

21 January 2016

Ms Amanda Honeyman
Research Director
Health and Ambulance Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Honeyman,

Re: Submission to the Inquiry into Tobacco Licensing Arrangements in Queensland

The Alliance of Australian Retailers Pty Ltd (AAR) appreciates the opportunity to contribute to the Queensland Parliament's Inquiry into Tobacco Licensing Arrangements in Queensland.

The AAR together with its member associations represents thousands of individual small retailers across Australia, including newsagencies, milk bars and local corner stores on issues relating to the retail sale of tobacco products.

The AAR supports evidence-based measures to reduce smoking in the community, but is opposed to measures that will unfairly impact on small retailers and policy outcomes that will do nothing for public health except place onerous and unfair restrictions on legitimate retailers, exacerbate the increasing trade in illicit tobacco and encourage the shift of customers especially toward large supermarkets.

Our members operate legal businesses selling a product that is entirely legal, helps to generate the billions of dollars in excise tax revenue as well as the Goods and Services Tax, while employing thousands of people across Queensland.

Tobacco is a particularly over-regulated area in Australia. Often, this over-regulation has led to an unnecessary burden and cost imposed on Australian retailers, and in many instances has been entirely counterproductive.

Small businesses like those we represent are under additional pressure due to excessive tobacco regulation. In addition to ensuring all tobacco products comply with far-reaching retail regulations, our members face day-to-day challenges in dealing with plain packaged products and extreme tax rises that lead to both customer and retailer confusion and frustration.

Particular consequences of extreme regulations on tobacco products include placing the operational cost imposed onto retailers, the increases of retail burglaries for tobacco products, as well as the magnification of the trade in and opportunities for illicit tobacco which have direct negative consequences on the safety of our community, not to mention encouraging customers away from legitimate retailers.

Potential Futility of Introducing Retail Licensing

The AAR has concerns about the implementation of licensing schemes upon tobacco retailers that places additional burdens upon small retailers and is not proven to have any impact on public health.

According to Queensland's Chief Health Officer and Deputy Director-General, Preventative Health Branch, Prevention Division, Department of Health, Dr Jeannette Young, the state's smoking rate was reduced by 26% in the decade 2004 to 2014, which also included a reduction of youth smoking to now below 10%.

It is worth noting that Queensland already has a far-reaching range of anti-tobacco requirements including:

1. the limits on points of sale for the retailing of tobacco products;
2. the ban on tobacco-related point of sale displays;
3. the ban on tobacco-related advertising, promotion and sponsorship;
4. the restrictions on location of vending machines;
5. the measures to capture electronic cigarettes as smoking products;
6. the impact of the Commonwealth Government's plain packaging of tobacco legislation;
7. the implementation of Smoke-Free Areas; and
8. the requirement for retailers' staff to be trained.

The AAR is concerned that any considerations to introduce onerous retail licensing arrangements would only be to the detriment of small business retailers.

As the Committee is no doubt aware, licensing regimes exist in most other Australian States and Territories. NSW already has in place a licensing scheme which requires compliance with tobacco control legislation in order to sell tobacco products. This regime is both workable for retailers and the government and allows for the Department of Health to be aware of who is selling tobacco products for communication and enforcement purposes.

Even though licensing restrictions have been raised in other states, the AAR submits that options for restricting access to tobacco are anti-competitive, and will cause negative consequences that affect smaller retailers hardest and more unfairly. If a customer's local store is unable to sell tobacco, smokers will still buy tobacco products from elsewhere. Especially in this day and age where people are highly mobile and often work in a different location to where they live. This is simply a burden on small businesses. All it will mean is that some retailers will have their existing legal ability to sell tobacco removed from them.

The most recent NSW Taskforce on Tobacco Retailing's Final Report and Recommendations (2014) found no convincing body of evidence to show whether any outlet reduction approaches work to reduce smoking rates. It also stated that despite NSW's existing *Tobacco Retailer Notification Scheme*, they did not recommend the introduction of any licensing fees, nor the regulation of licences of existing and future legitimate tobacco retailers.

