

IMPERIAL TOBACCO AUSTRALIA LIMITED:
SUBMISSION TO THE NATIONAL PREVENTATIVE
HEALTH TASKFORCE
AUSTRALIA: THE HEALTHIEST COUNTRY BY 2020
DECEMBER 2008

EXECUTIVE SUMMARY

It is important that the principles of good regulation are upheld throughout the consultation process currently being undertaken by the National Preventative Health Taskforce and in relation to any future decisions on tobacco issues. The same rigour and analysis should be applied to these proposals as with any other topics considered by Government.

Imperial Tobacco Australia Limited (ITA) recognises that it is the role of governments to provide smokers including Indigenous Australians, pregnant women and those from socio-economically disadvantaged groups with clear and consistent messages about the health risks associated with their smoking and we do not challenge those messages. However we believe that adults should continue to be allowed to make a choice as to whether or not to smoke.

It is our view that the funding for these messages should be invested from the revenue currently raised through the tobacco tax. ITA does not support the proposal to increase taxes on tobacco products (which are already subject to two increases annually due to CPI changes) or introduce minimum retail prices for tobacco products. In our view this potentially could increase the trade in illicit tobacco products by making illicit or counterfeit product more financially appealing to smokers and to organised crime by increasing their margins. In addition it undermines youth access prevention legislation and reduces government tobacco excise revenues. Setting minimum prices can reduce price competition and choice for consumers.

ITA encourages the Government to respect the principles of adult choice and freedom of competition and international law when regulating tobacco products. ITA does not support putting tobacco products out of sight in retail outlets, increasing the size of the current graphic health warnings or introducing plain packaging. The discussion paper and the technical report place undue weight on some research on these particular issues, yet ignore the substantial research evidence that points to factors which provide better indications of why young people use tobacco products.

The UK Government recently rejected the idea of plain packaging stating that the evidence base still needed to be developed. ITA agrees that the research and evidence simply does not exist to proceed with this proposal. Plain packaging has questionable efficacy in reducing youth smoking, poses significant legal questions around brand expropriation and international intellectual property treaty obligations and creates further opportunity for non-duty paid volume, particularly counterfeit.

ITA believes that regulation on environmental tobacco smoke should be determined by sound science, with smoking polices based on cooperation, courtesy and common sense. In the same way as smokers should show courtesy to other adults when smoking, this courtesy should be extended to children, who are often unable to exercise choice in their environment and surroundings in the way that adults can. Generally, most smokers do show this courtesy to others. However we believe further education is a more appropriate and ongoing solution to environmental tobacco smoke, rather than unbalanced and impractical legislation.

We agree that, in general matters of public health, some individuals may require support in their decision making, but this should be achieved in ways which are educative and enabling, rather than disproportionate, coercive or discriminatory and we hope that this view is shared by the National Preventative Health Taskforce.

1.0 INTRODUCTION

Imperial Tobacco Australia Limited welcomes this opportunity to contribute to the National Preventative Health Taskforce Discussion Paper *Australia: The Healthiest Country by 2020*. We have also taken the opportunity to respond to some of the points and proposed actions raised by the Tobacco Working Group in their Technical Report No2 *Tobacco Control in Australia: making smoking history*.

Imperial Tobacco Australia Limited is the Australian-based wholly owned subsidiary of Imperial Tobacco Group PLC (ITG), the world's fourth largest international tobacco company.

ITA has a total tobacco market share of approximately 20.5% and our leading brands include HORIZON, Peter Stuyvesant, Escort, Brandon, JPS and Davidoff cigarettes; Drum, Champion, White Ox and Golden Virginia fine-cut (roll-your-own) tobacco; Tally-Ho and Rizla rolling papers and Amphora pipe tobacco. We also import and distribute Camel and More cigarettes on behalf of Japan Tobacco International.

ITA employs 370 people in addition to being a significant contributor to the Australian economy, delivering approximately \$1.4 billion annually to the Federal Treasury through excise duties and GST. In addition ITA makes further contributions through corporate taxation, employment taxes and other revenues.

1.1 BACKGROUND TO THE CONSULTATION

The Minister for Health and Ageing announced on 9 April 2008 the establishment of the National Preventative Health Taskforce. The taskforce was made up of health experts from around Australia to develop strategies to tackle the health challenges caused by tobacco, alcohol and obesity, and develop a National Preventative Health Strategy by June 2009. In October 2008 the Minister for Health and Ageing released the discussion paper *"Australia: The*

Healthiest Country by 2020” with a deadline for responses of 2 January 2009. This was in unison with the release of the “Technical Report” by the Tobacco Working Group titled *“Tobacco Control in Australia: making smoking history”*.

It was planned that the taskforce “*seek input from the food, alcohol and medicines industries, from health consumers and experts outside the health portfolio*”. However no reference was made to the tobacco industry and no direct input has been sought from ITA from either the National Preventative Health Taskforce or the Tobacco Working Group. This is disappointing. ITA participates in a range of Government consultations that are relevant to our business. We do this on the basis that our views will be considered in an objective manner and that the evidence we provide will be properly evaluated, with due regard given to relevant legal and legislative requirements and the principles of best practice regulation to which the Australian Government has committed to adhere. These principles also relate to tobacco.

This response to the National Preventative Health Taskforce’s *“Australia: The Healthiest Country by 2020”* sets out our views in detail on the range of tobacco issues raised in the discussion paper in addition to the proposed actions in the Tobacco Working Group’s Technical Report *“Tobacco Control in Australia: making smoking history.”* Finally we have also taken the opportunity to clarify and, in some cases, correct inaccurate statements made in the Technical Report relating to progress against international comparators.

2.0 MAINTAINING THE PRINCIPLES & OBLIGATIONS OF GOOD REGULATION

Imperial Tobacco Australia Limited supports the sound, reasonable and practicable regulation of tobacco products. We believe that a proper and legitimate function of government is to safeguard the autonomy of the individual and his or her ability to be self-determining. Key to this is the ability to make informed decisions, whether or not those are “popular” with others, with an awareness of the individual’s responsibility as a member of a greater society.

In our view individuals are the best judges of their own interests. It is the role of the state to protect such freedoms, not to remove them or to make such decisions on an individual’s behalf. Such freedoms should be protected by the state and should, in particular, be protected from simple majority rule.

We believe that, while complex, justification for any restrictions on personal authority, on the basis that the restriction is to prevent harm to others must be based on solid, factual evidence (rather than emotive speculation). It should be treated consistently with other potential risks which are either accepted or legislated against by the law maker.

When removing any such freedom, a burden of the highest order is placed on the regulator to examine such risks from a factual point of view and to be satisfied that the risk is: a) real; b) of a quality which has led to similar restrictions for other risks; and c) incapable of being managed in another way which does not restrict personal authority. Convenience or ease of application or enforcement is not enough to justify any restriction where other options are possible. This must be a minimum expectation for any state which attaches value to the freedom of the individual.

There is an increasing view by some that on too many occasions the tobacco control movement has now become one about political correctness rather than

about protecting the public's health¹. In a survey commissioned by the Cancer Institute NSW smokers felt that the government agenda on tobacco issues was potentially influenced by a range of other political factors². These concerns even led Jeff Stier an associate director of the American Council on Science and Health (ASCH.org) to state on smoking "Overstating the case may help the advocates win this political battle but at significant cost to the overall public-health war".³

During the latest World Health Organisation's (WHO) Conference of the Parties to the Framework Convention on Tobacco Control (FCTC) in Durban in November 2008, governments were warned about the inappropriate behaviour of certain anti-smoking non-governmental organisations (NGOs) and the inaccuracy in some of the material being circulated. It is important that the WHO's FCTC treaty is not undermined by misleading information in an attempt to covertly enlarge the scope of the treaty signed by the Australian Government, which may be in conflict with local and national Australian law.

It is vital that the principles of good regulation are upheld throughout this consultation process currently being undertaken by the National Preventative Taskforce and in relation to any future decisions taken by the Australian Government on tobacco issues, regardless of any individual personal view or personal agenda in relation to tobacco.

