the ability for convenience stores to do business and serve their customers, as well as the negative financial impacts that result.

These financial impacts are not limited to reduced legal tobacco sales for small businesses, but extend to loss of market share as consumers shift buying habits to the major supermarket chains, and fewer employment opportunities.

We also emphasise the impacts of tobacco retail regulation and red tape on the illicit market for tobacco in Australia. We have included for the Committee's reference an outline on the state of the illicit tobacco market in Australia and an overview of independent research the AACS commissioned on consumer attitudes to the illicit tobacco market.

Given the majority of regulation around the retailing of tobacco is designed, or at least is claimed to be designed, to improve health outcomes, we believe it is necessary for the Committee to consider the role that e-cigarettes could play in helping to reduce the incidence of smoking.

We therefore outline the potential for e-cigarettes to play a role in reducing smoking among Australians, and we provide an overview of independent research the AACS commissioned on consumer attitudes to e-cigarettes in Australia.

## Response to the Terms of Reference

The AACS offers the following insights and considerations with respect to these select Terms of Reference for the inquiry. Many of these insights are expanded upon in greater detail over the following pages.

### **The effects on compliance costs (in hours and money), economic output, employment and government revenue**

More regulation and red tape surrounding the sale of legal tobacco means reduced sales for convenience stores, channel shift to the major supermarket chains, increased incidence in crime and loss of revenue for the Australian Government.

The most obvious example of regulation incurring compliance costs, emphasising the impact of red tape on small businesses like convenience stores, is plain packaging.

This regulation has increased small business costs, affected their profitability and jeopardised their ability to serve both tobacco and non-tobacco customers. At the same time, training and labour costs for small businesses continue to rise, customer frustration is a daily occurrence and the illegal trade of tobacco in Australia is flourishing at unprecedented levels.

Most disappointing of all is that, since the introduction of plain packaging, the incidence of smoking among Australians has remained relatively steady. According to the 2015 AACS State of the Industry Report<sup>1</sup>, volumes of tobacco sold have not diverted from the long term trend, and no reduction in smoking can be attributed to the plain packaging laws.

However, regulations like plain packaging and excise increases have had many flow-on impacts that demand consideration. These are explored further over the following pages.

The rise of the illicit tobacco market is of particular concern. This costs the Australian Government billions annually in lost revenue. Clearly, the balance between regulation in the form of excise and the objective to extract Government revenue from legal tobacco is skewed – to the detriment of retailers as well as the Government itself.

### **Any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions**

Structured excise increases on legal tobacco are having a huge negative impact not only on convenience stores and small businesses, but on public safety. This policy has directly fuelled – and continues to fuel – the market for illicit tobacco in Australia.

We expand on the state of the illicit tobacco market over the following pages.

The AACS calls for an immediate stop to excise increases on legal tobacco in Australia to enable small businesses a chance to recover, and to support law enforcement efforts to target criminals involved in illicit trade.

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<sup>1</sup> *State of the Industry Report, AACS 2015*

The high retail cost of cigarettes has made them a prime target for criminals, putting the safety of staff and customers at risk. It is time that the Government took note of the unintended consequences of its actions in the pursuit of greater tax revenue.

### **The impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged**

Our response to this Term of Reference is focused on the impacts of reduced legal tobacco sales that have resulted from excessive tobacco regulation.

Convenience stores are a staple of community life in Australia, with many run as family businesses which employ local people. Reduced sales means reduced profitability for convenience stores and fewer employment opportunities.

Other proposed regulations such as tobacco licensing caps will only exacerbate the negative economic and employment impacts and play into the hands of the two major supermarket chains.

Crime, including robberies, affects convenience stores more than other retail formats due in part to longer trading hours but also because our retailers sell legal tobacco.

As the cost of legal tobacco continues to rise, not only do criminal gangs involved in the illicit tobacco market reap the benefits, the safety of convenience store employees is increasingly threatened.

### **The effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape**

Regrettably, it is impossible to comment on the effectiveness of efforts to reduce tape by the current and previous Governments when it comes to tobacco retailing, as these efforts have been non-existent.

Instead we are faced with ever-increasing regulations, with consistent excise increases the most damaging from an economic perspective and in terms of crime.

These excise increases seem to have become an accepted budgetary response from successive Governments that has contributed directly to the rise of the illicit tobacco market in Australia.

Over the following pages we outline the extent of the illicit tobacco market in Australia and the impacts this has on small business, as well as the dangers to the public.

