



Master Grocers Australia Ltd

Trading as:

MGA Independent Retailers

Submission to the Review of the National Tobacco Strategy

August 2018

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Introduction

MGA is a national employer industry association that has demonstrated a profound interest in the work of the Federal and State Governments to reduce the incidence of tobacco smoking in Australia. It is commendable that due to the efforts of various organisations, together with the Governments, the smoking habits of Australians has been significantly reduced. However, the current National Tobacco Strategy 2012- 2018 (current NTS) indicates that despite the reduction in smoking amongst Australians the prevalence of smoking remains too high and is “a significant cause of death and disability in Australia.”¹

MGA, as the representative of Australian independent retailers, supports the views of Governments and health organisations that the public should be discouraged from smoking in the interests of their health and well - being and therefore supports a regulatory framework, which acts as a deterrent to taking up the smoking habit. MGA also agrees that families should be protected from the harmful effects of smoking products and supports the principle of protecting children from the adverse effects of tobacco smoking. However, MGA also believes that the retail sale of tobacco products is one that is legal and it is a matter of choice from the consumers' perspective as to whether they make such legal purchases or not.

MGA is aware that the Australian Government Department of Health has engaged Siggins Miller, Consultants, to commence the development, consultation and drafting of the next NTS. MGA welcomes the opportunity to make comment on the aim of the next NTS that will continue to assist in the reduction of the level of smoking in this country and improve the health of all Australians.

1. About Master Grocers Australia Ltd. (MGA Independent Retailers)

MGA Independent Retailers (MGA) is a national registered employer industry association representing family enterprises and privately-owned businesses in the independent grocery, liquor and other retail sectors including hardware, in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, accounting for approximately \$15 billion in retail sales.²

¹ National Tobacco Strategy Executive summary

There are 2,700 branded independent grocery stores, trading under brand names such as: Farmer Jacks, Foodland, FoodWorks, Friendly Grocers, IGA, IGA Xpress, SPAR and Supa IGA, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as: Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor which are either single or multi-store owners. These stores which collectively employ more than 115,000 staff are comparatively much smaller when juxtaposed against the large supermarket chains of Coles and Woolworths which combined, represent approximately 80 per cent of the retail supermarket industry.

MGA supports the Government view that the public should be discouraged from smoking in the interests of health and well - being and therefore supports a regulatory framework which acts as a deterrent to taking up the smoking habit. MGA also agrees that families should be protected from the harmful effects of smoking products and agrees with the principle of protecting children in particular. However, MGA points out that the retail sale of tobacco products is one that is legal and it is a matter of choice from the consumers' perspective as to whether they make such legal purchases or not.

Many MGA members in the independent supermarket and liquor sector have been adversely affected by the imposition of many tobacco sales regulations that have become an unnecessary burden in their day to day business operations. These regulations have included the introduction of plain paper packaging, retail display bans, licensing schemes, limits on store licences, restrictive licensing regimes and the ban on e- cigarettes containing nicotine. Such barriers to the freedom to do business without restrictions, acts as a disincentive, particularly for small business owners and has the added disadvantage of driving an element of criminality into an industry that previously traded without fear of any such impediment.

MGA strongly believes that all interested persons should be aware of, and have input into the proposed new NTS, and we welcome the opportunity to make comment on its development.

MGA thanks the Australian Government Department of Health for this opportunity to make this submission.

2. The Review of the National Tobacco Strategy NTS

- i. In reviewing the future NTS, there are nine primary recommendations presented for consideration. MGA intends to comment on several of these recommendations and referred to as 'Priority areas'.
- ii. MGA supports the objectives of the proposed strategy for a future NTS in that we believe, inter alia, in the prevention of the uptake of smoking , encouraging smokers to quit the habit, reducing smoking amongst indigenous Australians, eliminating the risks associated with exposure to harmful smoking and the encouragement of research to ensure tobacco control.
- iii. In respect of **Priority area 1** - MGA submits that it is inappropriate to eliminate any person or group of persons from the right to meet and discuss the proposals for inclusion in the NTS. It is submitted that public health policy should be developed and protected by interested parties but there should be no exclusions of any specific party. It is noted that Priority area 1 in the NTS Review states, "Protect public health policy, including tobacco control policies, from tobacco industry interference," There should be transparency and an availability to provide input and make comment by all persons regardless of their status or allegiance. MGA suggests that the use of the word "interference" is inappropriate and that all Governments should enable the right of any organisation to provide their opinions openly and without fear. The Government must demonstrate a willingness to listen and draw conclusions based on evidence presented by all parties and use the material as it decides appropriate but without favour to anyone.
- iv. **Priority area 3** - proposes that the future NTS reduce the affordability of tobacco products. It reads that the NTS should, "continue to reduce the affordability of tobacco products." The increased high excise imposed on tobacco products has had serious repercussions on our society and the community generally. It is understood that the objective of the increased tax was to deter smoking in the community. However, the introduction of a prohibitive cost hike has had the deleterious effect of sending a large part of tobacco sales into the arms of criminals. There have been massive increases in illegal importations of illicit tobacco products. The sales of these products are underground and often hard to detect. Cigarettes have become a

