



**BRITISH AMERICAN  
TOBACCO  
AUSTRALIA**

## Tobacco Free Generation Bill

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*Submission by British American Tobacco Australia to the Tasmanian  
Legislative Council Inquiry into the Public Health Amendment (Tobacco Free  
Generation) Bill 2014*

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## 1. Introduction

Thank you for the opportunity to comment on the Tasmanian Legislative Council Inquiry into the Public Health Amendment (Tobacco Free Generation) Bill 2014 (the Bill).

British American Tobacco Australia (BATA) supports carefully considered, evidence based tobacco control measures and appreciates any opportunity to be involved in the development of such measures.

The idea of limiting the sale of tobacco to adults born after a certain year has been considered and discounted in South Australia, Tasmania, Singapore and other parts of the world. The lack of support for such a proposal derives from the fact that prohibitionist policies have a track record of failure and intervening in the choices made by informed adults requires a level of evidence, demonstrating a significant opposing benefit which simply does not exist in this case.

The Bill confuses the objective of tobacco harm reduction with simply placing additional burden and complexity on the day-to-day operations of Tasmanian small businesses.

There is an opportunity for the Tasmanian Government to follow international trends and become more progressive in its approach to tobacco harm reduction, as opposed to simply continuing to introduce punitive measures which are not evidence-based, do not work and have clear unintended consequences.

## 2. Confused objective

The Honourable Ivan Dean's Bill confuses an important, but often ignored, distinction between effective tobacco control policies, delivering positive public health outcomes and those merely designed to place further burden on tobacco companies and retailers.

Robust tobacco control policy has at its heart the objective of reducing tobacco-related harm. This objective is reflected in the goal of the "*Tasmanian Tobacco Action Plan 2011-2015*" "to significantly improve the health of Tasmanians by reducing the harm caused by tobacco in all its forms"<sup>1</sup> and should logically then shape subsequent tobacco control policy.

The Honourable Ivan Dean frames the Bill as a tool to prevent youth from smoking, an objective which BATA strongly supports. There is, however, an obvious distinction between this claim and the reality of what this Bill will achieve. Given it is illegal to sell tobacco products to anyone under the age of 18 in Tasmania, banning those born after the year 2000 from purchasing tobacco simply cannot achieve a further reduction in youth smoking.

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<sup>1</sup> Tasmanian Department of Health and Human Services, "*Tasmanian Tobacco Action Plan 2011-2015*", (2010), available from: [http://www.dhhs.tas.gov.au/data/assets/pdf\\_file/0009/53793/Tasmanian\\_Tobacco\\_Action\\_Plan\\_2011-2015.pdf](http://www.dhhs.tas.gov.au/data/assets/pdf_file/0009/53793/Tasmanian_Tobacco_Action_Plan_2011-2015.pdf), accessed 04 June 2015.

This Bill has been developed in isolation of the existing “*Tasmanian Tobacco Action Plan 2011-2015*” and logically will not achieve the stated objective of a reduction in youth smoking. Instead it would simply prevent adults from making the informed choice to purchase a legal product.

### **3. Prohibition is a dangerous and failed policy**

The proposal outlined in the Honourable Ivan Dean’s Bill is prohibition in all but name. History proves prohibition does not work. This ban would open up opportunities for the illegal market just as was seen in the case of alcohol prohibition in the early 20<sup>th</sup> century, in which unregulated products flourish and where the federal government would receive no excise.

When this initiative was previously raised, then Tasmanian Greens Health spokesperson Paul O’Halloran said;

*“A generation of smoke-free Tasmanians is a terrific objective to aim for, but the big brother approach of prohibition has never worked. You only need to look at alcohol prohibition and the war on drugs to see that prohibition is an ineffective and costly way to resolve issues such as this.”<sup>2</sup>*

The same sentiment has been echoed by numerous others both locally and internationally, including Tasmanian Premier Will Hodgman who has stated that the Government was;

*“not persuaded that prohibition would be effective in reducing the rates of smoking in Australia”<sup>3</sup>*

The Honourable Ivan Dean contends that the Bill can be distinguished from prohibition due to those born after the year 2000 being legally allowed to smoke as long as they don’t purchase the tobacco themselves. If anything, this would make things worse, not better. Given that those born after the year 2000 would still be legally allowed to smoke, we can expect smokers to source tobacco from family or friends, purchase it online or, as was the case with prohibition of alcohol, look to the already growing illegal tobacco market.

