



**British American Tobacco Australia (BATA)**

**Response to the West Australian Parliament's  
Education and Health Standing Committee;**

**Inquiry into the  
Tobacco Products Control Amendment Bill 2008.**

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## **Introduction**

British American Tobacco Australia (BATA) welcomes the opportunity to respond to the Education and Health Standing Committee's inquiry into the Tobacco Products Control Amendment Bill 2008 (the Bill).

### British American Tobacco Australia (BATA)

British American Tobacco (BATA) is Australia's leading tobacco company, accounting for 45.5 percent of the tobacco market in Australia. The company manufactures and distributes cigarettes and roll-your-own tobaccos; it also distributes pipe tobaccos and cigars. Our brands include Winfield, Benson & Hedges, Dunhill, Pall Mall, Holiday, Kent and Lucky Strike.

We have operations in every Australian state and territory, and directly employ over 1,100 people and our federal excise contribution alone is approximately \$3 billion.

### Sensible regulation

Because of the real and serious risks of smoking, BATA supports the sensible regulation of tobacco products. In BATA's view, sensible tobacco regulation considers and reflects the differing needs and preferences of all affected stakeholders including consumers, tobacco retailers, hospitality providers, public health authorities and tobacco companies.

Above all, we believe that the hallmark of sensible regulation lies with its workability and enforceability, as well as its ability to demonstrate clear and measurable public policy objectives. Any proposal should meet this benchmark before being enshrined in legislation.

### Tobacco control regulation

In the last year alone BATA has made 11 submissions to various Australian governments on inquiries they are conducting in relation to tobacco control. These inquiries have led to the introduction of over 50 new items of tobacco regulation, which are detailed at the back of this submission.

### Terms of reference

We acknowledge the Education and Health Standing Committees terms of reference for the inquiry into the Bill are;

- (1) To consider the adequacy of the proposed actions in the bill to protect children and adults from the harmful consequences of passive smoking, and;
- (2) To consider the adequacy of the proposed actions in the bill to protect children and adults from tobacco promotion.

Within these broad terms, we have provided our general view and have explored in more detail each of the proposed actions in the bill and the second reading speech, namely:

- the display of tobacco products;
- the use of tobacco products in a passenger car with a young person present;
- the use of tobacco products in outdoor eating and drinking areas;
- the use of tobacco products in outdoor playing areas, and;
- the use of tobacco products in safe swimming areas

Despite the allegation in the second reading speech that the tobacco industry will “oppose any action which might reduce smoking”<sup>1</sup>, BATA encourages, in principle, measures that seek to reduce people smoking around young children. We are therefore supportive of some proposed actions, including a ban on the use of tobacco products in children’s playgrounds and in cars where a young person is present.

If we have reservations that the proposed measures will not meet their stated objectives, supporting evidence is provided.

#### In summary

##### **Smoking Bans**

BATA supports the sensible regulation of tobacco products, while ensuring that adult smokers can make informed choices about the use of such products. We accept that environmental tobacco smoke is an issue of public importance and believe that smokers should be mindful of others' comfort and should not smoke around young children.

We do not support attempts to ban or regulate against smoking in private dwellings or private vehicles where children are not present. We believe that people should not smoke around young children.

However, we think this is more effectively achieved through education and encouraging greater personal responsibility amongst smokers. Governments at all levels need to be very careful in balancing the civil rights of the smokers with those of non smokers.

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<sup>1</sup> Tobacco Products Control Amendment Bill 2008, Second Reading Speech (Dr Janet Woolard MLA), 26 November 2008.

**Retail display bans**

BATA competes for market share among adult smokers but does not in any way promote tobacco products to non-smokers, ex-smokers or children.

Overseas evidence demonstrates that retail display bans do not work and cause serious unintended consequences with no evidence of intended public health benefits.

Rather retail display bans result in a financial burden and administrative cost to business (especially small business), they can lead to an increase in illegal tobacco, and can result in an increase in youth smoking.

Small retailers would be more likely to lose sales to larger stores, as the display of products helps to counteract the incorrect assumption that larger stores have a bigger range of products available.

Therefore, rather than reduce smoking, more regulation imposes an administrative burden on retailers, particularly smaller retailers and adds to their compliance costs. This inhibits their ability to effectively compete with a larger retailer.

International evidence demonstrates that banning or restricting tobacco products at point of sale display does not reduce smoking incidence nor does it reduce youth smoking.

Given counterfeit and other illegal tobacco (currently costing the federal government \$450m per annum in lost excise) is now sold "under the counter", we hold concerns that putting all legal tobacco under the counter would serve to increase the illegal trade.

BAT believes that if a national approach was to be regulated, regardless of a balanced impact assessment; all State and Territory Governments should be required to legislate for such display restrictions to be effective.

Such legislation would need to ensure that all States are nationally consistent, that there is a similar starting period, that a realistic compliance period for all retailers is introduced and that sensible measures are put in place to assist retailers and minimise the negative impacts on them.

## **Response to terms of reference**

### **1. Smoking bans**

The Inquiry into the Tobacco Products Control Amendment Bill 2008 seeks to consider the adequacy of the proposed actions in the bill to protect children and adults from the harmful consequences of passive smoking.