2.1 THE PRINCIPLES OF GOOD REGULATION

According to the Australian Government, an efficient regulatory system is essential to a well functioning society and economy and depends on having effective processes and institutions for making and administering regulation in all its forms. As a result of the *Report of the Taskforce on Reducing Regulatory Burdens on Business*, the Government enhanced the regulatory framework to improve the analysis applied to regulatory proposals and, hence, the quality of

¹ Prof. Michael Siegel of Boston University School of Public Health, <http://tobaccoanalysis.blogspot.com>

² NSW Smokers' Attitudes and Beliefs change over three years, Cancer Institute NSW Monograph, February 2008

³ Smoke & Mirrors, Butts lies and public health, www.nypost.com 23 October 2007

the regulation. Implicit in the enhanced framework was a commitment by all ministers and their departments and portfolios to carefully consider, at an early stage, the case for acting in response to a perceived policy problem, including addressing the fundamental question of whether regulatory action is required⁴.

The Australian Government's Taskforce on Reducing Regulatory Burdens on Business noted that governments are often attracted to regulatory solutions as a tangible demonstration of government concern because the costs are difficult to measure. This Taskforce noted that Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. The pressure on government to 'do something' becomes heightened by intense, if short-lived, media attention on specific issues. As a result, regulatory solutions tend to be devised within individual government agency 'silos', the cumulative impact of the regulation across the government is then poorly understood and rarely taken into account. In this climate, a 'regulate first, ask questions later' culture appears to develop⁵. The Australian Government has made a commitment to improve the quality of its regulation and to reduce the burden of regulation on the community⁶.

2.2 REDUCING REGULATORY BURDENS ON BUSINESS

In 2006 the Australian Government, like most member governments of the Organisation for Economic Cooperation and Development (OECD), adopted specific principles for good regulatory processes identified by the Taskforce on Reducing Regulatory Burdens on Business.

- Governments should not act to address 'problems' until a case for action has been clearly established.
 - This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action.

⁴ Best Practice Regulation Handbook, Australian Government, August 2007

⁵ Rethinking Regulation, Report of the Taskforce on Reducing Regulatory Burdens on Business, January 2006.

⁶ Rethinking Regulation: Australian Government Response, 15 August 2006

- A range of feasible policy options (including self-regulatory and co-regulatory approaches) need to be identified and their benefits and costs (including compliance costs) assessed within an appropriate framework.
- Only the option that generates the greatest, net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

ITA believes that the case for prevention on tobacco as outlined by the discussion paper or the actions proposed by the technical paper, *Making Smoking History*, reflect these six principles on the grounds that:

- While the use of tobacco products by young people is an issue of public policy, neither the consultation document nor the technical paper has advanced significant credible evidence which shows that retail tobacco product displays (including vending) are directly responsible for young people starting to smoke or for adult smokers smoking more or failing to quit;
- Suggesting that there is good evidence that introducing plain packaging would have a profound effect on young image conscious teenagers but failing to provide conclusive evidence to support such a claim (acknowledging that it is something that has not yet been tried anywhere in the world and has actually been rejected by the Canadian and UK authorities);
- “*denormalisation*” as an objective of tobacco control policy. ITA contends that “denormalisation” is not in itself a conceptual objective that is compatible with the principles of good regulation of a legal product. It

is unclear in its definition and has no clear, measurable objective. It is impossible to further define and validate the concept through clear and concrete evidence. “Denormalisation” is, at best, a speculative supposition;

- The discussion paper and the technical report places undue weight on some research yet ignores the substantial research evidence that points to factors which provide better indications of why young people use tobacco products;
- Setting minimum prices for tobacco products and plain packaging lessens competition and consumer choice and is in direct conflict with the legal principles and requirements of the Trade Practices Act (1974) and Intellectual Property law;
- There is a considerable body of research which suggests that a significant number of non-smoking young people as well as existing youth and adult smokers may become “reactant” in the face of new tobacco control measures such as display bans and plain packaging. That is to say they could act counter-intuitively to proposals and that smoking incidence could increase.

2.3 INDIVIDUAL RESPONSIBILITY

It is ITA’s view that the decision to use tobacco products is a matter of informed adult choice. The 2004 Wanless Report in the UK *“Securing Good Health for the Whole Population”*, asserted:

“Individuals are, and must remain, primarily responsible for decisions about their and their children’s personal health and lifestyle. Individuals must be free to make their own choices about their own lifestyles. They are generally the best judges of their own health and happiness; people differ significantly in their preferences and their situations in life. But this does not remove the duties on government and many organisations in society, including businesses, to help individuals make better decisions about their health and welfare. Significant

*failures in how decisions are made can lead to individuals inadvertently making choices that are bad both for themselves and society. Therefore, to promote improved health outcomes and to reduce health inequalities, the government and other bodies need to act to reduce these failures and assist individuals to make better decisions.*⁷

“...for good decisions to be made both for the individual and society as a whole, it is important that:

- The individual is fully informed about all possible options, and their consequences;*
- The individual is forced to take all the consequences of a decision (including those that affect others) into account;*
- The social context within which individuals make decisions is conducive to making good choices; and*
- Opportunities exist for individuals to engage fully in the management of their health and general welfare; regardless of their background and circumstances.”*⁸

We agree that in general matters of public health, some individuals may require support in their decision making, but this should be achieved in ways which are educative and enabling, rather than disproportionate, coercive or discriminatory. We believe that the health risks associated with smoking are already well-known, and have been so for decades.

2.4 UNDERSTANDING THE CONCEPT OF RISK

One main barrier to be overcome is the general poor understanding in society of the concept of risk. This opens the way for sensationalism or coercive publicity and journalism and leads to disproportionate public policy responses. For example, the media may report a doubling of risk as a shocking story when the

⁷ Wanless D (2004) Securing Good Health for the Whole Population HMSO section 7.3

⁸ Wanless D (2004) Securing Good Health for the Whole Population HMSO section 7.5

risks involved may be mathematically minute (even when doubled) and unlikely to affect an individual reader.

The UK House of Lords' Select Committee on Economic Affairs' report "*Government Policy on the Management of Risk*" pointed out:

"Most of the things we do have uncertain outcomes and risk is necessarily an inherent feature of life ... Perceptions of risk by the public clearly have a potentially important impact in a policy environment that rightly aims to be responsive to public concerns over safety ... In this context, it is worth noting that excessive risk aversion in the formulation of policy, which, if it exists, has been attributed to the pressure arising from public perceptions or the media, may also stem from single interest lobbying groups or indeed from government itself ..."

Sir Kenneth Calman, a former UK Chief Medical Officer, has commented:

"In understanding issues surrounding risk assessment, perception is a key aspect of understanding patient and public choice ..."

"This leads to one of the major issues facing those who make decisions about public health: the relation between the science base, the knowledge available, the evidence accumulated, and the public policy which derives from them. This can be extraordinarily difficult, and the costs of taking action based on minimal evidence or simply on the basis of a proposed hypothesis can be very considerable indeed ..."

"The public should have a right to as much information as is available, but people also have to recognise that this information may not be complete and that it may not be possible to provide further information on a particular issue without more work, resources and, in particular, time. Nevertheless, individuals need to make choices, and the individual perception of risk is important."⁹

⁹ Calman K C (1996) British Medical Journal 313: 799-802

An evaluation of risk is effectively replaced by emotionally-driven dread and real but distorted perceptions result. Such considerations lead to politicised or over-cautious judgements and to measures beyond the proportionate response warranted by the data. This has led some to suggest that the willingness of influential anti-tobacco activists, including academics, to hurt legitimate scientists and turn epidemiology into junk science in order to further their own agendas does not bode well for the field of epidemiologic science and reputation¹⁰.

2.5 PRECAUTIONARY PRINCIPLE¹¹

There are occasions when little is known about the possible effects on human health of a material and some prudence is called for before such information is available. These considerations gave rise to the “precautionary principle”¹². This is not a legal principle. It is a principle applied increasingly widely by public health bodies and regulators, including the European Commission. Put simply, the principle (as it has come to be understood) suggests that where there is doubt about the safety of a product or an ingredient or component foodstuff, consumer product, environmental emission, etc., then it should not be used or should be removed. It is an approach to avoid public health risks by erring on the side of caution.