### **4. Proliferation of the illegal tobacco market**

The historic example of alcohol prohibition in early 20<sup>th</sup> century United States led to the establishment of an enormous black market in alcohol, an experience which led to a plethora of societal problems. Australia already has a significant illegal tobacco problem, which will only grow in Tasmania, should the Honourable Ivan Dean’s Bill be implemented. Considering that the total consumption of illegal tobacco

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<sup>2</sup> Zona Black, *The Examiner*, “Tobacco ban idea for those born after 2000”, (May 2012), available from: <http://www.examiner.com.au/story/86711/tobacco-ban-idea-for-those-born-after-2000/>, accessed 04 June 2015.

<sup>3</sup> *Ibid.*

products in Australia is at its highest ever rate of 14.5%<sup>4</sup>, it would be irresponsible for any government to implement regulation which would exacerbate the problem.

High tobacco excise rates and enormous regulatory burdens applicable to the sale of legal tobacco products already provide incentive enough for some retailers to sell illegal products and for adult smokers to seek it out. Prohibiting retailers from legally selling tobacco to adults will only make the option of selling highly profitable illegal tobacco products more attractive and encourage more smokers to purchase it.

If Governments are to avoid losing control of the industry altogether, they need to avoid simply added additional layers of complexity and regulation to an already heavily regulated industry and be more progressive in their approach to tobacco control.

## 5. Impacts on small business

In addition to the significant negative impact a rising illegal tobacco trade will have on honest small business operators there are a range of negative consequences to day-to-day operations which retailers themselves are best placed to highlight. BATA would encourage this Legislative Committee to ensure the concerns of these Tasmanian businesses are carefully considered before any further consideration is made to progressing this Bill.

At a broad level, however, there are issues with the retail implications of this policy which BATA would like to take the opportunity to highlight. In line with the Tasmanian Government's Red Tape Reduction agenda, placing further burden and complexity on small businesses who already comply with multiple layers of regulation simply to keep the doors open should be carefully considered.<sup>5</sup>

This Bill would completely extinguish the livelihood of all Tasmanian tobacconists and put the viability of many more small businesses in jeopardy. For the average convenience store, tobacco makes up nearly 36% of their revenue, whether over night or a period of years, this would cripple any business.<sup>6</sup>

Further, forcing retailers whose business model is centred in convenience and speed of service to ask every single adult customer wishing to buy a legal product for ID is a disproportionate burden with no clear benefit. As is driving retailers to a point in the not too distant future where we will see a 31-year-old sold cigarettes legally, while the 30-year-old, fully informed adult, standing next to them is refused.

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<sup>4</sup> KPMG, "Illicit tobacco in Australia: 2014 Full Year Report", (March 2015), available from: [http://www.bata.com.au/group/sites/bat\\_7wykg8.nsf/vwPagesWebLive/DO9T9289/\\$FILE/medMD9W6RKB.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO9T9289/$FILE/medMD9W6RKB.pdf?openelement), accessed 04 June 2015.

<sup>5</sup> Website of the Tasmanian Office of the Coordinator-General, "Red Tape Reduction", available from: [http://cg.tas.gov.au/home/red\\_tape\\_reduction](http://cg.tas.gov.au/home/red_tape_reduction), accessed 04 June 2015.

<sup>6</sup> Australian Association of Convenience Stores, "AACCS State of the Industry Report", (May 2015), available from: <http://www.aacs.org.au/>, accessed 04 June 2015.

This law will very quickly become an exercise in inhibiting an adult's right to choose, puts unnecessary additional complication on the operations of small business while failing to demonstrate any real public health benefit.

