



Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

166 William Street
Woolloomooloo 2011
NSW Australia

Locked Bag 6000
Potts Point 1335
NSW Australia

Tel +61 2 9370 1500
Fax +61 2 9370 1188
www.bata.com.au

Inquiry into the Regulatory Powers (Standardisation Reform) Bill 2020

British American Tobacco Australia (BATA) welcomes the opportunity to contribute to the Inquiry into the Regulatory Powers (Standardisation Reform) Bill 2020. BATA supports the government's regulatory reform agenda to simplify and streamline Commonwealth regulatory powers across the statute book.

We note that the Bill makes amendments to six Commonwealth Acts, however our comments will predominantly relate to the *Tobacco Advertising Prohibition Act 1992* (TAP Act) and the *Tobacco Plain Packaging Act 2011* (TPP Act).

BATA acknowledges the work done by the Federal Government and its agencies to disrupt the smuggling and distribution of illegal tobacco in Australia, including the establishment of the Illicit Tobacco Taskforce (ITTF). However, with illegal tobacco consumption at an all-time high, there is an urgent need for further action to address this growing problem.

According to KPMG, the consumption of illegal tobacco cost Australians \$3.4 billion in lost revenue from tobacco excise in 2019 alone¹ and found the consumption of illegal tobacco increased by nearly 50 per cent from 2018 to 2019².

BATA submits that the proposed changes to the TAP Act and the TPP Act will help address this growing problem, with some minor additional measures suggested below.

It is also worth noting that the Parliamentary Joint Committee on Law Enforcement recently delivered their final report into Illicit Tobacco in Australia. The committee made a number of recommendations, including that all aspects of illicit tobacco enforcement be removed from the portfolio responsibility of the Department of Health and transferred to the Department of Home Affairs³.

BATA believes that it makes sense for all aspects of illegal tobacco, including the provisions under the TAP Act and the TPP Act to sit with the Department of Home Affairs.

¹ KPMG, Illicit Tobacco in Australia. 2019 Full Year Report

² Ibid

³ Parliamentary Joint Committee on Law Enforcement, Inquiry into illicit tobacco, Recommendation 3, page 29.

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportint/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

Tobacco Advertising Prohibition Act 1992 (TAP Act)

BATA supports the introduction of regulatory powers to apply the standard monitoring, investigations, enforceable undertakings and injunctions provisions contained in the Regulatory Powers Act. Furthermore, we are of the view that this is an important and long overdue amendment.

In relation to the new section 25G – Appointment of authorised officers, BATA makes the following comments. People who can be appointed as authorised officers to enforce the TAP Act are, relevantly, limited to a person who is appointed under the Public Service Act or a member or special member of the Australian Federal Police.

Given tobacco products are sold in a large number of retail outlets across Australia we recommend that law enforcement agencies including members of state or territory police forces also be designated as authorised officers for the purposes of the TAP Act. This would greatly increase the likelihood of detection of breaches of the TAP Act.

Additionally, the proposed amendment requires individuals to be identified as authorised officers, we would suggest removing this requirement and providing that any member of the AFP or their state and territory equivalents should be authorised officers.

Finally, the proposed sub-section 25G (3) limits the appointment of authorised officers to a specified period of time. BATA would propose that no time limit be imposed on an authorised officer, and suggest that once appointed, an authorised officer is so appointed until they cease employment with the police or Commonwealth Public Service.

Tobacco Plain Packaging Act 2011 (TPP Act)

BATA supports amendments designed to simplify and clarify investigations, however we are of the view, as noted above that the opportunity to extend these powers to state and territory based law enforcement agencies maximises the potential for enforcement.

As noted above BATA submits that should this be extended to others in addition to a person who is appointed under the Public Service Act or a member or special member of the Australian Federal Police that no time limit be imposed on these authorised officers.

Conclusion

BATA appreciates the time the Senate Legal and Constitutional Affairs Legislation Committee takes to consider submissions.

With illegal tobacco now representing over 20% of the market any additional measures and enforcement to ensure ongoing compliance with Australia's strict tobacco control laws is welcome.

While the efforts of the Australian Government to introduce tougher restrictions on illegal tobacco through enforcement measures have been commendable to date, there is the opportunity to extend these powers to state and territory law enforcement agencies to further combat illegal tobacco and ensure ongoing compliance.

BATA welcomes any opportunity to further discuss our submission to this inquiry.