However, the European Commission¹³ states that measures based on the precautionary principle should be:

- (i) proportionate to the chosen level of protection;
- (ii) non-discriminatory in their application;
- (iii) consistent with similar measures already taken;

¹⁰ Philips, C V (2007) Warning: Anti-tobacco activism may be hazardous to epidemiologic science, *Epidemiologic Perspectives & Innovations* 2007, BioMed Central

¹¹ Communication from the Commission on the Precautionary Principle (2nd February 2000) COM(2000)1

¹² See Morris J Ed. (2000) *Rethinking Risk and the Precautionary Principle*, Butterworth-Heinemann, Oxford

¹³ Communication from the Commission on the Precautionary Principle (2nd February 2000) COM(2000)1

- (iv) based on an examination of the potential benefits and costs of action or lack of action;
- (v) subject to review, in the light of new scientific data; and
- (vi) capable of assigning responsibility for producing the scientific evidence necessary for a more comprehensive risk assessment.

The precautionary principle appears, however, to be being used with alarming regularity to bolster general risk-aversion.

“The precautionary principle undermines legal certainty by providing bureaucrats with an excuse to change the rules of the game in an essentially arbitrary manner ... Attempts to redefine the precautionary principle have done little more than restate the views of interest groups and regulators whose antipathy towards the development of new technologies was already well known.”¹⁴

¹⁴ Morris J Ed. (2000) *“Rethinking Risk and the Precautionary Principle”*, Butterworth-Heinemann, Oxford p19

3.0 PLACE OF SALE & PACKAGING

According to the Technical Report the case for 1) banning the retail display of tobacco products, and 2) the imposition of plain, unbranded tobacco packaging is premised on three suppositions:

1. that tobacco packaging or display constitutes a form of advertising for smoking;
2. that tobacco packaging causes individuals to smoke; and
3. that seeing tobacco packaging on display causes young people, occasional smokers, smokers who are attempting to quit and former smokers to smoke.

ITA does not accept the view expressed in the Technical Report that tobacco packages and displays of tobacco packages constitute tobacco advertising. This is backed up by evidence in terms of the effects (or lack of effects) on youth smoking initiation. ITA concurs with the conclusions of the Expert Panel for Health Canada's summary of the qualitative report in 1995 that young people do not decide to smoke on the basis of tobacco packages, that they do not have images of brands that are connected to lifestyles, that packages do not lead to smoking and that changing the package will not *"have any major effect on the decision(s) to smoke or not to smoke"*.¹⁵

ITA encourages the Government to respect the principles of adult choice and freedom of competition when regulating tobacco products. ITA does not support putting tobacco products out of sight in retail outlets, introducing plain packaging or increasing the size of the current graphic health warnings.

¹⁵ Goldberg ME, Liefeld J, Kindra K, Madill-Marshall J, Lefebvre J, Martohardjono N and Vredenburg H. *When Packages Can't Speak: Possible Impacts of Plain and Generic Packaging of Tobacco Products: Expert Panel Report to Health Canada, Ottawa, 1995.*

3.1 TOBACCO DISPLAYS

The visibility of tobacco products is an important aspect of the consumer purchasing process. It provides consumers with the information to make a genuine selection from the wide range of tobacco products, brands and prices that are available in retail outlets, whilst contributing to fair and undistorted competition between tobacco manufacturers and retailers alike.

The negative impact of a tobacco display ban on fundamental rights and economic interests of various stakeholders is disproportionate, when compared to the unproven, yet claimed benefit, of reducing smoking rates and tobacco consumption.

Tobacco visibility does not encourage people to take up smoking but informs those adults that choose to smoke about what products are available, a view shared by former Victorian Premier, Steve Bracks. Mr Bracks stated that the current level of tobacco display restrictions in Victoria allowed for “information but not persuasion as part of what is presented when cigarettes are sold”¹⁶. Public response to proposals on reducing tobacco prevalence also suggests both smokers and non-smokers are “not convinced that hiding cigarettes is the answer”¹⁷.

Reality also shows that tobacco products are not commonly positioned alongside products attractive to children and adolescents. Generally persons entering a convenience store, petrol station, supermarket or newsagent to purchase tobacco products will notice that tobacco displays are usually situated behind the retailer out of reach of the consumer, not on the counter, next to confectionary nor alongside products attractive to children. This is an emotive argument used by many to deflect the discussion from the real issue. Evidence of this can be found in a paper prepared for the Cancer Society of New Zealand and ASH New Zealand which recommends when “framing” discussions about

¹⁶ The Age, “Smoking deaths highest in rural areas”, 17 February 2005

¹⁷ “Forget Smokescreens”, Daily Telegraph, 23 April 2008, page 30

tobacco displays using statements such as “Protecting children from tobacco products” is better than referring to “Banning displays”¹⁸.

Given that tobacco displays only serve to inform retailers and adult consumers of the brands and products on offer in the market place, a ban would only mean the bigger and more well known brands gain market share, to the detriment of the smaller brands, product categories and manufacturers. Prohibition will play into the hands of the larger manufacturers and retailers, increase barriers to entry for new brands and suppliers, ultimately reducing consumer choice. The inability to see our products will limit ITA’s ability to compete against our competitors.

Display restrictions can also potentially pose a drastic punitive threat to small, family-run businesses, tobacconists and convenience stores that depend on tobacco sales for their viability, an issue which is even more sensitive during these times of financial crisis and hardship. Regardless of the anti-smoking groups’ view of the merit of legal trade in tobacco products, it is a very real concern particularly to tobacco retailers and small family run business, which led to the Department of Business, Enterprise and Regulatory Reform in the UK objecting to a proposal to ban displays as it would harm the profitability of small businesses during the economic slump¹⁹. The UK Conservative shadow Health Minister, Mike Penning recently stated that “There’s no evidence that [banning tobacco displays] will actually stop people smoking and there’s a lot of evidence that it will actually destroy local corner shops and newsagents that are already suffering now”²⁰.

Statements suggesting that retailers should diversify into “other” products to compensate for tobacco losses makes it clear that some advocates and organisations have no understanding of the commercial reality of the retail business environment. If “other” products were readily available to retailers today that would generate income to supplement or replace tobacco sales then

¹⁸ Out of Sight, Evidence on the tobacco retail environment in New Zealand and overseas, 30 November 2007, Janet Hoek & Heather Gifford

¹⁹ Peter Mandelson ‘blocking’ smoking crackdown, www.telegraph.co.uk, 29 November 2008

²⁰ Tories to oppose tobacco restrictions, www.telegraph.co.uk, 15 November 2008

retailers would already be stocking and selling them. They would not be simply waiting for a tobacco display ban to take up this opportunity.

It is important to note the technical report is incorrect in stating that New Zealand “plans to introduce legislation to prohibit the display of tobacco products in 2009”²¹. ITA is not aware that any such plans to introduce legislation have been made in New Zealand.

In addition there have been reports from Canada suggesting that retailers have experienced increased levels of pilferage from their stores whilst they are distracted when trying to locate tobacco products²².

According to the technical report, banning or restricting the size of the tobacco display will reduce the community’s exposure to tobacco advertising and promotion. ITA does not accept the view that tobacco packages and displays constitute tobacco advertising. In addition claims that banning or restricting display will help reduce youth smoking initiation and help smokers reduce their tobacco use, or quit altogether, or that the mere sight of cigarette packs will cause people to start smoking, or fail to quit, is not supported by any rigorous or substantial evidenced based research.

Over the years there has been much criticism by certain organisations of research or public opinion surveys paid for by tobacco manufacturers or retailer associations, with accusations of bias and conflicts of interest. However these same groups appear to have no such concerns, conflicts or bias when research is published by well-known anti-tobacco advocates and organisations to further their own, their colleagues’ or their associates’ claims. Both the discussion paper and the technical report appear to place undue weight on some research to support the proposed actions and ignore the substantial research evidence to the contrary or that does “not fit” with its rationale for reform. A discussion paper

²¹ Making Smoking History, Technical Report No2, 2008. Page 17

²² The futility of tobacco bans, www.nationalpost.com, 9 June 2008

should consider different sides of the issue at hand; unfortunately in this instance this appears not to be the case.

It is suggested that young people start smoking simply because they are exposed to tobacco displays throughout their childhood on visits to retail outlets. The technical report refers to two recent Australian studies that it is claimed demonstrate the powerful impact of retail displays on both children and adult smokers.

