



PHILIP MORRIS
LIMITED

Submission to the Legislative Council Government Administration
Committee 'A' inquiring into the:
PUBLIC HEALTH AMENDMENT (TOBACCO FREE GENERATION) BILL 2014

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Executive Summary

The proposals outlined in the *Public Health Amendment (Tobacco Free Generation) Bill 2014* (“the Bill”) to ban sales of otherwise legal tobacco products to adults born after the year 2000 amounts to selective prohibition of a consumer product that has been legally available in Tasmania for many generations.

If passed, this Bill will:

- Provide further incentives for organised criminals to flood Tasmania with cheap, tax-free cigarettes sold on an unregulated black market;
- Place additional strain on Tasmania’s law enforcement resources;
- Punish law abiding retailers; and
- Unnecessarily “criminalise” an entire cohort of adults.

Experience tells us that this type of prohibition does not work. It merely hands over control of the market to criminal organisations who would willingly supply illegal, unregulated products to people on the black market.

One only needs to consider the failed American attempt at alcohol prohibition between 1920 and 1933. Prohibition did not stop people drinking – it simply changed the nature and modus operandi of the suppliers rather than the behaviour of the consumers. Demand for alcohol in the community continued and it became an underground activity. The people distilling, brewing, importing, and selling alcohol ceased to be licensed, regulated businesses and instead, organised criminals selling illegal liquor of often dubious quality became the chief suppliers and a black market proliferated.

The tobacco black market is already thriving in Australia as a result of excessive regulation and high taxation. A report by consultants KPMG released in May 2015 found that illegal tobacco consumption in Australia has grown by 30% in the last two years and accounted for 14.5% of total market share in 2014, well above the World Health Organization’s global estimate of 10%, making Australia a focal point and major profit centre for international organised crime.

Given this existing base and clear historical precedents, it would be imprudent for the Tasmanian Parliament to pass and implement the proposed ban and the committee should recommend the Legislative Council reject the Bill.



Philip Morris and our approach to tobacco regulation

Philip Morris Limited (PML) is the Australian affiliate of Philip Morris International, the world's largest international tobacco company. PML supports the comprehensive regulation of tobacco products based on the principle of harm reduction.

To be effective, tobacco regulation must be based on evidence that it will achieve its aim of improving public health, and policy makers must consider the potential to trigger adverse consequences which undermine public health objectives, such as increasing the demand for black market tobacco.

The tobacco black market in Australia

The prohibitionist measures proposed in this Bill will only serve to exacerbate the tobacco black market in Tasmania which needs to be understood in order to assess the likely consequences of passing the Bill.

First and foremost, by creating new rules and offences, the Bill creates new opportunities for those prepared to break them for profit. The growing problem of black market tobacco and the involvement of organised crime is already well recognised and acknowledged by Australian government agencies.

The Australian Crime Commission's (ACC) *Organised Crime in Australia 2015 Report*¹ released in May 2015 stated that organised crime remains entrenched within the illegal tobacco market in Australia.

The ACC went on to say that organised criminals perceive involvement in the tobacco black market as a "low risk, high profit enterprise."

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."

The ACC's views are supported by the Australian Customs and Border Protection Service (ACBPS) Chief Executive Roman Quaedvlieg, who provided evidence to the Senate Estimates, Legal and Constitutional Affairs Committee in May 2015 of the serious nature of illegal tobacco smuggling and the involvement of well-resourced and well syndicated organised criminals.² Mr Quaedvlieg told the committee:

"There are now penalties of up to 10 years in jail for illicit tobacco importation. Notwithstanding those penalties, the high pecuniary and imprisonment penalties, there is still a dollar to be turned and we are seeing serious and organised crime using its existing supply chain, its infrastructure modes, to import illicit tobacco..."

"The involvement in importing illicit tobacco by serious and organised crime is one of the reasons we have actually nominated it as being an operational priority for the service. With that comes the game we always play with organised crime, which is to stay one step ahead."

