

6 June 2011

Assistant Secretary, Drug Strategy Branch

Attention: Tobacco Reform Section

Department of Health and Ageing
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Via email: tobaccoplainpackaging@health.gov.au

**Submission from ACAPMA on the
Plain Tobacco Packaging Bill 2011 Exposure Draft and
Consultation Paper**

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is a leading association and national peak body responsible for the development and growth of the petroleum distribution and petrol convenience retail industries for the benefit of the national interest, its members and the broader Australian community. ACAPMA members include over 90% of the 120 businesses that operate in petroleum distribution and storage, while representing - through direct ownership, operation or supply - over 3000 service stations. ACAPMA's membership profile consists mainly of independent small-to-medium businesses operating in regional and rural Australia.

Convenience store sales are an important part of petrol convenience retailers' revenues, and hence their viability. Revenues from convenience store products, car wash services, restaurant services and access to automatic teller machines are increasingly important to retailers. Convenience store net profits comprised 39 per cent¹ of total retail net profits in recent years. These revenues make a great contribution to petrol convenience operating costs, such as the wages of a console operator.

ACAPMA agrees with the Australian Government that reforms are required to reduce smoking and its harmful effects. We perceive however, that *The Tobacco Plain Packaging Bill 2011* (the Bill) considers tobacco plain packaging as the only form of policy neglecting issues that not only continue to influence the uptake in the consumption of tobacco products, but chip away at the viability of small-to-medium independents in the petrol convenience industry.

¹ ACCC, Monitoring of the Australian petroleum industry, December 2010, page 265



The Bill has no mechanism to control the potential growth in illicit tobacco, with counterfeiting having the potential to grow with plain packaged products. It also does not address or recognise the potential 'channel shift' of tobacco sales from small-to-medium independents to major retailers. Channel shift in tobacco sales will lead to decreasing viability due to reduced convenience store sales and further dominance by major retailers.

If the Bill, in its current form, is passed by Parliament the timeframe for implementation is too narrow. ACAPMA is also concerned that the Government is considering cost recovery for the monitoring and enforcement; compliance with the Bill and current State based retail display bans will be cost enough for many businesses.

ACAPMA calls on the government to help small-to-medium petrol convenience businesses take the necessary changes to support a long term trading future.

The greatest issues posed by the Bill to ACAPMA members are the additional direct day-to-day operational requirements and the channel shift this may cause in the purchasing habits of customers. As this submission indicates, continued viability of small-to-medium petrol convenience operators depends on strong convenience store sales, we anticipate that to successfully achieve this goal petrol convenience business will face additional operational cost as well as capital investment. ACAPMA urges the government to consider options to assist small-to-medium businesses to undertake the changes required to remain in business.

ACAPMA predicts that implementation of *The Tobacco Plain Packaging Bill 2011* will not detract consumers from purchasing tobacco but it will pose a range of other issues for our members, undermining their viability and adversely affecting motorists. Plain packaging, leading to reduced convenience store sales as well as higher wage and administration costs, will increase fuel prices at the pump. Additionally, local communities will suffer from less philanthropic support.

ACAPMA is not convinced that the current exposure draft for the Bill will achieve the stated objectives. For that reason the attached document highlights the major issues of concerns to the petrol convenience industry, current issues facing both operators and customers and suggested alternatives for your review.

ACAPMA is in an excellent position to bring a regional perspective and the views of small-to-medium sized independent petrol convenience operators to the Government, and is pleased to offer the Department of Health and Ageing the opportunity to discuss the proposed *Tobacco Plain Packaging Bill 2011*, either one-to-one or in a forum.