## 6. Alternative measures

The short sighted and punitive view which has shaped tobacco control regulation for some years has proven ineffective. If the Tasmanian Government truly seeks to address tobacco-related harm, it needs to take a more progressive approach to tobacco control solutions as is being seen in other jurisdictions around the world.

One such area which BATA would encourage the Tasmanian Government to act is the legalisation and appropriate regulation of e-cigarettes.

Australian public health thought leaders such as Professor Ron Borland, Nigel Gray - Distinguished Fellow in Cancer Prevention at Cancer Council Victoria<sup>7</sup>, Professor Wayne Hall - Inaugural Professor and Director of the Centre for Youth Substance Abuse Research at the University of Queensland<sup>8</sup> and Professor Alex Wodak of St Vincent's Hospital in Sydney<sup>9</sup> are supporting calls for legal access to electronic cigarettes to allow greater numbers of Australian smokers to reduce, replace and quit their use of tobacco.

If the Tasmanian Government wishes to reduce the smoking rate to 10% by 2020 as outlined in the "Tasmanian Tobacco Action Plan 2011-2015", consideration ought to be given to a recent letter on e-cigarettes that was addressed to the World Health Organisation. Signed by over a 50 globally-renowned public health experts, including Borland, Hall, Gartner and Gray, the letter articulates the benefits of e-cigarettes.

*"The potential for tobacco harm reduction products to reduce the burden of smoking related disease is very large, and these products could be among the most significant health innovations in the 21st Century – perhaps saving hundreds of millions of lives".<sup>10</sup>*

This advocacy is validated by a number of key pieces of data:

- E-cigarettes are at least 95% less risky than combusted tobacco<sup>11</sup>

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<sup>7</sup> Debate with Prof. Simon Chapman at the World Cancer Congress in Melbourne, December 2014.

<sup>8</sup> Hall, W., Gartner, C., and Forlini, C., *Addiction Journal*, Vol. 110, No.6 2015, "Ethical issues raised by a ban on the sale of electronic nicotine devices", (April 2015), available from: <http://onlinelibrary.wiley.com>, accessed 04 June 2015.

<sup>9</sup> Medical Organisations supporting Vaping and Electronic cigarettes, available from: <https://sciencecig.wordpress.com/supporters/>, accessed 04 June 2015.

<sup>10</sup> Bates, C. et al, Statement from specialists in nicotine science and public health policy, May 2014, available from: <http://www.clivebates.com/?p=2185>, accessed 09 June 2015.

<sup>11</sup> Nutt D, J, Phillips L, D, Balfour D, Curran H, V, Dockrell M, Foulds J, Fagerstrom K, Letlape K, Milton A, Polosa R, Ramsey J, Sweanor D, *European Addiction Research*, Vol. 20, No.5 2014, "Estimating the Harms of Nicotine-Containing Products Using the MCDA Approach", p.218-225, available from: (<http://www.karger.com/Article/FullText/360220>), accessed 04 June 2015.

- E-cigarettes are an effective tool in reducing tobacco harm by helping smokers reduce, replace and quit their tobacco addiction<sup>12</sup>, and also prevent relapse<sup>13</sup>
- E-cigarettes do not act as a gateway to tobacco<sup>14</sup> (UK government data showing never smokers compose 0.14% of electronic cigarette users)<sup>15</sup>

As recently as April 2015 an Australian independent academic review of the evidence on electronic cigarettes found:

“...an association between nicotine-enriched e-cigarette use and smoking cessation, suggesting that the devices may be an effective alternative smoking cessation method. We also found that use of e-cigarettes was also associated with a reduction in the number of cigarettes used, suggesting they may also have a role in tobacco harm reduction programs...”<sup>16</sup>

A focus on continued enforcement of the myriad of existing tobacco control laws and support for education campaigns as outlined in the “2011-2015 Tasmanian Tobacco Action Plan” should also be considered as effective measures to focus on before taking a gamble on this Bill.

If the Tasmanian Government is serious about reducing tobacco-related harm, BATA would welcome the opportunity to discuss this and other more progressive alternatives.

