



**BRITISH AMERICAN  
TOBACCO  
AUSTRALIA**

# British American Tobacco Australia's submission to Queensland Government Parliamentary Inquiry into Tobacco Licensing Arrangements in Queensland

---

*20<sup>th</sup> of January, 2016*

## Contents

<b>1. Executive Summary</b> .....	3
1. Objective of the inquiry and terms of reference. ....	3
2. Substantive engagement with affected stakeholders. ....	3
3. Negative impacts of licensing proposals. ....	3
4. Alternative measures to achieve tobacco harm reduction. ....	3
<b>2. Introduction</b> .....	3
<b>3. Objective and Terms of Reference</b> .....	3
3.1 What arrangements currently apply in Queensland with respect to licencing the wholesale and retail supply of tobacco products? .....	3
3.2 What licencing arrangements apply in other States and Territories for the wholesale and retail supply of tobacco products? .....	4
3.3 The capacity for licencing arrangements for tobacco wholesalers and retailers to support broader public health objectives .....	4
<b>4. Engagement with stakeholders</b> .....	4
<b>5. Negative Impacts</b> .....	5
5.1 Impact on Retailers .....	5
5.2 Illegal tobacco .....	5
5.3 Unnecessary Red Tape .....	5
<b>6. An opportunity - tobacco harm reduction</b> .....	5
6.1 Evidence .....	6
<b>7. Conclusion</b> .....	7

## 1. Executive Summary

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.

BATA believes these measures need to be progressive and forward thinking, rather than punitive and potentially damaging to small business. Introducing licensing requirements clearly adds an additional layer of red tape and compliance burden for retailers with no evidence of a reduction in tobacco related harm, in fact experience in South Australia saw smoking rates increase in the years following a licensing fee increase.<sup>1</sup>

BATA believes that in order for the Queensland Government to be effective in reducing smoking-related harm, there needs to be a shift to being more open minded about progressive solutions for tobacco harm reduction.

BATA's submission focuses on four key areas which are outlined below:

1. **Objective of the inquiry and terms of reference.**
2. **Substantive engagement with affected stakeholders.**
3. **Negative impacts of licensing proposals.**
4. **Alternative measures to achieve tobacco harm reduction.**

## 2. Introduction

Queensland has had in place for a number of years a very comprehensive set of measures in the space of tobacco control. To reference just a few of the many measures; there has been no advertising of tobacco products for a number of years, packs are hidden behind steel doors in plain packets which bear significant graphic health warnings and smokers are severely restricted in where they can smoke.

In the context of such a heavily regulated market, BATA does not believe there is justification to impose further red tape on the retail sale of cigarettes without any evidence that such measures will reduce smoking rates. The majority of tobacco retailers in Australia are small businesses that can ill afford additional compliance costs and burden.

As Queensland law stipulates the Government may only charge for licences in order to recoup the cost of managing the licensing scheme, BATA feels government policy should be focussed on practical harm reduction measures, rather than a punitive red tape exercise which will only adversely affect retailers.

## 3. Objective and Terms of Reference

### 3.1 What arrangements currently apply in Queensland with respect to licencing the wholesale and retail supply of tobacco products?

While there are no specific arrangements in place requiring a retailer to hold a license to sell tobacco products in Queensland, there are significant measures in place to ensure retailers are held accountable should they be found in breach of the strict tobacco control measures already in place (i.e. selling to minors). Monitoring enforcement activity is undertaken by Queensland environment health officers, including planned compliance audits and responding to alleged breaches, formal warnings and penalties for breaches. These are significant and range from a maximum of about \$16,000 for a first offence up to nearly \$50,000 for subsequent offences.

Under section 13 of the Tobacco Act, a court, when sentencing for a breach involving tobacco sales to minors, can make an order prohibiting the retailer from selling tobacco products. BATA believes enforcement and prosecution of retailer breaches of current legislation to be a suitable measure which does not require the introduction of an additional compliance burden on small business.

---

<sup>1</sup> SA Health, "Smoking prevalence in South Australia 2001-2011", available from: <http://www.sahealth.sa.gov.au/wps/wcm/connect/0904cc004713b583a274fa2e504170d4/Tobacco+Control+Strategy+2011-2016-DASSA-20110523.pdf?MOD=AJPERES&CACHEID=0904cc004713b583a274fa2e504170d4>

### 3.2 What licencing arrangements apply in other States and Territories for the wholesale and retail supply of tobacco products?