Yours sincerely



Nic Moulis
General Manager, ACAPMA

Enclosure: ACAPMA submission on the exposure draft *Tobacco Plain Packaging Bill 2011* and the Consultation Paper

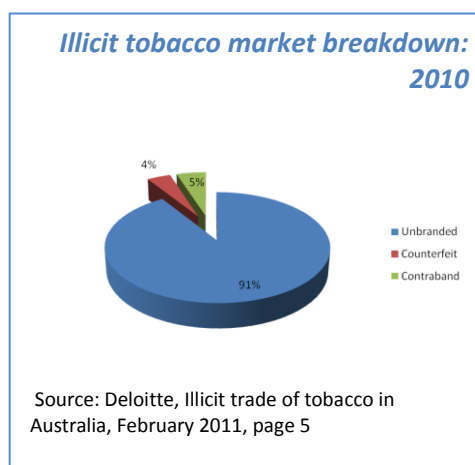
Distribution: House of Representative Standing Committee on Health and Ageing
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The Hon. Peter Dutton MP, Shadow Minister for Health and Ageing
The Hon. Bruce Billson MP, Shadow Minister for Small Business, Competition Policy and Consumer Affairs

Issues of concern with the proposed legislation:

The legislation has no mechanism to control the potential growth in illicit tobacco.

The illicit tobacco trade in Australia is estimated to represent 15.9 per cent as a proportion of the legal tobacco trade². In equivalent excise value this represents a potential loss of revenue to the federal government of over \$1.1 billion³.

Unbranded tobacco, commonly known as 'chop-chop', represents 91 per cent of the illicit tobacco trade.⁴ ACAPMA's concern however, is the effect the *Tobacco Plain Packaging Bill 2011* (the Bill), will have in the increase of counterfeit or products illegally made to look like market leading brands. The Bill, by producing an almost generic package for tobacco products, is making simpler the production and supply of counterfeit products in the Australian market.



It is unfortunate, that there has been a recent increase in the supply of illicit tobacco at convenience stores and independent supermarkets compared with a decline from local markets.⁵ Our perception is that this has occurred because desperate small-to-medium convenience and supermarket operators, trading in a highly competitive market against major retailers, have had their viability further marginalised through taxation and legislation. This distress may have driven some proprietors to conduct business at the limits of the law. ACAPMA does not condone this behaviour by any individual, though it should be noted that the changes have occurred concurrently with material changes in taxation and legislation, namely:

- A 25 per cent increase in the excise rate effective 30 April 2010.
- Implementation of retail display bans in various States of Australia, prohibiting the display of tobacco products at retail outlets.

Industry has put forward ideas on anti-counterfeiting measures, including a 'Codentify' system. However, it is concerning that the Government, in its Consultation Paper published on 7 April 2011, stated that, "the proposals put forward by the tobacco industry would not be a cost-effective response to the issue of counterfeiting/illicit trade."⁶ Nevertheless, the Consultation Paper, made no reference as to how this illicit trade will be curtailed by the Bill.

The Bill does not address or recognise the potential channel shift of tobacco sales from small-to-medium independents to major retailers.

ACAPMA members fear that the Bill will not reduce the smoking habits of tobacco purchasers; moreover we believe it will realign their purchasing habits, transitioning them away from small-to-medium retailers to major retailers. This potential loss of business to larger retailers, 'channel shift', is heightened by the growth of supermarkets in regional areas where they are viewed by the consumers as closer to a convenience store in terms of shopping decisions.

It is recognised by small-to-medium petrol convenience operators that when making a tobacco purchase there is a greater opportunity for that customer to purchase other products (confectionary, beverages, magazines, milk and bread). The wider implication of channel shift to larger retailers by the tobacco purchaser, as a result of plain packaging, is the loss of revenue from these add-on sales.

² Deloitte, Illicit trade of tobacco in Australia, February 2011, page 4

³ Based on current excise rates as at February 2011

⁴ Deloitte, Illicit trade of tobacco in Australia, February 2011, page 5

⁵ Deloitte, Illicit trade of tobacco in Australia, February 2011, page 6

⁶ Australian Government Consultation Paper: *Tobacco Plain Packaging Bill 2011*, Exposure Draft, 7 April 2011, page 15

The timeframe for implementation is too narrow.

The Bill has key trigger dates for compliance by petrol convenience retailers at 20 May 2012, the date where manufacturers and importers must have converted all products to compliant packaging, and 1 July 2012, when the offences relating to selling and purchasing non-compliant tobacco products commence.