## **The illicit tobacco market in Australia**

The latest independent research from KPMG<sup>2</sup> into black market tobacco consumption in Australia shows that illegal tobacco represented 14.3% of total consumption as at October 2015. Sold legally, this would have generated an extra \$1.42 billion in tax revenue for the Australian Government.

It robs honest retailers of legal tobacco sales. Responsible retailers of legal tobacco are bearing the brunt while the illegal tobacco market has grown significantly in recent years.

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<sup>2</sup> *Illicit Tobacco in Australia 2015 Half Year Report*, KPMG

It is a disturbing trend that demonstrates the unintended consequences of poorly planned Government policy, as the criminals who supply these illegal tobacco products don't care if it ends up in the hands of minors. There are also no quality checks on what is actually in the products.

The Australian regulatory environment continues to contribute to our growing reputation as one of the world's most lucrative markets for illegal tobacco.

Legal tobacco remains an important product for small businesses and the more the market for illicit tobacco expands, the more these small businesses will suffer. Consider the quote below from an actual retailer – and small business owner – on the impact of illicit tobacco on a typical convenience store:

*“My conservative estimates are that illicit tobacco is costing my business at least \$200 per day in tobacco and associated sales. My decline in customer count traffic commenced when the (nearby) illegal outlet opened in February this year.*

*“Not only is this having an adverse effect on my business profitability, but it's also costing [brand withheld] Service Stations nearly \$10K per year in lost revenue and supplier rebates.”*

The point is clear: the illicit trade of tobacco is having a pronounced negative impact on small businesses around Australia. Illicit tobacco is widely and readily available through many unscrupulous sources. The need to target the illicit tobacco market is urgent.

### **Targeting the illicit tobacco market**

The illicit tobacco market robs legitimate businesses of sales and market share and Governments of its entitled revenue from the sale of tobacco.

A coordinated effort to crack down on the illicit trade of tobacco is perhaps the most obvious and effective measure to reduce the incidence of smoking, particularly among minors, while ensuring those who are licensed to sell a legal product are not negatively impacted.

To this end, a hotline for retailers and consumers to alert authorities to the illicit trade of tobacco could be established.

This would provide a low cost avenue for any retailer or consumer approached by an individual or group to purchase illicit tobacco products to assist police in targeting the criminals involved in the illicit market.

### **The loss of revenue to the Commonwealth arising from the consumption of illicit tobacco products**

It's well known that excise from legal tobacco sales is a significant contributor to Government revenue.

What isn't as widely known is that the revenue the Government is missing out on because of the huge spike in illicit tobacco trade has run into the billions of dollars annually.

As at October 2015, the illicit tobacco market was estimated by KPMG to account for 14.3% of total tobacco consumption nationally in the 12 months to June 2015.

Sold legally, this would have generated an extra \$1.42 billion in tax revenue for the Australian Government.

### **The involvement of organised crime in the illicit tobacco market in Australia**

Criminal gangs are proven to be very effective in filling gaps in the legal tobacco market.

According to research from leading international research company Roy Morgan entitled *The Impact of Plain Packaging on Australian Small Retailers*<sup>3</sup>, commissioned by Philip Morris and supported by the AACS and other retail associations, a third of retailers reported having had customers enquire about purchasing illicit tobacco from their outlets.

The public is well aware of the existence of illicit tobacco in Australia and are actively seeking it out, driven in part by the high cost of legal tobacco.

The Roy Morgan research also shows that awareness among small retailers in Australia of illicit tobacco is high and has increased since the introduction of plain packaging. More than four in ten retailers perceive illicit trade to be having a negative impact on their business.

The growth of the illicit market, combined with excessive taxation increases and plain packaging legislation, has resulted in a shift in consumer purchasing habits when it comes to tobacco.

Consumers are now driven predominantly by price as brands have been diminished, and adult consumers are increasingly looking at illicit products as tax hikes on legal tobacco continue to have a dramatic impact on price.

Of course, illicit products are much more likely to end up in the possession of minors, as these products by definition are not sold responsibly.

### **The effectiveness of existing legislation**

Recent high profile seizures of illegal tobacco have reinforced the enormity of the illicit tobacco market in Australia.

The unprecedented spike in the illicit tobacco market coincides directly with the introduction of plain packaging legislation and the most recent round of excise increases applied to legal tobacco products.

It's important to understand that tobacco itself is, despite being more expensive in Australia than almost anywhere else in the world, actually a low margin product for retailers. The tax consumers pay on tobacco is what contributes to its high price and these high prices make Australia a particularly attractive market for criminals to sell illicit tobacco.

Illegal tobacco is by its very nature non-compliant with restricted sale and packaging requirements, and criminals have no issue selling illicit tobacco products to minors.

