

Retail Industry Response to Queensland Government: consultation regulatory impact statement (CRIS) – Reducing the negative effects of smoking in Queensland.

June 2022

Section One

Introduction and Summary Points

This submission to the CRIS is in response to the Queensland Government's *Consultation Regulatory Impact Statement (CRIS) – reducing the negative effects of smoking in Queensland*.

It details the views of the members of three of the major retailer representative organisations in Queensland - the Australian Lottery and Newsagents Association (ALNA), The Australasian Association of Convenience Stores (AACS), and the Master Grocers Australia (MGA) Independent Retailers. These are retail peak bodies that represent thousands of small to medium sized family, franchise and independent business, across Queensland.

While each of the organisations have replied to the CRIS individually with their own positions on the broader proposed regulatory reforms, this submission is unique, in that it presents a united response that is specific to the issue of illicit tobacco (RIS section 2 2.1), licensing and enforcement (RIS section 3 3.1).

The position outlined here by the collective group underlines the very serious impact on retailers of the rapid growth in organised crime tobacco sales (the illicit trade) in Queensland, as well as the significant effect it is having on the health of Queenslanders. In particular, young people who now have much easier and cheap access to illegal tobacco and nicotine vapes, etc, as well as retailers whose health is being severely affected by the stress of financial ruin.

Submission Sponsors

This submission has been prepared and presented by the following organisations.

Australian Lottery and Newsagents Association (ALNA)

The Australian Lottery and Newsagents' Association (ALNA) is the peak national industry body representing Lottery Agents and Newsagents. There are more than 4000 Lottery Agents and Newsagents in Australia employing over 20,000 people. In Queensland, ALNA represent these small businesses in almost every rural town, regional centre, urban and metropolitan shopping centre.

The Australasian Association of Convenience Stores (AACS)

AACS represents the interests of all businesses within the Australian convenience store channel. There are more than 7,000 stores nationally and our members range from high profile brands to independently owned stores, from global suppliers to sole traders.

Master Grocers Australia (MGA) Independent Retailers

MGA Independent Retailers (MGA) is a national registered employer industry association representing 2700 family enterprises and privately-owned businesses in the independent grocery, liquor and other retail sectors including hardware employing over 115,000 staff with sales in excess \$15 billion.

Submission Summary Points

This submission supports the objective of the RIS to further reduce the negative effects of smoking, improve the health and wellbeing of the community and ultimately reducing the costs of smoking on society.

As outlined in the RIS, the rapid increase in the supply of illicit tobacco in Queensland is a direct threat to the achievement of those objectives.

To that extent Queensland retail industry leaders support the intent of the RIS to establish a cost neutral licensing scheme, backed by a strong enforcement regime, to target and close down organised crime's illegal tobacco retailing activity.

This should reflect best practice from other states for identifying legal sellers of tobacco in Queensland, while maintaining reasonable costs. It must not be a burden on retailers who are already under pressure, rather it would be a tracking mechanism with associated enforcement powers that will enable the QLD authorities to prevent and prosecute all criminals selling illicit tobacco.

In summary, this submission responds to specific matters raised in the RIS on the issue of illicit tobacco, which it links strongly to the matter of licensing as a compliance tool, and outlines a clear position on behalf of a significant component of the retail industry in Queensland.

Specifically, this submission puts forward the clear position of industry on how to disrupt and reduce the supply of illicit tobacco in Queensland:

- 1. Introduce a cost neutral tobacco Licensing scheme as the enabler for enforcement at store level.***

We support the recommended approach outlined in the RIS (Option 3) to create a positive licensing scheme requiring retailers and wholesalers to apply for a licence prior to selling smoking products. This should include the provision to have a licence revoked due to illicit activity.

However, retailers do not support a licensing scheme that has the potential to add further cost to business unless it is supported by a properly funded enforcement regime that

includes additional funding for police on the beat, as well as new legislated powers to search and seize illicit products and enables timely and effective prosecution.

We also recommend the management of the licensing program under the Department of Justice and Attorney-General (DJAG) through the Office of Liquor and Gaming Regulation (OLGR).

2. *Establish an illicit taskforce in conjunction with retail licensing to work toward stamping out the illegal retailing of these products by organised crime groups.*

This proposal would include the following:

- An Initial 8 FTE QPS Illicit Tobacco Taskforce established for 24 months to shutdown existing criminal syndicates operating an estimated 75 illicit shopfronts.
- Reduced 3 FTE ongoing QPS Illicit Tobacco Taskforce after 24 months to maintain surveillance and as-needed compliance operations once existing criminal syndicates have been disbanded.
- Utilise existing inspectorate with an additional 4 FTEs for increased tobacco licensing and general compliance operations.
- Co-regulatory enforcement between DJAG and Queensland Police Service (QPS) aligned to OLGR legislative framework.

