

1 June 2015

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## **RE: TOBACCO FREE GENERATION**

Imperial Tobacco Australia Limited (“ITA”) welcomes the opportunity to participate in the Legislative Council Sessional Committee Government Administration A inquiry into the “Tobacco Free Generation” Bill.

Imperial Tobacco Australia is an Australian-based wholly owned subsidiary of Imperial Tobacco Group PLC, the world’s fourth largest international tobacco company.

ITA 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.

We have a share of approximately 25% of the total tobacco market and approximately 60% of the loose (roll-your-own) market in Australia.

### **Objective of Committee**

ITA notes that the Terms of Reference of the Committee – *for further consideration and a report* – are extremely broad. Having considered the statements of Members during the Second Reading Debate, ITA understands that the practicality and workability of the Bill are the primary concerns of many Members. As a result, our submissions are primarily focused on that area of concern together with the impact on Tasmanian retailers.

### **“Workability” of Proposal**

ITA was grateful for the opportunity to provide a briefing to Members prior to consideration of the Bill in the Council. During the course of that briefing, we raised

practicality and workability as key concerns. We note that several Members share concerns in this respect.

### *External Jurisdictions*

We are not alone in respect of our workability and practicality concerns. Tasmania is not the first jurisdiction to consider extending age-based prohibition beyond the age of majority. It has been considered both overseas and in Australia.

In 2009, the South Australian Parliament rejected the proposal based primarily on practical concerns; a significant increase in compliance burden placed upon small business and an increase in the illegal trade of tobacco.

Looking overseas, the Singapore Minister for Health rejected the proposal based on concerns of implementing and enforcing a ban. The minister quite specifically pointed at the ease of circumvention of the measure as a reason for rejecting it.

### *Restricting Supply to Reduce Demand*

The central tenet of the Bill is that supply will be restricted which will – contrary to the fundamental principles of economics – result in contraction in supply. The concept that curtailing supply automatically cancels demand is both logically and factually absurd. Prohibition of alcohol in the United States famously didn't work. If prohibition in the modern era were successful, there would be no marijuana use, no heroin, no methamphetamines and, more obviously, no underage use of alcohol.

The proponent of the Bill contradicts the central purpose of the proposal by asserting *“these kids will still be able to smoke and they will still be able to source tobacco products lawfully”*.<sup>1</sup> Within this assertion lie the primary questions to which the Committee must turn its attention; will supply be practically lawful in Tasmania and will the move result in alternative supply chains?

## **Practicality**

### *Lawful Purchase*

Mr Dean has contended that Tasmanian retail businesses will not be affected as only the direct purchase by people born after 2000 is precluded. The claim is based on the logic that a third party can purchase tobacco products and then supply to a member of the TFG.

The Bill creates an offence to sell to a class of persons (67J(1)) which is clear. The following subsection, however, extends the offence noting that a retailer must not

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<sup>1</sup> Ivan Dean, *Hansard*, Second Reading Debate

“permit the sale, loan gift or supply” of a tobacco product to a member of the TFG. Members were rightly concerned that a retailer therefore would be committing an offence in providing a product to a legal purchaser if that purchaser then provided the product to a member of the TFG.

The Macquarie Dictionary notes that “permit” includes “to let something be done or occur”, to “tolerate or agree to” and “to grant permission.” Each of these contemplates the knowledge of the retailer that the onward provision was to occur and hence a degree of complicity. That may well be Mr Dean’s intent. Troublingly for retailers, though, is that the definition of “permit” further includes “to afford opportunity or possibility.” Such definition does not imply knowledge on behalf of the retailer that the product will be provided to a third party – merely that there transaction gives rise to opportunity or possibility. Retailers are therefore quite rightly concerned – and Mr Dean’s assertion of zero effect on retailers is questionable.

Moreover, the contention that Tasmanian retailers will suffer no negative effect is based on the theory that a legal purchaser will supply to a member of the TFG *without receiving payment*. Mr Dean did not explicitly state this, but the reality is that the law prescribes no other means for the transaction to occur. Should the initial purchaser accept payment in return for their supply to a defined person, they will be in breach of Section 74A of the Public Health Act (1997) which requires that they hold a tobacco sellers license.

### *Affecting Tasmanian Business*

Mr Dean has stated that “the bill will affect only eight specialist tobacconists.”<sup>2</sup> On the contrary, there are in fact approximately 970 tobacco retailers in Tasmania, all of whom will be affected by this proposal.

ITA believes that the Committee must take evidence from Tasmanian retailers to fully understand the implications for Tasmanian business and Tasmanian jobs. Tobacco sales underpin many of those businesses; without the ability to sell tobacco into the future, many of those businesses will become marginal, at best.

Tasmanian retailers know their business is valued on future profit – which this law would devastate immediately.

The contention of the Bill’s proponents that time is allowed for diversification utterly fails to comprehend the percentage of turnover and profitability that the product accounts for. ITA may be able to provide guidance on these matters to the Committee at a hearing on the basis of confidentiality.

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<sup>2</sup> Ivan Dean, *Hansard*, Second Reading Debate

## Alternative Supply Chains

### *Purchase from Interstate*

In recent decades, Australian Governments have moved to harmonise tobacco control laws. The most obvious example was the move to align taxation rates to minimise flow of tobacco products across state borders, most notably Queensland into New South Wales. The fact that such a move was considered necessary underscores the ability of tobacco products to freely move across borders.

This Bill moves in precisely the opposite direction and, absurdly, does so at a time when interstate and, indeed, international trade has become dramatically simpler with the rise of online sale and purchase.