lucrative source of theft and thieves sell them cheaply on the black market. Consequently, burglaries in stores, have led to a massive increase in the crime rate in many states. Retailers suffer massive losses, their stores are wrecked, their insurance premiums rise and these criminals are serial offenders as they return many times to the same store because retailers are vulnerable targets. The crime rate in stolen tobacco goods is rising as criminals destroy the businesses of hard working retailers.

- v. In 2016 the Treasurer, the Honourable, Mr. Scott Morrison announced that that the excise increase of 12.5 % imposed on cigarettes would continue for a period of four years, with further increases to be imposed on the product. What may have appeared to be a satisfactory deterrent to the smoking habit and a revenue raiser for Government has had some devastating effects on increasing criminality in Australia. A price hike was unlikely to drive smokers to reform. Instead they looked for cheaper options and criminal groups have been only too happy to oblige.
- vi. The result has been an increase in illicit importation of cut price cigarettes. “As much as 14.3 per cent of tobacco in Australia is bought through the black market taking \$1.4 billion out of revenue earned from taxes each year”³
- vii. Although there was a slight reduction in the illicit consumption of tobacco in 2015, the level of contraband increased slightly. ⁴ However, this was prior to the 2016 Budget and the increased excise tax.
- viii. There is no doubt that over the last 12 months there has been an increase in the levels of criminality in the tobacco industry. The Australian Border Force has reported that in January 2017, 5 million illegal cigarettes were found in The International Mail Centre in Sydney, mainly from Asia and that equated to \$21 million in lost Government revenue. The cigarettes that were imported were generally hidden in clothing and children’s toys.⁵

³ <http://www.news.com.au/finance/economy/australian-illegal-tobacco-industry-i-flourishing-in-australia-as-government-hikes-taxes/news-story>

⁴ Illicit tobacco in Australia Report 2015 KPMG Page 6

⁵ <http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470>

- ix. MGA members frequently report incidences of how their businesses are affected by the illegal sales of imported cigarettes but there are difficulties in proving these sales outlets are acting illegally. Unless there is absolute proof of what is happening, it is very difficult to mount a successful case against rogue retailers. Furthermore, gangs of criminals are forming themselves in cities and regions throughout Australia and they are becoming more sophisticated and they are a serious threat to the viability of our members businesses.
- x. The increasing black market / illicit tobacco industry in Australia, is difficult to quantify. The increased costs associated with selling tobacco must be passed on to customers, further encouraging the trade in black market tobacco where costs are significantly lower, enabling consumers to purchase significantly cheaper products. This has the added detriment of reducing tax revenue received from tobacco products and increasing required costs to regulate the illegal trade of black market products.
- xi. **Priority area 7** - refers to the need for the further regulation of product disclosure, contents and supply of tobacco products. It states, “ Consider further regulation of the contents, product disclosure and supply of tobacco products and alternative nicotine delivery systems.” MGA questions whether more regulation is likely to achieve the objectives of a future NTS. Retailers in Australia have been subject to stringent regulations from both Federal and State Governments in respect of the sale of tobacco products over the last few years .
- xii. The prospect of restricting the number of stores allowed to sell tobacco products has been discussed in some States and the licensing of retailers to sell tobacco is also a major source of revenue for Governments. The prospect of losing a significant part of their business is a constant worry for retailers. The ability to sell a legal product has become increasingly arduous and a disincentive to small businesses to remain in their industry. Therefore, retailers are required to cope with dual restrictions that require their compliance, which in many cases prove costly and stifling for their business prosperity.
- xiii. The bans on the displays of tobacco products have caused considerable hardships for many stores both in terms of additional staff responsibilities and the financial