#### **1.1 BATA Position**

BATA supports the sensible regulation of tobacco products, while ensuring that adult smokers can make informed choices about the use of such products. We accept that environmental tobacco smoke is an issue of public importance and believe that smokers should be mindful of others' comfort and should not smoke around young children.

We do not support attempts to ban or regulate against smoking in private dwellings or private vehicles where children are not present. We believe that people should not smoke around young children.

However, we think this is more effectively achieved through education and encouraging greater personal responsibility amongst smokers. Governments at all levels need to be very careful in balancing the civil rights of the smokers with those of non smokers.

#### **1.2 BATA experience**

Our experience is that environmental tobacco smoke is an issue of public importance and we believe that smokers should be mindful of others' comfort and should not smoke around young children. We favour sensible and workable restrictions on smoking in enclosed public places and we accept that their needs to be regulation.

We support practical initiatives such as the creation of smoke free areas, combined with adequate provision for smokers. We are willing to work with the hospitality industry in developing effective solutions that address this public policy.

#### **1.3 Lack of justification for outdoor smoking bans**

The weight of opinion on outdoor smoking bans appears to question their value. For example, Chief Executive of Action on Smoking and Health (ASH), Anne Jones, has called for pubs to "maintain a safe workplace – that means sending smoking outside, where it can't harm others"<sup>2</sup>.

Further, Simon Chapman, Professor in Public Health at the University of Sydney, in a recent publication on outdoor smoking bans reminds the tobacco control community that "The 2006 US Surgeon General's report on involuntary exposure to tobacco smoke

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<sup>2</sup> Jones, A: Action on Smoking and Health (ASH), press release 21 Nov 2005: "Barworker's passive cancer case win highlights smokefree urgency".

made no recommendations and reviewed no evidence in its 709 pages on the dangers of outdoor exposure or the public health importance of controlling it.”<sup>3</sup>

The Surgeon General’s report was the result of extensive research on environmental tobacco smoke and is the foundation for recent international activity on indoor smoking bans. It gives, however, no medical justification for *outdoor* smoking bans.

In the same article, Simon Chapman reinforces his belief that “to me ‘going too far’ in SHS (Second Hand Smoke) policy means efforts premised on reducing harm to others, which ban smoking in outdoor settings such as ships decks, parks, golf courses, beaches, outdoor parking lots, hospital gardens and streets”.<sup>4</sup>

This view is shared by the Australian Council for Civil Liberties (ACCL). When the Queensland government debated outdoor bans, it was roundly criticized by the ACCL Chairman who said; “I think for this package to say that smoking should be banned inside all pubs and clubs is justified, but I think it starts to get a bit extreme when it says you can’t smoke in outdoor forums such as patrolled beaches”<sup>5</sup>.

Further, the viability of evidence which supports smoking bans can be called into question. Professor Michael Siegel<sup>6</sup> questions the scientific support behind assertions made in a study on what has been coined “third-hand smoke”, and says “you don’t need science behind you to make health claims in the tobacco control movement. You can make any claim you want and rest assured that virtually no one within the tobacco control movement is going to publicly question your statement.”<sup>7</sup>

#### **1.4 Community attitudes**

The second reading of the bill made reference to the strong community support for smoke free alfresco dining areas and the demand for more public places to be “smoke-free”.

Of course, the best test of community support for an outdoor smoking ban is whether market forces have influenced businesses to self-regulate in this regard. If there was majority support for banning smoking outdoors, this would be reflected in a large number of businesses banning smoking around their businesses.

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3 Chapman, S: “Going too Far? Exploring the Limits of Smoking Regulations”. Research paper written under National Health and Medical Research Council (Australia) grant The Future of Tobacco Control #401558 (2006-09)

4 *ibid*

5 O’Gorman, Terry (quoted in) “Qld smoking ban fires up debate”:  
<http://www.abc.net.au/news/newsitems/200409/s1193524.htm>

6 Professor Michael Siegel received his PhD in 1971 from the City University of New York. He is a physical anthropologist interested in craniofacial biology, with a clinical specialty in cleft palate and other craniofacial anomalies. He is also interested in functional anatomy, animal models, and physiological adaptation to stress

7 Siegel, M: “Author of Thirdhand Smoke Study Warns that Smokers are Contaminated and Emit Toxins; Suggests that Thirdhand Smoke Causes Lead Poisoning”, 20 Jan 2009:  
<http://tobaccoanalysis.blogspot.com/>

BATA's own community attitude research has found that there is broad support for banning smoking *indoors*. Beyond that, the Australian community only supports bans in children's playgrounds (not beaches, footpaths etc). A national survey<sup>8</sup> in 2007 made these findings:

- Unprompted, in terms of health issues, Australians are more concerned with public hospitals, obesity, drugs and alcohol, mental health, dental care, the hospital system, aged care and Medicare, than they are with smoking bans;
- Also unprompted, 0% cited smoking as the top priority for councils to focus on.
- Concern about smoking relates to youth smoking (not adults)
- 74% of voters think that councils should focus on enforcing existing cigarette butt litter fines, education about responsible disposal of cigarette butts and provision of bins and ashtrays for butts *rather than* banning smoking in open public places; and
- 88% support banning smoking in children's playgrounds.

