

**Submission**

**No 46**

## **INQUIRY INTO TOBACCO SMOKING IN NEW SOUTH WALES**

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**Theme:**

**Summary**



**BRITISH AMERICAN  
TOBACCO  
AUSTRALIA**

**Submission by  
British American Tobacco Australia (BATA)**

**To the Joint Select Committee Inquiry  
into Tobacco Smoking in NSW**

**20<sup>th</sup> April 2006.**

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## **1. EXECUTIVE SUMMARY**

### **1.1. Scope**

British American Tobacco Australia Limited ('BATA') is Australia's leading tobacco company, accounting for approximately 46.2% of the cigarette market<sup>1</sup>. The company manufactures and distributes cigarettes and roll-your-own tobaccos and distributes pipe tobaccos and cigars. Our brands include Winfield, Benson & Hedges, Dunhill and Holiday.

The following is a summary of BATA's views in relation to the Terms of Reference established by the *Joint Select Committee Inquiry into Tobacco Smoking in NSW*.

BATA has responded directly to the Terms of Reference and those additional issues raised throughout the inquiry, where we have a justified concern.

### **1.2. Support for 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, be they consumers, tobacco retailers, hospitality providers, public health authorities or 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.

In our view ongoing consultation with affected stakeholders is critical to the achievement of reasonable and effective tobacco control policy. To this end the NSW Parliament's establishment of a Committee to formally inquire into the matters set out in terms of reference is a positive first step towards meaningful consultation with the groups who will be impacted by future regulation.

To this end BATA welcomes the NSW Parliament's review of certain aspects of the government's overall tobacco strategy.

### **1.3. Summary of BATA's views in relation to the Terms of Reference**

#### **1.3.1. The costs and other impacts of smoking**

There are differing official government estimates of the direct health costs identified with smoking. In the Draft National Tobacco Strategy (NTS) a figure of approximately \$1.1 billion is quoted, whereas the Australian Institute of Health and Welfare (AIHW) estimate is \$700m<sup>2</sup>. Either way, BATA contends that the costs associated with smoking

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1 Ex-Warehouse Manufacturer Sales to Trade: March 2006

2 from: [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-resources.htm/\\$FILE/tobcfacts\\_facts.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-resources.htm/$FILE/tobcfacts_facts.pdf)

must be matched against an assessment of those positive features of a local tobacco growing, manufacturing and retailing industry, which outweigh these costs.

The total contribution that tobacco makes to the Australian economy is in excess of \$26.64bn<sup>3</sup>.

### **1.3.2. The effectiveness of strategies to reduce tobacco use**

#### **Unintended consequences**

BATA feels the efficacy of tobacco control strategies must be measured in terms of the unintended consequences of regulation, including growth in the illegal trade in tobacco products, the ability to undermine youth smoking prevention and harm reduction initiatives and the disproportionate commercial impacts on small business retailers.

#### **Harm minimization**

BATA also feels the Committee ought to consider how the NSW Government can better meet its stated policy objective under the National Tobacco Strategy (NTS) to minimize the harm caused by tobacco use, recognizing that tobacco consumption is likely to continue into the foreseeable future.

Our submission provides an overview of tobacco control measures and information on some unintended consequences of regulatory proposals, as follows:

#### **product regulation**

- disclosure of ingredients is adequately managed by the federal government
- the ACT model should be followed to remove “DJ Mix”-style cigarettes.
- Lower Ignition Propensity (LIP) cigarettes: have not been found to work in the real world; have been rejected in a number of jurisdictions; and may encourage irresponsible disposal

#### **public place smoking**

- restrictions will create significant financial hardship for hotels
- regulations will create problems (such as footpath congestion, noise, drink spiking<sup>4</sup>, and litter) the solving of which will require assistance from government for the hotel industry
- council footpath smoking bans undermine acceptance of enclosed space smoking bans requiring government intervention

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<sup>3</sup> A PricewaterhouseCoopers industry report in 2001 estimated that the tobacco industry contributed an additional \$21.3 billion from flow-on effects further to tax contribution. (Source: *The Current Economic and Policy Environment for the Australian Tobacco Industry*, June 2001 at iii.) In 2005/06, total tobacco excise is \$5.34bn. In addition, goods and services tax and sales tax is payable on tobacco products.

<sup>4</sup> According to the National Project on Drink Spiking, between 1 July 2002 and 30 June 2003 (i.e. over a twelve month period): between 3000 and 4000 suspected incidents of drink spiking occurred in Australia; approximately one third of these incidents involved sexual assault; between 60 and 70 per cent of these incidents involved no additional victimisation; and between 15 and 19 suspected drink spiking incidents occurred per 100,000 persons in Australia during 2002/03.

- is now a debate about non enclosed areas given achievement of a workable definition of “substantially enclosed” areas,
- are unpopular, as evidenced by community attitude research

#### **packaging regulation**

- graphic health warnings will maintain awareness of risks of smoking

#### **place of purchase**

- product “shrouding” hides graphic health warnings, does not reduce incidence, encourages illegal tobacco trade, may in fact *encourage* youth smoking, is anti-competitive, and disproportionately impacts small business retailers. This section also discusses proposals for retailer licensing;
- if retailer licensing is pursued, it should be part of a broader compliance programme and developed in consultation with retailers, should support youth smoking prevention and anti-illicit trade objectives, and should be federally managed. However, BATA stresses that licensing may make illegal tobacco prices more attractive as costs will be passed on to legal product consumers, which may be too onerous on businesses.

#### **promotion**

- the April 2006 announcement of NSW Cabinet plans to increase penalties under the Public Health Act will be considered by BATA in due course.
- BATA does not pay for product placement in movies.

#### **price**

- high price of legal tobacco is the most significant encouragement of the illegal tobacco market – which currently represents an excise leak of around \$350m.

#### **other issues**

BATA defends the right of political parties and individuals to engage with tobacco companies on constitutional grounds.

### **1.3.3. The effects of smoke-free indoor venues on the initiation and maintenance of the smoking habit**

A policy objective of reducing incidence may not be achieved by creating smoke-free indoor venues. Other factors including impacts on the hospitality sector and reasons not to pursue outdoor bans (as flagged by some in the tobacco control lobby) are explored in this section.

### **1.3.4. Factors affecting initiatives for smoke-free indoor areas**

Issues relating to smoke-free indoor areas are all explored in the section relating to “the effectiveness of strategies to reduce tobacco use - public place smoking”. These arguments are not repeated.

### **1.3.5. The effectiveness of media, educative, community and medically-based Quit initiatives**

Quit initiatives have been successful in contributing to a reduction in incidence to 17.4 percent in Australia. Their effectiveness in contributing to a universal awareness of the risks associated with smoking is a more appropriate measurement of the efficacy of Quit initiatives.

Adult consumers choose to continue to smoke for a range of reasons – not least because they enjoy it despite awareness of the serious risks to health associated with smoking. Therefore beyond maintaining, as they rightly should, the awareness that exists of these risks, it is unreasonable for regulators to assume they should continue to impose ever more burdensome restrictions on tobacco with an objective of reaching an impossible “zero smoking incidence” target. Furthermore, such a course is not seen as acceptable to the Australian electorate.

### **1.3.6. The adequacy of the budget for smoking control initiatives**

Cancer research attracts over \$30M every year in NSW. Over half of this income is from government, 30 per cent from charity and 14 per cent from industry. The Cancer Institute of NSW’s Annual Report of 2003/04<sup>5</sup> categorises its work into five main program areas: research; clinical programs and quality; policy; information; education and public relations; and partnerships. The Cancer Institute of NSW identified upon its establishment that tobacco will be its major emphasis of the prevention program. This work compliments considerably greater Federal Government funding in this area.

BATA would support a *reallocation* of funding to address certain key areas of concern. These campaigns would focus on:

- enhancing awareness amongst parents that they should not smoke around children – perhaps by continuing and enhancing the “*car and home smoke free zone*” as an alternative to a legislative approach such as the Nile bill;
- informing adults they can continue to smoke in non-enclosed areas at NSW hotels post-July 2007; and
- reinforcing awareness amongst retailers that they should not sell tobacco to minors or sell illegal tobacco.

Recent research<sup>6</sup> demonstrates that people feel that there are more important government priorities than issues of tobacco control". Individuals surveyed in 2006 feel other health issues deserve more attention, such as waiting lists and queuing times in public hospitals, age care and the cost of dental care. Maintaining the current pace of tobacco control reform will further entrench public perception that the government is ignoring issues that the public see as more important.

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<sup>5</sup> See: [http://www.health.nsw.gov.au/cancer\\_inst/programs/annu\\_rep.pdf](http://www.health.nsw.gov.au/cancer_inst/programs/annu_rep.pdf)

<sup>6</sup> Surveys conducted in March 2006 for BATA by Crosby|Textor

**1.3.7. The Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005**

BATA feels it is not appropriate to smoke around children, and so we would support measures to curb this practice.

Where vehicles do not transport underage passengers, however, BATA maintains that adult Australians should continue to enjoy the right to choose to consume tobacco in their cars. Smoking tobacco in cars with adult passengers is a matter of courtesy. We note that driver organizations do not support driver safety arguments put by the tobacco control lobby. Community attitude research supports our view that smoking bans in private vehicles without underage passengers exceed community expectations. Our view is that butt litterers are already subject to significant fines to reduce environmental impacts and so the government might consider better enforcement of existing penalties in this regard, without resorting to banning a legal product.

## 2. INTRODUCTION

### 2.1. Scope

British American Tobacco Australia Limited ('BATA') is Australia's leading tobacco company, accounting for approximately 46.2% of the cigarette market<sup>7</sup>. The company manufactures and distributes cigarettes and roll-your-own tobaccos and distributes pipe tobaccos and cigars. Our brands include Winfield, Benson & Hedges, Dunhill and Holiday.

The following submission outlines BATA's views in relation to the Terms of Reference of the *Joint Select Committee Inquiry into Tobacco Smoking in NSW*, namely:

- the costs and other impacts of smoking
- the effectiveness of strategies to reduce tobacco use
- the effects of smoke-free indoor venues on the initiation and maintenance of the smoking habit
- factors affecting initiatives for smoke-free indoor areas
- the effectiveness of media, educative, community and medically-based *Quit* initiatives
- the adequacy of the budget for smoking control initiatives
- the Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005

BATA has responded directly to the Terms of Reference and those additional tobacco issues, where we have a justified concern.

### 2.2. Support for Sensible Regulation

Because of the real and serious risks of smoking, BATA supports the sensible regulation of tobacco products while ensuring that adult smokers can make informed choices about the use of such products.

In BATA's view, sensible tobacco regulation considers and reflects the differing needs and preferences of all affected stakeholders, be they consumers, tobacco retailers, hospitality providers, public health authorities or 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. Ongoing consultation with affected groups is critical to the achievement of reasonable and effective tobacco control policy.