3. *Queensland Police (in addition to EHOs) given the powers to disrupt the illicit trade, including search and seize powers and large on the spot fines.*

The RIS section three (3.1) Supply of Illicit Tobacco (page 194) states clearly that there is no offence for selling illicit tobacco products in the Act. Further, it suggests that there is universal support for “State based compliance action to disrupt the supply of illicit tobacco products at retail stores.”

As such, we support the recommended action within the RIS to introduce ‘Option 2: *“Amend the Act to allow seizure of tobacco products not meeting plain-packaging requirements or without mandatory graphic health warnings.”*

However, retailers believe strongly that State based compliance action must empower Queensland Police with new legislated powers including search and seize illicit product and on the sport fines.

As outlined Section 2 - 1.3 (page 47) “Compliance with the Act is predominantly monitored by Queensland Health Environmental Health Officers located in Public Health Units across the State. While there are some enforcement actions taken in response to breaches, it is clear that the control of supply by major organised crime is beyond the day-to-day ability of EHO’s to manage. It requires strong and sustained police action – a position robustly supported by Queensland Police.

4. *The cost of licensing being a nominal flat fee for government administration purposes only (\$350).*

Within the RIS under 'Fees and fee structures' section 2.1 (page 68) it suggests that the establishment of a fee structure for smoking product licensing in Queensland would be determined on the basis of full cost recovery for the price of licensing infrastructure, as well as directly related policy, education, monitoring and enforcement regulatory functions.

The retail community supports cost neutral licensing but does not support the notion that enforcement activity against the existing organised crime groups distributing illicit tobacco across Queensland should only be taken if the full cost can be borne by legitimate retailers.

We do not believe that this level of funding would adequately allow the government to prevent the continued growth in the supply of illicit product. The costs to the State in terms of a growing mental and physical impact on its citizens, and the empowerment and funding of organised crime, are strong reasons to immediately commit a greater portion of consolidated revenue to the challenge.

There is a strong argument that the State Government should invest in enforcement beyond cost recovery through a licensing scheme. We have provided in section two of this submission a number of ideas on how this could be funded.

5. *Given the rapid and sustained increase in the supply of illicit product in Queensland legislation must be introduced as a matter of urgency to provide Police with the powers to stop the illegal trade in tobacco.*

The costs in any delay are real, in relation to the impact on victims (retailers), GST avoidance, and health impacts, especially in young people who are accessing nicotine and unregulated vaping products.

In particular, the impact on business owners' mental health is devastating. People who have had small businesses in Queensland for decades are now on the brink of collapse as a result of the impact of Organised Crime – Tobacco outlets within their area.

The pure threatening nature of the crime syndicates entering legitimate outlets if anyone dare challenge them or speak in the media is only compounding that anxiety.

Section Two

Submission background and Evidence

Presented here is a more detailed analysis of the matters outlined in the summary points above.

Licensing Scheme

We propose that the recommended tobacco licensing scheme be established under the umbrella of the Office of Liquor and Gaming Regulation (OLGR). We note the based on approximately 3-3500 retailers selling tobacco products in QLD, we estimate – similar to the figures outlined in the RIS – that the model will generate reasonable licence fees annually, which are generally exempt from GST. We believe that the ongoing staff resources required

to administer the scheme would be no more than 4 FTE, providing a surplus from annual licensing fees to fund other enforcement and educational activities.

General compliance duties in relation to tobacco licensing could be carried out by QLD Health EHO's who already attend tobacco retailers to check compliance with other aspects of the Tobacco and Other Smoking Products Act 1998 and if necessary supplemented by the existing inspectorate of the OLGR.

In the short term, policing resource requirements would be limited to dealing with specific illicit tobacco related intelligence that may be reported by EHO's, OLGR inspectors or impacted members of the retail community. It is important to note that although they have a disproportionately large impact on legitimate retailers, if the problem is effectively contained, we are talking about police involvement in dealing with less than 3% of tobacco retailers across QLD.