## 7. Communication with tobacco companies

BATA notes that the Tasmanian Department of Health and Human Services website states that

*‘Tobacco companies do not contribute to the development or implementation of tobacco control policy in Tasmania’ and further, that it is the practice of the Government ‘to only communicate with tobacco companies in their capacity as a tobacco licence holder or with respect to existing tobacco legislation.’<sup>17</sup>*

<sup>12</sup> West, R., Beard E. and Brown, J., *Smoking in England*, “Electronic cigarettes in England - latest trends”, (April 2015). Available from: <http://www.smokinginengland.info/latest-statistics/>, accessed 06 June 2015.

<sup>13</sup> Etter, J-F., Bullen, C., *Addictive Behaviours*, Vol. 39, No. 2 2014, “A longitudinal study of electronic cigarette users”, p491-4, available from: <http://www.sciencedirect.com/science/article/pii/S0306460313003304>, accessed 04 June 2015.

<sup>14</sup> Action on Smoking and Health UK, “Over 2 million Britons now regularly use electronic cigarettes”, April 2014, available from: <http://www.ash.org.uk/media-room/press-releases/:over-2-million-britons-now-regularly-use-electronic-cigarettes>, accessed 04 June 2015.

<sup>15</sup> Office for National Statistics, “Adult Smoking Habits in Great Britain, 2013”, available from: [http://www.ons.gov.uk/ons/dcp171778\\_386291.pdf](http://www.ons.gov.uk/ons/dcp171778_386291.pdf), accessed 04 June 2015.

<sup>16</sup> Rahman, M-A., Hann, N., Wilson, A., Mnatzaganian, G. and Worrall-Carter, L., *PLoS One*, Vol. 10 No.3 2015, “E-Cigarettes and Smoking Cessation: Evidence from a Systematic Review and Meta-Analysis”, (March 2015), available from: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4378973/>, accessed 04 June 2015.

<sup>17</sup> Tasmanian Department of Health and Human Services, “Communication with tobacco companies”, available from: [http://www.dhhs.tas.gov.au/publichealth/tobacco\\_control/tobacco\\_action](http://www.dhhs.tas.gov.au/publichealth/tobacco_control/tobacco_action), accessed on 04 June 2015.

This position presumably stems from a misinterpretation of the guidelines relating to implementation Article 5.3 of the World Health Organisation's Framework Convention on Tobacco Control (FCTC).<sup>18</sup>

These guidelines are intended as recommendations to parties to the FCTC on how they might implement each article in their country. The guidelines for Article 5.3 suggest member states should act to avoid undue influence of the tobacco industry in shaping regulation and that interactions with the industry ought to be undertaken in a transparent manner. There is no directive in the guidelines that tobacco companies must be excluded from any consultation relating to the development of new policies.

Such a blanket ban on the involvement of a legal company in the development of policies relating to their business operation raises concerns with the fulsomeness of policy approaches being developed. It also risks breaking the constitutionally protected right to freedom of expression on political matters. In providing this submission BATA trusts that this misinterpretation and consequent undemocratic, if not unconstitutional, principle will not influence considerations made by this Legislative Committee.

## 8. Conclusion

Regardless of the policy area, there is a minimum standard which governments must apply when implementing regulation. In recent years the approach to tobacco control regulation has been more focused on introducing punitive measures rather than on developing robust policy or even achieving positive health outcomes.

The Bill confuses the objectives of harm reduction and constraining the livelihood of retailers; it lacks evidence demonstrating that the proposals will result in a reduction in harm and pays no regard to the various and significant negative impacts the proposals are likely to have on the retail industry.

As an alternative, BATA would welcome the opportunity to discuss further the potential which exists for the Tasmanian Government to pursue more progressive solutions to tobacco-harm reduction and achievement of its objectives via proven methods.

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<sup>18</sup> World Health Organisation, "Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control", available from: [http://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](http://www.who.int/fctc/guidelines/article_5_3.pdf), accessed on 04 June 2015.