### 1.5 State of Play.

Nationally, while the tobacco control lobby is trying to characterise outdoor smoking bans as the "norm", we can see that this is also not the case. In fact since the first council outdoor smoking ban in 2004, of Australia's approximately 630 councils<sup>9</sup> :

- 65 Councils have banned smoking in and around children's playgrounds (10%)
- 56 have banned smoking at sports fields (9%)
- 35 at swimming pools (5%)
- 33 in public parks (5%)
- 13 at council run events (2%)
- 16 at entrances to public buildings (2%)
- 12 at beaches (2%)
- 12 at alfresco dining areas/footpaths (2%)
- 5 at council owned car parks (1%)
- 7 at public transport stops (1%)

There is a similar picture within WA's 144 Councils:

- 2 Councils have banned smoking in and around children's playgrounds (1%)
- 3 at beaches (2%)
- 4 at alfresco dining areas/footpaths (3%)

It is also important to note that the majority of Councils that have formally considered outdoor smoking bans have opted *not to ban smoking* in alfresco dining areas for a range of reasons. These are explored in three Australian Hotels Association (AHA) publications for local government.<sup>10, 11 12</sup>

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<sup>8</sup> Public Place Smoking research conducted by Crosby|Textor (June 2007)

<sup>9</sup> Audit of Australia's local governments: [http://www.aha.org.au/AHA\\_-\\_Database\\_of\\_Council\\_Smoking\\_Bans.xls](http://www.aha.org.au/AHA_-_Database_of_Council_Smoking_Bans.xls)

<sup>10</sup> Burnett, Peter: "Our Hotel – Special Local Government Edition" (November 2007) <http://www.aha.org.au/Documents/LGovEdition.pdf>



These publications and the AHA's website [www.aha.org.au/smoking.html](http://www.aha.org.au/smoking.html): detail the impacts of indoor smoking bans; show how the hotel industry is effectively self-regulating outdoor areas; warn of downsides to outdoor smoking bans; and urge support from local and state governments. Any regulator considering outdoor smoking bans should first consider the information on the downsides and unintended consequences of such a policy, which are explained in these publications.

Most councils that have considered outdoor smoking bans have decided not to pursue regulation in this area because of a range of unintended consequences. These include, for example;

- Such bans only shift smokers away from butt bins creating litter elsewhere;
- Encouraging people to smoke at home often around children;
- Reducing council revenue previously generated by leasing alfresco space;
- Increasing cost to councils by enforcement of bans;
- Decreasing community confidence that councils have got their priorities right; and
- Undermining compliance with indoor bans.

## **1.6 Enforcement difficulties**

It would appear that the proposed actions in the Bill are to be largely self enforcing in response to a claimed strong community demand for more public places to be smoke-free. As previously mentioned, BATA disputes the view there is broad community support for bans on smoking in outdoor areas, aside from those in children's playgrounds. Furthermore, we believe that government should not pass laws unless they are willing to undertake enforcement.

Whilst the "difficulty of enforcement" is perceived as a tobacco industry argument<sup>13</sup>, valid concerns have been raised by those with this responsibility. WA Local Government Association (WALGA) president Bill Mitchell has said "councils do not have the resources to police the changes actively"<sup>14</sup>. WA Police Commissioner Karl O'Callaghan has stated "his officers have more important things to do than enforce a ban on smoking in cars...he would not order them to enforce such a law".<sup>15</sup> Even the current Minister for Health, Dr Kim Hames, has indicated he has concerns with an alfresco dining ban<sup>16</sup>.

Furthermore, of local councils in NSW which have opted to ban smoking in various outdoor areas, only one (Mosman Council) has actually issued a fine<sup>17</sup>. We agree with

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11 Burnett, Peter: "Our Hotel – Special Local Government Edition" (November 2006)  
<http://www.aha.org.au/Documents/AHALGEdition.pdf>

12 Australian Hospitality Industry: "Our Hotel – Special Local Government Edition" (November 2008)  
<http://www.aha.org.au/booklet2008.pdf>

13 Tobacco Products Control Amendment Bill 2008, Second Reading Speech (Dr Janet Woolard MLA), 26 November 2008

14 The West Australian; Councils will not police ban on cigarettes, 28 Nov 2008

15 Ibid

16 The Western Australian; Councils will not police ban on cigarettes, 28 Nov 2008

17 The Daily Telegraph, Clean air policy up in smoke, 20/10/08

Action on Smoking and Health Australia CEO Anne Jones, when she says “it does make a mockery of laws if there is no intention to enforce them”.<sup>18</sup>

### **1.7 The use of tobacco products in outdoor eating and drinking areas**

BATA is aware the introduction of indoor smoking bans had a significant effect on the hospitality industry. We believe further restrictions would undermine the acceptance of indoor smoking bans and have serious adverse affects on the Western Australian hospitality industry.

Tobacco control advocates maintain that every jurisdiction which has enacted indoor smoking bans has found them easy to implement with either a neutral or positive impact on business. However, this does not appear to be the case in Australia.

In NSW alone, \$385 million was lost by small businesses in the first year since the indoor smoking bans<sup>19</sup>, with other states (such as Tasmania) recording a 20-30% downturn<sup>20</sup>. This economic loss incorporates the cost of renovations needed to cater for smokers in permitted outdoor settings and increased expenditure on security (with more people entering and exiting venues to smoke). Further, donations to organisations such as charities and professional sporting teams have fallen and in NSW alone thousands of jobs in the industry have been lost.<sup>21</sup>

Hoteliers in WA have invested over \$25 million on renovations to accommodate smokers<sup>22</sup> in response to regulations developed when the total smoking ban in enclosed public places was introduced July 2007. These regulations have provided a clear definition as to what is an ‘outdoor space’. To further change these laws and cause pubs and clubs to commit to further renovations, in the current economic climate, will surely see serious adverse affects to the hospitality industry.