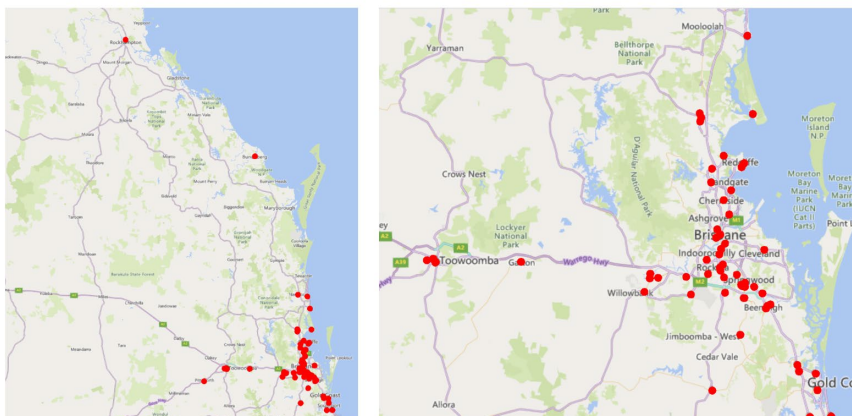
Illicit Tobacco Enforcement Cost

The issue of cost to undertake expanded enforcement activity is a complex one. Not everything can be cost recovered but there is a strong argument and moral imperative to undertake this activity before it is too late, or before tackling the issue becomes significantly more cost prohibitive as is now the case in Victoria.

There is a strong argument that the State Government should invest in enforcement beyond cost recovery through a licensing scheme. It is well established that the sale of illicit tobacco is exploding in Queensland, driven by organised crime syndicates like bikie gangs.

Currently we estimate 120 illegal outlets are already operating in QLD, almost double the number of stores that were known when this issue was first raised with the Queensland Government in August 2021, with new ones opening every week (We've received retailer reports of 5 or 6 new stores in the last 48 hours alone).

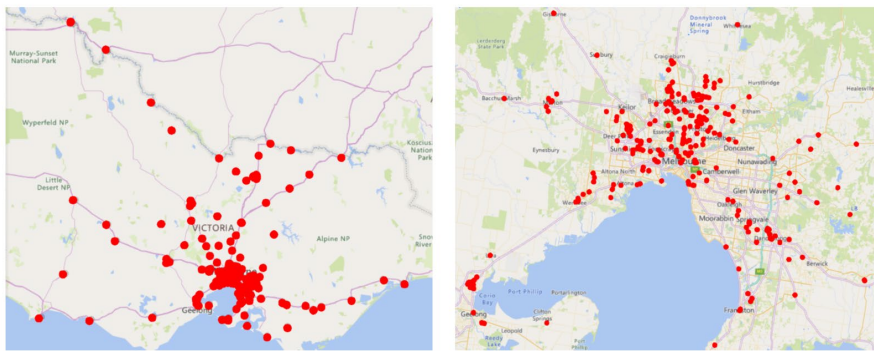
Illicit Tobacco in Queensland – 80+ stores





Without strong reforms to curb this illegal activity it is likely this number could easily double to nearly 200 within the year. In Victoria where the problem is further advanced there are well over 400+ illegal retail outlets.

Illicit Tobacco in Victoria – 400+ stores



This criminal activity is being promoted by serious organised crime groups and is highly profitable.

The retail community is willing to absorb a small cost for a simple but efficient and equitable licensing regime to help enforcement agencies identify legal and illegal sellers and to undertake additional illicit trade enforcement, but retailers cannot support further cost if there is no offset for improving policing of illegal activity.

To effectively address this crime problem enforcement agencies will require new powers and some additional resourcing to undertake additional efficient enforcement.

The retail community, however, does not support the notion that enforcement activity against the existing organised crime groups distributing illicit tobacco across Queensland should only be taken if the full cost can be borne by legitimate retailers.

The moral imperative requires action and to proactively guide modelling of how cost can be minimised we have developed a recommended framework for further engagement.

Tobacco Taskforce

As outlined in the Summary Points, we support the establishment of a QPS 'Tobacco Taskforce' to stop the sale of illicit tobacco by organised crime in QLD. Currently Police resources are mainly targeted – in concert with Border Force and the ATO - at the 'chop chop' trade and the growth and distribution of large amounts of illegally grown tobacco. Initially the taskforce would be responsible for dismantling the existing illegal retail networks currently operating across SE QLD which we suggest could require 8 FTE members of QPS to investigate and co-ordinate enforcement action against the criminal groups involved.