Existing regulations surrounding the sale of legal tobacco are not working. They are pushing otherwise law abiding consumers to the illicit market, and they are positioning Australia as one of the world's most lucrative markets for illegal tobacco.

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<sup>3</sup> *The Impact of Plain Packaging on Australian Small Retailers*, Roy Morgan, 2013

Legal tobacco is an extremely important product for convenience stores. Though it is low margin, it still represents a considerable proportion of sales and is a key reason for consumers to visit our members' stores.

The rise in the illicit tobacco market is hurting small businesses especially, as the major supermarket chains are much better positioned to absorb the regulatory costs and the loss of trade to the black market through their many other product categories and buying power.

## **AACS research: public attitudes to the illicit trade of tobacco**

In 2016, the AACS commissioned the Sexton Marketing Group to conduct independent research to investigate the level of public awareness, as well as attitudes and opinions, on the illicit tobacco market in Australia.

A total of 4,000 Australian consumers aged 18 years and over (and eligible to vote in State/Territory and Federal elections) were interviewed in late August / early September 2016, using a combination of online and telephone interviews.

### **Executive summary**

- The research shows that the biggest single consumer concern regarding illicit tobacco is that *it is a revenue-earner for organised crime, who use that revenue to expand their criminal activities, including into socially damaging areas like ice production and distribution.*
- Consumer awareness of the extent of the illicit tobacco trade is generally low.
- Most consumers would be concerned if politicians turned a blind eye to this issue, or worse still, did not adequately resource Customs to stop the trade at its source.
- There is also strong support for tougher penalties for illegal tobacco trafficking and unscrupulous retailers selling illegal tobacco products.
- There is also concern that Government revenue is being lost, putting pressure on budgets for hospitals, schools, etc.

### **Consumers want non-compliant retailers punished**

Unsurprisingly, the research shows that consumers are strongly in favour of penalising unscrupulous retailers which sell illicit tobacco.

**A summary of the key findings of the AACS research into public opinions on the illicit trade of tobacco is included overleaf. For a detailed briefing of the full research report, contact AACS CEO**



22%

- of Australian smokers have been offered illegal or illicit tobacco products

54%

- Believe illicit tobacco needs Government action

77%

- of consumers are concerned that criminals use profits from illegal tobacco to expand other criminal activities including illicit drugs like ice

85%

- of consumers believe there should be much tougher penalties for illegally importing tobacco

81%

- of Australians believe there should be much tougher penalties for selling illegal tobacco products in retail shops

58%

- of consumers are extremely or very concerned about the impact of illicit tobacco on retailers of legal tobacco

## The potential for e-cigarettes to help reduce smoking

The AACS believes there is an urgent need for Governments at all levels to create an appropriate framework for the legal sale of e-cigarettes in Australia.

The recent decision by the Therapeutic Goods Administration to uphold the ban on liquid nicotine in e-cigarettes is putting the health and lives of Australian smokers at risk.

These products have significant potential as an alternative for smokers seeking safer options and hence should be made more readily available as a priority.

E-cigarettes are undergoing significant growth at the moment not only in Australia but internationally, so the development of an appropriate legal framework for the sale of these products cannot be delayed.

Our members are proven responsible retailers, as evidenced by their responsible sale of traditional tobacco products, so we can provide real insights as to the opportunity e-cigarettes provide for retailers.

E-cigarettes are a relatively new product to Australia with significant potential for those looking to quit smoking as well as for retailers. They represent one of a range of solutions Governments should be investigating as having the potential to reduce the incidence of smoking.

In 2016, Public Health England and numerous other UK public health organisations<sup>4</sup> released a joint statement on developing a public health consensus on e-cigarettes, products they state “are the most popular quitting tool in the country with more than 10 times as many people using them than using local stop smoking services”.

A Public Health England study from 2015 shows that e-cigarettes – which do not contain tobacco - are around 95% safer than conventional cigarettes.

Elsewhere, the New Zealand Government has indicated it will regulate for e-cigarettes.

If there is a chance that a proportion of smokers looking to kick the habit will benefit from these products, we owe it to them to provide this option.

The AACS promotes responsible retailing and believes the framework to govern the legal sale of e-cigarettes should include restrictions on sales to minors and legislated product quality standards.

## AACS research: public attitudes to e-cigarettes

In 2016, the AACS also commissioned independent research to investigate the level of public awareness, as well as attitudes and opinions, on e-cigarettes in Australia.

A total of 4,000 Australian consumers aged 18 years and over (and eligible to vote in State/Territory and Federal elections) were interviewed in late August / early September 2016, using a combination of online and telephone interviews.