There is a mixed approach to tobacco retail licensing across jurisdictions in Australia.

As is the case in Queensland, Victoria does not have a requirement for retailers to hold a license to sell tobacco products.

New South Wales which has recently completed a review of their tobacco retailing arrangements (which found them to be effective and sufficient) operates a retailer notification scheme, requiring retailers to provide their details to the New South Wales government. The scheme is used to help monitor sales of tobacco products in NSW and does not require the payment of any fees by retailers, from February 2016 wholesalers will not be able to supply tobacco products to any retailer that does not hold a notification number. It is BATA's understanding that while this formal notification scheme is not in place in Queensland, the Queensland Department of Health does already have records of all retailers in the state who sell tobacco products as a result of other mechanisms in place.<sup>2</sup>

Tasmania, the Northern Territory and South Australia each have tobacco licensing schemes in place which require retailers to apply for a licence should they wish to sell tobacco products. Western Australia and the ACT extend this requirement beyond retailers alone to also capture tobacco wholesalers.

Regardless of the mechanism in place across each jurisdiction, the key purpose of each model is to monitor compliance, and to maintain a list of those able to supply tobacco. As highlighted above, this is already effectively achieved in Queensland by environmental health officers and has been successful in maintaining retailer compliance.

### 3.3 The capacity for licencing arrangements for tobacco wholesalers and retailers to support broader public health objectives

In Queensland, a tobacco licensing scheme would collect a fee from retailers which can only be used to directly offset the cost of administering the scheme. Associated costs typically include staff for administration, inspections registered retailers, and maintain the information database.

There is no evidence to suggest licensing schemes reduce the incidence of smoking in any Australian jurisdiction.

The suggestion of restricting licences to a capped number (which was an idea raised in the committee hearing on Wednesday 2 December 2015), or restricting the number of licences in certain areas with high smoking rates, would simply have an unfair effect on small business without any guarantee smoking rates would decrease.

If smokers want to buy cigarettes, it is unlikely they will be dissuaded to buy them by their local convenience store being unable to sell the product. It is more likely smokers will simply purchase cigarettes when visiting larger chains such as supermarkets and petrol stations or move to purchasing online. This may also provide an additional opportunity for sellers of illegal tobacco to profit from punitive legislative measures as discussed in further detail below.

## 4. Engagement with stakeholders

Any proposed changes to tobacco retailing should be thoroughly reviewed in a meaningful manner by those who would be most affected by the changes, these being retailers of tobacco. Small business, convenience stores, service stations, and supermarkets need to be engaged as an industry to discuss the viability and necessity of licensing schemes. This would also include whether it would be likely a licensing scheme would discourage retailers from selling tobacco. High Australian tobacco prices make tobacco a major profit stream for these types of small

---

<sup>2</sup> Dr Jeannette Young, Chief Health Officer and Deputy Director-General, Preventive Health Branch, Prevention Division, Department of Health, Health and Ambulance Services Committee Public Briefing – Inquiry into tobacco licensing arrangements in Queensland (2 December 2015), available from <https://www.parliament.qld.gov.au/documents/committees/HASC/2015/InqTobaccoLicenArrangQld/07-trns-pb02Dec2015-proof.pdf>

businesses (making up to as much as 40 per cent of turnover),<sup>3</sup> it is unlikely a licensing scheme will discourage retailers from purchasing licences to sell tobacco in any case.

## 5. Negative Impacts

### 5.1 Impact on Retailers

Introducing licences will have the greatest impact on small businesses which, as highlighted by retail associations such as the Australian Association of Convenience Stores, are already vulnerable and find it difficult to absorb additional costs.<sup>4</sup> BATA believes the argument that licensing will incentivise retailers to cease selling tobacco products demonstrates a lack of understanding of the sector and the significance that forcibly removing a profit stream for these small businesses will have on the livelihood of many Queenslanders.

### 5.2 Illegal tobacco

A further concern may be pertinent to this discussion is the likely proliferation of the illegal tobacco market in the Queensland. High tobacco excise rates and regulatory burdens applicable to the sale of legal tobacco products already provide incentive enough for some retailers to sell illegal products. Adding further restrictions and potentially prohibiting a number of retailers from selling tobacco legally will only make the option of selling highly profitable illegal tobacco products more attractive.