The rapid rise in stores selling illegal tobacco in Queensland has to date been driven by the understanding amongst criminal groups that there is no enforcement framework in place to shut them down. Therefore, an enforcement blitz by the taskforce would send a strong message – together with strong messaging around the timely implementation of recommendations in the RIS - that Queensland is now specifically targeting this sort of activity and provide sufficient supply chain disruption to halt the rapid growth in store numbers.

Once the current situation is under control the staffing requirements of the Tobacco Taskforce could be reduced while still maintaining surveillance and as-needed compliance operations to deal with emerging store syndicates in the future.

Legislate to provide Queensland Police with key enforcement powers

To enable QPS to effectively target illicit tobacco distribution the *Tobacco and Other Smoking Products Act 1998* must be amended to clearly establish the sale of illicit tobacco products as an offence and provide QPS members with necessary entry and search powers, without warrants, in regard to retail premises where there is reasonable suspicion illicit tobacco products are being sold.

The best practice Western Australian scheme clearly makes it an offence to possess illicit tobacco by making it an offence for a tobacco license holder to possess tobacco products which are:

- (a) *Prohibited goods as defined in the Customs Act 1901 of the Commonwealth; or*
- (b) *Excisable goods as defined in the Excise Act 1901 of the Commonwealth upon which excise duty has not been paid.*

Although this offence should be extended to include anybody, not just tobacco license holders, it establishes a clear offence that justifies police use of the investigative powers.

A proposed costing of the licensing and police enforcement initiative is provided here and shows that over the forward estimates period this approach could prove to be cost neutral.

Licensing and Enforcement Costings

	2022-23	2023-24	2024-25	2025-26
Tobacco License Income				
Number of retail licensees	3,500	3,500	3,500	3,500
Annual license fee	\$ 375	\$ 375	\$ 375	\$ 375
Total income	\$ 1,312,500	\$ 1,312,500	\$ 1,312,500	\$ 1,312,500
DJAG Program Expense				
FTEs	\$ 4	\$ 4	\$ 4	\$ 4
Average FTE expense	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Total employee expenses	\$ 400,000	\$ 400,000	\$ 400,000	\$ 400,000
Supplies and services (30% of employee expenses)	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000
Total DJAG expenses	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000
QPS Illicit Tobacco Taskforce Expense				
FTEs	\$ 8	\$ 8	\$ 3	\$ 3
Average FTE expense	\$ 110,000	\$ 110,000	\$ 110,000	\$ 110,000
Total employee expenses	\$ 880,000	\$ 880,000	\$ 330,000	\$ 330,000
Supplies and services (30% of employee expenses)	\$ 264,000	\$ 264,000	\$ 99,000	\$ 99,000
Total QPS expenses	\$ 1,144,000	\$ 1,144,000	\$ 429,000	\$ 429,000
OPERATING SURPLUS/(DEFICIT)	-\$ 351,500	-\$ 351,500	\$ 363,500	\$ 363,500
NET POSITION OVER FORWARDS	\$ 24,000			

Further Action - On The Spot Fines/Infringement Notices

Queensland's smoking laws are governed by the:

- Tobacco and Other Smoking Products Act 1998
- Tobacco and Other Smoking Products Regulation 2021

They are primarily enforced by Queensland Health Environmental Health Officers (EHOs), who can:

- issue individuals with warnings and on-the-spot fines
- issue businesses with improvement notices, warnings and on-the-spot fines
- initiate legal proceedings for breaches of the smoking laws
- respond to complaints
- inspect premises
- provide advice about the smoking laws.

Under these instruments if Police officers could issue on the spot fines and these were modernised and substantially increased to focus on organised crimes illegal retailing activities, cost effective policing could occur quickly to stamp out this activity and return significant penalty revenue to the QLD government.

For reference as of 1 July 2021, the value of a penalty unit in QLD is \$137.85 and the following list outlines some of the current enforcement penalties for legal retailers.

Smoking product retailing

On-the-spot and court fines

Section Offence Penalty unit (On-the-spot) Max penalty unit in court

Over-the-counter sales and vending machines

44E(1) Failing to show an authorised person written evidence of employee training 2 50

44F Failing to certify a copy of written evidence of employee training 2 50

Over-the-counter sales

9A(1) Failing to undertake prevention measures, including failing to provide training to employees about not supplying smoking products to under 18's 4 40

13B Selling smoking products from more than one point of sales at a retail outlet 4 140

