



**IMPERIAL
BRANDS**
Australasia

IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel: +61 2 9881 0888
Fax: +61 2 9881 0700

21 January 2021
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

legcon.sen@aph.gov.au

RE: Regulatory Powers (Standardisation Reform) Bill 2020 [Provisions]

BACKGROUND

Imperial Brands Australasia ("Imperial") is an Australian-based wholly owned subsidiary of Imperial Brands PLC, an international fast-moving consumer goods company specialising in tobacco and non-tobacco products. Imperial entered the Australian market in September 1999 at the request of the ACCC to ensure that competition was maintained following the global merger between British American Tobacco (BAT) and Rothmans International.

INTRODUCTION

Imperial welcomes the opportunity to participate in the Legal and Constitutional Affairs Committee Inquiry on Regulatory Powers. Imperial participates in a range of government consultations that are relevant to our business. We do this on the basis that our views will be considered in an objective manner and that the evidence and views we provide will be properly evaluated, with due regard given to relevant legal and legislative requirements and the principles of best practice regulation. We are a legal industry, we sell a legal product, and comply with high standards of regulation.

We would like to re-affirm that we recognise the role of Governments and Public Health Authorities in the regulation of tobacco and non-tobacco nicotine products and support those measures that are reasonable, proportionate and evidence based.

We commend the Federal Government on the recent steps taken to address the serious issue of illicit tobacco trade in Australia. Adopting the Black Economy Taskforce recommendations, the May 2018 budget measures which included the creation of a multi-agency taskforce, expanded powers



**IMPERIAL
BRANDS**
Australasia

IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel: +61 2 9881 0888
Fax: +61 2 9881 0700

for the Australian Taxation Office and changes to import requirements will strengthen the ability of government departments and agencies to combat illicit trade. Significant steps have been taken, although much remains to be done. It is an unfortunate fact that the regularly evolving nature of illicit supply has proven the illicit tobacco trade to be a highly flexible and responsive business phenomenon. The supply of illicit tobacco routinely evolves to take advantage of perceived “loopholes” and in reflexive response to government activity.

THE ILLICIT TOBACCO TRADE

The KPMG Illicit Tobacco in Australia 2019 Full year Report confirms that the black market for illicit tobacco has continued to entrench itself as a significant segment of the tobacco market in Australia. At 20.7% of consumption, the illicit market represents one in every five cigarettes and \$3.41 billion dollars in lost revenue to the Government. This is a marked increase from the previous year’s figure of 14.1%.

It is necessary to highlight that the illicit tobacco trade is intimately linked to excise. Australia is a high tax environment for tobacco products and this essentially drives both the demand, and supply side of the equation. Excise increases result in higher prices, driving down trading and, ultimately, movement of consumers to the illicit market. These large excise increases also fuel the black market by making it even more lucrative for organised criminals to smuggle illegal tobacco into Australia. For example, a pack of 20 cigarettes is up to 15 times more expensive in Australia than Indonesia¹. These high profit margins undoubtedly provide an attractive and valuable source of income for organised crime syndicates who are increasingly involved in the illegal trade.

COMMENTS AND RECOMMENDATIONS ON REGULATORY POWERS (STANDARDISATION REFORM) BILL 2020 [PROVISIONS]

Imperial neither supports nor opposes the *Regulatory Powers (Standardisation Reform) Bill 2020 (Cth) (Bill)*. However, we are concerned that the Bill’s amendments do not sufficiently subject illicit tobacco products or packaging that breaches the *Tobacco Plain Packaging Act 2011 (Cth) (TPPA)* to the monitoring and investigations provisions in the *Regulatory Powers (Standard Provisions) Act 2014 (Cth) (Regulatory Powers Act)*. The amendments appear to assume that contraventions of

¹ KPMG Illicit Tobacco in Australia , 2019 Full Year Report, 05 May 2020



IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel: +61 2 9881 0888
Fax: +61 2 9881 0700

the TPPA only involve the legitimate tobacco industry and miss the opportunity to improve detection capabilities of plain packaging violations in the illicit trade.

The ATO estimated that the net tobacco 'tax gap' within the Australian economy covering the three financial years from 2015-16 to 2017-18 to be 5 per cent or \$647 million. The Parliamentary Joint Committee on Law Enforcement found that this ATO estimate 'is likely to now be the most independent and verifiable data to estimate the size of the illicit tobacco market'. Separately, KPMG estimated the total level of tobacco consumption in Australia was 14.9 million kilograms in 2019 and that 3.1 million kilograms of that tobacco was illicit. KPMG further estimated that had the 3.1 million kilograms been consumed in the legitimate market, it would have represented an excise amount of \$3.41 billion.