¹ Australian Crime Commission *Organised Crime in Australia 2015 Report* (pg 68) available at: <https://www.crimecommission.gov.au/publications/intelligence-products/organised-crime-australia/organised-crime-australia-2015>

² Senate Estimates, Legal and Constitutional Affairs Committee – 25 May 2015. Available from: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/0c5973fa-5b41-457f-af39-57df2971a205/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee%202015%2005%2025%203493.pdf;fileType=application%2Fpdf#search=%22committees/estimate/0c5973fa-5b41-457f-af39-57df2971a205/0001%22



Both the ACC and ACBPS have also reported a shift in tobacco smuggling methodology from sea to air cargo, with increased detections by authorities of smaller, more frequent shipments of illegal tobacco through air cargo, international mail and individual travelling passengers.

The ACC's *Organised Crime in Australia 2015 Report* states:

There are indications that those groups involved in the (tobacco black) market are highly networked and that they have made significant effort to gain a knowledge of Customs procedures, priorities and detection limitations."

In an article published in the Herald Sun Newspaper³ on 20 May 2015, ACBPS figures revealed a 163% increase in the amount of illegal tobacco detected entering Australia via air.

The amount of illegal tobacco being smuggled by air also shot up dramatically, with more than 500 detections in the last six months of 2014, including seven million illegal cigarettes. The same period the year before saw only 190 detections.

"We recognise this problem," Mr Quaedvlieg said. "It is a priority and we are dealing with it. We are seeing the same scattergun phenomenon which we see in the importation of drugs with illicit tobacco. We are seeing scattergun imports across air cargo, international mail and travelling passengers. The air stream has become an efficient and fast supply chain."

In the same article, Mr Quaedvlieg stated that authorities are now contending with "more players" in the tobacco black market, with increasing numbers of criminals attracted to the lucrative business.

To better understand, and more importantly quantify, the size and scale of the illegal tobacco market in Australia, Philip Morris International, Imperial Tobacco Group and British American Tobacco have engaged globally respected consultants KPMG to assess the illicit tobacco problem in many countries around the world.

In Australia, KPMG uses the same methodology as in the EU report that has been endorsed by the OECD Task Force for Charting the Illicit Trade, developed in conjunction with the European Commission Anti-Fraud Office (OLAF).

KPMG's *Illicit Tobacco in Australia, 2014 Full Year Report*⁴ found that the volume of black market tobacco consumption in Australia has increased by 30% in the last two years and is now at a record high. The KPMG report found that that illegal tobacco represented 14.5% of total consumption, with nearly 2.6 million kilograms of illicit tobacco consumed in 2014 (13.5% in 2013 and 11.5% in 2012).

This growth in illicit tobacco came during a period which saw two 12.5% tobacco excise increases and the implementation of plain packaging in December 2012.

Historical tracking of illicit trade in manufactured cigarettes in Tasmania indicates Hobart in particular is over-indexed in illicit tobacco products compared to other large Australian cities.

³ The Herald Sun 21 May 2015 (p11) available at: <http://www.heraldsun.com.au/news/victoria/middle-eastern-crime-gangs-main-players-in-australias-illegal-tobacco-boom/story-fni0fit3-1227361875279>

⁴ KPMG *Illicit Tobacco in Australia, 2014 Full Year Report* available at:

http://www.pmi.com/eng/media_center/media_kit/Pages/Illicit_Tobacco_in_Australia_KPMG_2014_FY_Report.aspx



Suburbs regularly found with a high incidence of illicit trade include West Hobart, Lauderdale, Blackman Bay, Kingston and Mount Stuart.⁵ Survey limitations prevent similar analysis outside of Hobart, however the illicit trade problem has been demonstrated nationwide and there is no reason to think it might somehow be limited to one city in Tasmania.

Extreme regulation and the growing price disparity between legal and illegal cigarettes caused by tobacco excise increases makes Australia a lucrative target for organised crime gangs importing and selling cheap, illegal and branded cigarettes on the black market. The implementation of selective prohibition laws will provide yet another incentive to drive illicit tobacco consumption in Tasmania.

Consequences of prohibition

Providing further incentives for the growth of the tobacco black market through prohibition will further strain Tasmania's law enforcement resources, punish law abiding retailers, and unnecessarily 'criminalise' an entire cohort of adults.

Effective regulation relies on the acceptance, if not the consent of the regulated. Extreme regulation which discriminates against and selectively marginalises adults and criminalises their behaviour by causing differential treatment of peers who have assumed all of the rights of adulthood, will not only cause them to turn to illicit sources of supply, but potentially undermine existing tobacco control regulations.