The first study conducted in 2006²³ involved showing 605 ninth-grade Australian children edited photographs of a convenience store sales point which showed either: cigarette advertising and tobacco pack display; pack display only; or no cigarette packs. Students then completed a questionnaire. Students who saw the photographs with either the pack displays or the advertising and pack displays “perceived it would be easier to purchase tobacco from these stores”. However in our view the study’s results are compromised.

Prior to the experiment, “all students took part in a discussion designed to increase the salience of general brand advertising and display”²⁴. This could have had the effect of biasing the study by priming the subjects about its purpose. The validity of the results is called into question by the fact the students who saw pictures of the shop without any tobacco products in it still rated it 3.2 for ease of purchasing tobacco on a scale of 1-5 (where 1 is very easy and 5 is very hard). The researchers do not explain how the students expected to find it anything other than “hard to obtain” from a shop that did “not appear to have any cigarettes for sale”. There were no statistically significant differences in perceived prevalence estimates between those who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display. The hypothesis that seeing tobacco products displayed will lead to distorted prevalence was not supported by the authors’

²³ An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays, Wakefield M, Germain D, Durkin S and Heriksen L, 2006

²⁴ Wakefield et al (2006), An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays.

results. Viewing tobacco products on display did not affect the adolescents' beliefs about how many of their peers or adults smoked.

There were no statistically significant differences in the approval of smoking between students who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display. This is a finding which undermines a central claim about tobacco displays – that they encourage smoking by leading young people to have more favourable views of smoking. Moreover, there were no significant differences in assigning favourable attributes to teenagers who smoked between students who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display.

Crucially, there were no statistically significant differences between perceptions of the risks of smoking between students viewing pictures of the store with no tobacco on display and those viewing pictures of the store with a tobacco display. This fails to confirm the hypothesis that seeing tobacco displays encourages smoking by altering perceptions about the risks of smoking. When the students were asked if they felt smoking can harm your health on a scale of 1 to 5 (with 1 being strongly agree and 5 strongly disagree), those students who viewed no tobacco displays averaged 1.4 and those who saw tobacco displays 1.3. This suggests that prohibiting tobacco displays might actually have an undesired impact on the public health message²⁵.

Most significantly (given its close connection with an actual measure of smoking behaviour), there were no statistically significant differences in future intentions to smoke between those who saw pictures of the store with no tobacco and those who saw pictures of the store with tobacco displays. Therefore, rather than supporting the proposed reform to prohibit tobacco displays, the 2006

²⁵ Table IV, An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays, Wakefield et al, 2006

study actually refutes most of the claims about the influence of such displays on adolescent smokers.

The second study published in 2008²⁶ attempts to address the issue of impulse purchase of tobacco products. It is important to be precise about what is meant by an impulse purchase. Those who promote retail display bans imply that tobacco purchases are impulsive in the sense that they are unplanned and would not have occurred if the tobacco product had been absent. Their view is that a display ban would mean there would be no impulse buying of tobacco. This, however, represents a confusion between impulsiveness in the sense of buying something previously unwanted, and impulsiveness in the sense of being opportunistic – buying a regularly-used item on the spur of the moment. In studies involving impulse purchases, these are not items that a consumer does not regularly use. They are simply items that they had not planned to buy before coming to the store. In other words, what is impulsive is the time of purchase, not whether the item is purchased.

Equally important is the fact that most impulse purchases are not category purchases but brand purchases, in which the consumer decides to try a different brand from the one normally used. As Inman and Winer 1998²⁷ note, some impulsive shoppers – often defined as those without a shopping list – do not enter a shop without planning their purchases but their shopping planning is only to the category level; the “impulsive” aspect of their purchase is the decision between brands in a category, not whether to purchase the category at all. This is congruent with the positioning of tobacco products in retail displays.

The fact that cigarette purchases are not impulsive, in the sense of deciding to start smoking based on seeing a tobacco display, follows from what is known about smokers’ habits. Smokers tend to smoke approximately the same number of cigarettes each day. They do not suddenly decide to smoke more. This

²⁶ The effect of retail cigarette pack displays on impulse purchase. Wakefield M, Germain D and Heriksen L, 2008

²⁷ Inman and Winer, 1998, Where the Rubber Meets the Road: A Model of In-store Consumer Decision Making, Marketing Science Institute Working Paper (98-122)

means that they usually know when they will need to buy more cigarettes, which also means that cigarette purchases are commonly routine and planned, both in regard to location and to brand availability.

The research surveyed a total of 2996 adults by telephone, of whom only 526 (around 16%) were smokers. The report concludes that when shopping for something other than cigarettes, only 2.9% of smokers always decided to buy cigarettes as a result of seeing the tobacco display, 74.8% of smokers replied rarely or never²⁸. Whilst there are fundamental problems with the study's methodology and its findings, this result in itself is hardly conclusive evidence about impulse purchases of tobacco products.

The impact that tobacco visibility has on overall tobacco consumption and prevalence is also questionable. The Tasmanian Discussion Paper released in 2006 stated as a result of a total tobacco display ban the number of smokers who actually quit and do not relapse as a result of the measure was expected to be marginal²⁹. Smoking prevalence in Tasmania also remains above that of Victoria at 25.4%³⁰ in spite of a voluntary cover-up of some tobacco displays in Tasmania by a large grocery chain for the past few years.

The UK Government has also acknowledged that the evidence on tobacco consumption declines since the display ban in Iceland, introduced in 2001, has not been definitive³¹. During 2001 when the ban was introduced in Iceland, smoking prevalence amongst the 15-19 year old age group rose by 3.1% from 14.4% to 17.5%. During 2002, the first full year after the ban, smoking prevalence among this age group was the highest it had been for 5 years.³² Although smoking prevalence then fell from this peak in 2007, the latest year for

²⁸ The Effect of retail cigarette pack displays on impulse purchase, Wakefield M, Germain D and Henriksen L, 2008

²⁹ Tasmania Department of Health and Human Services, Discussion Paper Strengthening Measures to Protect Children from Tobacco, May 2006

³⁰ Strengthening Measure to Protect Children from Tobacco, Tasmania Department of Health and Human Services Discussion Paper, May 2006.

³¹ Department of Health Consultation on the future of tobacco control, May 2008

³² Statistics Iceland, www.statice.is/Statistics

which data is available, smoking prevalence was 15.2%; still higher than it had been before the display ban was introduced.

Canada, often held up as an example by anti-smoking advocates and organisations for implementing display bans recently released its smoking prevalence figures³³. According to the 2007 Tobacco Use Monitoring Survey smoking rates have virtually unchanged from the rates in 2005 and 2006, even though many provinces have tobacco display bans in place. Smoking prevalence amongst the young smokers in Saskatchewan and Alberta has actually increased since the display bans were introduced³⁴. Given that some organisations are stating that display bans are meant to enhance quitting, it is interesting to note that, from the Canadian statistics, Saskatchewan has the second lowest percentage of smokers intending to quit in Canada. The National Party in New Zealand stated that recent bans of retail displays in Thailand and Canada have not yet shown positive results in smoking rates and that there is a need for more international evidence at this time in order to present a compelling and convincing case to banning tobacco displays³⁵

A recent survey of more than 92,000 teenagers in 27 countries was recently published in the scientific journal *Addiction* challenging the notion that restricting the sale of tobacco will encourage people to kick the habit. Professor Candace Currie, director of Edinburgh University's child and adolescent health unit and co-author of the study said of the results "They challenge our assumptions that if we ban something then it won't happen. Young people simply get more inventive about the way they obtain cigarettes. It raises a question mark about the way legislation is enforced and how effective it is"³⁶.

