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**Submission to
Legislative Council Inquiry into the Public Health Amendment
(Tobacco Free Generation) Bill 2014**

1300 368 041 | www.retail.org.au | policy@retail.org.au

Legislative Council Inquiry into the Public Health Amendment (Tobacco Free Generation) Bill 2014

Ms Jenny Leaman
Committee Secretary
Legislative Council
Parliament House
HOBART TAS 7000

Email: tfg@parliament.tas.gov.au

The Australian Retailers Association (ARA) appreciates the opportunity to give input into the Legislative Council Inquiry into the Public Health Amendment (Tobacco Free Generation) Bill 2014.

The ARA is urging the Tasmanian Government and the Legislative Council to use the consultation to allow the safe sale of these products in a regulated way, removing them from the black market and avoiding a form of prohibition which would further drive organised crime and illegal sales of tobacco products.

With the grocery, newsagent and convenience store market already selling these products, it would be inappropriate for the Tasmanian Government to restrict product sales via an increasing age mechanism to what will inevitably be a black market of loose, branded overseas contraband and illegally obtained products.

**Consumption of illicit tobacco products by category and as a percentage of overall consumption,
2007 – 2014**



(KPMG Report Illicit Tobacco Trade in Australia March 2015)

Tasmania has a recent history of campaigning for appropriate regulation of harmful substances when they have operated in the illegal market, bringing them into a regulated market where sales can be restricted and appropriate assistance given to reduce usage. It seems strange at best that a state where there is a serious campaign and consideration of legalising marijuana to stop current prohibition, as any level of Government considering prohibition of currently legal products knowing the failed history of prohibition.

The ARA continues to advocate for greater education and harm reduction efforts from government in relation to tobacco products, including the sale of alternative harm reduction products in pharmacies and convenience stores. We strongly believe education is the best form of harm reduction and appropriate regulation around sales and distribution.

There is now ample evidence that an environment of heavy regulation and excise has dramatically grown the illegal tobacco market. This has not only impacted retailers in a revenue sense but has increasingly exposed them to both petty and organised crime infiltrating the market.

The ARA does not support greater use of nonsensical, unproven attempts which will further harm retailers without reducing smoking rates such as banning the sale of these products by age which allows vastly expanded criminal activity.

As way of background, the ARA offers support, information and representation to over 5,500 member retailers - representing over 50,000 retail outlets across every state and territory - making the ARA the largest and most diverse retail industry body in Australia. The ARA Tasmanian membership reach is around 600 retailers including franchises and buying groups. The ARA works closely with government and other industry participants to ensure the long-term viability and position of the retail sector as a leading contributor to the Australian economy.

38,382 Jobs in Tasmania

Total Retail Jobs - Direct and indirect	38,382
Direct Employment	26,200
Indirect jobs supported by retail in other industry sectors	12,182
% of total for state	11.2%
Compensation of employees (2009-10, current) bln	\$0.6
% of total state	5.2%
Total factor income (2009-10, current) bln	\$1.1
% of total for state	5.0%
Number of businesses (as at June 2009)	3,181
% of total for state	8.4%



Sources: ABS Labour Force, Australia, detailed quarterly 6291.0.55.003; ABS State National Accounts, 5220.0; ABS Count of Australian Businesses, 8165.0

In principle, the retail sector fully supports a properly regulated system ensuring safe use of this product, allowing the legal sale by retailers to undertake harm reduction through education and restriction of sales to minors.

There does seem to be agreement that this proposed bill will not work from all sides of politics with former Tasmanian Greens health spokesperson Paul O'Halloran saying alcohol prohibition proved Ivan Dean's approach would not work. Liberal Premier Will Hodgman has also said the government was "not persuaded that prohibition would be effective in reducing the rates of smoking in Australia".

The ARA believes it is in the best interests of the Tasmanian community to have these products legalised and formally regulated, allowing the legitimate sale through current retail channels which will also replace tobacco products.

There are concerns for retailers exposed to tourism related businesses and the impacts on tourism where Australian tourists (let alone international visitors) will not be able to buy tobacco product in Tasmania. This will mean Tasmania would no longer be seen as an acceptable tourism destination for some cultures and regular smokers

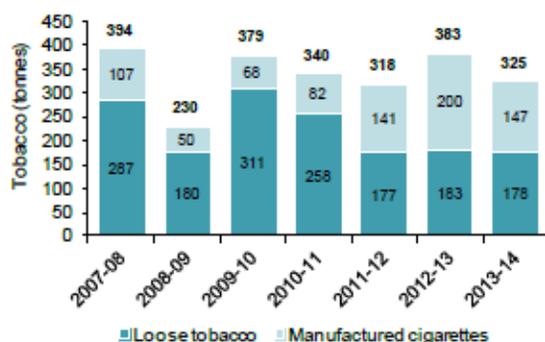
When it comes to practicalities, a 32 year old could buy tobacco products while their 30 year old relative standing right next to them cannot. Will their relative ask the 32 year old to buy the product for them or will they go to an illegal source if they cannot find a supplier?