13C(1) Selling a smoking product from a temporary retail store 4 140

22(1) Failing to sell cigarettes or herbal cigarettes in a package 4 140

22(2) Selling cigarettes or herbal cigarettes in packets of fewer than 20 6 140

23(1) Selling loose tobacco not in a package 4 140

23(2) Selling loose tobacco in a package containing less than 25g 4 140

23A(1) Selling loose smoking blend not in a package 4 140

23A(2) Selling loose smoking blend in a package containing less than 15g 4 140

26A(1) Having unauthorised smoking product display 4 140

26A(2) Having unauthorised smoking product advertising other than at a retail outlet 4 140

26A(3) Having unauthorised smoking product advertising at a retail outlet 4 140

26HC(1) Failing to display a mandatory sign at the relevant point of sale 2 20

26L(1) Supplying an object or entitlement that promotes a smoking product, smoking products trademarks, brand names or the manufacture or distributor of a smoking product in association with the smoking product - 140

26M(1) Supplying an object or entitlement in association with the sale or consumption of a smoking product or smoking products generally - 140

26N(1) Supplying smoking product giveaways - 140

26O(1) Conducting a competition that promotes a smoking product, smoking products trademarks, brand names or the manufacture or distributor of a smoking product in association with the smoking product - 140

26P(1) Conducting a competition associated with the sale or consumption of a smoking product or smoking products generally - 140

26PA(1) Displaying an image that promotes a person or thing consuming, using or being associated with smoking product at a retail outlet - 140

Product sales to children

10(1) Supplier selling smoking products to a child - Up to 420

11(1) Failing to ensure that employees do not supply smoking products to a child - Up to 420

12(2) Employee selling smoking products to a child - Up to 40

Timely legislation to stop the explosion in the supply of illicit Tobacco

There is a significant cost to the community if Police are not provided with the resources and powers to crack down on the scourge of illicit tobacco.

1. Proliferation of organised crime activity in the community

There is no doubt that the illicit tobacco trade is almost exclusively the domain of organised crime syndicates. Failure to curtail the growth of illicit tobacco sales in QLD will only allow these groups to continue generating significant profits which can be used to fund other criminal activities including illicit drugs and weapons.

Profitability of an illicit tobacco retailer

Store Opening Hours Per Day	10
Trading Days Per Week	7
Customers Per Hour	5
Average Spend Per Customer (assume 1 box of tubes purchased)	\$55
Weekly Sales	\$19,250.00
Annual Sales	\$1,001,000.00

2. Victim Impacts

The cost of inaction has gone beyond dollars and cents in Queensland. The human cost is now very real. All our associations have examples of small business's losing thousands of dollars week on week with the influx of Organised Crime – Tobacco entering the state with several new stores opening up on a weekly basis.

Small businesses are being forced to cut employees because they are unable to maintain their wage budgets, or even worse, are on the brink of shutting their doors. The flow on effect that is very real right now is the impact on business owners' mental health, people who have had small businesses in Queensland for decades are now on the brink of collapse

as a result of the impact of Organised Crime – Tobacco outlets within their area. The pure threatening nature of the crime syndicates entering legitimate outlets if anyone dare challenge them or speak in the media is only compounding the above anxiety.

The sale by organised crime groups of illegal tobacco products is not the victimless crime that some members of the community who take advantage of cheaper prices think it is. The sale of these illegal unregulated products including illegal vaping products containing nicotine is occurring more often to school age Queenslanders and is undermining the governments preventative health policy.

Attached as **appendix one** are just some of the recent examples of the financial impact on legitimate business operators following the opening of nearby illicit tobacco operations

Further, we recommend a thorough analysis of victim impacts as part of developing a taskforce to deal with the problem and to inform educating the community on the need for a new approach.

3. GST Avoidance

Given that illicit outlets substantially impact existing legal retailer's sales to the tune of \$10's of thousands or more per week, it can be estimated that GST losses alone are very conservatively in the order of \$1000 or more per week for each illegal outlet.

Currently this would amount to approximately \$4.5 Million per annum being lost in GST Revenue throughout QLD and this could easily double by the end of the year without immediate and effective action.

Conclusion

The ongoing sale of illicit tobacco by organised crime groups in Queensland is a significant issue that is continuing to have a major negative impact on more and more Queenslanders and retailers each week. Those that choose to blatantly break the law, and profit from it, have been given a free ride for far too long. Without risk of penalty organised crime is challenging the huge profits generated from the trade into other illegal activity that is further undermining the life of Queenslanders. We again thank the State Government for its strong engagement on this vital issue. Representatives of AACS, the MGA and ALNA welcome the opportunity to discuss this submission further in person.

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