A ban on the display of legal tobacco products may also lead to an increase in the sales of illegal products such as counterfeit and chop-chop. If legal products

³³ Health Canada Tobacco Control Programme, Canadian Tobacco Use Monitoring Survey, 7 November 2007

³⁴ Anti-smoking campaigns apparently have little effect on youth, www.cba.ca, 2 September 2008

³⁵ Petitions 2005/140 of Dalton Leo Kelly and 20,000 others and 2005/174 of Craig Foss, Report of the NZ Health Committee, September 2008

³⁶ Age limit 'encourages children to smoke', www.timesonline.co.uk, 11 May 2008

are hidden from view, it will be more difficult for retailers, customers and enforcement officers to distinguish between legal, duty paid products and illegal, non-duty paid products. Moreover, a display ban could lead to a reduction in the number of retail outlets legitimately selling tobacco. Any reduction in the legitimate retail universe is likely to lead to an increase in illicit sales as those channels replace legitimate ones. ITA believes that removing legal products from view will further encourage Australia's illicit tobacco trade, estimated to be valued at up to \$450 million annually³⁷.

The distribution of illegal counterfeit cigarettes has increased significantly in recent years, spurred by high government taxes on tobacco products.

Removing legal tobacco products from display puts them in the same category as, and possibly along side, chop-chop and counterfeit cigarettes and other illegal tobacco products. Bans on display are unlikely to affect overall cigarette consumption, but rather encourage the use of cheaper, unregulated products.

As already stated, a number of Provinces in Canada have bans on tobacco displays which have not led to a reduction in smoking rates particularly amongst youth, but have led to an increase in the prevalence of illicit tobacco. Rob Cunningham from the Canadian Cancer Society has also suggested that the reasons for no further reduction in smoking rates in Canada has stemmed from "the widespread contraband problem that is providing access to inexpensive cigarettes".³⁸

ITA does not support the option to ban the complete display of tobacco at the point-of-sale.

³⁷ Illegal Tobacco Trade: Costing Australia Millions, PriceWaterhouseCoopers Report, August 2007

³⁸ Decline in smoking rates flatlines; cancer group blames contraband cigarettes, The Canadian Press, 25 August 2008

3.2 LICENSING

ITA advocates that, where appropriate and practicable, licensing of all manufacturing (which is presently the case in Australia) and certain levels of trade in tobacco products, tobacco and tobacco-related products such as machinery could be introduced. However, we do not support the licensing of tobacco retailers. In our view this would do little to reduce illicit trade as in most countries smuggled products are currently sold through illegal distribution channels.

Excessive license fees would be unaffordable and unattractive for small businesses, or even for medium and large businesses, where tobacco products are sold in small quantities. License fees should not be used by Governments as simple revenue raising opportunity³⁹ or an indirect attempt to reduce the number of tobacco outlets. If this was to occur there could be a potential significant reduction in the number of legitimate outlets leading instead to business opportunities for illicit trade and organised crime gangs.

3.3 PLAIN PACKAGING

It is our belief that plain packaging for tobacco products and the cigarette itself is unnecessary, unreasonable and unjustified. The proposal by the Tobacco Working Group is not based on sound public policy, or on compelling evidence. In fact the statement “if we act quickly, Australia can overtake the British Government and become the first country in the world to mandate that cigarettes be sold in plain packaging”⁴⁰ confirms that it is just another proposal based on an attempt to try and claim the higher ground in some sort of perverse public health competition that exists between various anti-tobacco advocates and organisations and has no public health basis. In fact the UK Government recently rejected the idea of plain packaging stating that “the evidence base needs to be developed”⁴¹. Plain packaging has questionable efficacy in reducing youth smoking, poses significant legal questions around brand expropriation and

³⁹ AMA Victoria Budget Submission, April 2008

⁴⁰ Technical Report No2, Making smoking History, page vi

⁴¹ Ministerial Statement, Johnson stubs out recruitment of young smokers, 9 December 2008.

creates further opportunity for non-duty paid volume particularly counterfeit, reducing government revenue and enhancing organised crime.

Despite continuous suggestions to the contrary, the introduction of Plain packaging is not an obligated requirement under Article 11 of the WHO FCTC. In fact there is no reference to plain packaging in the treaty.

Plain packaging would not address the issues that the Australian Government seeks to combat: it would make no overall contribution to the public awareness of the risks associated with smoking; it would not provide more information to smokers; and it would not reduce the appeal of tobacco products, especially to young people. The introduction of plain packaging would make no contribution to addressing youth smoking initiation. In fact, certain evidence suggests the potential for the contrary. Professor Chapman's comments provide the real reason why anti smoking advocates want to see the introduction of plain packaging and it appears to have absolutely nothing to do with improving the salience of the graphic health warnings or protecting children, it is simply about trying to put tobacco manufacturers out of business "that's the whole idea"⁴².

ITA is concerned about the continued erosion and potential expropriation of our valuable intellectual property rights. We believe that we are entitled to use our packaging to enable adult consumers to distinguish our quality products from those of our competitors. Regulation that requires plain packaging will expropriate valuable corporate assets in which the Company and its shareholders have invested for more than a century and risks placing the Australian government in breach of a range of legal and treaty obligations that relate to intellectual property rights and international trade. The introduction of plain packaging would set a regulatory precedent for intellectual property owners and their shareholders outside the tobacco sector, potentially causing serious concern for all organisations with registered trademarks in Australia.

⁴² Kill the tobacco industry, or it will keep killing, Sydney Morning Herald, 2 October 2008

Plain packaging will have a negative effect on competition. There would be little incentive for retailers to stock new brands and it would be practically impossible for a new competitor to enter the market successfully or for an existing competitor to compete with others by launching a new brand.

Plain packs would facilitate counterfeiting and undermine the excellent work that has been done by the industry and the Tobacco Industry Forum (previously the Illicit Tobacco Forum) to combat illicit trade. Due to the relative ease with which the materials for a tobacco product are acquired and the cigarette itself counterfeited, one of the key components in the fight against counterfeit is the packet itself. Both overt and covert elements of the pack design are incorporated to frustrate counterfeiters' attempts to copy the pack exactly and to facilitate identification of illegal product. An obvious repercussion of the introduction of plain packaging would be to make the counterfeiter's task substantially easier.

The Technical Report states that "Plain packaging would increase the salience of health warnings" stating that research subjects show an improved ability to recall health warnings on plain packs. This assumption relies on a couple of research papers which we have examined in detail over the next few pages.

The Beede and Lawson⁴³ study fails to confirm the authors' claims about plain packages aiding recall of health warnings, given that there were no statistically significant differences in recall between plain packs and branded packages.

This study consisted of eighty focus group interviews with 568 New Zealand adolescents, with an average age of 13. Branded and plain packs from New Zealand and the US were shown to focus group subjects and, after being withdrawn, the subjects were asked to illustrate the packs they had observed. Students were then provided with a list of ten health warnings and asked to identify any health warnings that they remembered from the cigarette packages.

⁴³ The Effect of plain packages on the perception of cigarette health warnings, Public Health, Beede P and Lawson R, 1992

The authors conclude that adolescents give limited attention to the health warnings on tobacco packages compared to the brand information. They also say that if tobacco was to be sold in plain packages, the awareness of health risks would be heightened and the promotional messages on the packages would be inhibited. *“The practical implications of this finding suggest that presentation of cigarettes in plain packs would increase the probable retention and impact of health warning messages.”*

There are several problems with this study. First, though appearing to be a quantitative study, this report cannot warrant reliability, validity or generalisation. No information is provided as to whether the subjects are smokers or non-smokers, even though such differences are extremely relevant to the study, for example.

Second, the results (when examined closely) fail to support the authors' conclusions. For instance, the difference in recall of health warnings between New Zealand brand packs and New Zealand plain packs was not statistically significant.

Third, the researchers argue that with the plain packs *“a greater proportion of available information can be retained, and consequently the health warnings achieved a greater impact.”* However, the study provides no evidence of this “greater impact” since impact was not measured. The researchers assume that greater recall of information leads to greater impact, but only a behavioural study which investigated the impact of higher recalled warnings on smoking could validate this claim.

Moreover, the results of the Health Canada 1995 Report (When Packages Can't Speak) contradict these findings. In that study, respondents reported that they were well aware of the current package warnings and that *“most people don't care if there is a warning there, if they are going to smoke they are going to smoke”*. As the panel itself concluded, after examining the respondents' replies, *“The evidence regarding recall, recognition, awareness and knowledge dimensions suggest that plain and generic packaging would lead to lowered*

recall, recognition and knowledge of brands, but may not have significant effects with respect to the recall and recognition of health warning messages.”