The Black Economy Taskforce found that organised criminals are attracted to dealing in illicit tobacco because it is more profitable and less risky than dealing in other drugs. Similarly, the Joint Committee on Law Enforcement observed, based on considerable evidence presented to it that criminal organisations 'are involved in all aspects of the illicit tobacco supply chain' and that there was 'a general consensus amongst submitters that the trade in illicit tobacco was attractive as it is seen as a low risk, high profit venture'.

The Black Economy Taskforce observed that while all cigarettes cause serious health problems, illicit tobacco 'can be even worse as it may be produced in unhygienic conditions and, if not properly dried, will be mouldy and can lead to complicated fungal and other lung infections. The Department of Health also acknowledged before the Joint Committee on Law Enforcement that it takes a significant interest in illicit tobacco from a health perspective because its interest is ensuring that consumers 'are provided with the full suite of government strategies to reduce smoking prevalence and tobacco consumption in Australia'.

The Black Economy Taskforce found that 'a lot of illicit tobacco may be packaged in containers which do not fully comply with the plain packaging laws'. The Commonwealth Government recognised this with the introduction of the 'reasonable suspicion' illicit tobacco offences into the *Taxation Administration Act 1953 (Cth)* because the matters taken to satisfy the 'reasonable to suspect requirement' include that the tobacco or its packaging does not comply with the TPPA.



**IMPERIAL
BRANDS**
Australasia

IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel: +61 2 9881 0888
Fax: +61 2 9881 0700

The Joint Committee on Law Enforcement also subsequently noted that 'some law enforcement agencies and members of the tobacco industry see Australia's tobacco plain packaging laws as a potentially useful tool in tackling the illicit tobacco market'.

If passed, the Bill will insert a new part into the TPPA that triggers the standard monitoring provisions of the Regulatory Powers Act. Those provisions will apply to offences and civil penalties under the TPPA and also offences under the *Crimes Act 1914 (Cth)* or the Criminal Code that relate to the TPPA. These amendments will complement s 52(1) of the TPPA which already subjects those offences and penalties to the investigation provisions of the *Regulatory Powers Act*.

Imperial respectfully submits that regardless of the actual purpose of the Bill, its amendments and the existing provisions of the TPPA, *Crimes Act 1914 (Cth)* and Criminal Code should apply equally to the illicit tobacco trade and the legitimate tobacco industry. Therefore, this legislation provides further potential armoury in combatting illicit tobacco and organised crime. Indeed, the Bill is an opportunity identified by the Joint Committee on Law Enforcement to scale up the Department of Health's intelligence gathering and sharing capacities.

The shortcoming with the Bill and the current TPPA is that the standard monitoring and investigations provisions under the *Regulatory Powers Act* will miss many illicit tobacco offences. In particular, the Bill and the TPPA do not catch any of the illicit tobacco offences under the *Customs Act 1901 (Cth)*, *Excise Act 1901 (Cth)*, or the *Taxation Administration Act 1953 (Cth)*. It is those Acts that provide for the most common and important illicit tobacco offences.

Consequently, the amendments do not maximise the potential for detecting plain packaging breaches to the fullest possible extent. They also miss the opportunity to act upon the view of the Joint Committee on Law Enforcement that the Department of Health should collaborate with relevant law enforcement agencies on illicit tobacco.

Imperial recommends the Bill be amended to ensure the standard monitoring and investigations provisions of the *Regulatory Powers Act* apply to offences under the *Customs Act 1901 (Cth)*, *Excise Act 1901 (Cth)*, or the *Taxation Administration Act 1953 (Cth)* that relate to the TPPA.



**IMPERIAL
BRANDS**
Australasia

IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel: +61 2 9881 0888
Fax: +61 2 9881 0700

CONCLUSION

While Imperial is broadly supportive of the proposed new provisions to regulatory powers, the impacts of this legislation only affect the legal industry and we respectfully suggest our recommendations be considered to address the significant and detrimental impacts of the illicit tobacco trade in Australia.

We thank the Committee for the opportunity to submit to the Inquiry and are happy to discuss any aspects of this submission further with the Committee.

Gary Dickson

Regulatory & Legal Compliance Manager
Imperial Brands Australasia