Tobacco regulation in Australia is undertaken by a number of Federal, State and Territorial departments with differing objectives including the promotion of public health, efforts to maximise excise tax revenue and attempts to advance business competition policy. Tobacco policies also differ from state to state and are often

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<sup>7</sup> Price Waterhouse Coopers: Ex-Warehouse Manufacturer Sales to Trade: March 2006

advanced with little consultation with those most affected – Australia’s tobacco manufacturers and retailers. According to an independent study conducted by PricewaterhouseCoopers, overall, tobacco regulation does not adhere to best practice regulation making processes. The report cites many examples indicative of a conflicting regulatory regime in which government departments pursue different objectives, and where policy development occurs without reference to those conflicts<sup>8</sup>.

BATA believes a consistent approach to regulation in Australia could be enhanced through more robust consultation with tobacco manufacturers. Indeed we believe we have a valuable contribution to make to any long-term legislative strategy. As a manufacturer of tobacco products and market leader we possess valuable technical knowledge that in the past we have openly shared with governments, in good faith, to work together to achieve real progress. We are committed to maintaining an open dialogue with all Commonwealth, State and Territory governments who have jurisdiction over our operations.

In line with this position the following submission seeks to put forward BATA’s view on issues outlined in the Inquiry’s Terms of Reference, as they reflect our view of sensible and effective regulation.

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<sup>8</sup> “The Current Economic and Public Environment for the Australian Tobacco Industry” (“PricewaterhouseCoopers, 2001)

### 3. BATA's RESPONSE TO THE TERMS OF REFERENCE

#### 3.1. The costs and other impacts of smoking

##### 3.1.1. Value of the Australian Tobacco Industry

The Australian tobacco industry continues to make a significant contribution to the Australia economy in terms of excise payments, state license fees, general business taxation (such as company tax and payroll tax), GST receipts to the States and Territories, retail sales and employment.

- In 2005/06, the Federal Government will collect \$5.34 billion in tobacco excise (in addition to revenue raised through sales tax and GST). Currently, government taxes represent 70 percent of the cost of a packet of cigarettes; one of the highest rates in the world. Tobacco excise is linked to the Consumer Price Index, which is reviewed and adjusted twice yearly. A table showing history and forecast of tobacco excise is included in the Supporting Documents section of this submission.
- Cigarette and tobacco sales represent 4.7 percent of total spending on all retail sales<sup>9</sup> and approximately 12 percent of total expenditure on food and grocery<sup>10</sup>.
- The revenue and gross margins generated by sales of cigarettes and tobacco products comprise a major part of business for many Australian retailers, particularly for small mixed businesses and tobacconists.

#### Value of tobacco products to the Australian economy 2004

Total value of Australian tobacco retail sales	\$A9.3 billion <sup>11</sup>
Number of retail businesses that sell cigarettes and tobacco products	35,000 <sup>12</sup>
Percentage of tobacco sales made by supermarkets, grocery stores and convenience stores	64 percent <sup>13</sup>
Percentage of all retail sales spent on tobacco and cigarettes	4.7percent <sup>14</sup>

9 Sales of Cigarettes & Tobacco Products by Retail Channel - Analysis of the significance of sales of cigarettes & tobacco products to tobacco retailers in Australia, May 2005 (p4 )

10 Sales of Cigarettes & Tobacco Products by Retail Channel - Analysis of the significance of sales of cigarettes & tobacco products to tobacco retailers in Australia, May 2005 (p16)

11 Research Report on the Illegal Tobacco Market, PricewaterhouseCoopers, March 2005.

12 Sales of Cigarettes & Tobacco Products by Retail Channel - Analysis of the significance of sales of cigarettes & tobacco products to tobacco retailers in Australia, May 2005.

13 Sales of Cigarettes & Tobacco Products by Retail Channel - Analysis of the significance of sales of cigarettes & tobacco products to tobacco retailers in Australia, May 2005.

### Value of tobacco products in terms of employment

Full-time equivalent jobs within the retailing and distribution sector as a result of the demand for tobacco products 1999/2000	18,500 <sup>15</sup>
Full-time equivalent jobs within the growing, manufacturing, retail, distribution and flow-on sectors as a result of the demand for tobacco products 1999/2000	57,500 <sup>16</sup>

Figure E.1 (see annex) illustrates the proportion of total sales represented by cigarettes and tobacco products for each type of retail business. Table E.1 summarises the key findings from the 2005 PricewaterhouseCoopers report and the margins derived from tobacco products by the estimated 35,000 businesses involved in the sale of tobacco products.

#### 3.1.2. Social costs and unintended consequences of tobacco policy

BATA agrees that when evaluating any economic benefit derived from the manufacture, sale and distribution of tobacco products consideration must be given to the social costs of tobacco use. According to data compiled by the Australian Institute of Health and Welfare (AIHW), between 2001 and 2002 smoking was responsible for almost 300,000 hospitalisations, costing almost \$700 million.<sup>17</sup> We note also another official government estimate of the direct health costs identified with smoking of \$1.1billion<sup>18</sup>.

In meeting these and other ‘social costs’, BATA notes findings of a PricewaterhouseCoopers industry report estimated an industry contribution in 1999/2000 of an additional \$21.3 billion from flow-on beneficial effects making the tobacco industry the second largest contributor after petroleum.<sup>19</sup>

BATA contends that the costs associated with smoking must be matched against an assessment of those positive features of a local tobacco growing, manufacturing and retailing industry, which outweigh these costs. The *total* contribution that tobacco makes to the Australian economy is well in excess of \$26bn<sup>20</sup>.

14 Sales of Cigarettes & Tobacco Products by Retail Channel - Analysis of the significance of sales of cigarettes & tobacco products to tobacco retailers in Australia, May 2005.

15 Current Economic and Policy Environment for the Australian Tobacco Industry, PricewaterhouseCoopers Research Report, June 2001.

16 Ibid no. 12.

17 from: [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-resources.htm/\\$FILE/tobcfacts\\_facts.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-resources.htm/$FILE/tobcfacts_facts.pdf)

18 . Draft National Tobacco Strategy (NTS)

19 The Current Economic and Policy Environment for the Australian Tobacco Industry, June 2001 at iii.

20 A PricewaterhouseCoopers industry report in 2001 estimated that the tobacco industry contributed an additional \$21.3 billion from flow-on effects further to tax contribution. (Source: The Current Economic and Policy Environment for the Australian Tobacco Industry, June 2001 at iii.) In 2005/06, total tobacco excise is \$5.34bn. In addition, goods and services tax and sales tax is payable on tobacco products.

### 3.2. The effectiveness of strategies to reduce tobacco use

Statistics indicate that strategies to reduce tobacco use have generally been effective:

- Smoking rates in Australia are one of the lowest in the world,
- Indications from the Australian Institute of Health and Welfare 2004 National Drug Strategy Household Survey, show that the proportion of the population aged 14 and over who smoked daily declined by two percentage points between 2001 and 2004, to 17.4 per cent. This means that there are approximately 200,000 fewer smokers now than in 2001.<sup>21</sup>
- The recent Federal Government review of the *Tobacco Advertising Prohibition Act 1992* concluded “that the Act is working well to protect the Australian public from advertising messages and the gains made by making amendments to the Act would be insignificant.”<sup>22</sup>
- There is universal awareness of the risks associated with smoking.
- In Australia, there are more ex-smokers than smokers.

However in order to properly gauge the effectiveness of strategies to reduce tobacco use, BATA contends that the Committee must also consider the unintended consequences of tobacco control strategies and their ability to undermine the public health objectives they seek to address.

BATA believes that more work needs to be done to reduce youth smoking. BATA believes tobacco reduction measures have not been effective in relation to reducing harm for those adult smokers who continue to choose to smoke.

Also, greater consideration should be given to the burgeoning illegal tobacco which has been shown to be more harmful to health than legitimately manufactured cigarettes<sup>23</sup>.

#### 3.2.1. Youth smoking prevention

At present, tobacco companies are among the only stakeholders providing on-going education and support to retailers in preventing under-age access to tobacco products. These programmes focus on the retail sector seeking to prevent under 18's from buying tobacco products at the point of sale.<sup>24</sup>

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21 Australian Institute of Health and Welfare, *2004 National Drug Strategy Household Survey: First Results*, April 2005. see: <http://www.aihw.gov.au/mediacentre/2005/mr20050407a.cfm>

22 The Hon. Christopher Pyne, Media Release: Australian Rates of Smoking among the world's lowest, 7 April 2005.

23 Samples of "chop-chop" have been found to include many contaminants such as twigs and pulp from raw cotton, hay, cabbage leaves, grass clippings and chloride products. Mould and fungi are also commonly found in "chop-chop" samples. For more information, see Bittoun, R. *The Medical Consequences of Smoking "Chop-Chop" Tobacco*, December 2004. Report produced for the Department of Health and Ageing.

24 The principal programme for the past decade has been the '18+ It's the Law' campaign, a joint campaign between BATA and Philip Morris (Australia).<sup>12</sup> This campaign was designed to assist retailers to understand the laws and regulations relating to tobacco sales and to provide them with the tools to help ensure tobacco products are only sold to those over 18 years of age.

BATA believes youth smoking prevention initiatives could be enhanced through government involvement in retailer education, greater enforcement of current laws in relation to sales to minors and the development of programmes which align with the findings of the National Expert Advisory Committee Tobacco Report, *A National Approach for Reducing Access to Tobacco in Australia by Young People under 18 Years of Age*. This report specifically addresses reducing or eliminating the access to tobacco products to young people. Recommendations 5, 6 and 8 of the report deal with education of parents, siblings, retailers and the wider community on issues around the supply of tobacco products to young people. BATA believes these specific recommendations should be revisited as a template for further action in this area.

### **3.2.2. Harm Reduction**

Australians are well-informed of the risks of smoking and many will continue to choose to smoke despite knowledge of the risks. Effective strategies for reducing tobacco use must therefore necessarily include the provision of less harmful products to consumers. Indeed, a stated goal of the National Tobacco Strategy (NTS) 2004-2009 (supported by the NSW Government), is to promote harm reduction to reduce the health risks to those who choose to continue to consume tobacco.

BATA contends that certain regulatory measures have the potential to undermine this policy commitment to harm reduction:

- Measures which limit tobacco product display impede the ability of adult smokers to choose between products; and

### **3.2.3. Illegal Tobacco**

The World Health Organisation (WHO) predicts that there will continue to be consumer demand for tobacco products.<sup>25</sup> It is estimated that 1 in every 17 cigarettes sold in Australia is illegal, costing the Australian government around \$350million in lost revenue per annum<sup>26</sup>. The potential growth in the illegal trade in tobacco products must be considered in relation to the development of any regulatory strategy which seeks to recover the social costs of tobacco consumption. Such impacts if not taken into account have the potential to inadvertently undermine the public health objectives which they seek to address. Illegal tobacco is further discussed in the context of subsequent sections of this paper, namely considering price product display, and licensing regulation.