It is not clear, based on the Canadian experience with graphic health warnings which fulfil a significant part of the plain packaging agenda by seeking to drastically reduce the branded space of the tobacco package, that such enhanced warnings change smoking behaviour. For instance, according to Health Canada’s Wave studies⁴⁴, following the introduction of the graphic warnings which were argued to enhance recall and behavioural change, there was no statistically significant decline in the number of adolescents who believed that smoking was not a health problem; there was no statistically significant change in the number of adult smokers who believed that smoking is a major source of disease; there was a decrease in the number of adult smokers who looked at the warnings several times a day; and there was an increase in the number of both smokers and non-smokers who never looked at or read the warnings. Thus, by each of these indicators of warning enhancement and effectiveness, graphic health warnings were a substantial failure.

Beede & Lawson’s claims about the necessity of plain packaging to enhance health warnings are misplaced since these warnings are already satisfactorily performing their function in the current environment.

The second study cited in the Technical Report in support of the introduction of plain packaging is Goldberg⁴⁵ et al study, which consists of just one page, provides no evidence that its key assumption – that greater recall of health warnings makes them more effective – is true since it has no behavioural component that measures smoking. Moreover, its findings are contradicted by the results of the Health Canada Wave Studies⁴⁶ which were undertaken following the introduction of graphic warnings in Canada, which found that such

⁴⁴ Environics Research Group Limited (2004a and b etc). *Wave 9 Surveys: The Health Effects of Tobacco and Health Warning Messages on Cigarette Packages – Survey of Adults and Adult Smokers*. Ottawa: Health Canada

⁴⁵ The Effect of plain packaging on response to health warnings, American Journal of Public Health, Goldberg M, Liefeld J, Madil J and Vredenburg H, 1999

⁴⁶ Environics Research Group Limited (2004a and b etc). *Wave 9 Surveys: The Health Effects of Tobacco and Health Warning Messages on Cigarette Packages – Survey of Adults and Adult Smokers*. Ottawa: Health Canada

warnings made no difference in either youth or adult smoking prevalence or consumption.

As with the other qualitative studies on plain packaging, this study cannot warrant its results as representative, reliable, or capable of generalisation. For example, there is no data provided on the numbers of smokers and non-smokers or of the differing responses of smokers and non-smokers. Given that part of the claimed advantage of plain packaging is in discouraging smoking uptake or encouraging cessation, in our view this is a strange and fundamental omission.

The findings are contradicted by the results of the Health Canada Report and Wave studies. The findings are also contradicted by Rootman & Flay⁴⁷ who found that Ontario adolescents' recall of the health warning was not statistically different on plain packs from regular packs.

The implicit assumption about the relationship between health warnings and tobacco packages - unsupported by validated empirical evidence - that certain features (which are never properly specified) diminish the effectiveness of the warnings - rests on a further assumption that health warnings on tobacco packages change smoking behaviour. There is little evidence that this is in fact the case. There is also evidence which suggests why it is likely not to be the case. For such warnings to change smoking behaviour they must increase adolescents' risk perceptions. Professor Kip Viscusi of Harvard University has shown in a number of studies⁴⁸ that adolescent smokers already over-estimate the risks of smoking substantially in terms of risk of premature death, years of life lost and risk of death from lung cancer. It is improbable to expect that these

⁴⁷ Rootman, I.; Flay, B.R.; Northup, D.; Foster, M.K.; Burton, D.; Ferrence, R.; Raphael, D.; Single, E.; Donovan, R.; d'Avernas, J. 1995. A study on youth smoking: plain packaging, health warnings, event marketing and price reductions. Key findings. University of Toronto; University of Illinois at Chicago; York University; Ontario Tobacco Research Unit; Addiction Research Foundation, Toronto, ON, Canada

⁴⁸ Viscusi et al 2000 Smoking Risks in Spain *Jn of Risk and Uncertainty* 21: 213-34 Viscusi 1999 Public Perception of Smoking Risks in Valuing the Cost of Smoking C. Jeanrenaud and N. Soguel Eds. Viscusi, 1990 Do Smokers Underestimate Risks? *Jn of Political Economy* 98: 1253-69 Viscusi Smoke Filled Rooms, University of Chicago Press 2002, Fuller 2007 Smoking, drinking and drug use among young people in England in 2006 NHS National Statistics

perceived risks of smoking will be increased, regardless of what types of warning or packaging adolescents are exposed to.

The UK Department of Health's own expert evidence contradicts the claim that adolescent perceptions of smoking risks can be changed because they are inaccurate. Fuller⁴⁹, 2007 (Smoking, drinking and drug use among young people in England in 2006) reports that *"Almost all pupils thought smoking causes lung cancer (98%) ... harms unborn babies (97%), can harm non-smokers' health (96%) and can cause heart disease (94%)."* These figures represent risk awareness levels that cannot be increased. As Fuller observes *"These proportions have remained at similar levels since the early 1990s."*

ITA does not support the introduction of plain packages or plain cigarettes.

⁴⁹*Drug Use, Smoking and Drinking among Young People in England in 2006*, The Information Centre, London, Fuller, E. 2007.

4.0 PRODUCT INFORMATION FOR CONSUMERS

Smoking is a complex behaviour and different people smoke for different reasons. Fundamentally however, people smoke because they enjoy smoking.

ITA agrees that smoking can be characterised as addictive as the term is commonly used today. Some people may find it difficult to stop smoking, but we believe it is important for them to understand that if they choose to stop, they are able to do so. Thousands of people across Australia have stopped smoking, the majority without assistance. There are, however, many people who exercise an adult choice to smoke and use tobacco.

ITA recognises that it is the role of governments to provide smokers, including Indigenous Australians and those from socio-economically disadvantaged groups, with clear and consistent messages about the health risks associated with their smoking and we do not challenge those messages. However we believe that adults should continue to be allowed to make a choice as to whether or not to smoke.

4.1 GRAPHIC HEALTH WARNINGS

It is our view that the use of graphic health warnings is unnecessary and that they are designed solely to shock and to stigmatise smokers. In our view graphic warnings make no overall contribution to the public awareness of the risks associated with smoking, which we believe are already well known. ITA, working closely with the Federal Department of Health and Ageing and the Australian Competition and Consumer Commission, has fully complied with the legislative requirement to print graphic health warnings to tobacco products manufactured or imported for sale in Australia since 1 March 2006.

These warnings currently cover 30 per cent of the front and 90 per cent of the back of the pack; further encroachment on the pack is unjustified and unnecessary. Article 11 of the WHO FCTC states that in accordance with national law tobacco products shall carry health warnings, these should be 50%

or more of the principal display areas but shall be no less than 30%, they “may” be in the form of pictures.

Australia already has health warnings covering 60% of the principal display areas and already has implemented graphic health warnings. At the time of their launch the Australian Government stated that their introductions would “ensure consumers are fully informed of the wide range of adverse health effects caused by tobacco smoking”.⁵⁰ Therefore there is no further justification or evidence to support any further increase in the current size of the graphic health warnings to the proposed 90% of the front and 100% of the back of the pack of as outlined in the Technical Report.

As with the proposal for plain packaging, increased graphic health warnings potentially risks placing the Australian government in breach of a range of legal and treaty obligations that relate to intellectual property rights.

4.2 INGREDIENTS DISCLOSURE

ITA does not add anything to its products to make it more difficult for smokers to stop smoking, or to make its products attractive to children. Ingredients are not used to change the level or chemical form of nicotine in tobacco smoke.

Ingredients may be added to tobacco products during manufacture. Ingredients (for example, flavourings typically used in food), are sometimes used in some brands to enhance their overall flavour characteristics and aroma, giving each brand its own distinctive style, in line with adult consumer preferences. However these ingredients are not designed, nor intended to give the cigarettes a fruit or confectionary-like flavour.

There has been particular concern in recent years at both a Federal and State level about fruit flavoured cigarette brands imported and sold by certain tobacco

⁵⁰ Australia’s new tobacco warnings, among the worlds largest, Media Release The Hon Tony Abbott, 25 June 2004.



distributors but not in relation to any brands manufactured or sold by ITA. ITA has continued to work closely with State and Federal Governments on the issue of tobacco ingredients.