burden of changing store layouts. The imposition of removing smoking products from view has imposed a cost burden on retailers who have been required in many cases to reconfigure the front end and point of sale sections of their stores and retrain staff at a considerable expense. Additionally, the renewed training of staff has proved particularly costly. There are up to 200 brands of cigarette products which are searched for by staff on a regular basis and staff now have less indicators enabling them to distinguish between products. In addition to the variety of brands available each brand also has differences between them such as content, taste and size which will also need to be identified. The training of staff not only comes at a significant wages cost to our stores, but also creates a noteworthy rostering disadvantage, removing staff from other areas of the store where they are often required.

- xiv. The introduction of plain packaging has been burdensome in stores because it is the staff who carry the problems of sorting the various kinds of products that are available for sale, which often causes them and their customers varying degrees of angst,
- xv. MGA has received reports from our members that customers have been frustrated by the consequences of plain packaging, often blaming the checkout operator or sales assistant whom they believe to be thwarting their attempt to purchase cigarettes.
- xvi. The introduction of plain packaging has also resulted in additional time being spent by staff members on administrative tasks such as case replenishment, stock ordering, receiving invoices and marking of stock. The tasks listed must be performed by experienced managerial staff, who under the General Retail Industry Award earn roughly \$19.64 per hour but under management salaries often earn up to \$39.27 per hour.
- xvii. MGA maintains that the tobacco plain packaging measure has been ineffective in encouraging people to give up smoking and to stop using tobacco products. It would be an overly simplistic presumption to conclude that smokers will be encouraged to stop smoking because of the colour of their packet of tobacco. As witnessed by our

members the colour of the packet is unlikely to be a deterrent to any person who wishes to smoke.

- xviii. The packaging is not the reason for the purchase, and the colour of the packaging is unlikely to bare any influence over a smoker's decision to continue smoking. A 2011 report that was commissioned from Deloitte on packaging regulation showed that neither increasing the size of health warnings on packets nor introducing graphic images over many years led directly to reduced tobacco consumption. This is consistent with the feedback we are receiving from our members.

The use and marketing of E -cigarettes and personal vaporisers to assist people to quit smoking.

- xix. MGA has stated previously that we welcome any initiatives to improve and safeguard the health of all Australians. Helping smokers to quit is obviously an important objective for inclusion in the future NTS . MGA supports the legal use of personal vaporisers as an alternative to the use of tobacco products. The use of e-cigarettes or personal vaporisers have been successful in the UK, Europe and the USA, their use is relatively widespread. There is still debate on their general use, particularly the impact on individuals and on the community. It is important to provide opportunities for Australians to wean themselves off tobacco products but they need an alternative to enable them to quit the habit. After considering the differing views of medical practitioners and academics⁶, and without serious consideration of the research both overseas and in Australia it may still be premature to draw definite conclusions of the potential damage or dangers of the use of personal vaporisers. However, at this stage providing opportunities to make quitting tobacco smoking easier then alternatives should be available to smokers.
- xx. There is a plethora of information and opinions as to whether the use of personal vaporisers is harmful to the user and/or to the community. Worldwide there are various regulations controlling the sale and availability of personal vaporisers and the possible harm that they can have on their users and those around them.

⁶ The "Action on Smoking and Health" group (ASH) great Britain has conducted many surveys in relation to the use of personal vaporisers

- xxi. Although sales of personal vaporisers in many European countries has been available for some time there is still some conjecture about the need to control the availability of these products. Earlier this year the European Parliament issued a Directive relating to laws for the manufacture and sale of tobacco and related products⁷ and at paragraphs 37 to 50 of the Directive issued strong guidance on the promotion and sales of electronic cigarettes in the European community. The World Health Organisation has called for strict regulation around the use of nicotine- based vaporisers because it is felt that there needs to be much more research done before endorsing their use as an aid to stop the smoking of tobacco products.
- xxii. In the United Kingdom the sales of personal vaporisers have grown considerably and it is estimated that there are currently 2.1 million adults in Great Britain using them. The United Kingdom has adopted guidelines for the sale of personal vaporisers in the interests of consumer protection.⁸
- xxiii. The United States has federal regulations as from April 2014, which require the disclosure of ingredients used in personal vaporisers, including the type of liquids and proof of their safety and also the use of devices to vaporise and deliver the liquid. However, a number of States in the USA also have their own regulations, which require information as to the ingredients in personal vaporisers and many are also aimed at restricting the use of electronic cigarettes for young persons under the age of 18 years.
- xxiv. Whilst other countries have generally been willing to adopt the use of nicotine based personal vaporisers, Australia is less willing to adopt them for widespread sales. The Australian Government, Department of Health is of the same opinion as the World Health Organisation that greater research is needed into the safety of personal vaporisers for all parties, users and non- users, before their widespread use can be fully condoned.
- xxv. In November 2014, the Queensland Government passed legislation to regulate the use of personal vaporisers in public and a ban was introduced with respect to sales

