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Legislation Public Health (Tobacco and Other Products) Bill 2023, and the Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023

Retail and Trade Brands Advocacy (RTBA) is a coalition of businesses, retailers and trademark holders working to minimise the impact of criminal conduct on the Asia-Pacific trading environment. We unite, mobilise and advocate for effective change with regard to regulatory, financial and taxation issues affecting the supply chain.

We have a specific focus on illicit items, counterfeit products and ensuring brand trademarks are upheld. This work directly supports a healthy retail industry, supporting retailers and small businesses and ensuring they get a fair go.

Illicit Tobacco

The illicit tobacco trade is an issue that has had dire effects on the grocery, liquor and retail business throughout Australia over the past decade and it continues to get more severe. Illicit tobacco trade throughout Australia is causing major economic burden on business and trade as well as harming the communities they operate in, we are seeing a sustained presence of organised crime entering the retail sector either through front operations or intimidation.

In this year's FTI report into illicit tobacco in Australia it was reported that the current market for illicit products approximately 24% of the total tobacco market in Australia. This is an alarming figure as it means that almost one in every four cigarettes consumed in Australia is illicit.

Illegal tobacco consumption poses a significant threat to the livelihood of grocery stores in Australia and the financial wellbeing of families who run them.

The impact of this illegal trade is particularly concerning as the country continues to recover from the economic impact of the COVID-19 pandemic.

The ATO's tax gap estimates for 2020-21 indicate that the government is expected to lose \$1.89 billion to illegal tobacco, a significant increase from the previous year. This highlights the urgent need to address this issue to protect both the government's revenue and the financial stability of families and businesses. This estimate is for excise and not the GST or retail value of the product which is additionally going to organised crime syndicates.

RTBA recommends that the Australian Government:

- 1) More budget funding should be allocated for law enforcement such as the Illicit Tobacco Task Force (ITTF);
- 2) There should be better communication and support from State and Territory law enforcement to Federal law enforcement to stop illicit tobacco from being imported and sold in Australia
- 3) Actively seek legislative change for States and Territories to have the laws to enforce against illegal tobacco; and
- 4) Introduce a national licensing law for the sale of tobacco products to counter the illicit trade of tobacco.

Tobacco Control Legislation

RTBA builds on this submission and provides the following observations:

- Commencement:
 - Six months is not a sufficient timeframe for a transition of this size for industry, even with advance consultation. A rushed implementation will see the production of counterfeit products being quickly produced and rushed into the Australian market. To ensure retailers can effectively deal with the proposed changes an education process will be required for both industry and consumers. Consultation with law enforcement will also be vital to ensure there are sufficient resources, co-ordination, and prioritisation across federal and state authorities to ensure that the law can be upheld. This is not just important for industry and consumer protection, but also to meet community expectations. We know from previous changes that retailers will struggle to meet stocking and other requirements.
 - RTBA is broadly supportive of the goals of the legislation, however, does not support proposals where these goals will be compromised if consumers decide to switch to unregulated and cheaper products in the black market.
- Advertising and sponsorship:
 - RTBA notes the restrictions on advertising, which are in line with community expectations that tobacco products are not advertised, and that smoking is not promoted as an activity.
 - We also note the exemption for information published in trade publications about tobacco products, which is welcome and should be maintained through the proposed legislation.
 - Given the government has signalled intent to grant the Minister powers under Chapter 3 to ban global consumer colour branding such as "gold" or "blue", we would like some assurances that industry will be able to discuss the differences between products in regards to things like flavours and strengths, and their equivalents in current marketing rubric, in order to support the retail industry to understand the products they are selling and be able to communicate effectively and clearly with consumers.
- Packaging:
 - RTBA strongly encourages the Government to consider the impacts of inconsistent packaging limits creating opportunities for illicit sellers to produce counterfeit products. This is a major concern for RTBA, which directly impacts the consumer options and disadvantages Australian retailers.
 - We support standardised packaging which will help retailers in the long run and these standards should be as clearly outlined as possible to ensure that retailers can continue to

point to illegal versions easily. The Government should consider fact sheets and other educational tools.

- Given the sweeping powers in this exposure draft, the proposals would likely lead to confusion where the need is for clarity, both for manufacturers and for consumers, and especially for our growing and vitally important tourism sector.
 - We urge a detailed and thorough engagement with the retail industry and marketing professionals to discuss the impacts of these on the sector and on consumers.
- Reporting requirements:
- RTBA notes there are significant new proposals in this legislation which will add red tape to medium-sized businesses and curb the ability of the Government to undertake crucial work in enforcement and compliance.
 - Legal tobacco sellers are already taxed through the Federal Government, and in most parts of the country must comply with state licensing schemes and otherwise. The reporting requirements, such as they may apply to a business that imports tobacco products to meet customer demand, add to this and will place immense pressure on importers to report quarterly and annually on different measures and metrics.
 - RTBA does not support the expansive nature of the reporting requirements, particularly those which go to the commercial operations of businesses and numbers and details of stock sold. This activity does nothing to curb illicit retailers who obviously will not be providing such reports.
 - We urge further consideration of this including consultation with retail industry and importers, in order to clarify the potential impacts and avoid adding unnecessary reporting obligations on legal businesses.

Conclusion

RTBA's primary concern is ensuring Australia is not further impacted by counterfeit products and illicit markets.

Already, this is a problem Australia faces, with illicit tobacco costing the economy, law enforcement and Australian businesses.

The illicit tobacco market in Australia is significant and pervasive. On some reports, it accounts for around one-quarter of total consumption.

This should not be tolerated in an advanced economy like Australia. For example, we would not tolerate such high volumes of moonshine in the alcohol market, faked paintings in the art world, or in fashion products. These would be hugely embarrassing to Australia because of the impact on legitimate businesses. Yet government policy has inadvertently led to this growth of illegal products in the tobacco category.

When combined with the tax increased flagged by the government, we are concerned that this legislation, while well-intentioned, will only add to the incentives for criminal networks to supply consumers with stolen, fake, or substitute products at discount prices, further eroding the tax base and diverting consumer spending into the black economy.

The Commissioner for the Australian Border Force has stated publicly that Australia's borders are being infiltrated by illegal tobacco daily, and more needs to be done to support law enforcement with both

power and resources to fight criminals. Commissioner Outram has also stated that the illicit tobacco industry – and the excise that doesn't attach to it – forms a nexus with organised crime.

This is a genuine and pressing concern for Australian retailers and should be the number one priority for tobacco regulatory changes.

While the proposed Tobacco Control legislation seeks to reduce Australia's smoking rates, it completely forgets the illicit market. It is RTBA's firm view that the new proposed restrictions in the draft legislation and the ensuing confusion for consumers and businesses will be another factor that drives people away from the regulated market, while opening the gap for illicit markets to capitalise on.

Kind regards,

Heath Michael
Managing Director
RTBA International