Certainly, indoor bans have created challenges for the hospitality industry by moving smokers outside. Such challenges include cigarette butt litter, neighbourhood noise, footpath congestion, drink spiking (leaving drinks unattended), pressure on security staff (extra traffic in and out of pubs) and the revelation of unpleasant odours<sup>23</sup>. However, the AHA has been particularly active (and successful) in assisting members in dealing with these challenges.

For our part, to demonstrate our commitment, our business trading terms with the hospitality industry will encourage venues to have regard to managing litter, noise and footpath congestion, along with preventing cigarette sales to minors.

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<sup>18</sup> Sunday Telegraph, Ban goes up in smoke, 11/01/2009

<sup>19</sup> AAP Newswire, National, 01/08/08

<sup>20</sup> Hobart Mercury, 06/08/08, p. 9

<sup>21</sup> Sydney Morning Herald: Smoke ban costs clubs \$1.7m a day, 10 Dec 2008

<sup>22</sup> The Shout, Hotel, Bar, Club and Liquor Industry News; Outdoor smoking bans is ill thought: Opinion

<sup>23</sup> <http://www.hs.fi/english/article/1135227964553>

The Liberal Government only four months ago made an election promise that it would not ban smoking in alfresco dining areas, with Health Minister Kim Hames stating he “reservations” about such a policy.<sup>24</sup>

The WA government has led the world in legislating for short stay breakout areas to accommodate smokers. It would be a retrograde step for the government to now ban smoking in outdoor eating and drinking areas.

Banning smoking in outdoor eating and drinking areas only serves to move smokers which have been accommodated successfully into other areas, presenting further unintended consequences.

Others involved in this debate have pointed to evidence that outdoor smoking bans would undermine the acceptance of indoor bans<sup>25</sup>, could mean more smoking in the home (around children)<sup>26</sup>, and possibly other unintended consequences such as an increase in domestic violence<sup>27</sup>, concern over civil liberties abuse<sup>28</sup> and increased litter as smokers would congregate where cigarette disposal cannot be managed.

### **1.8 The use of tobacco products in outdoor playing areas**

BATA supports the sensible regulation of tobacco products, while ensuring that adult smokers can make informed choices about the use of such products. BATA accept that environmental tobacco smoke is an issue of public importance and believe that smokers should be mindful of others' comfort and should not smoke around young children. We therefore would not oppose a ban on smoking in children's playgrounds.

### **1.9 The use of tobacco products in safe swimming areas**

We believe the definition of a “safe swimming area” provided in the bill is not clear and seek clarity as such.

A “safe swimming area” has been defined as “a beach or part of a beach identified as a safe swimming area by flags marker buoys or otherwise”. From this description it is unclear whether smoking products would be prohibited on the whole beach or just the area “between the flags”.

There appears to be a lack of consistency at both a state and local government level as to what a smoking ban on beaches actually implies, causing potential confusion for beach goers.

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24 Hames, K (as quoted in) ABC news: “Labor promises more smoking bans”, 20/08/2008

25 Chapman, Simon: “Banning smoking outdoors is seldom ethically justifiable”: Tobacco Control 2000;9: 95-97 (see <http://www.aha.org.au/Documents/SMOKING/Chapman%20Ethics.pdf> )

26 Adda, Jerome Ph.D., and Cornaglia, Francesca Cornaglia, Ph.D: quoted in “Public Smoking Bans May Increase Smoking at Home” April 5, 2006. See:

<http://www.jointogether.org/news/research/summaries/2006/public-smoking-bans-increase.html>

27 Marcus, Caroline: “Pub smoke ban means violence in the home” Sydney Morning Herald:

<http://www.smh.com.au/news/national/pub-smoke-ban-means-violence-in-the-home/2007/06/02/1180205573411.html>

28 Australian Hotels Association (AHA) National Office website: [www.aha.org.au/resources.html](http://www.aha.org.au/resources.html)

Surf Life Saving Queensland have identified a number of concerns they have with smoking bans on patrolled beaches.<sup>29</sup> These include;

- Smokers and their families swimming at un-patrolled beaches where they can get into difficulty and drown.
- Children being left unsupervised while adult carers leave the beach to smoke.
- Surf life savers and life guards being called on to police smoking bans, distracting them from their duties.
- Moving smoker away from bins, with the potential for increased litter.

### **1.10 Tobacco use in private vehicles with children passengers**

BATA supports the sensible regulation of tobacco products, while ensuring that adult smokers can make informed choices about the use of such products. As mentioned in our response to the *Western Australia Department of Health Discussion Paper on Smoking in Selected Outdoor Public Places (April 2008)*, BATA accepts that environmental tobacco smoke is an issue of public importance and believe that smokers should be mindful of others' comfort and should not smoke around young children. We therefore would not oppose smoking bans in cars carrying children if enforcement is feasible.

However, we think this is more effectively achieved through education and encouraging greater personal responsibility amongst smokers. Governments at all levels need to be very careful in balancing the civil rights of the smokers with those of non smokers.