⁷ Directive 2014/40/EU 3rd April 2014

⁸ www.mhr.gov.uk/safetyinformation and advice /nicotine products

to minors, Victoria has a ban on the sales of vaporisers that contain nicotine. In a recent case decision in Western Australia,⁹ an electronic e –cigarette seller was prosecuted for sales of personal vaporisers and he was found to have breached the Tobacco Products Control Act 2006 (WA) on the basis that he sold a product that looked like a cigarette, was shaped like a cigarette and the steam or vapour looked like smoke. It is likely that after the decision in WA will affect other States because the sale of any model of a personal vaporiser that resembles a cigarette may be illegal. Currently, in Tasmania and the ACT the prohibition on the sale of a product that resembles a smoking product only applies to toys or confectionery. Western Australia has also introduced a ban on the sale of non- nicotine based personal vaporisers due to the internet availability of liquid nicotine.

- xxvi. The Labor Party in NSW called on the Health Minister, Ms. Jillian Skinner, to seek public submissions and establish community debate as claims regarding the safe use of personal vaporisers escalates across the country. There appears to be a range of various regulations appearing in different states and territories which has prompted Mr. Stephen Jenkins from the company, British American Tobacco to say that he was hoping that all state and federal governments would harmonise laws that permitted the sales of nicotine using devices.¹⁰ The differing reactions from State and Territory governments indicate that there is a need for greater clarity on their effects on the health and welfare of users of personal vaporisers. Whilst there are still reservations both overseas and in Australia about tackling the issues around the use of personal vaporisers it would seem to appropriate to proceed cautiously in the interests of anyone who may be affected by the use of personal vaporisers.
- xxvii. The question that arises from the research that has been done to date into the use of personal vaporizers is that if the product is declared non-poisonous, as in the United Kingdom or parts of Europe, whether it should be available for sale under specified controls in Australia. MGA welcomes the proactive approach that the ACT Government is taking in respect of encouraging this enquiry into the issue of

⁹ Department of Health WA v. Heavenly Vapours 2011 (appeal 2014)

¹⁰ Extracted from article in the Sydney Morning Herald - "Opposition calls for inquiry into e- cigarettes"- Nov 29, 2014 SMH

personal vaporisers. Unless there is an increased interest in a unified approach to the control of personal vaporisers and regulations for their use there is a serious danger of the product” going underground,” and providing an opportunity for sales of nicotine- based vaporisers on the black market.

- xxviii. It is submitted that any adult should have the ability to purchase an item that is legal. However, there is scope to deter the public from endangering their health by using advertising that shows the dangers associated with any product. This is not dissimilar to the introduction of plain packaging and the use of graphic health warnings which were implemented as part of community awareness in the use of tobacco products. These advertisements may have successfully deterred individuals from the smoking habit.
- xxix. It may well be that there is an opportunity to pursue similar warning processes for personal vaporisers. No matter what form such deterrents take, the use of personal vaporisers could be a significant step forward in helping individuals to overcome the smoking habit. If it is proven that personal vaporisers are less personally dangerous than tobacco products or their effect on the public is minimal then these benefits should be considered as a means of assisting smokers who genuinely want to ditch the tobacco –smoking habit. Nevertheless, subject to personal vaporisers being sold under control it should remain the choice of the consumer to make the ultimate decision on what to purchase or not purchase.

Conclusion

MGA thanks the Australian Department of health for the opportunity to make the above comments to the Consultants Siggins Miller Pty Ltd. and we trust that the development of the future National Tobacco strategy will benefit the health of all Australians by reducing the prevalence of tobacco smoking and also the associated health and economic costs.

Jos de Bruin



CEO - Master Grocers Australia Ltd

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