KPMG estimates that illicit tobacco comprises 14.3% of total tobacco consumption. By market share, the illicit tobacco “industry” is the fourth largest competitor in the Australian tobacco market. 14.3% of the Australian tobacco market equates to an estimated street value of between \$1.25 billion and \$2.5 billion,<sup>5</sup> and around \$1.42 billion per annum in lost excise revenue to the Australian government.<sup>6</sup> Considering the scale of this existing problem, it would seem irresponsible to implement regulation which would likely exacerbate the problem.

The Federal Government has recently announced an Australian Border Force Tobacco Crime Strike Team to address the significant and growing illegal tobacco problem in Australia, the Queensland Government should ensure that introduction of additional regulatory burden is not counterproductive to this positive momentum. Restricting when, where and how much tobacco an adult smoker may legally purchase will push smokers further toward the unrestricted illegal tobacco industry. If Governments are to avoid losing control of the industry altogether, they need to be more progressive in their approach to tobacco control.

### 5.3 Unnecessary Red Tape

Queensland’s laws stipulate the government may only charge for licences in order to recoup the cost of managing the licensing scheme. This is the case across all licencing schemes, including – for example – fishing, boating, alcohol and gaming. As Queensland’s tobacco control scheme is monitored and enforced with a high level of compliance, adding a licencing scheme would be an unnecessary red tape measure, putting the onus on small business. The system as it exists has been proven to be successful, and therefore should not be changed merely for the sake of it being changed.

## 6. An opportunity - tobacco harm reduction

There is no evidence to suggest tobacco licensing schemes work to lower the rate of smoking. On the contrary, it has already been demonstrated in South Australia that increased licensing fees did not meaningfully impact smoking

---

<sup>3</sup> Jeff Rogut, CEO of Australian Association of Convenience Stores, “ACT store owners slam proposal to limit the sale of tobacco”, *Canberra Times*, April 2 2014, <http://www.canberratimes.com.au/act-news/act-store-owners-slam-proposals-to-limit-the-sale-of-tobacco-20140401-35wn9.html>

<sup>4</sup> Australian Association of Convenience Stores Annual State of the Industry Report 2013

<sup>5</sup> Based on 50% of RRP and RRP of supermarket price list

<sup>6</sup> KPMG LLP, “Illicit tobacco in Australia: 2015 Half Year Report” (October 2015), pg. 6, 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)

rates.<sup>7</sup> In order to truly address tobacco-related harm, the Queensland Government needs to take a more progressive approach to tobacco control solutions with a focus on harm reduction.

Harm reduction is about developing policies to try to minimise the negative health impacts of a risky activity.<sup>8</sup> Dr Alex Wodak, a notable proponent of harm reduction from St Vincent's Hospital in Sydney stated that the approach "is consistent with the best traditions of both medicine and public health".<sup>9</sup>

Australian Governments have been at the forefront of initiating harm reduction strategies to reduce the impacts of heroin use - methadone, motor vehicle accidents – seatbelts and sexually transmitted diseases - condoms.<sup>10</sup> These strategies are widely hailed as saving significant numbers of Australian lives.<sup>11</sup>

Australia risks falling behind other comparable countries in relation to best public policy practice for harm reduction in relation to tobacco use. New innovative harm-reduced products that are proving to be effective at reducing tobacco related harm or as quit aids are illegal to buy in Australia. Rather Australian tobacco control policy-makers are focused on punitive tobacco control measures, such as 'quit or die' strategies notably represented by tobacco plain packaging. This means that Australian smokers are denied the opportunity to choose alternatives to smoking such as snus and electronic cigarettes, which have been proven to work in other countries as part of an appropriately regulated tobacco harm reduction strategy.

A comparable country example is Sweden which has the lowest rate of smoking-related disease in Europe and the lowest rate of lung cancer in males in the world<sup>12</sup>. Swedish smokers are able to freely access snus, small bags of moist tobacco that are placed under the top lip. A traditional Scandinavian product, snus use has grown significantly over the past 40 years with the proportion of male smokers falling from 40% in 1976 to just 15% in 2002.<sup>13</sup> Despite being supported by noted public health experts,<sup>14</sup> snus is banned in Australia.