It is also worth noting that community attitude research shows that Australians see a ban on smoking in their vehicles as overly intrusive. Research shows that community support for indoor public place bans is only just starting to materialise – real community support for bans on smoking outdoors or in a person's own car (without children present) are a long way off.

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<sup>29</sup> Surf Life Saving Queensland; Position Statement – Smoking Ban on Patrolled Beaches 21/09/04

## **2. Retail display bans**

The Inquiry into the Tobacco Products Control Amendment Bill 2008 seeks to consider the adequacy of measures to curb so-called "tobacco promotion".

### **2.1 BATA Position on so-called "promotion"**

BATA competes for market share among adult smokers but does not in any way promote tobacco products to non-smokers, ex-smokers or children

The second reading speech states the presence of tobacco products in retail outlets have become a vital focus of industry marketing and promotion.

Firstly, it is misleading to equate "promotion" with the "display" of products for sale. Any form of tobacco promotion – that is, advertising brand and product attributes to the consumer, has been banned in Australia for over a decade. Retailers do not "advertise" tobacco products for sale but rather display for sale tobacco brands and their prices for the consumer to select.

BATA competes for market share among adult smokers but does not in any way promote tobacco products to non-smokers, ex-smokers or children. Any assertion that display is used by BATA to market to consumers in the current regulatory environment is not a matter of fact and must therefore be considered an opinion.

### **2.2 Display of tobacco products**

Overseas evidence demonstrates that retail display bans do not work and cause serious unintended consequences with no evidence of intended public health benefits.

Rather retail display bans result in a financial burden and administrative cost to business (especially small business), they can lead to an increase in illegal tobacco, and can result in an increase in youth smoking.

Introducing such bans into Australia is a regulatory experiment which will significantly change the retail landscape and no one knows the full extent of the negative impact that these bans will have.

Given the current economic climate, which we are being told will continue to 'get worse', now is not the time to be experimenting with business (particularly small business) and the priority should instead be on saving jobs in the retail sector rather than losing them. BATA believes that business deserves consistency in regulation to provide certainty in their planning.

For these reasons BATA is opposed to such bans and have made our case to various State and Territory governments.

Although we continue our stance on its ineffectiveness, BATA would rather see a nationally consistent approach to retail display restrictions than the current piecemeal approach.

### **2.3 The cost of display bans to retailers**

Small retailers would be more likely to lose sales to larger stores, as the display of products helps to counteract the incorrect assumption that larger stores have a bigger range of products available.

Therefore, rather than reduce smoking, more regulation imposes an administrative burden on retailers, particularly smaller retailers and adds to their compliance costs. This inhibits their ability to effectively compete with a larger retailer.

If display bans were implemented, there is concern that small retailers would be less likely to be able to bear the costs of compliance involved in refitting their stores.

In fact, research conducted in NSW found that 81% of small businesses surveyed believe that banning cigarettes display will see smokers shift their purchases to large supermarkets<sup>30</sup>.

Smaller retailers also believe the absence of stock visibility will have some competitive implications for them with larger retailers able to offer one-stop-shopping at better prices. The sale of tobacco products contributes as much as 40 percent of revenue for small to medium sized business (who do not "*specialise*" in the sale of tobacco where the contribution is between 60-80 percent of sales revenue).<sup>31</sup>

### **2.4 Display bans and smoking incidence**

International evidence demonstrates that banning or restricting tobacco products at point of sale display does not reduce smoking incidence nor does it reduce youth smoking.

Saskatchewan was the first Canadian province to prohibit the retail display of tobacco products. However the percentage of smokers in Saskatchewan actually increased from 21 percent in 2002 to 24 percent in the 19 months when the ban was first introduced.

Also during this period, the national rate of youth smoking decreased from 22.5 percent to 22 percent over the same period whilst in Saskatchewan youth smoking prevalence actually increased from 27 percent to 29 percent.<sup>32</sup>

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30 AUSPOLL Retailer and Community Attitude Survey June 2008.

31 PricewaterhouseCoopers "Sales of cigarettes and tobacco product by type of retail business" An analysis of the significance of sales of cigarettes and tobacco products to tobacco retailers in Australia. May 2005. p. 22

32 Tobacco Control Programme, Health Canada, Canadian Tobacco Use Monitoring Survey (CTUMS) Annual 2002-2003.

Furthermore, in 2005, three years after the display ban, it was identified that Saskatchewan had the highest rates of smoking in the 15-19 year old age group compared to every other Canadian province<sup>33</sup>.

The display ban has also been ineffective in reducing smoking prevalence. Statistics from Health Canada have shown there has been no medium-term reduction in smoking rates and from 2003 to 2005, smoking rates did not change, compared to other provinces that saw significant reductions without the use of a retail display ban<sup>34</sup>.

The majority of retailers are sensible and responsible when it comes to the sale of tobacco products. In fact, it is more likely that underage smokers are getting their cigarettes from older siblings or friends.