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<sup>25</sup> WHO Final Conference Report, International Conference on Tobacco and Youth, Singapore, September 1999 at 8.

<sup>26</sup> Research Report on the Illegal Tobacco Market (PricewaterhouseCoopers March 2005)

### **3.2.4. Consequences of regulation**

BATA feels that the effect of a range of state and Federal policies have combined to contribute to a reduction in smoking incidence – which currently stands at 17.4 percent nationally<sup>27</sup>.

This section also outlines some of the downsides to certain areas of regulation that the Committee should consider. These include impacts on the hospitality sector, disproportionate impacts on small business retailers, and further encouragement of the illegal tobacco market and undermining policy objectives to reduce youth smoking.

BATA contends this reinforces the need for tobacco control reforms to be based on sound and objective evidence of benefits to public health, rather than focussing on measures designed to target the legitimate commercial activities of retailers, tobacco growers, manufacturers and wholesalers where there is no evidence of any public health benefit.

The NSW government has implemented policy changes as guided by the NTS. The current NTS (2004–2009) was developed as both a plan for implementing tobacco control and a statement of governments’ “resolve as Federal, state and territory governments to work *together* and *in collaboration with non-government agencies* on a *long-term, comprehensive, evidence-based* and *coordinated* national plan”<sup>28</sup>. With this in mind, BATA would wish that more attention be paid to inclusion of all stakeholders in policy development, and to ensuring that a greater focus is brought to the evidence underpinning tobacco control policy.

Following is an overview of some areas in which BATA holds regulatory concerns. It is by no means an exhaustive list. These issues are grouped in six broad subject areas: the product; public place smoking; packaging; place of purchase; promotion and price.

#### **3.2.4.1. Product Regulation**

BATA submits that where product regulation is contemplated, this must be developed by competent national regulatory authorities with advice from scientific experts, health authorities and tobacco manufacturers. Indeed the regulation of tobacco products, including ingredients and emissions has traditionally fallen under Federal jurisdiction.

The imposition of product regulation at the State level is likely to cause confusion in the market place to the detriment of smokers. BATA therefore supports the maintenance of the status quo in this regard.

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<sup>27</sup> Australian Institute of Health and Welfare statistics. Other measurements are available including Australian Bureau of Statistics household survey (9 March 2006), or Roy Morgan research polling, however robust AIHW statistics are recognized as the official data, underpinning Commonwealth health policy.

<sup>28</sup> National Tobacco Strategy 2004-2009 – see: [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/phd-pub-tobacco-tobccstrat2-cnt.htm/\\$FILE/tobccstrat2.rtf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/phd-pub-tobacco-tobccstrat2-cnt.htm/$FILE/tobccstrat2.rtf)

#### **3.2.4.1.1. Disclosure of Ingredients**

To assist Australian adults to make an informed choice as to whether or not to smoke, BATA believes the community should continue to be given meaningful information about tobacco products.

The disclosure of cigarette ingredients has been regulated by voluntary agreement between the Australian tobacco companies (BATA, Philip Morris Limited and Imperial Tobacco Australia Limited) and the Commonwealth Department of Health and Ageing ('DoHA') since 2000.

The *Voluntary Agreement for the Disclosure of the Ingredients of Cigarettes* ('the Voluntary Agreement') requires annual brand-by-brand cigarette ingredient disclosure by the three signatory companies.

This information is disclosed to Government and published annually on the DoHA website. BATA also voluntarily discloses brand-by-brand ingredients information on its own website. It is our contention that every tobacco manufacturer marketing cigarette brands in Australia should be required to disclose the ingredients of those products in line with this practice.

However, sensible regulation of cigarette ingredient disclosure has been achieved through industry self-regulation at the *Federal level*. BATA contends therefore that States should not seek to regulate further in this area. In general, duplication of Federal government efforts will only create consumer confusion without achieving any public health benefit.

#### **3.2.4.1.2. Regulation of Particular Ingredients**

Professor Simon Chapman presented to the Committee on the issue of fruit flavoured cigarettes and efforts by the ACT government to ban products that are marketed toward children<sup>29</sup>.

BATA is supportive of the endeavours of government to reduce youth smoking. In particular, we support the policy of removing products designed to specifically appeal to minors – such as those manufactured by Trojan Tobacco with overt fruit flavours.

BATA does not manufacture overtly fruit flavoured cigarettes.

Furthermore, should regulatory proposals be considered in this regard, BATA expects robust consultation with tobacco manufacturers, who have the experience and expertise to advise on the impacts of product modification, particularly as they impact consumers.

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<sup>29</sup> Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 22 March, 2006, p6

BATA has reached agreement with the ACT government to accept the wording for a license condition change as follows:

*Clause 8. The licensee must not sell or display any cigarette that has a fruit flavour.*

*Clause 9. For clause 8, fruit flavour means a clearly identifiable fruit flavour or taste (and does not include menthol). A cigarette will not be taken to have fruit flavour by reason of the ingredients of the cigarette unless they impart a clearly identifiable fruit flavour or taste.*

We are now in discussions with ACT Health as they move towards enshrining this agreement in legislation. Following a recent meeting with the Health Minister Simon Corbell, we agreed that the intent of the legislation would be along similar lines to the above.

The ACT Department of Health and the Minister have both accepted that cigars are not products which appeal to youths. I refer you to the two tables annexed to this submission – “Values Segments developed in conjunction with Colin Benjamin of Horizons Network”, showing cigar smoking incidence is higher amongst smokers earning higher incomes (Over \$50000 and \$70000). Also, Cigar only incidence is lower amongst the under 30 age group (ASU30). It is apparent from this that cigars do not hold youth appeal.)

### **3.2.4.1.3. Lower Ignition Propensity Cigarettes**

Proposals to mandate lower ignition propensity cigarettes are currently being considered at a national level with support from New South Wales Fire Brigades, NSW Health and the NSW Minister for Emergency Services.

While BATA believes the reduction of fires caused by careless disposal of cigarettes is a worthy goal, the modification of cigarettes as a means to achieving that goal however is complex and needs careful consideration.

Among BATA’s key concerns in the development of policy in the area of lower ignition propensity (‘LIP’) products are:

- There is universal agreement that there is no such thing as a “fire-safe” cigarette. Nor will there ever be. Cigarettes by design are meant to be combustible.
- There is currently no reliable evidence globally that cigarettes designed to pass existing ignition strength tests are effective at reducing fires in the real world.
- The State of New York and Canada are the only jurisdictions in the world which have legislation in effect mandating cigarettes pass an ignition strength test.

Vermont and California will have similar legislation in effect commencing May 2006 and January 2007 respectively.

- A large number of jurisdictions in the United States (including, without limitation, Arkansas, Maryland, New Jersey, Texas, Colorado, Oregon, New Hampshire, Maine, Rhode Island, Alabama) and also New Zealand have rejected such proposals.
  - The cigarettes in New York and Canada must pass a test which is performed in a laboratory. Cigarettes are placed on 10 layers of filter paper to determine whether they will self-extinguish before burning down to the filter 75% of the time. That means 25% of products will definitely not have a lower ignition propensity. The others may or may not start a fire before they burn to the filter. In other words, in a standard pack of 20 cigarettes, current LIP legislation and standards allow for 5 cigarettes to burn right through to the butt.
  - Canadian LIP regulations took effect on 1 October 2005. There is therefore currently no evidence from Canada regarding the impact that the introduction of lower ignition propensity products has had on reducing fires in Canada.
  - Likewise, there is no evidence from New York which can be relied upon to give a clear indication of the impacts of LIP legislation in the real world.
- When mandating changes to cigarette products for the purposes of reducing fires, careful consideration must be given to the potential health impacts such changes could have on 3 million Australian smokers.
  - A report prepared by the Harvard School of Public Health and the American Legacy Foundation regarding the preliminary effects of the New York cigarette LIP legislation found that, when tar, nicotine and carbon monoxide, as well as 19 toxic smoke compounds were tested, five of the toxic compounds were higher in the New York brands tested, compared with the same brands from another US state<sup>30</sup>. The authors of the report recommended that smoke toxicity in LIP products should be the subject of further research<sup>31</sup>.

“The present study found some differences in the yields of specific smoke constituents in addition to tar and Carbon Monoxide (‘CO’). The differences found were generally of small magnitude. There is no evidence that small increases in one or more toxins affect the already highly toxic nature of cigarette smoke. However, the small sample (four sub brands out of 767 certified brands) and the high variability across these brands warrant viewing these results as preliminary and deserving of further research.”<sup>32</sup>

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30 Harvard School of Public Health/ American Legacy Foundation, *Fire Safer Cigarettes, the Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity, Smoke Toxicity and the Consumer Market: A Preliminary Report*, 24 January 2005 at 1 and 16.

31 *Ibid* at 23.

32 *Ibid* at 23.

- The introduction of cigarettes which invite smokers to take less care with their disposal or which do not perform as consumers expect them to would undermine the policy objective of reducing fires and potentially expose those mandating such changes to the risk of misleading conduct.
- Australia has a unique natural environment and has adopted different approaches to mitigate fire risk to match that environment, including smoke alarm laws and furnishing standards. It would follow that when considering the applicability of LIP cigarettes for Australia, government and regulators will examine their relevance in the Australian context. That said, it is expected that approaches adopted in other markets which have proven to be effective at reducing cigarette-related fires would not be discounted from any robust review. For example, the UK Furniture and Furnishings (Fire) (Safety) Regulations 1988 imposed mandatory flammability testing and control of upholstered furnishings. A report by the UK Department of Trade and Industry, *Effectiveness of the Furniture and Furnishings (Fire) (Safety) Regulations 1998* published in June 2000 indicates that as a result of this legislation there was a significant reduction in fatalities during the 10 years since its introduction and also a significant cost benefit associated with the regulation.

#### **3.2.4.2. Public Place Smoking**

BATA supports the sensible accommodation of both smokers and non-smokers in environments associated with hospitality venues.

Public Place Smoking is now an issue of non-enclosed space smoking, given the fact that most States and Territories including NSW have banned smoking in all substantially enclosed areas from or before mid-2007.

Attempts to ban smoking in non-enclosed areas, including some outdoor workplaces are attempts to demonise or stigmatise smokers for no public health benefit.

Our concern is to address the impacts of indoor bans, including such issues as outdoor cigarette butt litter, noise, footpath congestion, and drink spiking.