Electronic cigarettes are another tobacco harm reduction lever. Electronic cigarettes contain a nicotine-based liquid that is vaporized and inhaled and are used to simulate the experience of smoking. Because the products do not involve igniting tobacco, the carcinogens associated with smoke are absent. British smokers are now 50% more likely to quit using electronic cigarettes than nicotine patches or gums.<sup>15</sup>

Recognising the growth in sales of these products, the European Union and United Kingdom have recently moved to appropriately regulate the market-place.<sup>16</sup>

## 6.1 Evidence

The Queensland Government recently legislated to treat e-cigarettes as tobacco products, a decision which BATA believes was based on alarmist misinformation and incomplete analysis of the evidence base. BATA would like to take this opportunity to draw the Committee's attention to a report published by Public Health England in August 2015 which explains the relative risks and benefits of electronic cigarettes, in terms of harm reduction when compared with cigarettes and as an aid to quitting.

The report "E-cigarettes: an evidence update"<sup>17</sup> is an independent expert review of the latest available evidence and concludes that:

---

<sup>7</sup> SA Health, "Smoking prevalence in South Australia 2001-2011" (above n.1)

<sup>8</sup> Australian Department of Health definition, available from <http://www.health.gov.au/internet/publications/publishing.nsf/Content/phd-hepc-manual-toc~phd-hepc-manual-ch3~phd-hepc-manual-ch3-4>

<sup>9</sup> Dr Alex Wodak, "Harm reduction: Australia as a case study", *Bulletin of the New York Academy of Medicine* (1995 – 72:2), available from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2359449/>

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Cancer Research UK, "Lung Cancer Incidence Statistics", available from <http://www.cancerresearchuk.org/health-professional/cancer-statistics/statistics-by-cancer-type/lung-cancer/incidence>

<sup>13</sup> J Foulds, L Ramstrom, M Burke, K Fagerstrom, "Effect of smokeless tobacco (snus) on smoking and public health in Sweden", *Tobacco Control Journal* (2003 – 12), available from <http://tobaccocontrol.bmj.com/content/12/4/349.full.pdf+html>

<sup>14</sup> Paul Haydon, "In Sweden smokers have another option - Snus", *The Guardian* (October 2012), available from <http://www.theguardian.com/commentisfree/2012/oct/29/sweden-smokers-option-snus>

<sup>15</sup> Robert West et al, "Smoking toolkit study: Trends in electronic cigarette use in England" (July 2015), available from <http://www.smokinginengland.info/latest-statistics/>

<sup>16</sup> European Commission, "Commissioner Borg welcomes agreement on the revision of the Tobacco Products Directive" (December 2013), available from [http://europa.eu/rapid/press-release\\_MEMO-13-1177\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1177_en.htm)

- The current best estimate is that electronic cigarettes are around 95% less harmful than smoking; and
- Nearly half the population (44.8%) don't realise electronic cigarettes are much less harmful than smoking; and
- There is no evidence so far that electronic cigarettes are acting as a route into smoking for children or non-smokers.

As recently as December of 2015, Public Health England have recommended to the UK Government that electronic cigarettes be made available as a subsidised quitting aid on the National Health Service (NHS).<sup>18</sup>

Importantly, the emerging evidence suggests that harm-reduced products have the greatest capacity for public health benefits, over and above nicotine replacement therapies, however, they need to be regulated to appropriate standards and available only to adult smokers.

While not a key focus for this committee, BATA respectfully asks that the Committee consider whether it is time for preventative health in Queensland to shift its focus from purely punitive measures to those that are truly centered in the principles of harm reduction. BATA would welcome the opportunity to discuss this and other more progressive alternatives.

## 7. Conclusion

Queensland retailers who choose to sell tobacco products are subject to an enormous amount of regulation which imposes significant cost and complexity to their business and has over recent years made it harder for them to compete with illegal operators.

In the context of such a heavily regulated market, BATA does not believe there is justification to impose further red tape on the retail sale of cigarettes without any evidence that such measures will reduce smoking rates. The majority of tobacco retailers in Australia are small businesses that can ill afford additional compliance costs and burden.

BATA feels government policy should be focused on practical harm reduction measures, rather than a punitive red tape exercise which will only adversely affect retailers.

---

<sup>17</sup> McNeill A, Brose LS, Calder R, Hitchman SC, "E-cigarettes: an evidence update. A report prepared for Public Health England" (August 2015), available from <https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update>

<sup>18</sup> Andrew Gregory, *The Daily Mirror UK*, "NHS to offer e-cigarettes on prescription to help people give up smoking" (August 2015), available from: <http://www.mirror.co.uk/news/uk-news/nhs-offer-e-cigarettes-prescription-6277049>