The Australian Constitution provides for free trade between states as a clear and unequivocal right in Australia. Add to that right the existence of the internet providing the capacity for retail supply without geographical restriction and the proposal falls flat in an instant. In short, Tasmanian consumers will purchase from interstate defeating the purpose of the Bill whilst unfairly punishing lawful, tax paying, Tasmanian businesses which employ Tasmanians.

Mr Dean stated in a public radio interview<sup>3</sup> that online purchase from interstate was unlikely because “they can still acquire them through retailers.” This contention is, of course, entirely incorrect and misleading according to the terms of the Bill which expressly prohibits the “sale, loan, gift or supply” by retailers.

### *Illicit Tobacco Market*

Noting that the illegal trade in tobacco was identified by both South Australia and Singapore as key reasons for rejecting the proposal in those jurisdictions, further consideration of the subject by the Committee is warranted.

This is not the first time that the issue of illicit supply has arisen before Members. ITA raised the issue and provided details of it during our briefing. It was mentioned by Members during the course of the second reading debate, including the proposer of the Bill:

*“It has been a difficult part of this bill convincing people that persons born after 2000 will still be able to access tobacco products legally.”<sup>4</sup>*

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<sup>3</sup> Ben Fordham, 2GB Sydney

<sup>4</sup> Ivan Dean, *Hansard*, Second Reading Debate

It has been difficult to convince people as such primarily because it will clearly be the case that legally accessing tobacco products will be practically impossible. The assertion relies on the contention that those Tasmanian's who can *purchase* tobacco will be willing to provide it to those who cannot *in the absence of a financial transaction*. In other words, Mr Dean asserts that some Tasmanians will be prepared to *give* other Tasmanians a product widely recognised as extremely expensive.

As intimated earlier, demand will not be affected by a reduction in one channel of supply. Consumers search either for a new method of supply or, more likely, avail themselves of an existing alternative.

Ignoring the existence of the illicit trade in tobacco has become solely the realm of anti-tobacco zealots who have convinced themselves to ignore reality. Mr Dean refers<sup>5</sup> to papers published via academic website *The Conversation* to suggest that illicit trade is not prevalent in Australia. That reference conveniently ignores that the authors of the report are well known and recognised anti-tobacco advocates with a clear bias on the subject.

The World Health Organisation recognises that “[F]rom many angles, the illicit trade of tobacco products is a major global concern, including health, legal and economic, governance and corruption. The illicit tobacco market may account for as much as one in every 10 cigarettes consumed globally.”

In Australia, illicit trade currently sits at approximately 14.5% of the total market representing \$1.35 billion dollars in lost revenue to the Government with lost revenue instead funding organised crime.<sup>6</sup> Instead of paying tax to the Australian Government, criminal gangs are profiting from this illegal tobacco trade at the expense of Australian taxpayers and law-abiding retailers.

The illicit market represents approximately 2.7 million kilograms of tobacco, or 3.3 billion cigarettes or more than 156 million packs of 20s sold on the black market in one year. Roughly 1 in 7 smokes is now illegal. That data is provided by KPMG LLP in a report commissioned by ITA and other tobacco manufacturers in Australia. Allegations of bias in that report are made by those who seek to downplay the existence of illicit tobacco. The Committee should be aware, however, that the KPMG report is considered by the Organisation for Economic Cooperation and Development (OECD) to be the “most authoritative assessment of the level of counterfeit and contraband cigarettes”.

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<sup>5</sup> Ivan Dean, *Hansard*, Second Reading Debate

<sup>6</sup> KPMG “Illicit Tobacco in Australia” 2014 Full Year Report, 30 March 2015

Tasmania is not exempted from illicit tobacco. The illegal supplies are already available and will quickly fill the gap. That means a supply chain with no product control, no compliance with packaging requirements and no qualms in supplying to underage consumers.

In Senate Estimates earlier this year (23 Feb 15), Roman Quaadvleig, the Chief Executive of ACBPS said, "Serious and organised crime will use the same infrastructural spine upon which it imports prohibited drugs to import tobacco" and "(Illicit tobacco)...now requires the wit and wherewithal of serious and organised crime."

The 2015 Australian Crime Commission Report states that organised crime remains entrenched within the illegal tobacco market in Australia and it continues to perceive involvement in this market as a low risk, high profit enterprise.<sup>7</sup>

According to the ACC, it is highly likely that the illegal tobacco market will remain attractive for serious and organised crime groups because of the very large profits that can be made with very low risk.<sup>8</sup>

By shifting demand from legal to already existing illicit channels, Tasmania seriously risks embedding organised crime in the state. Moreover, an inability to purchase or practically acquire tobacco products via legal channels will normalise illicit trade in the state which will in turn circumvent the simplest method to deter underage smoking. It would be absurd at best to believe that criminal gangs are deterred by the prospect of supplying product to underage consumers.

## **CONCLUSION**

The Committee has been asked to consider the practicability and workability of the Tobacco Free Generation Bill. This Bill is neither practical nor workable.

Imperial Tobacco Australian supports sensible, rational and practical regulation of tobacco products.

This Bill is none of these things. It represents an ideological objective to restrict the free choice of Tasmanians that is unnecessary, impractical and potentially even counterproductive.

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<sup>7</sup> <https://www.crimecommission.gov.au/sites/default/files/FINAL-ACC-OCA2015-180515.pdf>

<sup>8</sup> <https://www.crimecommission.gov.au/sites/default/files/FINAL-ACC-OCA2015-180515.pdf>

The demand for tobacco products is better met by well governed, tax-paying and responsible businesses that will work in partnership with stakeholders, rather than criminals who operate in the illicit market.

Imperial Tobacco Australia requests the opportunity to appear before the Committee, and with the Committee's discretion, provide further commercially confidential details, including specific information relating to the already existent illicit tobacco trade in Tasmania.