BATA's recommends that further restrictions on smoking in covered, ventilated areas not be pursued, nor bans on smoking in outdoor locations associated with hospitality venues. We see decision-making about restricting smoking in public places as a responsibility of state, not local, government and urge the NSW Government to take note that the activities of some local councils in this regard can undermine work done by the state government and hospitality groups to develop sensible regulation.

We will continue to engage with government and other stakeholders to demonstrate that outdoor bans or further covered area restrictions are not justified in scientific nor environmental terms. We will support the work done by third parties, especially the club

and hotel sectors, and will encourage a hospitality industry-driven solution where relevant.

Many patrons smoke and, judging by experience in other national jurisdictions, a significant proportion of patrons will choose to socialize at home if they are prevented from smoking in licensed venues. The following issues need to be considered:

A study by CCG Consulting Group in Vancouver found a massive gap in expenditure between smokers and non-smokers<sup>33</sup>. Smokers visited all nine types of hospitality venue surveyed more frequently than non-smokers. The Vancouver study estimates that a single smoker is worth 1.7 non-smokers in terms of customer revenue. This ratio is even more dramatic for certain venues.

A further study carried out in Hong Kong confirms that the average weekly spend of non-smoking customers is significantly less than that of a smoking customers<sup>34</sup>. In fact, according to this KPMG study, non-smokers spend 39 percent less per week in the hospitality sector than smokers. This gulf in expenditure is often ignored by regulators when considering regulation of public smoking.

A New York City Health Department report, released on 30<sup>th</sup> March 2004, claimed that revenues at restaurants and bars have increased, employment has risen and more liquor licences have been issued since the City's smoking ban took effect. However, the figures are misleading as the study compares data from 2003 with 2002, when the economy was in a slump and the City was still feeling the effects of the 2001 terrorist attacks. Furthermore, the key shortcoming of this study is its failure to distinguish between bars and lounges and other hospitality venues. As outlined above, a public smoking ban does not affect the hospitality industry uniformly.

In reality, *“New York State’s public smoking ban has resulted in dramatic economic losses in bars and taverns across the State. This reduction translates into a negative overall economic impact in 2003 with more than \$70 million in economic activity, \$50 million in lost wages, and the elimination of more than 2,650 jobs state wide”*.<sup>35</sup>

Independent Research also shows the true impact of smoking bans among Irish pubs. On average, Dublin pub sales are down by 16 per cent. Dublin pub employment levels are down by 14 per cent since introduction of their smoking ban. The results clearly illustrate that 2,000 full and part-time jobs are being lost in the Dublin pub trade alone.

Research carried out by marketing research company, Behaviour and Attitudes, confirms the negative economic impact of the Smoking Ban on the Dublin licensed trade, with turnover down by as much as 16 percent, and overall employment levels cut by up to 14 percent since the introduction of the smoking ban (the Dublin licensed trade currently employs 14,000 full-time and part-time employees).

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33 CCG Consulting Group Ltd, Vancouver B.C. *“The Hospitality Sector And A Vancouver Smoking Ban.”*

34 KPMG *“Proposed Smoking Ban: Impacts On Hong Kong Hospitality Businesses.”*

35 Ridgewood Economic Associates, Ltd. *“The Economic Impact of the New York State Smoking Ban on New York’s Bars”*.

This is concerning as Dublin publicans will, on average, be better able to weather the initial impact of a smoking ban than their Australian counterparts. Irish pubs in general have been family-owned, sometimes for generations. Consequently they do not have the same 'outgoings' like bank repayments or property rental to deal with. The pubs that have seen the greatest business impacts are those who have not invested in beer gardens, heating, covering *et cetera*.

While some Australian states have resisted the introduction of poker machines into hotels (for example Western Australia), most Australian hotels – including those in NSW – rely heavily on gaming revenue. Though they contest the impact on the hospitality sector in general, tobacco control advocates in foreign jurisdictions accept that gaming is impacted heavily. "Casinos may be exposed to a greater risk. Financial analysts who monitor the gaming industry say Delaware experienced an 11 percent drop in revenues after passing a smoking ban; Australian casinos in the state of Victoria saw an 8 percent dip. Estimates are that New Jersey casinos would lose about 12 percent, resulting in a \$50 million decline in gaming taxes."<sup>36</sup>

To get an accurate picture of the effect of smoking bans on pubs, research should focus on those who actually attend these venues. AC Nielsen research<sup>37</sup> points out, of the 300 people who were surveyed, 18 per cent visited a pub once every few months, 19 per cent visited a pub one or two times a year, 7 per cent less often and 13 per cent never. Including the views (on a pub smoking ban) of the 57 per cent of people who aren't regular customers provides an inaccurate picture of the impact of these bans.

The introduction of smoking bans does not result in non-smokers visiting pubs more, even though they may *say* they would be more inclined to. On the announcement of smoking bans in NSW, then Premier Bob Carr referred to a *NSW Health Survey* (2003) that suggested that if smoking was banned: 23 per cent would go to pubs and clubs more; 11 per cent would go less; and 66 per cent no change<sup>38</sup>. Experience in other markets, however, bears out the reality that non-smoking patrons don't materialize to mitigate the impact felt by the loss of smokers. For example, in Ireland, 63 per cent of Dublin publicans described the smoking ban as having a major impact on their business. In relation to turnover, 55 percent referred to a major decline and a further 32 percent referred to a minor decline.

Current smoking restrictions adequately recognise the preferences of smokers and non-smokers. "A similar national survey found that 64 percent total agree with the statement that smokers are demonized enough in modern society."<sup>39</sup> A similar national survey found that 64 percent total agree that "banning smoking outdoors is an example of government regulation going too far"<sup>40</sup>. Outdoor bans are unpopular, with 81 per cent of Australians (including smokers and non-smokers), agreeing that that pubs and clubs should be

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36 (Joseph Cherner, "Ashtray of the Northeast" Editorial by the New Jersey Star-Ledger Tuesday, November 15, 2005)

37 AC Nielsen, Hospitality Campaign Research Report April 2004. Published on-line at:

[http://www.heartfoundation.com.au/downloads/ETS\\_ACNielsen\\_SmokeBan\\_Report\\_Qld.pdf](http://www.heartfoundation.com.au/downloads/ETS_ACNielsen_SmokeBan_Report_Qld.pdf)

38 (Hon Bob Carr MP, news release, Tues 12 Oct 2004)

39 UMR Research, Quantitative Research Report, February/ March 2004.

40 Crosby Textor Research March 2005

allowed to accommodate both non-smokers and smokers if that's what their customers want.<sup>41</sup>

### **3.2.4.3. Packaging**

With smoking comes real risk of serious disease. To this end we support the provision of meaningful and effective information for consumers about the risks of smoking. We believe that governments must play a central role in determining and providing health information to consumers, while tobacco companies should assist governments in implementing messages required by government.

Our trade marked packaging is BATA's intellectual property. While we support government efforts to communicate health risks associated with smoking, we would not accept further infringement of our legal rights unnecessary to maintain awareness of the risks of smoking – including expanded graphic health warnings, or generic packaging.

When a 50 percent graphic for front of packs was discussed with the federal government in negotiating new graphic health warnings, BATA argued that the brand elements on a number of our products could not be accommodated on the front face of packages displaying the larger warnings (greater than 30 percent). All are registered under the Trade Marks Act 1995. In all these trade marks the product name is only one element of an integrated overall design known in law as "get up". If the Department's proposals were implemented, these trade marks could be compulsorily removed from the Register of Trade Marks.

The importance of "get up" in the branding of cigarettes has been recognised in the Federal Court case of *WD & HO Wills (Australia) Ltd v Philip Morris Ltd*. The Court held that the "get up" of a proposed Philip Morris product, to be called SUMMIT, could be confused with the Wills product HORIZON due to similar pictorial elements, confirming the trade mark significance and value of "get up" notwithstanding the clearly different product names.

A manufacturer's brands are its most valuable business assets, and proposals to further tamper with branding would result in BAT Australia suffering considerable financial loss. Leaving aside for the moment any constitutional implications of such government action, we believe that such punitive measures are inappropriate, and certainly should not be contemplated in the absence of sound empirical evidence that those proposals are likely to meet legitimate objectives.

Increased warning sizes, let alone generic packs, would significantly reduce the value of our brands. This drop in value together with the cost of compliance will lead to price increases which will be passed on to consumers at a time when they are turning to illegal tobacco to avoid rising costs.

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<sup>41</sup> UMR Research, Quantitative Research Report, February/ March 2004.

The excessive pressure and financial burden imposed on our Industry could force tobacco growing and manufacturing operations offshore and lead to significant local job losses.

We believe that the risks of smoking are well known by those who choose to smoke, with messages about these risks being the cornerstone of public education campaigns for many decades. To underscore this level of awareness, all our tobacco products have carried government mandated health warnings since 1973. Health warnings in textual form were replaced with graphic health warnings in March 2006. Copies are annexed to this submission.

In considering further regulatory proposals to provide information to smokers through packaging government must have regard to its own policy intention, that is, information requirements which are adequate, and not those which are merely punitive to the industry. In this regard, consultation with the industry is critical to ensuring the significant cost implications for the industry are taken into account.

Similar regard must be had to the unintended consequences of mandating packaging changes which may confuse consumers, impede category management or offer incentives to the illicit market.

Since March 2006 we have seen the introduction of mandatory graphic health warnings on 30 percent (front of pack) and 90 percent (back of pack). In response to comments by Professor Chapman in connection with appearance of graphic health warnings on packs<sup>42</sup>, BATA informs the Committee that none of our packets have been produced or imported without these warnings post 1 March 2006. We anticipate they will appear in most stores before the end of April 2006, due to the time taken to transport these packs from the factory, to our distribution company's warehouse, then to store warehouses and finally into stores. Different stores have different stock turnover rates and this also impacts on speed to market. This has been communicated to the satisfaction of the ACCC and other interested parties. The packs feature graphic health warnings on *both* the front *and* back, contrary to testimony by Professor Gullotta<sup>43</sup>.

#### **3.2.4.4. Place of purchase**

##### **3.2.4.4.1. Product Visibility**

BATA welcomes the announcement by Minister Sartor that a display ban in retail stores will not be pursued in NSW. This decision was made on the basis that 'shrouding' product would render graphic health warnings on packs invisible to consumers before purchase. This decision is supported by research<sup>44</sup> indicating the community agrees with the statement that "retailers should not be placing graphic health warning containers under the counter".

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42 Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 22 March, 2006, p8

43 Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 21 March, 2006, p20

44 Surveys conducted in March 2006 for BATA by Crosby|Textor

BATA is strongly opposed to further restrictions on the display of tobacco products in the retail environment. Experience in Australia does not demonstrate that restricting product display will bring about a measurable reduction in smoking incidence.<sup>45</sup>

Display restrictions commoditise brands and may increase illegal trade. Pushing legitimate tobacco products ‘under the counter’ risks equating these with illegal tobacco and incentivising growth in the illegal market, with lost government revenue estimated at around \$350 million per annum<sup>46</sup>. The illegal tobacco market would also be greatly served by the mandating of “generic packs” – something discussed at length by the Committee<sup>47</sup>.