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534708/E-cigarettes\\_joint\\_consensus\\_statement\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534708/E-cigarettes_joint_consensus_statement_2016.pdf)

## Executive summary

The research provided an extremely strong case supporting the legalisation of e-cigarettes in Australia, based on numerous benefits:

- Financial and health benefits in helping smokers to cut down or quit conventional smoking.
- Benefits to smokers' families to live in a smoke-free or reduced smoke environment.
- Benefits to society through a reduced burden on the public health budget and public hospitals.

The research found that the majority of smokers support the legalisation of e-cigarettes in Australia, but for the general population the reasons are more informative. In conducting the survey, people were asked if they support the legalisation of e-cigarettes prefaced by three different statements.

- *“as a health initiative”*
- *“to help smokers cut down”*
- *“if they are 95% safer”*

Overall, 41% of people support the legalisation of e-cigarettes as a health initiative. This spikes to 62% when prefaced by the fact they are 95% safer than smoke tobacco. Among smokers, 68% support legalisation “as a health initiative” but support jumps to 79% “if they are 95% safer”.

But the research explored people's reasons further. Again, widespread support for legalisation was the undeniable take-out. The arguments for legalisation with the strongest support among smokers and non-smokers are:

- If it means family members of smokers including children don't have to live in a smoke-filled environment.
- If medical research studies show that e-cigarettes reduce the health problems associated with tobacco smoke by 95%.
- If e-cigarettes can help reduce smoking, smokers should have a right to access them if they believe they will help them quit the habit and improve their health, their budget and the health of their family.
- If they help smokers cut down or quit smoking altogether.
- If e-cigarettes resulted in far fewer health problems for smokers and reduced the burden on the health system, freeing up hospital beds and money for other patients awaiting treatment.
- If e-cigarettes are proven conclusively to reduce smoking of tobacco cigarettes.

**A summary of the key findings of the AACS research into public opinions on e-cigarettes is included overleaf. For a detailed briefing of the full research report, contact AACS CEO**

73%

- of Australians would support the legalisation of e-cigarettes to help smokers quit

95%

- e-cigarettes are around 95% safer than smoked tobacco

21%

- of people are unaware that e-cigarettes are not legally available in Australia

44%

- of smokers have tried e-cigarettes

68%

- *Would you try e-cigarettes if they were readily available and cheaper than normal tobacco?* - 68% of smokers say yes; just 6% of non-smokers say they might

54%

- of people view the legalisation of e-cigarettes as a potential vote-influencing or even vote-changing issue.

## Counting the cost of customer inconvenience

The AACS wishes to briefly touch on the importance of customer service to the convenience store value proposition. Integral to good service is ensuring a convenient offering to our customers.

As we've emphasised previously, tobacco is a legal product. The AACS is of the firm belief that adult consumers have the right to purchase legal tobacco should they so choose.

Providing a convenient solution to those adult consumers is at the core of what we do. For the small businesses in the convenience store sector, convenience is our key point of difference.

We are open 24/7, 365 days per year, and we provide a unique service in the local communities in which we operate.

Legal tobacco is already a heavily regulated product category, and our stores are proven responsible retailers. We must be permitted to continue to provide our customers the service they expect.

## Conclusion

Tobacco is among the most heavily regulated products legally able to be sold in Australia.

The effect of these regulations disproportionately impacts small businesses, resulting in reduced sales, loss of economic opportunity and constrained employment opportunities.

The regulatory environment for tobacco retailing also fuels the illicit tobacco market, making Australia one of the most lucrative markets for criminals involved in the supply and sale of illicit tobacco globally.

It is time for small businesses to be permitted to serve their customers and run their businesses without the continual imposts of red tape and excessive regulations when it comes to the sale of legal tobacco.

We urge the Committee to recognise these imposts and call for a reduction in red tape in this area.

Most importantly, putting a stop to the regular excise increases on legal tobacco is necessary to avoid fuelling the illicit tobacco market any further.

Recommending a framework through which e-cigarettes can legally be sold in Australia is another important area requiring urgent attention.

The AACS welcomes the opportunity to work with the Committee throughout the inquiry. Feel free to contact me at any time to discuss this submission, and the implications for small business, further.

**The AACS is not an arm of, nor does it lobby on behalf of, the tobacco industry. It is the peak body for the convenience industry in Australia, representing the interests of some 6,000 stores.**

**Jeff Rogut FAIM MAICD**  
**Chief Executive Officer**  
**Australasian Association of Convenience Stores Limited**