Information on the ingredients used in ITA cigarette brands have been provided under a Voluntary Agreement formalised between the Federal Government and the three major tobacco companies since December 2000 and can be accessed via www.health.gov.au

5.0 PRICE

ITA contributed \$1.25 billion to the Federal Government through the collection of tobacco excise and \$146 million in GST during our financial year ended 30 September 2007.

5.1 EXCISE RATES

The topic of a tobacco excise increase was floated by the Government prior to the general election in 2007, at which time it was met much public criticism. Deputy Prime Minister Ms Julia Gillard's decision to drop the plan to increase tobacco excise (along with other measures) was because "they were not good ideas" and that "they will not be proceeded with"⁵¹.

Dr Rob Moodie, the Chair of the National Preventative Health Taskforce, prior to the discussion papers release called on the Government to increase tobacco tax following the Government's increase on alcopops. Dr Moodie claimed at the time that a 2.5 cents rise per cigarette could raise \$400 million annually and would also reduce consumption by 3 percent.⁵² However the revenue assumption did not appear to take into account the claimed 3 percent reduction in consumption. If it did, based on today's industry tobacco volumes, this in itself would reduce excise revenue by approximately \$200 million. Now the action proposed by the Tobacco Working Group in their technical report states this should be increased by 7.5 cents per cigarette stick.

Anti-smoking organisations have been quick to demand tobacco excise be increased. However the public's support for raising taxes as a preventive health policy is not universal⁵³. The first results of the 2007 National Drug Strategy Household Survey also confirm that increasing tax on tobacco products to discourage smoking had the lowest level support for any tobacco control measures⁵⁴.

⁵¹ Funding Hole after ALP drop savings, Adelaide Advertiser, 31 October 2007

⁵² Cigarette tax a worthy attack, Sydney Morning Herald, 29 April 2008

⁵³ Bucks fizz as wowsers way taxes our health, Daily Telegraph, 2 May 2008

⁵⁴ 2007 National Drug Strategy Household Survey, First Results, April 2008

Consumer group CHOICE has “warned that any cost increase could have a negative social impact on families struggling with rising living costs”⁵⁵. This is also supported by further research from the US which suggests cigarette excise taxes may have become an increasingly ineffectual approach to tobacco control in the post Master Settlement Agreement era and has not helped reduce income-based disparities in smoking participation. The smoking participation gap, it states, may even be widening. Therefore increasing cigarette excise taxes appears to impose a particular burden on low-income persons who continue to smoke⁵⁶.

In a recent lecture to the Australian National University Dr Cornaglia, from Queen Mary University in London, stated that when tobacco prices are actually pushed up because of budget constraints smokers may “inhale more deeply the smoke”⁵⁷.

Additionally, smokers may seek out alternative sources to legal tobacco, such as “chop-chop” or counterfeit product thus adding to the current illegal tobacco market, which still remains a serious problem in Australia. It is estimated that the illegal market is equivalent to 6.4% of total cigarette consumption in Australia and represents taxation losses of around \$450 million⁵⁸. The Department of Health and Ageing also recognises that there are serious additional health risks regarding the use of chop-chop⁵⁹. Experience from many other countries demonstrates that significant tax increases fuel the illegal black market in tobacco products to as high as 35%. The technical report states that “It is essential that we do not let illicit trade become a problem in Australia”, excessive and unreasonable excise and customs duty increases will make the illicit trade in tobacco products more lucrative and appealing to organised crime gangs, something the Australian Federal Police have already highlighted as a key area of concern.

⁵⁵ Fed: Pressure on gov to increase tax on tobacco, AAP Newswire, 28 April 2008

⁵⁶ Cigarette Prices, Smoking, and the Poor: Implications of recent trends, Franks et al, October 2007

⁵⁷ Banning smoking in public and raising taxes may not be answer, researcher warns, Canberra Times, 9 April 2008

⁵⁸ Illegal Tobacco Trade: Costing Australia Millions, PriceWaterhouseCoopers Report, August 2007

⁵⁹ Fact Sheet: The Facts about ‘chop-chop’ tobacco, Department of Health and Ageing Website May 2007, <http://www.health.gov.au>

Finally, suggestions that tobacco taxes have not increased for ten years are unfounded. The current excise rate is 25.45 cents per cigarette stick and 31.81 cents per gram of rolling tobacco. These rates are currently indexed to CPI inflation every February and August.

It is important to be certain that tax increases have the outcome that is desired and that they do not in fact cause other spin-offs that are not socially desirable.

5.2 SETTING MINIMUM PRICES

The proposal to set minimum prices of \$20 for a packet of thirty cigarettes is in direct conflict with the principles the Australian Competition and Consumer Commission protects and upholds on behalf of all Australians. It is also a clear breach of the Trade Practices Act (1974).

The topic of minimum prices on tobacco has been raised in other countries most notably in the European Union. In July 2007 the European Commission formally called on Austria, Ireland and Italy to amend their legislation setting minimum retail selling prices for cigarettes. In the Commission's view and as consistently held by the Court of Justice of the European Communities, minimum prices breach Community legislation and distort competition⁶⁰. Belgium complied with the Commission's opinion. In January 2008 the Commission decided to refer Austria and Ireland to the Court of Justice⁶¹ for their failure to do so.

5.3 ILLICIT TRADE

ITA supports all measures against illicit trade in tobacco products that are appropriate, effective and properly implemented. ITA also supports the active participation by the Australian Government in the negotiation of the FCTC Article 15 Protocol on illicit trade in tobacco products.

⁶⁰ European Commission Press Release, Excise duties – Minimum retail selling prices for cigarettes: infringement proceedings against Austria, Ireland and Italy, 2 July 2007.

⁶¹ European Commission Press Release, Excise duties/Minimum retail sale prices for cigarettes: the Commission refers Austria and Ireland to the Court of Justice, 31 January 2008

We fully support all proposals which are appropriate to tackle the world-wide illicit trade in tobacco products which include information sharing and party co-operation, taking into account national and regional legislative and trade processes, agreements and treaties. Illicit trade undermines Governments' health objectives and tax revenues, harms consumers and threatens jobs in legal businesses. Illicit trade benefits no one but criminals.

ITA believes that the current cooperation and engagement that exists between tobacco manufacturers and regulatory bodies in Australia today, through the Tobacco Industry Forum, is one of the best examples of how all parties can work together on tackling this important issue.

Illicit trade in tobacco products comprises three different categories:

- Genuine products which may be purchased duty paid in one market, but are smuggled to another and resold.
- Counterfeit products on which no duty has been paid.
- Genuine domestic products released for consumption on which duty has not been paid.

Smuggling of genuine products has taken place for many years, as a result of tax and price differentials across regions and even across the world. The international cigarette manufacturers including ITG have implemented and rigorously enforced stringent supply and know-your-customer policies along with other anti-smuggling measures, in order to limit the availability of products to smugglers. However, as a result of this, the smuggling of genuine products is increasingly being replaced with smuggling of counterfeit products. Therefore, it is essential to implement measures that target both smuggling of genuine, and manufacturing and smuggling of counterfeit products.

Unfortunately, the Technical Paper does not address the root cause of the trade in illicit tobacco products. Instead it chooses to focus on legitimate tobacco manufacturers, placing more onerous requirements on the industry, making legal tobacco products less affordable and or restricting availability to adult smokers, thus encouraging them to seek out illegitimate sources. The Technical Report instead proposes the banning of sales of tobacco products on the

internet and duty free sales, which are not significant causes or sources of trade in illicit tobacco products. In fact, retailing within traditional duty free markets is a highly regulated and controlled trading environment, subject to scrutiny and supervision, with sanctions available for abuse or misuse. Enforcement of proof of age is supported with the production of boarding pass and passport. Suggestions to focus on banning duty free as a solution to combating illicit tobacco worryingly suggests a total lack of understanding in this important area.

Action in this area should consider introducing tougher enforcement and penalties for selling or trading in illegal tobacco products which have evaded excise duty and or are counterfeit products. Smuggling benefits only the criminals involved and threatens the livelihoods of legitimate family retail businesses. It creates an uncontrolled and unregulated market that is untaxed and unaccountable. Organisations including the Australian Federal Police are also concerned that the trade in illicit tobacco could be financing serious crime including illicit drugs.