Research conducted for the Australasian Association of Convenience Stores (AACS) in June 2008 found that 63 percent of the NSW community believes that young people who smoke primarily obtain cigarettes from older friends or siblings, with 84 percent of NSW retailers surveyed holding the same view.<sup>35</sup>

This research is supported by that conducted in 2005 by the Australian Government Department of Health and Ageing who commissioned Eureka Strategic Research to undertake an extensive research report into Youth Tobacco Smoking to gain an insight into preventative strategies upon which all governments could draw, enabling them to promote policies and fund targeted spending initiatives on the basis of sound evidence.<sup>36</sup>

The Report found that the most important influencers of smoking initiation and supply amongst youth are parents, siblings and peers.<sup>37</sup>

The Report also found that:

- Overall the most common means of accessing cigarettes for youth are “social sources” (i.e. friends and peers).<sup>38</sup>
- Despite legislation relating to sales to minors, young people report little difficulty in accessing cigarettes. Cigarettes appear to be readily available to under 18s through older friends, family members and small struggling retailers”.<sup>39</sup>
- With regard to “anti-smoking” sentiments, young people resent being told what to do and deliberately rebel by doing the opposite of what they are told.<sup>40</sup>

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33 Canadian Council on Tobacco Control (2007) *Ontario Tobacco Strategy: Youth and Tobacco Factsheet* [Online]. Available at: [www.cctc.ca/cctc/EN/mediaroom/factsheets/factsheetyouth](http://www.cctc.ca/cctc/EN/mediaroom/factsheets/factsheetyouth) [Accessed: 24/04/08].

34 Statistics Canada (2006), *An Update from the 2005 Canadian Community Health Survey*, Chart 5 [Online]. Available at: <http://www.statcan.ca/english/research/82-621-XIE/2006002/smoking.htm> [Accessed: 24/04/08].

35 AUSPOLL Retailer and Community Attitude Survey June 2008.

36 Eureka Strategic Research. Youth Tobacco Prevention Research Project - Australian Government Department of Health and Ageing. June 2005. pp 1.

37 *ibid* pp 11.

38 *ibid* pp 62.

39 *ibid*, pp 81.

40 *ibid*, pp 71.

- There is a need for dedicated, relevant assistance for young smokers as Quitline services are perceived by the young as only being for “older, adult, long term smokers”.<sup>41</sup>

The Report states that although the availability of tobacco products is clearly a necessary factor for initiation, peers and older siblings are the most commonly cited sources. Where young people report stealing to obtain cigarettes, the most likely sources are family members.<sup>42</sup>

## **2.5 Display bans increase sales in illegal tobacco**

Evidence also shows that more regulations, such as putting legitimate tobacco products out of sight will result in an increase in the trade of cheaper illegal tobacco and cigarettes.

In 2007 it was reported the rate of illicit tobacco trade was higher in Saskatchewan than almost every other Canadian province.<sup>43</sup> In fact, the Canadian Cancer Society believes that tackling illicit trade along with youth smoking prevalence will be the major focus areas for Saskatchewan in the years to come.<sup>44</sup>

The availability of low cost illegal tobacco undermines government policy to keep tobacco costs high to reduce affordability and levels of consumption.<sup>45</sup> Further, in 2007, 6.4 percent of tobacco consumption in Australia was consumption of cheap, illegal tobacco which represents taxation losses of at least \$450 million.<sup>46</sup>

A survey of people attending smoking clinics run by Central Sydney Area Health Service<sup>47</sup> found that respondents who admitted to using illegal tobacco were overwhelmingly using it because it was cheaper than commercial tobacco<sup>48</sup> and many also believed it had no additives and was healthier.

In 2005, it was found that 1 in 17 cigarettes smoked in Australia was illegal tobacco, which would indicate that interventions to manage *both* legal and illegal consumption of tobacco should be a part of the government’s health agenda.<sup>49</sup>

## **2.6 Duty free sales**

No public health benefit would be served through the abolition of duty free sales of tobacco products. Such a move would have significant unintended consequences (such

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41 *ibid* pp 4 pp 79.

42 *ibid* pp 44-45.

43 Boggs, T. (2007), *Convenience Central Magazine* Volume 6, Issue 10, October 2007

44 Benjoe, K. (2008), “Agency wants increased anti-smoking measures in Sask.” [Online: Published in *Leader-Post*, 01/04/08]. Available at: <http://www.canada.com/reginaleaderpost/news/story.html?k=42720&id=831ed26f-d7e0-4b24-a3eb-2e954a1c1c66> [Accessed: 28/04/08].

45 *ibid*.

46 PricewaterhouseCoopers Research “Illegal Tobacco costing Australia millions” August 2007. p 3.

47 *Ibid*

48 Robotham 2002.

49 PricewaterhouseCoopersResearch “The Illegal Tobacco Market in Australia.” March 2005. p 4



as the loss of jobs and sales for business) and would set a dangerous precedent with banning the sale of a legal product.

BATA opposes the banning of duty free sales of tobacco products as the products are already highly regulated, and equate to approximately 1% of Australia's total industry volume. Considering this, and when compared to other channels, there is no overall benefit in removing sales from either a health or illicit trade perspective, other than the inconvenience to the international travelling public and negative impacts to Australian businesses and jobs.

Duty free sales already occur in a highly controlled environment with no opportunity for immediate consumption of the product in public places.

Such restrictions are likely to have unintended consequences on business commerce, revenue and employment given that consumers will simply purchase tobacco products in another jurisdiction rather than Australia, which would result in an impact on Australian business rather than an impact on smoking rates.

Permission to sell duty-free tobacco is also subject to strict controls and licences in every state and territory. The movement and storage of the product is highly regulated as is the method of sale to the end user.