Display restrictions may encourage youth smoking. Research suggests that the core motivation for youth smoking is peer group pressure and a desire to act in defiance of authority<sup>48</sup>. Shrouding tobacco products in the same manner as other highly-restricted products may encourage youth to purchase them as an act of rebellion.

Display restrictions will limit the ability of adult consumers to choose between brands and impede competition between tobacco companies.

Display restrictions will hurt retailers, in particular small retailers who derive up to 40 percent of sales from tobacco products due to costly store re-fits, costly insurance premiums stemming from increased risk of theft, and lost sales to larger retailers as consumers move to larger stores where they assume all brands will be available. Tobacconists who derive up to 80 percent of their revenue from tobacco sales will also be disproportionately impacted.<sup>49</sup>

### **3.2.4.8.2 Vending**

Public health groups say that vending machines make underage access easier. In committee hearings, Dr Andrew Penman promoted a ban on vending machines as a “start” in developing a retail control policy, as vending machines are a “curse”<sup>50</sup>.

Instead, BATA feels it is important that age verification at point of entry to licensed premises is enforced – this ensures access to alcohol and gambling is also captured.

Smoking is an adult choice, so BATA supports measures to control access by minors, including signage, location and access control modification.

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45 From 2002 to 2005 smoking incidence increased in Tasmania (where tobacco display is highly restricted), while in Western Australia (where similar restrictions are only now being introduced), incidence rates declined (Roy Morgan Research).

46 Cartright, S. 2003 citing Australian Taxation Office figures.

47 Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 21 March, 2006, p14

48 Open Mind Research Group, *National Drug Strategy, Adolescent Smoking Qualitative Research Report*, 27 June 1994.

49 PricewaterhouseCoopers, *The Current Economic and Policy Environment for the Australian Tobacco Industry*, June 2001

50 Andrew Penman giving evidence before the Joint Select Committee on Tobacco Smoking in NSW 21 March 2006 (p14)

Banning vending would create a business burden. Over-the-counter sales increase cash held on site, and create problems of stock security, staff management issues and staff pilferage.

Smaller independent licensees are less able to meet these costs and would be forced to forgo this income, and so the Committee must also consider competition issues.

Vending makes regulation easier. It is better to regulate the relatively few vending machine operators in Australia instead of 12,000 licensed outlets who would instead be supplying tobacco products 'over-the-counter'.

#### **3.2.4.4.2. Licensing of Tobacco Retailers**

BATA would not oppose the introduction of a positive licensing scheme for tobacco retailers which was developed and implemented in close consultation with all affected stakeholders in particular tobacco retailers and tobacco companies and met certain specific criteria affecting both licensor and licensee. In this regard we would recommend that any proposal to mandate licensing of retailers be the subject of a separate and independent review and consultation process.

Licensing of tobacco retailers should be merely a component of a broad compliance avoidance programme.

The purpose of a licensing scheme should have as its central tenet a commitment to ensuring that the purpose of the scheme relates to ensuring compliance rather than revenue-raising. Put simply, the licence scheme should not be used to reduce the number of retailers currently selling a legal product. Such a measure would severely affect revenue for businesses, particularly small businesses.

The licensing scheme proposed could also cause significant financial hardship to existing businesses as it sets the bar too high to allow businesses, such as tobacconists, intended to fall within the scope of exemptions for specialist licenses, to meet the requirements.

BATA would support a licensing scheme satisfying the following key requirements and developed in close consultation with tobacco wholesalers and retailers:

- A tobacco licensing scheme which is implemented as part of a broader compliance scheme for the purpose of preventing sales to minors and the illicit trade in tobacco products.
- The licensing scheme should be national and imposed at Federal level to ensure a level playing field for retailers across all Australian jurisdictions. The scheme would encompass tobacco retailers, wholesalers, and owners of liquor licensed premises in which tobacco vending machines are housed.

- To ensure a level playing field for smaller businesses against larger accounts, individual businesses falling within a large franchise or banner would each have to hold a licence.
- In regard to vending machines, a licence should be required for each vending supplier (not per machine) operating in a particular liquor licensed premise. Given that many licensed premises contain multiple retail environments each containing a vending machine, a requirement to licence each machine in a premise would be unduly restrictive. For example, a liquor-licensed venue containing three vending machines owned by a single operator would attract one licence.
- Any licensing fee would be imposed and maintained at the minimum required to cover the administration costs of the scheme. Licensing fees would not be used to raise government revenue.
- Already, over 70 percent of the cost of a cigarette is government tax. It is generally accepted that any further pressure on price would have a net negative effect in terms of consumers turning to the illegal market. Already, engagement in the illegal market is such that one in seventeen cigarettes smoked in Australia contains illegal tobacco.
- Tobacco retailers already face high costs in relation to security, insurance against theft and compliance with successive and ever-changing tobacco control regulations. The application of additional substantial fees relating to the sale of tobacco products would place a heavy burden on retailers, especially small businesses and would also be inconsistent with the purpose of the scheme.
- The licensor would be granted powers to revoke the licence based on conviction of a licensee for any serious breach of the licence. For example, a tobacco retailer who was charged and found guilty of an offence of sales to minors or engagement in the illegal tobacco trade would have their licence revoked for a period to be determined by an appropriate authority.
- Granting of a licence would be conditional upon participation in a government-sponsored training programme in responsible retailing, including preventing youth access and illegal sales. Such programmes would be run through existing retail industry associations or educational organisations.
- Licensors would be responsible for ongoing training of licensees in legal compliance.
- The licensor would be responsible for training of inspectors to monitor and enforce the conditions of the licence.
- Licensees would be required to display their licence clearly at the point of sale such that inspectors and customers could ascertain their status as a legal purveyor of tobacco products.
- The licence scheme would be developed in close consultation with tobacco retailers and other affected stakeholders including tobacco manufacturers and hospitality owners, and be the subject of a separate and formal review process, coordinated by revenue stakeholders, prior to any articulation in regulation.

### **3.2.4.5. Promotion**

#### **3.2.4.5.1. Proposed NSW Reforms**

In April 2006 the NSW Cabinet revealed plans to reform penalty regime for advertising. The changes to penalties, under proposed amendments to the *Public Health Act 1991*, could see fines of up to \$1 million for companies breaking tobacco advertising laws and a ban on tobacco products being sold from cars, caravan, trailers, stalls, tents or markets stands is also under consideration. BATA expects widespread consultation with affected stakeholders including tobacco retailers and manufacturers in relation to any proposed reforms in this area.

#### **3.2.4.5.2. Product Placement**

In response to comments by Professor Chapman<sup>51</sup>, BATA does not pay for the placement of its products on television or in films. To this end we would not oppose a prohibition on the product placement of tobacco, but note that since we do not participate in such practices, this may be a matter which requires consultation with those in the media business.

### **3.2.4.6. Price**

Attempts to punitively increase the price of legal tobacco products would drive increased demand for illicit tobacco or 'Chop Chop', resulting in a loss of government revenue, damage to legitimate retailers, tobacco growers and manufacturers as well as creating new opportunities for organised crime, and increasing health risks to consumers<sup>52</sup>.

Currently, taxes on cigarettes including excise and GST account for almost 70 per cent of the total cost of cigarettes in Australia. The Australian National Audit Office ('the ANAO') stated that "...it is this high proportion of tax that provides generous margins to illicit dealers"<sup>53</sup>. PricewaterhouseCoopers also argues that "*The attractiveness of excise tax avoidance will remain so long as the high taxation approach is maintained.*"<sup>54</sup>

Estimates for the year 2000 placed the equivalent value<sup>55</sup> of Chop Chop at \$400 million (and growing). The Australian National Audit Office estimated lost revenue as a result of the illicit tobacco trade as between \$99 million and \$220 million. The Australian Taxation Office estimated lost revenue as a result of the illicit tobacco trade could be as high as \$600 million per annum in 2003.<sup>56</sup> The Illegal Tobacco Forum (comprising the Australian Taxation Office, the Australian Customs Service, and tobacco manufacturers and growers) recognise a range in excise leakage in the order of \$99m to \$600m.

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51 Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 22 March, 2006, p11

52 For example, see "*Chop Chop puts four in hospital*" in Canterbury-Bankstown Express newspaper, Tuesday 22 July 2003 at 1.

53 Australian National Audit Office ('ANAO'), *Administration of Tobacco Excise*, 2002.

54 PricewaterhouseCoopers, *The Current Economic and Public Environment for the Australian Tobacco Industry*, 2001.

55 Equivalent value refers to the retail value if the goods were sold through legal channels.

56 Cartright S, 2003: *CTSI Conference Presentation 2003*, Quote sourced from Australian Taxation Office 2003.

Increasing the attractiveness of the margins available to organised crime through taxation will inevitably lead to growth in the Chop Chop market.

The ANAO suggest that the Chop Chop supply chain is becoming more sophisticated and involves crime syndicates and other criminal organisations<sup>57</sup>. The nature of the criminal activities identified by the ATO included the presence of “...*criminal activities involving cash-based transactions, with sophisticated tobacco sourcing, transportation and distribution.*”<sup>58</sup>

Evidence from the United States of America suggests that the lucrative illicit tobacco market has begun to rival drug trafficking as a relatively low-risk funding source for terrorist groups. In June 2004, The Washington Post<sup>59</sup> reported that the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives has more than 300 open cases of illicit cigarette trafficking – including several with links to terrorist organisations including al Qaeda and Hezbollah. Meanwhile, European officials have said that the Russian mafia, Hezbollah and others have profited from cigarette smuggling.<sup>60</sup>

Furthermore, there is evidence to suggest that illicit tobacco use can have immediate adverse health impacts. Illicit tobacco is frequently cut with straw or dampened to increase its weight. This practice can increase the prevalence of mould spores which could enter the lungs, causing alveolitis or pneumonia. Some products are fumigated with chlorine bleach, meaning users are at risk of inhaling chlorine gas<sup>61</sup>. Chop Chop tobacco carries no health warnings and is not subject to any quality control in its manufacture. We would suggest that there needs to be a public health programme to attend to the illicit tobacco issues, particularly as up to 7% of smokers are regular smokers of Chop Chop.

### **3.2.4.7. Political donations**

In hearings<sup>62</sup>, the Committee discussed the issue of political donations, and this has also been a matter of much public debate.

In BATA’s view it is integral to the democratic process operating in Australia that political parties maintain their right to choose from whom they accept donations. Attendance at political party conferences is allowed upon payment of attendance fees.