We are apprehensive that the timeframe of 41 days between manufacturing compliance to selling compliance is too short. The issue as we see it is in the average stock turn on tobacco products at the wholesale and retail levels. Small-to-medium petrol convenience stores, in particular those operating in regional and rural areas, are not necessarily delivered to on a weekly basis. The delivery cycle in some cases can extend past fortnightly to monthly. In these cases, to satisfy customers and cater for non-delivery, a retailer may hold up to 60 days worth of stock. This is further magnified by slower moving tobacco products, which in some instances must be held by the retailer to comply with tobacco company support contacts. In these situations the slower moving tobacco product may be held in excess of 60 days.

Wholesalers have also been known to have stock management issues, delivering products to retailers when they are close to the best before dates. It is therefore our concern that the short timeframe may see wholesalers trying to pass non-compliant stock onto the retailer close to the compliant packaging deadlines, leaving them with little time to sell the product before enforcement commences. This may result in oversupply and/or retail price reductions.

Any cost recovery for the monitoring and enforcement of the Tobacco Plain Packaging Bill 2011, should not be imposed on petrol convenience retailers.

The sale of tobacco, a legal product, is already highly regulated with petrol convenience businesses complying with both Federal and State legislation. ACAPMA is not going to stand in the way of health and social reform but our businesses, that are expected to employ 35,700 people in 2010-2011⁷, should not have to pay.

ACAPMA is apprehensive that, "The Government is considering cost recovery options for the monitoring and enforcement of the *Tobacco Plain Packaging Bill 2011*."⁸ Already, retail display bans in some States have had an adverse effect on the operational as well as capital costs of tobacco retailers. Even without cost recovery ACAPMA highlights that the Bill will have further impact on the viability of some operators.

ACAPMA agrees that there needs to be high priority on beneficial health outcomes for Australian's; but at what cost to private business? Small-to-medium petrol convenience business should not be put in a position where they suffer extra recovery costs for social reform; compliance with the current retail display bans is difficult to bear for many businesses.

⁷ IBISWorld Industry Report G5321, Automotive Fuel Retailing in Australia, August 2010, Executive Summary page 4

⁸ Australian Government Consultation Paper: *Tobacco Plain Packaging Bill 2011*, Exposure Draft, 7 April 2011, page 8

Potential impacts facing customers and independent operators in the downstream petroleum industry:

In petrol convenience retail, the estimated earnings generated by convenience store sales are significant compared to the estimated earnings from petrol.

Petrol gross margins are much lower than the gross margins from the sale of convenience store items. Whereas every fuel sale of one dollar earns approximately 8 cents gross profit, every convenience store sale of one dollar earns 32 cents in gross profits.⁹

Revenues from convenience store products, car wash services, restaurant services and access to automatic teller machines are increasingly important to retailers. These revenues make a great contribution to petrol convenience operating costs, such as the wages of a console operator.

Channel shift in tobacco sales, away from small-to-medium independents, will lead to decreasing viability due to reduced convenience store sales and further dominance by major retailers.

Since the financial year 2002-03, major supermarkets have increased their market share of volume of retail sales in petrol convenience retail from 10 per cent to 46 per cent. While in the same period independents have increased from 6 per cent to 10 per cent.¹⁰ This is also reflected in tobacco sales were about half of all sales in Australia occur through supermarkets and grocery stores (51 per cent), compared with convenience stores at 13 per cent.¹¹

Convenience store sales are an important part of petrol convenience retailers' revenues, and hence their viability. Convenience store net profits comprised 39 per cent¹² of total retail net profits in recent years, while tobacco can contribute up to 37 per cent of gross convenience store sales¹³. Tobacco sales are over twice as much spent on the next strongest category, carbonated drinks (17.3 per cent).¹⁴

It is recognised by small-to-medium petrol convenience operators that when making a tobacco purchase there is a greater opportunity for that customer to purchase other products (confectionary, beverages, magazines, milk and bread). The wider implication of channel shift to larger retailers by the tobacco purchaser, as a result of plain packaging, is the loss of revenue from these add-on sales.

Share of volume of retail sales by brand: 2002–03 to 2009–10

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10*
	%	%	%	%	%	%	%	%
BP	20	20	18	19	19	19	19	17
Caltex	24	22	18	17	16	16	17	16
Coles Express/Shell	0	16	25	25	22	20	22	23
Mobil	19	17	12	11	11	13	11	7
Shell	20	3	3	3	3	2	2	2
Woolworths/Caltex	10	14	18	20	22	22	23	23
Other retail chains	6	7	6	6	7	8	9	10

Source: ACCC, Monitoring of the Australian petroleum industry, December 2010, Table 3.8 on page 39.