The retail industry's major fear would be that this product moves to the illegal market. The unregulated black market is continuing to take sales from retailers and revenue from the government, promoting non-regulated underage consumption and supporting those operating in a black market tobacco revenue stream.

The key concepts within this proposed legislation appear to be poorly proposed and drafted. There is no penalty for being given a tobacco product for those supplying someone born after 2000, but there is for purchasing it. The temptation to supply product from legal interstate sources or from contraband international sources would be an overwhelming attraction for the illegal market.

There is also a very tangible cost to small business and for retailers of all sizes. Currently, some mixed retailers will see over 50 percent of their turnover in tobacco products, and these are not even the dedicated tobacconists. All indications are there would be a boost to current levels of illegal trade from the 14.5 percent indicated by KPMG's report this year into the illicit tobacco trade to a much higher level, directly moving away from legitimate merchants and placing it in the illegal untaxed, unregulated crime sector. The illegal sector would most likely import more loose, branded and counterfeit tobacco product from overseas, as witnessed by recent growing customs seizures. The low retail price in many jurisdictions of around \$1 AUD per packet sees even a half Australian retail priced illegal product delivering percentage profits well into the hundreds of percents.

Sea cargo seizures split by type of illicit tobacco, 2008 – 2014^{(1)(a)(b)(c)}

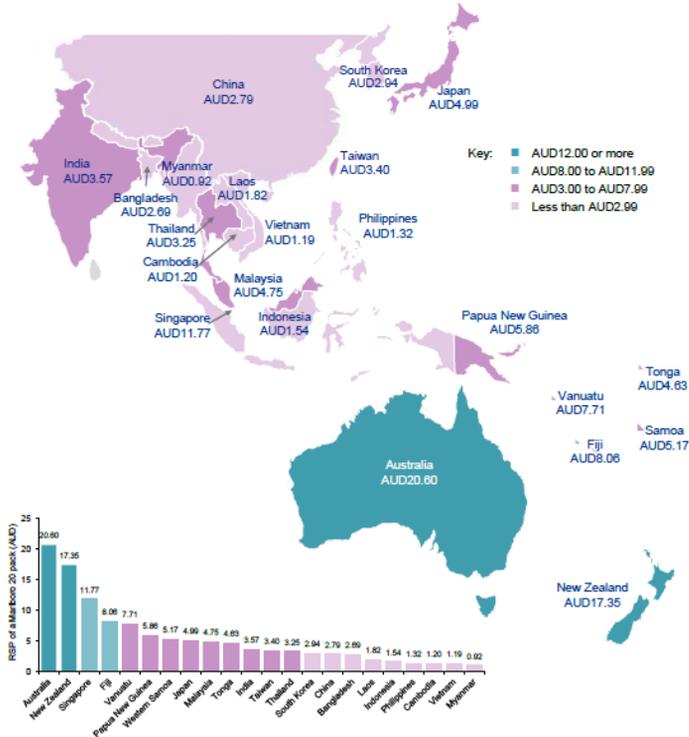


Notes: (a) Illicit tobacco detections were also made in air cargo. However, volumes are considerably smaller and have not been included in the figures above
(b) Tobacco seizures have been converted to cigarette equivalents based on the conversion rates used for consumption modelling
(c) Numbers for 2012-13 have been updated and are based on data provided by the Australian Customs and Border Protection Service
Sources: (1) Australian Customs and Border Protection Service, Annual Report 2014, October 2014

(KPMG Report Illicit Tobacco Trade in Australia March 2015)

Regional tobacco prices

Price of a pack of 20 Marlboro cigarettes – Australia and selected markets, 2014⁽¹⁾



Notes: (a) Prices for a 20 cigarette pack of Marlboro (taxes included); where Marlboro is not available, a comparable premium brand has been used
(b) As Marlboro is not legally sold in Myanmar, the price of a comparable premium local brand, Red Ruby, has been used for comparison
(KPMG Report Illicit Tobacco Trade in Australia March 2015)

The ARA believes;

- Any regulation to stop those born after 2000 from smoking would be a regulatory minefield;
- The growth in illegal trade through prohibition would counter any reduction in legitimate sales;
- Organised crime would replace legitimate merchant trade as witnessed through already excessive regulation and taxes;
- No reasonable political party or regulator sees this measure being workable;
- Mixed retail businesses of all sizes would see their businesses harmed for the net benefit of the illegal trade;
- Tourism businesses would be harmed through fewer visitors to Tasmania; and
- Public education is the best means of reducing harm and consumption.

Where we have had experience in dealing with other markets and associations in those markets, commercial evidence indicates that overregulation and high taxation reduces the legitimate market. This measure would drive trade directly to the illegal market with no net health benefit. It would also have serious repercussions for the Tasmanian economy - not only in tourism markets but also retail growth at a time when the state's economic indicators are picking up.

We do accept the fact that no product is a 100 percent safe and for this reason we believe usage does need to be monitored for harmful effects and that quit programmes must continue to be used to help people stop their nicotine addiction.

Name: Russell Zimmerman
Position: Executive Director
Contact email: Russell.zimmerman@retail.org.au
Contact phone: 1300 368 041