The current disclosure regime for political donations and BATA’s own internal policy ensures that political donations are made transparently:

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57 The ANAO confirmed that Commonwealth law enforcement authorities have evidence to link organised crime groups to the trade in chop-chop. (ANAO, 2002, 1.31).

58 ANAO 2002, 3.60.

59 Sari Horwitz, *Cigarette Smuggling Linked to Terrorism*, Washington Post, Tuesday, June 8, 2004; Page A01

60 Damask James A, *Cigarette Smuggling: Financing Terrorism?*, Mackinac Center for Public Policy, 1 July, 2002.

61 Smoking Research Unit, Department of Psychological Medicine, University of Sydney NSW 2003.

62 Report of proceedings before the Joint Select Committee on Tobacco Smoking – inquiry into tobacco smoking in New South Wales, 27 March, 2006, p26

- J Corporations are required to disclose the amounts donated to political parties under the provisions of the Australian Electoral Commission ('AEC') (for amounts over \$1000 during an election period and amounts totalling over \$1500 in any one financial year); and
- J It is our policy to donate only to registered political parties with published policies and disclosure arrangements with the AEC.

Both political parties and the public are therefore aware of the source of all political donations. Indeed some political parties have already set their own policy in this regard, voluntarily ceasing to accept donations from tobacco companies.

To this end we consider it an unnecessary restriction on the democratic process to legislate for the cessation of donations from any particular source.

While tobacco is a controversial product, it is a legal one, and one of many controversial products which are legally sold in Australia. As responsible members of the legitimate tobacco industry operating in Australia we are strongly opposed to any regulation, which would seek to deprive BATA of its right to participate transparently in the political process in the same manner afforded other legitimate businesses.

Electoral campaign financing is a legitimate avenue for corporations and other interested parties to participate in the party-political system and the discussion of political and public issues. To single out tobacco manufacturers, retailers and distributors and prevent them from freely donating to political parties would mean that tobacco companies and those deriving substantial revenue from the sale and distribution of tobacco products would be limited in their opportunity to participate in discussion of political and public issues.

A freedom of communication on matters of public and political interest is an indispensable incident of the system of representative government which the Commonwealth Constitution creates<sup>63</sup>. Integral to this system is a freedom of public discussion of public affairs and political and economic matters among all members of the community<sup>64</sup>.

The High Court has held that "[f]reedom of communication in relation to public affairs and political discussion cannot be confined to communications between elected representatives and candidates for election on the one hand and the electorate on the other. The efficacy of representative government depends also upon free communication on such matters between all persons, groups and other bodies in the community."<sup>65</sup>

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63 (*Lange v Australian Broadcasting Corp* (1997) 145 ALR 96 at 106)

64 (*Australian Capital Television Pty Ltd v Commonwealth* (1992) 108 ALR 577 at 603 per Brennan J).

65 (*Australian Capital Television Pty Ltd v Commonwealth* (1992) 108 ALR 577 at 594 per Mason CJ and *Theophanous v Herald & Weekly Times Ltd* (1994) 124 ALR 1 at 12).

The transparency of donations under the AEC's system of publishing them removes the need to legislate in this regard.

### **3.3. The effects of smoke-free indoor venues on the initiation and maintenance of the smoking habit**

The policy objective of reducing incidence may not be achieved by creating smoke-free indoor venues, as is claimed by some.

The achievement of smoking bans in Ireland seem to have failed in reducing smoking incidence. Statistics from the Irish Department of Finance reportedly show that revenue from tobacco products will rise by 7 per cent in 2005. The statistics contradict figures from the office of Tobacco Control which suggested a fall in smoking in Ireland since the introduction of a smoking ban on smoking in public places<sup>66</sup>. The failure to reduce smoking is evidenced also by the fact that cigarette volumes have risen. This means people are smoking more and going home to smoke.

We recognise that environmental tobacco smoke can be annoying and may be of concern to some non-smokers, hence we support the sensible accommodation of smokers and non-smokers alike.

We support the development and implementation of sensible public, and workplace smoking, policies. Policies that are too liberal or too extreme can lead to friction and stress for non-smokers and smokers alike. We believe sensible smoking policies seek to provide real choice for both non-smokers and smokers.

We do not believe that smokers should be excluded from society through a lack of tolerance and mutual respect on the part of others. BATA therefore welcomes the decision by the NSW and other governments to allow for smoking in areas that are suitably ventilated by removing wall space but where patrons are not exposed to rain. This is a commonsense and practical solution.

BATA has long been an advocate of the accommodation of both smokers and non-smokers in hospitality venues, with the use of segregation and adequate ventilation as a means of improving indoor air quality.

We strongly believe in maintaining our consumers' freedom of choice to smoke in hospitality venues. As long as society chooses that tobacco be a legal product, the Government should balance the interests of hospitality providers, workers, non-smokers and the views of the adult population that choose to smoke.

BATA pioneered the 'A Fresh Look' program and the WorkAIR accord to develop commercially viable solutions which would obviate the need for blanket government legislation.

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<sup>66</sup> "Smokers light up exchequer finances" (The Sunday Times, 4 Dec 05)

With the introduction of total indoor smoking bans in hospitality venues across Australia, beginning with Tasmania in January 2006, has come a high degree of uncertainty about the viability of venues that already face a range of other business pressures. This is especially so for those venues without ‘non-enclosed space’ to cater for patrons who would choose to continue to smoke in beer gardens.

A minority of tobacco control advocates are calling for smoking outdoors to be regulated. BATA agrees with those like Professor Simon Chapman who say that non enclosed area bans send a message to the community that certain *“health policy makers do not care about evidence of harm, but are more concerned to impose standards cut loose from any evidence base and indifferent to a vital ethical principle of respect for autonomy.”*<sup>67</sup> BATA acknowledges the views of those tobacco control advocates who accept that non enclosed area smoking is not harmful to third parties<sup>68</sup>.

With total indoor smoking bans will come the need for proper management of such problems as footpath congestion, drink spiking (as patrons leave drinks unattended indoors), litter, noise and neighbourhood amenity, and security and control. Footpath bans are not the answer to these problems, for a range of issues outlined in a sample letter from the Restaurant and Catering Association to Newcastle Council, annexed to this submission.

It is BATA’s view that regulators and the tobacco control lobby must accept that many adult consumers choose to continue to smoke for a range of reasons – not least because they enjoy it. Therefore beyond maintaining, as they rightly should, the awareness that exists of the risks associated with smoking, it is unreasonable for regulators to assume they should continue to impose ever more burdensome restrictions on tobacco with an objective of reaching an impossible “zero smoking incidence” target.

Furthermore, such a course is not acceptable to the Australian electorate. Research undertaken in 2006<sup>69</sup> indicates an emerging belief that smoking is a deliberate and informed choice and that it is becoming ‘unfair’ to punish smokers when they exercise that choice.

55% of the population is neutral on smoking. 56% of non-smokers are neutral and 51% of non-smokers are not against smoking. Consistently, Australians feel that other issues (including number of beds in public hospitals and wait times, research and treatment for breast and prostate cancer, aged care and nursing home funding, dental care, use of illicit drugs, childhood obesity and binge drinking among young people) are more important issues.

Also evident in focus groups where, when asked what they would say to the Health Minister at the end of the groups, sentiments were focused on fixing the health system.

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67 (Chapman, Repace, Bloch and Shopland, “Banning Smoking Outdoors is Seldom Ethically Justifiable”, Tobacco Control 2000; 9:95-97).

68 Anne Jones, Action on Smoking and Health (ASH), press release 21 Nov 2005

69 Consumer qualitative surveys conducted in March 2006 for BATA by Crosby|Textor

### **3.4. Factors affecting initiatives for smoke-free indoor areas**

BATA's views on this section are sufficiently addressed in the "effectiveness of strategies to reduce tobacco use – public place smoking" section of this submission

When assessing factors affecting initiatives for smoke-free indoor areas, BATA believes that the views of hotel and club owners and hospitality organisations including the Australian Hotels Association must be carefully considered.

### **3.5. The effectiveness of media, educative, community and medically-based Quit initiatives**

BATA believes that communication of the risks of smoking is adequate, given the universal awareness of the risks of smoking including lung cancer and emphysema. We note discussion in committee that not all Australians are aware of risks of diseases such as macular degeneration – but note that the new health warning regime will rotate different messages on a range of tobacco-related disease.

In terms of medically-based Quit initiatives, we believe that more could be done to make cessation services available to all Australians. The only way to avoid the risks of smoking is to quit. As such we think smokers who want to quit should be encouraged and supported to do so. BATA believes public health authorities are best placed to provide cessation information and services and to evaluate the success of these programmes. We facilitate access to this information via links from our website. The Quitline also appears on all of our consumer packaging.

Governments, along with community partners and NGOs, should ensure there is adequate provision of cessation programmes and services. These initiatives ensure that tobacco control remains focussed on allowing adults to make informed choices and preventing the uptake of smoking by children.

### **3.6. The adequacy of the budget for smoking control initiatives**

BATA believes it is the responsibility of government to reinforce the universal awareness of the risks associated with smoking.

To this end, BATA recommends the NSW government funds advertisements in the lead up to the 2007 total indoor smoking ban date to inform hotel patrons that they can continue to smoke in non-enclosed areas associated with Hotels. This has been done successfully in New Zealand and has been funded also by other Australian state governments (with commercials set to run around the time of bans).

BATA is supportive of the “Car and Home Smoke Free Zone” campaign run by the NSW government, that raises awareness of smoking around children. The campaign provides parents and carers with options for minimising their children's exposure and encourages parents and carers of young children to make cars and homes smokefree.

BATA strongly believes that children should not smoke, and that smoking should only be for adults who understand the real risks of serious disease associated with it. The Australian tobacco manufacturers are united in playing a role in preventing the sale of tobacco products to underage youth. As a manufacturer, BATA believes the most appropriate role we can take is to assist retailers in ensuring that they comply with the law, and to heighten awareness within the general community that they may be asked for photo identification if the retailer is in doubt about their age.

### **3.7. The Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005**

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.

A number of arguments have been advanced to support smoking bans in private vehicles including, the prevention of cigarette butt littering, driver safety and the protection of passengers. BATA contends that such arguments do not provide sufficient justification for such bans:

- Butt litterers are already subject to significant fines to reduce environmental impacts. Butt littering is a behavioural issue which is best addressed through community education, the provision of car ashtrays, and the enforcement of existing fines for littering.

Commonsense is the best regulator against dangerous disposal of cigarette butts. The issue of butt littering needs to be addressed holistically. There are already laws in place to prevent littering from cars. The government should focus on enforcing existing littering laws.

Given that many modern cars are no longer manufactured with ashtrays, the government should promote a reduction in littering through initiatives which support positive community behavioural change such as driver education and provision and use of disposable ashtrays.

BATA supports the independent Butt Littering Trust. The Trust targets butt littering behaviour in a measurable way across a number of key focus areas, including littering from vehicles and other transportation.