Trade in illicit tobacco also undermines public health policy. According to Dr Campbell Aitken, from the Burnet Institute in Melbourne, smokers of illicit tobacco such as “Chop-chop” are more likely to have additional serious ills than smokers of licit cigarettes.⁶² In addition efforts to cut smoking rates among Canadians have stalled and the Canadian Cancer Society is blaming huge sales of cheap contraband cigarettes.⁶³

⁶² A black mark for black cigs, Herald Sun, 8 July 2008

⁶³ Decline in smoking rates flatlines; cancer group blames contraband cigarettes, www.canadaeast.com, 27 August 2008

6.0 PLACE OF USE

ITA recognises that many people find tobacco smoke in enclosed areas to be unpleasant or annoying, particularly in clubs and pubs, and that they want access to smoke-free areas.

Similarly, there are many smokers who use licensed premises and outdoor facilities who want to enjoy the amenities and be able to smoke at the same time. We support measures that can accommodate the interests of all parties, including the hospitality industry that has been seriously disadvantaged when smoking in licensed premises was severely curbed or banned.

Claims that smoking bans in enclosed licensed areas would have no effect on sales and that non-smokers would flock to hotels, clubs and pubs as result of introducing the smoking ban have proven to be completely unfounded. There is now clear and strong evidence that the smoking ban implemented in various states across Australia has led to a decline in revenue and jobs in the hospitality sector. According to figures from the Office of Liquor, Gaming and Racing, in New South Wales alone, poker machine revenue plummeted \$616 million compared with the 12 months before the smoking ban and was said to be costing clubs and pubs almost \$1.7 million a day.⁶⁴

A recent survey carried out for the National Health Service in England suggested that smokers who could no longer smoke in licensed premises such as pubs and clubs simply ended up smoking at home. This has led to an increase in the proportion of men who smoke rising since the ban in July 2007 and has also failed to increase the number of people quitting. According to the Liberal Democrat health spokesman Norman Lamb the figures demonstrate that the strategy of introducing smoking bans has not been successful and is “yet another case of Government pursuing tough eye-catching initiatives which in the end don’t succeed in tackling the real problem”.⁶⁵

⁶⁴ Smoking ban costs \$1.7m a day, Sydney Morning Herald, 10 December 2008.

⁶⁵ Smoking ban fails to curb the habit: figures reveal men are smoking MORE, www.dailymail.co.uk 18 December 2008

6.1 OUTDOOR AREAS

ITA believes that regulation on environmental tobacco smoke should be determined by sound science, with smoking policies based on cooperation, courtesy and common sense. If smokers are comfortable taking food and drink into an outdoor smoking area whether it be a licensed restaurant or a hotel or club, they should be allowed to do so. We appreciate that some persons do not wish to eat or be served food in outdoor smoking areas, but question the rationale for not allowing smokers to take their food into a designated outdoor smoking area if they wish.

In the UK in 2006, the House of Lords' Economic Affairs Committee enquiry into Government Policy on the Management of Risk published the results of its enquiry. On environmental tobacco smoke, the Committee argued that “the risks associated with passive smoking do not justify a ban [In the UK]. Failure to consider these matters properly has resulted in the introduction of a policy that appears to demonstrate a disproportionate response to the problem [of passive smoking]”.⁶⁶

The Chairman of the Committee, Lord Wakeham, commented “We are also concerned that the Government does not pay enough attention to the cumulative impact of legislation on personal freedom and choice.”⁶⁷

Professor Simon Chapman too has stated “let’s not confuse health and morality, the anti-tobacco brigade has gone too far with proposals to ban outdoor smoking”⁶⁸. Prof Chapman goes on to say that “people have forgotten values such as justice and choice, personal freedom and such.”⁶⁹

ITA believes that smokers and non-smokers alike should be offered the freedom of choice connected with better options for pubs and licensed premises to create

⁶⁶ Press Release, House of Lords Economic Affairs Committee “Threats to personal liberty need to be incorporated in government risk assessments”, 7 June 2006

⁶⁷ Press Release, House of Lords Economic Affairs Committee “Threats to personal liberty need to be incorporated in government risk assessments”, 7 June 2006

⁶⁸ “Let’s not confuse health and morality”, page 12 The Australian, 20 March 2007

⁶⁹ “Stubbing out basic values in fight against fighting”, page 66, Australian Financial Review, Thursday 30 August 2007

smoking areas that will be better able to provide personal choice, rather than forcing smokers onto the footpaths and streets.

6.2 SMOKING IN CARS CARRYING CHILDREN

In the same way as smokers should show courtesy to other adults when smoking, this courtesy should be extended to children, who are often unable to exercise choice in their environment and surroundings in the way that adults can. Generally, most smokers do show courtesy to others when smoking in cars.

When giving evidence to the Joint Select Committee inquiry on tobacco smoking in New South Wales, Commander Traffic Policy of NSW Police, Ronald Charles Dorrough, stated that the idea of banning smoking in cars would be extremely difficult to try and enforce⁷⁰. The NSW Joint Select Committee also recognised that a ban on smoking in cars would entail a greater encroachment on individual liberties as cars are considered private areas, as did the Queensland Government in their 2007 Review of Smoke-free Laws⁷¹.

Professor John Gullotta of the Australian Medical Association has also stated that the best approach to smoking in cars with children present “is an educational approach, to educate parents and drivers to ensure they know the risks that they are exposing their children to, and to get them to take the responsible upper hand and not smoke in their vehicles”⁷². The Queensland Government also acknowledged that “public education campaigns and existing smoke-free legislation were likely to result in further decreases in the prevalence of smoking in cars”⁷³.

⁷⁰ Joint Select Committee on Tobacco Smoking, Inquiry Tobacco Smoking in New South Wales, Public Hearing, 5 May 2006.

⁷¹ 2007 Review of Smoke-free Laws, Queensland Health, November 2007.

⁷² Joint Select Committee on Tobacco Smoking, Inquiry Tobacco Smoking in New South Wales, Public Hearing, 21 March 2006

⁷³ 2007 Review of Smoke-free Laws, Queensland Health, November 2007.

Dr David Roberts former president of the Australian Council on Smoking and Health has also said “there is simply no convincing evidence to suggest that smoking in cars represents anything like the health danger that he claims”⁷⁴.

Calls for Western Australia to ban smoking in cars with children led the WA Health Minister Jim McGinty to say that WA could become “a ‘nanny-state’, if legislation to ban people from smoking in their cars while children are present, is approved”⁷⁵.

ITA believes further education is a more appropriate and ongoing solution to this problem rather than regulation.

⁷⁴ “Lib plan to ban car smoking is hit from within”, West Australian 7 June 2006.

⁷⁵ Radio Grab, MIX 94.5 (Perth), 14:00 News, 6 June 2006 (02:02PM)

7.0 CORPORATE RESPONSIBILITY

ITA is committed to good governance and responsible corporate behaviour. We recognise that operating in the tobacco business attracts particular scrutiny with regard to our corporate behaviour and believe that our responsible approach to the manufacture, sales and marketing of our products is fundamental to long-term business success. At ITA, we are proud of our reputation in how we conduct our business and will continue to work to protect it.

It is our policy not to make donations to political parties. We do, however, seek to engage with Government and regulators across the political spectrum, but we remain politically neutral.

In common with other significant international companies, ITG is committed to its responsibilities as a manufacturer of consumer goods and a good corporate citizen, as well as to making a positive contribution to the community in which we operate. Each year ITG Tobacco publishes our Corporate Responsibility Review, which contains information on our achievements and performance together with our commitments for the future; it is available on our website www.imperial-tobacco.com

Corporate Responsibility activities undertaken by ITA in Australia include issues such as minimising any adverse environmental impacts of our operations through our commitment to the National Packaging Covenant that we became a signatory to in December 2002; working with Keep Australia Beautiful NSW and KESAB to tackle cigarette litter issues; working with government to combat smuggling and counterfeit tobacco products and supporting local Australian charities with appropriate financial donations. These Corporate Responsibility initiatives and activities conducted by ITA, or with the support of ITA, are not tobacco advertising, tobacco promotion or sponsorship and attempts to suggest that they are and therefore prohibited by Article 13 of the WHO FCTC are inappropriate.