In broad terms;

- There is limited opportunity for the Australian population to access tobacco in a duty free environment;
- Purchase qualification is required;
- Purchase quantity is strictly limited;
- A retail license is required to sell tobacco products in a Duty Free environment;
- There is highly restricted storage and movement of tobacco products; and
- Strict records of transactions are maintained.

A dangerous precedent would also be set by banning the sale of a legal product in a legitimate channel, putting the future sale of other such products (such as alcohol) in doubt.

Given the above, there is very little reason to assume that the abolition of Duty Free sales will either address illicit trade or reduce cigarette consumption.

## **2.7 National consistency**

If governments are committed to introducing regulation to restrict tobacco displays, this must allow for effective price and brand communication with adult smokers; permit effective brand competition at the point of sale; mitigate the potential financial and other impacts to retailers; and avoid unintended adverse consequences such as the potential for increased tobacco consumption and illicit trade.

BAT believes that if a national approach was to be regulated, regardless of a balanced impact assessment; all State and Territory Governments should be required to legislate for such display restrictions to be effective.

Such legislation would need to ensure that all States are nationally consistent, that there is a similar starting period, that a realistic compliance period for all retailers is introduced and that sensible measures are put in place to assist retailers and minimise the negative impacts on them.

Retailers, retail associations, the tobacco industry, and other affected stakeholders need to be involved in the regulatory process, so as to ensure that there is minimal impact on Australian small businesses.

There is support for calls for nationally consistent regulation on the retail display of tobacco products.

The Productivity Report found in August 2008 that “a nationally consistent approach to the regulation of tobacco sale, promotion and supply would clearly reduce the compliance on burden for national retailers in relation to tobacco sales”<sup>50</sup>.

Support is also forthcoming from various retailers with the Productivity Commission also finding that the “Coles Group proposed that nationally consistent approach to the regulation of tobacco sales be developed through the Ministerial Council on Drug Strategy”<sup>51</sup>.

The Productivity Commission has outlined a way that nationally consistent retail display restrictions could be implemented. In its August 2008 Report it recommended that “as the regulation of tobacco sales is a state and territory responsibility, the introduction of a nationally consistent approach in this area is a matter for the State and Territories and could be addressed through their memberships of the Ministerial Council on Drug Strategy”<sup>52</sup>.

BATA believes that this is the implementation model that could be further explored.

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50 Productivity Commission Research Report, August 2008, pg 176

51 Productivity Commission Research Report, August 2008, pg 176

52 ibid

## **Annexures**

Recent tobacco control measures initiated:

2002 – smoking restrictions applied to Victorian licensed premises with gaming rooms and machines<sup>53</sup>

2002 – point of sale advertising restricted in Victoria, except for product display and price<sup>54</sup>

2003 – smoking banned in Northern Territory enclosed workplaces, restaurants, cafes, shopping centres and the dining areas of licensed venues, licensed premises required to provide smoking and non-smoking areas of equal amenity<sup>55</sup>

2003 – Northern Territory introduces licence requirements for tobacco retailers, advertising prohibited and product display and point of sale restrictions<sup>56</sup>

2004 – 59 councils banned smoking near children's playgrounds (since this date)

2004 – smoking banned in South Australian enclosed public places, workplaces, and shared areas<sup>57</sup>

2005 – smoking banned in Queensland workplaces, enclosed public places and other public areas<sup>58</sup>

2005 – court enforceable undertaking agreed between ACCC and industry to remove 'light', 'mild' and similar descriptors from tobacco products<sup>59</sup>

2005 – SA places restrictions on the number of points of sale of tobacco products and requirement for separate retail tobacco licences<sup>60</sup>

2005 – tobacco advertising in South Australia at point of sale banned<sup>61</sup>

2005 – SA limits cigarette vending machines to one per venue and restrictions applied to placement or operation<sup>62</sup>

2005 – SA place ban on all forms of tobacco advertising in retail outlets<sup>63</sup>

2005 – WA introduces restrictions on indirect forms of the sale of tobacco products by mail order or the internet<sup>64</sup>

2006 – Federal: pictorial Graphic Health Warnings implemented on cigarette packaging

2006 – Federal: all tobacco sponsorship for international sporting events held in Australia phased out<sup>65</sup>

2006 – Queensland reduces retail display of tobacco to 1sqm

2006 – SA bans sale of overt fruit flavoured cigarettes

2006 – ACT bans sale of overt fruit flavoured cigarettes

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53 [www.health.vic.gov.au/tobaccoreforms/downloads/smoking\\_laws\\_booklet\\_sept02.pdf](http://www.health.vic.gov.au/tobaccoreforms/downloads/smoking_laws_booklet_sept02.pdf)

54 [tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/TL2001.pdf](http://tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/TL2001.pdf)

55 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572))

56 [tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/TL2001.pdf](http://tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/TL2001.pdf)

57 [www.dassa.sa.gov.au/site/page.cfm?u=120](http://www.dassa.sa.gov.au/site/page.cfm?u=120)

58 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572)

59 [www.accc.gov.au/content/index.phtml/itemId/683533](http://www.accc.gov.au/content/index.phtml/itemId/683533)

60 [www.dassa.sa.gov.au/site/page.cfm?u=120](http://www.dassa.sa.gov.au/site/page.cfm?u=120)