Tasmanian and Federal tobacco control measures and education will be ignored by a growing number of those impacted. Alcohol prohibition in the United States, referred to above, also provides a useful example of these kinds of impacts in practice.

Straining law enforcement resources

It's a proven fact the world over that criminal suppliers have no respect for the law and history demonstrates that they will seek ways to meet the new demand created by a so-called "tobacco free generation." This will ultimately result in the growth of the illicit tobacco trade in Tasmania, eventually diverting law enforcement resources from tackling "real" crime to policing a self-inflicted problem for an otherwise legal product for the rest of Tasmania's population.

Punishing law abiding retailers

Retailers already operate in a strictly regulated and controlled environment in relation to the sale of tobacco products in Tasmania. Retailers are required to comply with a broad range of federal and state tobacco laws. For example, they must ensure all tobacco products sold are in plain packaging, that tobacco products are kept out of sight behind closed doors, that relevant signage is posted, and, most importantly, that tobacco products are not sold to anyone under the age of 18.

In an economic environment where less regulation is a necessity to allow small business to survive, further red tape will place an additional and unnecessary burden on retailers.

⁵ Empty Pack Survey Q2 2013 – Q4 2014, prepared as an input to the KPMG *Illicit Tobacco in Australia, 2014 Full Year Report* and previous reports.



This Bill makes it illegal for retailers in Tasmania to sell a legal product to a cohort of adults who are nevertheless able to possess, consume and obtain that product legally through other means. Similarly, this Bill does not prevent consenting adults born after the year 2000 from smoking but denies them the ability to purchase tobacco products at legal, retail outlets in Tasmania.

The proponent of the Bill, Ivan Dean MLC, has stated publicly that the measures outlined in the Bill will not stop people from purchasing or consuming tobacco products. In a radio interview with 2GB on

25 May 2015, Mr Dean said:

“Anybody born after the year 2000 would not be able to be sold cigarettes or tobacco products by retailers. However, it does not stop those people born after 2000 from smoking, they can still get their tobacco products and legally ... their parents could go and get them for them, older brother or older sibling born before 2000 or a friend or whatever and, of course, they can be given cigarettes too, by anybody ... they can get them online, of course.”

The purpose of this Bill, therefore, appears more about denying law-abiding retailers access to a legitimate customer base than creating a so-called “tobacco-free generation.”

Unnecessarily criminalising adult smokers

The selective restrictions in the Bill will effectively criminalise an entire generation of adults trying to exercise their right to purchase a legal product available to other adults. Prohibiting tobacco for a generation of adult smokers only invites criminal networks to infiltrate communities to supply them with illegal cigarettes while also creating a supply chain for other illicit substances which pose significant and widespread threats to local communities.

And as the size of the generation of adults affected by the proposed legislation grows, so too will the demand and supply of illicit tobacco, ultimately normalising the act of breaking the law and undermining all tobacco regulation and public health education in Tasmania.

As such, some public health advocates have also expressed significant concerns about implementing prohibition measures for tobacco products.

Independent health policy analyst Martyn Goddard wrote in 2012: *“It is a fantasy to say that this ban will result in a smoke free generation ... It will lead instead to the criminalisation of an entire generation of law-abiding people.”*⁶

Mr Goddard went on to say that: *“Those supporting Tasmania’s proposal to ban tobacco supply to everyone born after 2000 deny that it amounts to prohibition. But it does. It replaces the successful means of tobacco control we now have — education and regulation — with what will in time become a blanket ban.”*

Mr Goddard rightly draws the comparison to the disastrous policy of alcohol prohibition in the United States and the very real likelihood that a similar situation would emerge in Tasmania should tobacco prohibition laws be introduced.

⁶ Martyn Goddard 27 August 2012. Available from: <http://www.crikey.com.au/2012/08/27/prohibition-on-tasmanias-smoking-speakeasies-a-bad-idea/>



Conclusion

Given the existence of a growing tobacco black market in Australia, and the proven consequences of prohibiting consumer products that have long been legally and widely available, PML does not support the measures proposed in the *Public Health Amendment (Tobacco Free Generation) Bill 2014*.

Passage of the Bill will not advance public health but it will have significant negative consequences for legitimate tobacco control efforts, law enforcement, retailers and adult consumers.

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