Note: *2009–10 data estimated by the ACCC on the basis of information provided by the monitored companies.

⁹ ACCC, Monitoring of the Australian petroleum industry, December 2010, page 265

¹⁰ ACCC, Monitoring of the Australian petroleum industry, December 2010, page 39

¹¹ Cancer Council Victoria, Tobacco in Australia: Facts and Issues (Third Edition), 2008, Chapter 10.3 Retail value and volume of the market

¹² ACCC, Monitoring of the Australian petroleum industry, December 2010, page 265

¹³ Cancer Council Victoria, Tobacco in Australia: Facts and Issues (Third Edition), 2008, Chapter 10.3 Retail value and volume of the market

¹⁴ Cancer Council Victoria, Tobacco in Australia: Facts and Issues (Third Edition), 2008, Chapter 10.3 Retail value and volume of the market

Direct impact on day-to-day operations of petrol convenience stores will increase operational costs.

Petrol convenience businesses anticipate that implementation of the Bill will cause a direct impact on the day-to-day operations for their outlets. It is expected that these impacts will include stock management issues as well as transactional; when serving the customer.

Effective stock management requires a business to conduct stocktakes on a regular basis, ordering and receiving of products, unloading deliveries and restocking shelves. Image recognition of a product has a great influence on the speed and accuracy of these processes; the more a product can be differentiated from like products the more effective the stock management. Visually consistent tobacco packaging, even though the products may be of a different type and from a different manufacturer, will increase the time taken and reduce the precision of stock management tasks.

It should also be recognised that due to compliance with retail display bans in some States the process of stock management, for tobacco products, happens afterhours. This has meant, in some cases, management of tobacco stock occurs when businesses are required to pay penalty rates to employees. The impost of penalty rate wages coupled with slower processing times will cause a direct increase in operational costs for petrol convenience businesses.

Speed and accuracy when completing a sales transaction would be regarded as a convenience stores competitive advantage over supermarket retail. Tobacco legislation (including plain packaging and retail display bans), by adding confusion and time in the process of identifying a customer's preferred product, will strip this advantage away from small-to-medium independent retailers. Additional time taken to complete any given transaction imposes an opportunity cost onto the retailer.

Plain packaging, leading to reduced convenience store sales as well as higher wage and administration costs, will increase fuel prices at the pump.

Regional and rural petrol convenience operators need to charge higher fuel prices to earn a similar profit to similar businesses operating in the city, due to lower sales volumes and lower convenience store sales.

The ACCC have highlighted that, "Prices in regional centres and country towns also tend to be somewhat higher than those in the largest cities for a number of reasons including: lower convenience store sales; these may be important for some retailers in achieving adequate returns."¹⁵

Implementation of this Bill will force these businesses to further increase fuel prices at the pump to make up for lost convenience sales and increased operational costs. As a result, these businesses will lose their competitive advantage against competitors.

Local communities will suffer from less philanthropic support.

Petroleum distributors and petrol convenience retailers, especially small-to-medium independents, pride themselves on their ability to be involved in and financially supporting their communities. Implementation of this legislation, including compliance and the reduction in gross convenience store sales through channel shift as well as an the potential increase in illicit tobacco, will mean less time and money to assist in community causes, especially in regional areas.

¹⁵ ACCC, Monitoring of the Australian petroleum industry, December 2010, page 166

ACAPMA's suggested amendments to the Tobacco Plain Packaging Bill 2011:

Tobacco company branding should remain on the base of packages.

Image recognition of a product has a great influence on the speed and accuracy of these stock control and sales transactions; the more a product can be differentiated from like products the more effective the stock management. Visually consistent tobacco packaging, even though the products may be of a different type and from a different manufacturer, will increase the time taken and reduce the precision of stock management tasks.

By allowing for the branding of products on the base of the package there would be an easing of the confusion and time in the process of both stock control and identifying a customer's preferred product. Allowing this minor branding would address the potential impacts ACAPMA has summarised thought out this submission and would go some way in restoring speed and accuracy when completing a sales transaction, which is regarded as a convenience stores competitive advantage over supermarket retail.