61 [www.dassa.sa.gov.au/site/page.cfm?u=120](http://www.dassa.sa.gov.au/site/page.cfm?u=120)

62 [www.ahasa.asn.au/index.php?a=154](http://www.ahasa.asn.au/index.php?a=154) and <http://www.tobaccolaws.sa.gov.au/Default.aspx?tabid=96>

63 [www.tobaccolaws.sa.gov.au/Default.aspx?tabid=89](http://www.tobaccolaws.sa.gov.au/Default.aspx?tabid=89)

64 [www.austlii.edu.au/au/legis/wa/bill\\_em/tpcb2005281/tpcb2005281.html](http://www.austlii.edu.au/au/legis/wa/bill_em/tpcb2005281/tpcb2005281.html)

65 <http://www.health.gov.au/internet/main/publishing.nsf/Content/phd-tobacco-progress-cwealth-07>

2006 – prohibition in the ACT of tobacco vending machines distributing smoking products<sup>66</sup>  
 2006 – ACT vending machines require a lock out mechanism  
 2006 – SA bans split packs  
 2006 – Tasmania bans split packs<sup>67</sup>  
 2006 – smoking banned in Tasmania pubs and clubs enclosed areas and all enclosed public places and workplaces<sup>68</sup>  
 2006 – smoking banned in Queensland pubs and clubs enclosed areas  
 2006 – smoking banned in WA pubs and clubs enclosed areas and all enclosed public places<sup>69</sup>  
 2006 – smoking banned in ACT pubs and clubs enclosed areas and all enclosed public places and workplaces<sup>70</sup>  
 2006 – smoking banned in Victorian enclosed workplaces and public areas<sup>71</sup>  
 2006 – smoking banned in NSW enclosed workplaces and public areas<sup>72</sup>  
 2006 – WA restricts advertising of price discounting and display of tobacco advertisements at point of sale<sup>73</sup>  
 2006 – WA restricts vending machines to licensed premises and amenity areas of mine sites<sup>74</sup>  
 2007 – SA ban retailer rewards, vending requires lock out system  
 2007 – SA ban retail sales via the internet  
 2007 – NSW ban mobile sales and fruit flavours  
 2007 – WA reduces retail display of tobacco to 1 sqm  
 2007 – WA introduces retailer licensing for the sale of tobacco products  
 2007 – Tasmania bans display of retail display of tobacco products  
 2007 – Tasmania bans sale of fruit or confectionary flavoured cigarettes<sup>75</sup>  
 2007 – SA reduces retail display of tobacco to 1 sqm  
 2007 – smoking banned in Victorian pubs and clubs enclosed areas  
 2007 – smoking banned in NSW pubs and clubs enclosed areas  
 2007 – smoking banned in South Australian pubs and clubs enclosed areas  
 2007 – smoking banned in cars with children in South Australia  
 2008 – Federal: national move to ban sale of overt fruit flavours across Australia  
 2008 – smoking banned in cars with children in Tasmania  
 2008 – smoking banned in cars with children in NSW  
 2008 – smoking banned in cars with children in Queensland<sup>76</sup>

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[www.health.gov.au/internet/main/publishing.nsf/Content/9BBD4C52D0C65A1DCA2574C8000DA5D9/\\$File/att-a-act-07.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9BBD4C52D0C65A1DCA2574C8000DA5D9/$File/att-a-act-07.pdf)

67 [www.health.gov.au/internet/main/publishing.nsf/Content/phd-tobacco-progress-tas-07](http://www.health.gov.au/internet/main/publishing.nsf/Content/phd-tobacco-progress-tas-07)

68 [www.seton.net.au/smokingban/legislation.cfm](http://www.seton.net.au/smokingban/legislation.cfm)

69 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572)

70 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572)

71 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572)

72 [www.smokefree.org.au/sfv\\_browse.asp?ContainerID=1572](http://www.smokefree.org.au/sfv_browse.asp?ContainerID=1572)

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[www.health.gov.au/internet/main/publishing.nsf/Content/623CE2B1CA23D9C3CA2574C8000F52F2/\\$File/att-a-wa-07.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/623CE2B1CA23D9C3CA2574C8000F52F2/$File/att-a-wa-07.pdf)

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[www.health.gov.au/internet/main/publishing.nsf/Content/623CE2B1CA23D9C3CA2574C8000F52F2/\\$File/att-a-wa-07.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/623CE2B1CA23D9C3CA2574C8000F52F2/$File/att-a-wa-07.pdf)

75 [www.dhhs.tas.gov.au/\\_data/assets/pdf\\_file/0005/34367/Selling Tobacco Products in Tasmania.pdf](http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0005/34367/Selling_Tobacco_Products_in_Tasmania.pdf)

76 [www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=61368](http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=61368)

2008 – regulations for Reduced Fire Risk cigarettes in Australia are passed  
2008 – NSW passes laws for the total retail display ban of tobacco products  
2008 – ACT passes laws for the total retail display ban of tobacco products  
2008 – SA vending machines to have appropriate staff intervention mechanism to operate<sup>77</sup>  
2008 – Victoria announces retail display bans and banning smoking in cars carrying children

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<sup>77</sup> [www.tobaccolaws.sa.gov.au/Default.aspx?tabid=172](http://www.tobaccolaws.sa.gov.au/Default.aspx?tabid=172)