If restricted consumption and/or geographic licensing arrangements were to be introduced into Queensland, the Parliament would have to address the consequences of removing legitimate trade from existing legal retailers, and be faced with implementing some methods of allocation either on the basis of suitability, auction, lottery, or first-come-first-serve. And bearing in mind the infamous consequences of prohibition of alcohol in the United States, such restricted licensing arrangements

would simply contribute towards the illicit tobacco trade, and therefore criminal activities. Should restricted licences be implemented, as with other restricted products, demand for tobacco would remain and the black market would readily expand to fill it.

Addressing the rise in Illicit Tobacco

While the Queensland Parliament has asked its Health and Ambulance Services Committee to consider tobacco licensing arrangements for tobacco wholesalers and retailers to support broader public health objectives, one of the current significant issues that affect our members is the expanding illegal tobacco market. Tobacco excise in Australia is significantly high, inciting customers to increasingly seek cheaper options whenever prices rise, with more and more of such being illegal alternatives.

Australian retailers are simply not able to compete against criminals who are profiting from the supply and sale of illegal tobacco. KPMG has reinforced what our retailers have been saying – that illegal tobacco is a significant issue. The *Illicit Tobacco in Australia 2015 Half Year Report*, released in October 2015, showed illegal tobacco now represents 14.3% of the total market. It also showed the black market in illegal tobacco last year is worth \$1.42 billion in lost excise revenue. That amount also does not include the lost revenue from the Goods and Services Tax that the Queensland Government benefits from.

While our retailers operate within a highly regulated market selling legal, highly taxed, plain packaged tobacco products from behind closed doors, there have been others who are deliberately breaking numerous laws on a daily basis. The Australian Crime Commission stated in its *Organised Crime in Australia 2015 Report* that, “*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.*” Legitimate retailers do the right thing. They do not sell illegal cigarettes. Yet, every time illegal tobacco is distributed and sold, legitimate small businesses and Australians generally suffer. If the illegal tobacco market continues to grow, small retail businesses like the ones we represent will be forced to close down, and the broader Australian community could be exposed to further risk of criminal activities.

Therefore, the AAR asks the Queensland Parliament to consider:

- (a) reviewing the existing suite of Queensland legislation of their effectiveness in identifying and combating illicit tobacco sales and distribution channels;
- (b) emulating the Victorian Parliament who have enacted standalone legislation specifically to penalise possession of smuggled tobacco products (see Part 2, s11A of the Victorian Parliament’s *Tobacco Act 1987*);
- (c) the inclusion in Queensland’s *Tobacco and Other Smoking Products Act 1998* to give authorised personnel the power to seize illegal tobacco found in any businesses;
- (d) leveraging the Commonwealth’s plain packaging legislation to impose significant penalties on individuals and businesses who are selling and distributing non-compliant tobacco products;
- (e) introducing a well publicised telephone and/or Internet-based platform to attract anonymous information about individuals, wholesale and retail businesses who sell and distribute illegal tobacco;
- (f) introducing significant penalties on wholesale and retail businesses who sell illegal tobacco; and
- (g) greater enforcement and harmonisation between Australian Customs and Border Protection, the Australian Federal Police, the Australian Crime Commission, the Commonwealth’s and Queensland’s Departments of Health, and the Queensland Police.

Conclusion

As long as tobacco remains legal to sell, purchase and consume, the AAR submits that small retail businesses should not continue to be punished for selling legal tobacco products, particularly when the Commonwealth Government receives over \$8 billion in related excise revenue each year and growing rapidly according to figures from the latest Commonwealth Budget. This does not include the lost revenue on illegal tobacco products.

Thus, the AAR asks the Queensland Parliament to:

- (a) show its support for small business by not introducing any additional burdens and regulations on legitimate small business retailers;
- (b) consider NSW's existing *Tobacco Retailer Notification Scheme* as Australian best practice and provides the lowest impost on legitimate tobacco-related wholesalers and retailers;
- (c) note the NSW Taskforce on Tobacco Retailing's Final Report and Recommendations; and
- (d) revise Queensland legislation and operational resources in order to achieve effective penalties and enforcement on the growing number of persons and entities that sell and facilitate illicit tobacco.

Thanking you for your consideration. And we look forward to your response.

Yours sincerely,



Chiang Lim
General Manager