- Driver organizations do not support driver safety arguments put by the tobacco control lobby.

Research conducted by driver organizations demonstrates that smoking in cars is not a significant cause of motor vehicle accidents. Indeed the National Roads and Motorists' Association Ltd road safety expert John Brown claims that "banning motorists from smoking is over the top and is not supported by any evidence that smoking is a significant road safety issue"<sup>70</sup>. If the Committee decides to accept arguments from tobacco control advocates on road safety matters instead of road safety experts, it should also consider potential bans on car radios and drive-through fast food convenience outlets.

- Enforceability issues must be weighed. BATA notes NSW Premier Morris Iemma's concerns over the enforceability of private vehicle bans and agrees that it is a complex issue<sup>71</sup>.

To summarise, notwithstanding the above, BATA would not oppose appropriate measures for discouraging smoking around children. BATA believes adult Australians should continue to enjoy the right to choose to consume tobacco products in private places, including their homes and cars. While we do not believe, however, that it is appropriate to smoke around children, we believe this issue can be best addressed through an educative rather than a legislative approach.

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70 (NRMA media release, 16 June 2005, "Smoking ban proposal over the top"; see [http://www.mynrma.com.au/2005\\_050616.asp](http://www.mynrma.com.au/2005_050616.asp))

71 ABC radio 666 Canberra, 28 February 2006.

#### **4. SUPPORTING DOCUMENTS**

Cigar sales information - Roy Morgan Research 2006

Graphic Health Warnings (from Commonwealth Department of Health and Ageing Website)

Letter appearing on *Restaurant and Catering NSW* website outlining arguments against potential smoking bans on footpaths (in this case, a Newcastle Council proposal).

Research Report on the Illegal Tobacco Market (PricewaterhouseCoopers March 2005)

Sales of Cigarettes and Tobacco Products by Type of Retail Business (an analysis of the significance of sales of cigarettes and tobacco products to tobacco retailers in Australia), (PricewaterhouseCoopers May 2005)

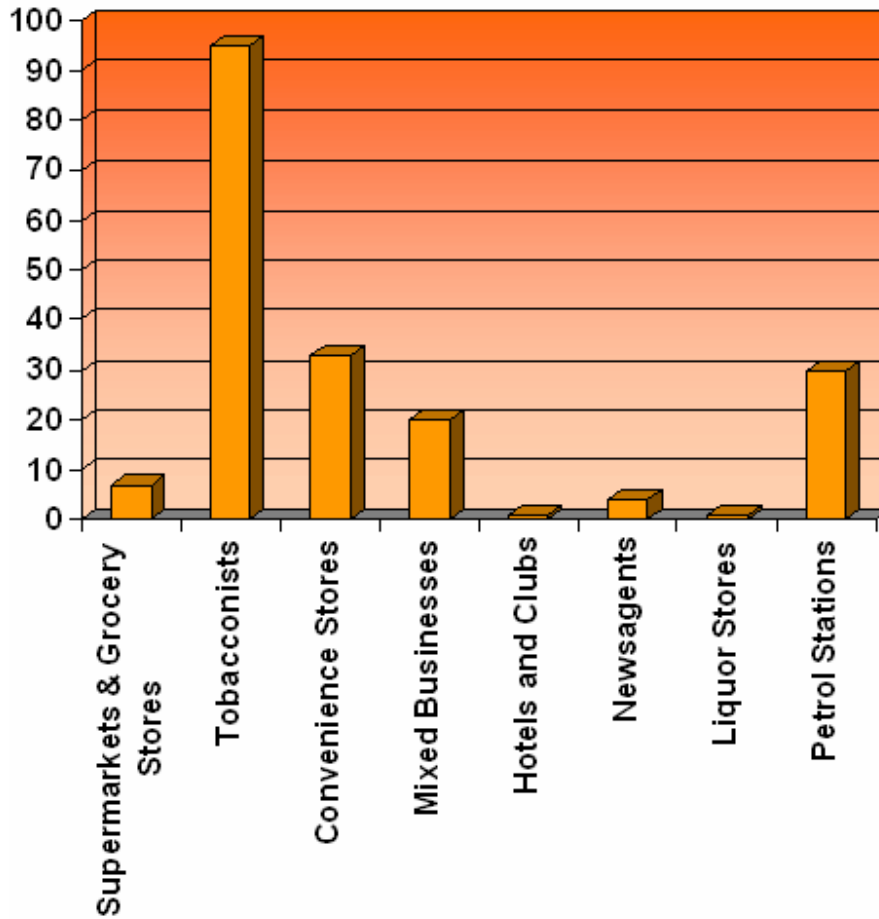
Terms of reference: the NSW Parliament's *Joint Select Committee Inquiry into Tobacco Smoking in NSW*

Tobacco excise graph – compiled from Commonwealth government budget papers.

RESOLUTION PASSED BY THE LEGISLATIVE COUNCIL  
Tuesday, February 28, 2006

1. That a Joint Select Committee be appointed to inquire into and report on tobacco smoking in New South Wales, and in particular:
  - (a) the costs and other impacts of smoking,
  - (b) the effectiveness of strategies to reduce tobacco use,
  - (c) the effects of smoke-free indoor venues on the initiation and maintenance of the smoking habit,
  - (d) factors affecting initiatives for smoke-free indoor areas,
  - (e) the effectiveness of media, educative, community and medically-based Quit initiatives,
  - (f) the adequacy of the budget for smoking control initiatives, and
  - (g) the Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005 introduced by the Revd Mr Nile in the Legislative Council.
  
2. That, notwithstanding anything to the contrary in the standing orders of either House, the Committee consist of 11 members, as follows:
  - (a) four members of the Legislative Council of whom:
    - (i) one must be a government member,
    - (ii) one must be an opposition member, and
    - (iii) Dr Chesterfield-Evans and Revd Mr Nile
  - (b) seven members of the Legislative Assembly of whom:
    - (i) four must be government members,
    - (ii) two must be opposition members, and
    - (iii) one must be an independent or cross bench member.
  
3. That the members be nominated in writing to the Clerk of the Parliaments and the Clerk of the Legislative Assembly by the relevant party leaders and the independent and cross bench members respectively within seven days of this resolution being agreed to by both Houses.
  
4. That, notwithstanding anything to the contrary in the standing orders of either House, at any meeting of the Committee, any six members of the Committee will constitute a quorum, provided that the Committee meets as a joint Committee at all times.
  
5. That the Committee report by 30 May 2006.
  
6. That this House requests the Legislative Assembly to agree to a similar resolution and name the time and place for the first meeting.

**Figure E.1: Cigarettes & tobacco products as a proportion of Total Sales, 2004. From Sales of Cigarettes and Tobacco Products by Type of Retail Business (an analysis of the significance of sales of cigarettes and tobacco products to tobacco retailers in Australia), (PricewaterhouseCoopers May 2005)**



Source: An analysis of the significance of sales of cigarettes and tobacco products to tobacco retailers in Australia), (PricewaterhouseCoopers May 2005)

**Table E.1: Summary Findings of 2005 PricewaterhouseCoopers report. From Sales of Cigarettes and Tobacco Products by Type of Retail Business (an analysis of the significance of sales of cigarettes and tobacco products to tobacco retailers in Australia), (PricewaterhouseCoopers May 2005)**

Type of retail business	Total Australian Retail Sales of cigarettes and tobacco (incl GST) (\$ mill)	Proportion of cigarettes & tobacco products sold by retailer type	Estimated gross margin from sales of cigarettes and tobacco products (\$ mill)	Estimated average gross margin per packet
Supermarkets & Grocery Stores	4,478	51%	382	8%
Tobacconists	1,800	19%	108	6%
Convenience Stores	1,203	13%	360	30%
Mixed Businesses	875	9%	184	21%
Hotels and Clubs	244	3%	56	23%
Newsagents	171	2%	27	16%
Liquor Stores	151	2%	30	20%
Petrol Stations	92	1%	18	20%
Other Retailers	negligible	-	-	-
<b>Total</b>	<b>9,314</b>	<b>100%</b>	<b>1,165</b>	<b>13% (average)</b>



14 November 2005

Councillor John S. Tate  
The Lord Mayor of Newcastle  
Newcastle City Council  
PO Box 489  
Newcastle NSW 2300

Dear Lord Mayor,

On behalf of the members of the Restaurant & Catering Industry Association of NSW, many of whom are known to you as residents of the city of Newcastle; I write to object to the proposal by Newcastle City Council to implement a smoking ban on footpath space, moved at a council meeting on 8 November 2005. I understand this proposal will be on public display until 23 December 2005.

The Association draws your attention to the fact that only three councils out of 675 nationwide have pursued a ban on footpath smoking. There are a number of Councils who have pursued bans on beaches, and in parks and playgrounds but have stopped short of footpath bans. Equally it is worth noting that there are many councils opposing smoking bans because of the reasons outlined below:

1. Bans pose financial risks for councils – Restaurants and cafes have entered into leasing footpath space so that patrons, who have been forced outside by bans on smoking in enclosed space, are able to smoke. Mosman Council, for example collects an estimated \$900,000 annually from leases on footpath leasing. The initial bans on smoking not only forced restaurants and cafes to seek the use of the footpath, but the prices charged by councils have increased as a consequence of the ban on indoor smoking. If patrons of restaurants and cafes cannot use the footpath for outdoor smoking increasingly they will not lease this space.