As there would be no requirement for branding on the face of packaging, there becomes the possibility to increase the size of health warning images on the main area.

ACAPMA calls for government support to help small-to-medium businesses overcome the potential of channel shift, increased direct operational costs and capital requirements.

The greatest issues posed by the Bill to ACAPMA members are the additional direct day-to-day operational requirements and the channel shift this may cause in the purchasing habits of customers. As we have shown in this submission continued viability of small-to-medium petrol convenience operators depends on strong convenience store sales, we anticipate that to successfully achieve this goal petrol convenience businesses will face additional operational cost as well as capital investment.

ACAPMA calls on the government to help small-to-medium petrol convenience businesses take the necessary changes to support a long term trading future.

To convert successfully to regulations imposed by the Bill, businesses may be required to make capital investments in physical storage devices, mechanical stock control processes and additional computerised point-of-sale and back office systems. Any of these upgrades will require some businesses to seek finance to fund acquisitions. ACAPMA urges the government to consider options to assist small-to-medium businesses to undertake these investments. This could be in the form of capital grants providing low cost funding or accelerated depreciation allowances that would assist in delivering the returns required to repay finance to lenders.

The Bill should see the establishment of a Federal licensing system for tobacco resellers.

In Australia, tobacco products can be purchased from approximately 35,000 retail outlets.¹⁶ ACAPMA believes a federal licensing system, requiring retail outlets to register before selling tobacco products, would be effective in enforcing the regulations under the Bill. The requirement of a licence to sell tobacco products would also help in the policing of the illicit tobacco trade.

Retailers should be required to provide the following business details when making their notification:

- Business address of the person intending to engage in tobacco retailing;
- Address of the premises at which the person intends to engage in tobacco retailing;
- Registered Australian Business Number (ABN) of the relevant business and, if the business is incorporated, the Australian Company Number (ACN); and
- Names and addresses of the owners and directors of the tobacco retailing business.

Businesses wanting to be licensed to sell tobacco products would register for free online to the Department of Health and Aging. Once registered, a copy of the licence must be made available at the retail outlet for enforcement agencies to review on request.

A licensed tobacco retailer must display signage informing customers that the business is licensed to sell tobacco products.

Once licensed, retailers would receive a package from the Department of Health and Aging notifying them of their obligations under the Bill. Included in this material would be a sign, which must be displayed, informing customers that the business is licensed to sell tobacco products.

The sign must conform to the following requirements: wording of “This business is licensed to sell tobacco products”, black lettering on a white background and be no larger in size than 60 point type, and the total sign size no larger than 21cm high X 30 cm wide (A4). The single sign would be displayed within the point of sale area.

Any businesses and consumers trading in illicit tobacco or non-compliant packaging should face stronger penalties.

ACAPMA is concerned with the trade in illicit tobacco, not only for public health, but for the contribution it makes towards undermining the viability of legitimate retailers.

For there to be successful trade in illicit tobacco there is a requirement for two participants; a willing seller and a willing purchaser. Even though there are sections within the Bill creating offences and civil penalties for non-compliance that apply to manufacturers, importers, packagers, wholesalers, distributors and retailers, we highlight that the Bill places no onus on a purchaser. In fact, the Consultation Paper expressly states, “The offence will not apply to people who purchase tobacco products for personal use.”¹⁷

To act as a deterrent, to not only the illicit tobacco trade but also the consumption of tobacco products, it would be wiser for the government to make the purchasing of illegal tobacco products for personal use a criminal offence. Of course the courts would need to prove the purchaser clearly knew the product was illegal, but those considering using illicit tobacco to continue their habit may think twice knowing there will be a heavy penalty.

Coupled with a federal licensing system, stronger penalties for illicit or non-compliant trading including for the purchaser, the government would be sending a strong message that it is tackling tobacco issues wider than preventing tobacco advertising and promotion.

¹⁶ Cancer Council Victoria, Tobacco in Australia: Facts and Issues (Third Edition), 2008, Chapter 10.3 Retail value and volume of the market

¹⁷ Australian Government Consultation Paper: *Tobacco Plain Packaging Bill 2011*, Exposure Draft, 7 April 2011, page 15