

Tobacco and Other Smoking Products Amendment Bill 2023

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British American Tobacco Australia

Inquiry into the Tobacco and Other Smoking Products Amendment Bill 2023

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Background

British American Tobacco Australia (BATA) welcomes the Queensland Government's action on addressing illicit tobacco with the introduction of the Tobacco and Other Smoking Products Amendment Bill 2023 (the Bill) on 14th March 2023.

BATA appreciates the opportunity to make a further submission to the Queensland Parliament's Health and Environment Committee's inquiry into the Bill.

Reducing the trade in illicit tobacco products and illegal e-cigarettes remains a key priority for BATA, for that reason our feedback will focus on the proposals concerning tobacco licensing and disrupting the supply of illicit tobacco.

In 2021 KPMG estimated that 19.3% of all tobacco consumed in Australia was illicit, costing the Australian Government more than \$3.4 billion in lost excise revenue. In addition to the lost Government revenue the trade in illicit tobacco products undercuts-law abiding retailers who deal in only legal tobacco products. The Australian Federal Policy (AFP) has highlighted that the organised crime groups involved often use the "profits generated from illicit tobacco provide funding to other criminal activities"¹.

The extent of organised crime involvement in the illicit tobacco trade was estimated by the Australian Criminal Intelligence Commission to be approximately 78% of the total illicit tobacco trade in 2016-17.²

Recently, following the seizure of more than \$20mn of illicit tobacco and vaping devices in Queensland ATO Commissioner Ian Read said of illicit tobacco operations "they are run by organised criminal syndicates who use the proceeds to fund their criminal behaviour well beyond the sale of illegal tobacco."³

Prior to late 2020 there was little evidence to suggest a substantial illicit tobacco problem existed in Queensland, with much of the problem centred in Victoria and New South Wales. However, over the past 2 years, BATA has been inundated with reports from our customers of increased sales of illicit tobacco in the community and has observed a concerning exponential increase in the number of illegal retailers dealing in illicit tobacco and vaping products.

¹ <https://www.abc.net.au/news/2022-06-18/organised-crime-turning-to-illicit-tobacco-trade-cigarette-price/101158958>

² <https://www.aic.gov.au/sites/default/files/2020-05/sr09.pdf>

³ <https://mypolice.qld.gov.au/news/2021/06/16/illegal-tobacco-trading-operation-romeo-serge-logan-and-south-brisbane/>

Recommendations

The Queensland Government's proposed legislative framework in the the Tobacco and Other Smoking Products Ammendment Bill 2023 (the Bill) is welcomed by BATA in light of the impact illicit tobacco is continuing to inflict on law-abiding retailers across the state.

BATA believes that the key illicit tobacco reforms outlined in the Bill will see the illicit tobacco trade substantially reduced in Queensland and would like to provide further feedback on several reforms.

Wholesaler licence conditions

Firsly, BATA recomends that the Queensland Government incorporate a defence clause under Division 9, section 72N subsection 3 for the licensee for a wholesale licence.

Currently, the proposed law only offers a defence for an employee of a licensee in the event that the wholesaler of tobacco products sells the product/s to a retailer that does not hold a licence.

BATA believes that the Queensland Government should seek to adopt the language of the Western Australian (WA) legislation to allow for the defence of a wholesaler.

The WA wholesaler licensing laws are similar to the proposed Queensland Bill. However, WA has a clause which covers a wholesaler where a retailer/purchaser misrepresents themselves as being a licence holder for the purposes of selling tobacco products.

As such an amendment would follow the WA bill and include the insertion of 'Wholesalers' duties' and read:

'If a person is charged with an offence under subsection (1) it is a defence to prove that at or before the time at which the offence is alleged to have been committed the purchaser had produced evidence that might reasonably be accepted as showing that the purchaser held a licence.'

A second recommendation is regarding licenses and public record keeping. The records of licence holders in WA can be obtained from the 'Public Register of Tobacco Sellers Licences'.

To ensure public transparency in the process and to avoid tobacco product sales by unlawful wholesalers to unlawful retailers, it is recommended that the Queensland Government establish a similar public register that is adminisitered by the Department of Health.

Automatic mechanisms for suspending tobacco licenses

To ensure transparency and credibility in the licensing scheme amongst the wholesale and retail industry, it would be beneficial if the licensing scheme had a mechanism whereby following the recording of a second serious offence (or even subsequent offence) by the Department of Health, it automatically triggered a suspension of a licence.

Further to that, any suspension or permanent revocation of a licence should be recorded against both the licensed entity and its directors to ensure that a new license is not granted to previously suspended individuals under a new corporate entity.

Consideration should also be given to recording a suspension against the physical address at which the licensee was registered, to prevent stores being transferred between associates to avoid serving a suspension.

Clear enforcement threshold during transition phase

To ensure that dishonest retailers do not stockpile illicit products while the licensing scheme is in a transition period, communication from the Department of Health to the retail industry on what enforcement measures and activities will be in place to combat illicit tobacco would be supported.

Further to that, collaborative action is vital to combat the illicit tobacco trade across Queensland. While the licence scheme is being finalised there is also an opportunity for information sharing between the tobacco industry and the Department of Health on dishonest retailers selling illicit tobacco across the state.