2. Aside from revenue for council, we have to look at the effect on local restaurants and cafes and their employees – these bans will impact negatively on hotels and clubs – already feeling the economic pain brought by indoor bans. In some areas footpath and building entrance restrictions will cripple small business which council needs to generate rates and lead to the loss of jobs in the City of Newcastle. Without any doubt, a ban on smoking on council footpaths will create economic uncertainty in the community.
3. These bans on smoking on the footpath would need to include all pedestrians who smoke. Surely this would create an administrative nightmare for the council and its staff assigned the task of enforcing such legislation. With respect to local government authority many voters who smoke could view this position as a ‘civil liberties’ issue. Smokers are aware of the health risks posed by smoking – they choose to continue to do so outside where they minimize harm to others and should be a matter for themselves and not for Government. Even anti-smoking campaigners point out that outdoor smoking bans undermine work done to achieve indoor bans.
4. The former Premier of NSW, Bob Carr and the Premier of Victoria Steve Bracks previously indicated to respective Councils in NSW and Victoria that they should not introduce bans because they are not necessary, and will jeopardize acceptance of indoor bans. In NSW we have not yet completed the introduction of bans on indoor smoking in pubs and clubs. The first priority should be the completion of the introduction of these bans before we seek to ban footpath smoking. Footpaths, building entrance and alfresco dining restrictions are inconsistent with and counterproductive to State government approaches to addressing indoor smoking in hospitality venues. Bob Carr is on the record saying;

*“We’re not going to turn New South Wales into a dictatorship run by thought police. If someone wants to smoke on the street, they’re not projecting their smoke into my lungs or the lungs of other non-smokers, so let’s lay off the cause for a while and give them ample space to, with a bit of assistance to move away from the habit.”* [Premier Bob Carr commenting on proposed outdoor bans (2GB Sydney) 15:00 News 13/10/2004 - 03:02 PM]

5. There’s no reliable evidence to suggest that outdoor smoking is harmful to others – the research focuses on indoor, enclosed space. Because no health authority will sanction a ‘safe’ level of exposure to outside smoke, this is used to “prove” that outdoor smoke can do significant harm. It is important to note that no health claim has ever been brought due to exposure to outdoor cigarette smoke. Even one of Australia’s leading anti-tobacco advocates,

Professor Simon Chapman, has conceded that smoking in outdoor places is seldom “seldom ethically or scientifically justifiable”

*“In a recent tobacco control journal article, it was argued that bans on smoking in outdoor places are seldom ethically or scientifically justifiable as such proposals, risk undermining “support for other tobacco control policies which if implemented may bring profound public health benefits to communities” sending a message to the community that “health policy makers do not care about evidence of harm, but are more concerned to impose standards cut loose from any evidence base and indifferent to a vital ethical principle of respect for autonomy.” (Chapman, Repace, Bloch and Shopland, Banning Smoking Outdoors is Seldom Ethically Justifiable, Tobacco Control 2000; 9:95-97).*

6. Tied in with outdoor smoking is the cigarette butt litter problem – but a smoking ban is the wrong approach to take to solve problems of litter – we would support a program that focuses on providing more mounted ashtrays where there is footpath dining. Forcing people away from entrances to pubs, clubs and from alfresco dining areas where ashtrays are supplied will likely cause cigarette butt litter elsewhere on footpaths. A recent report by Los Angeles County's Department of Beaches and Harbours found that the vast majority of the butts come not from beachgoers but from smokers inland who toss their butts on sidewalks and streets. Rain washes them with other debris into storm drains and to the beach. (Inland Litter Butts In at Beach, Los Angeles Times, 2004-10-22 Author: Amanda Covarrubias, Times Staff Writer, <http://www.tobacco.org/news/180028.html>)
7. Issues of enforcement have not been properly reviewed. We do not want to diminish the authority of our council officers who are currently enforcing council by-laws that have the support of the community (burning off in bushfire season, parking in handicapped places) by making them enforce regulations that do not have community support. Also, councils should not create a stressful environment for their council officers by putting them in potentially confronting situations where they are compelled to confront smokers. Councils cannot expect hospitality venues to enforce these regulations.
8. Community education on the bans would be the council's responsibility and can only be enforced if there is a sign provided by Council for at every venue where a ban applies (i.e. outside every hotel, club, restaurant and café) and on the footpath for pedestrians. One council has suggested it would be a condition of future leases that restaurants would display signs on their property, but that Council officers would be responsible for enforcement. The council should not worry about future leases as most restaurants and cafes if they cannot provide the opportunity for outdoor smoking would cancel their

lease. More to the point, if the council bans smoking on the footpath, the restaurants and cafes would cancel their lease effective immediately.

9. Lastly, the City of Newcastle has made enormous strides as a regional tourism centre bringing economic vitality and increased high yield employment to the region as domestic and international tourists come to Newcastle as the regional hub. This legislation will not contribute to the efforts you and the council have made in restructuring the Newcastle region. The risk in endangering your success far outweighs the ban on footpath smoking.

Please record on behalf of the Restaurant & Catering Industry Association of NSW and it's over 2300 members our strong opposition to the proposed footpath smoking ban when the Council next considers this motion.

Yours sincerely,

ROBERT GOLDMAN  
Chief Executive Officer  
Restaurant & Catering NSW  
Level 1, 80 Cooper Street  
Surry Hills, NSW 2010  
02 9211 3500  
robertg@rcnsw.asn.au

## Tobacco Warnings Cigarette Packs Set A

Set A graphic warnings for cigarettes, cartons, loose tobacco and pipe tobacco.

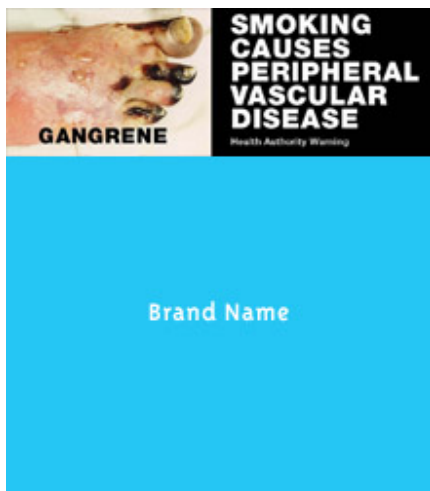
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Set A and Set B health warnings are rotated annually. The rotation system is set out below. During the transition period, either Set A or Set B may appear.

- 1 March 2006 - 31 October 2006 - Set A only
- 1 November 2006 - end February 2007 - Set A to Set B transition
- 1 March 2007 - 31 October 2007 - Set B only
- 1 November 2007 - end February 2008 - Set B to Set A transition
- 1 March 2008 - 31 October 2008 - Set A only
- This rotation pattern will then continue for the duration of the Regulations.


See below for representational cigarette packages showing graphic health warnings on front and back of pack

**Front of pack**



**Back of pack**





**EMPHYSEMA**

**SMOKING CAUSES EMPHYSEMA**

HEALTHY LUNG

Health Authority Warning

Brand Name

**SMOKING CAUSES EMPHYSEMA**

Health Authority Warning




HEALTHY LUNG

EMPHYSEMA

Quitline 131 848

Emphysema is a disease where the airsacs in the lungs are gradually destroyed, making it hard to breathe. Sufferers describe it as a living, breathing hell. Nearly all emphysema is caused by tobacco smoking.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



**SMOKING CAUSES MOUTH AND THROAT CANCER**

MOUTH CANCER

Health Authority Warning

Brand Name

**SMOKING CAUSES MOUTH AND THROAT CANCER**

Health Authority Warning



MOUTH CANCER

Quitline 131 848

Smoking is the major cause of cancers affecting the mouth and throat. These cancers can result in extensive surgery, problems in eating and swallowing, speech problems and permanent disfigurement.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



**SMOKING CLOGS YOUR ARTERIES**

Health Authority Warning

Brand Name

**SMOKING CLOGS YOUR ARTERIES**

Health Authority Warning



Quitline 131 848

Smoking narrows your arteries, causing them to become clogged, and can lead to heart attack, stroke, peripheral vascular disease, gangrene of the feet and impotence.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



Brand Name



Children exposed to passive smoking experience more serious illnesses such as pneumonia, middle ear infections and asthma attacks. Babies exposed to passive smoking are at greater risk of SIDS (Sudden Infant Death Syndrome).

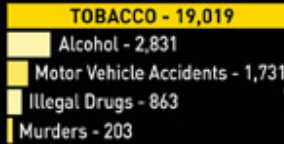
You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



Brand Name



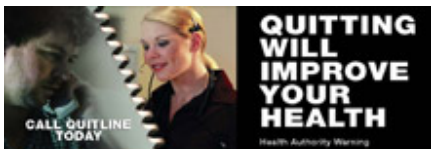
**CAUSES OF DEATH IN AUSTRALIA\***



Smoking causes more deaths than murder, illegal drugs, motor vehicle accidents and alcohol combined. Smokers not only live shorter lives, they also live more years with disabling health problems.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

\* Source: AIHW Quantification of drug caused mortality and morbidity in Australia, 1998 and ABS Causes of Death, 1998



Brand Name



CALL QUITLINE TODAY

Quitting smoking at any age benefits your health and fitness. Quitting reduces your risk of developing diseases such as cancer, heart attack and stroke. In the case of heart attack, the risk is halved one year after quitting.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

## Tobacco Warnings Cigarette Packs Set B

Set B graphic warnings for cigarettes, cartons, loose tobacco and pipe tobacco.

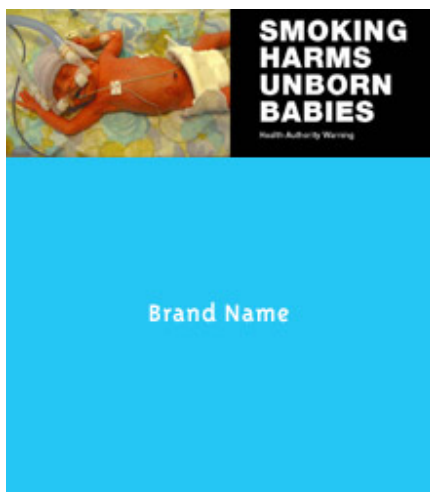
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Set A and Set B health warnings are rotated annually. The rotation system is set out below. During the transition period, either Set A or Set B may appear.

- 1 March 2006 - 31 October 2006 - Set A only
- 1 November 2006 - end February 2007 - Set A to Set B transition
- 1 March 2007 - 31 October 2007 - Set B only
- 1 November 2007 - end February 2008 - Set B to Set A transition
- 1 March 2008 - 31 October 2008 - Set A only
- This rotation pattern will then continue for the duration of the Regulations.

See below for representational cigarette packaging showing graphic health warnings on front and back of pack.

**Front of pack**



**Back of pack**





Brand Name



Smoking causes irreversible damage to the back of the eye. This is known as macular degeneration. Central vision is lost, blindness may follow.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

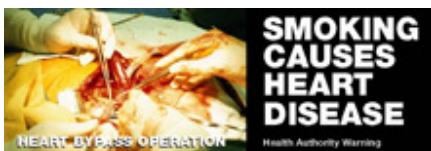


Brand Name



9 out of 10 lung cancers are caused by smoking. Every cigarette you smoke increases your risk of lung cancer. Most people who get lung cancer, die from it.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



Brand Name



Smoking narrows the arteries to your heart, causing them to become blocked. This can cause heart attacks and death. Smoking can double your risk of dying from a heart attack.

You CAN quit smoking. Call Quitline 131 848, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



Brand Name

**SMOKING DOUBLES YOUR RISK OF STROKE**  
Health Authority Warning



Smoking narrows the arteries to your brain, causing them to become blocked. This causes a stroke that can result in permanent paralysis, inability to speak, disability or death.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)



Brand Name

**SMOKING IS ADDICTIVE**  
Health Authority Warning



When you smoke you inhale the drug nicotine. In a short time you can find it difficult to control how much you smoke or to quit smoking. Many people don't realise they are dependent on tobacco until they try to quit. Even lifelong smokers CAN and do quit.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

Image Source: Health Canada website and Media Photo Gallery.



Brand Name

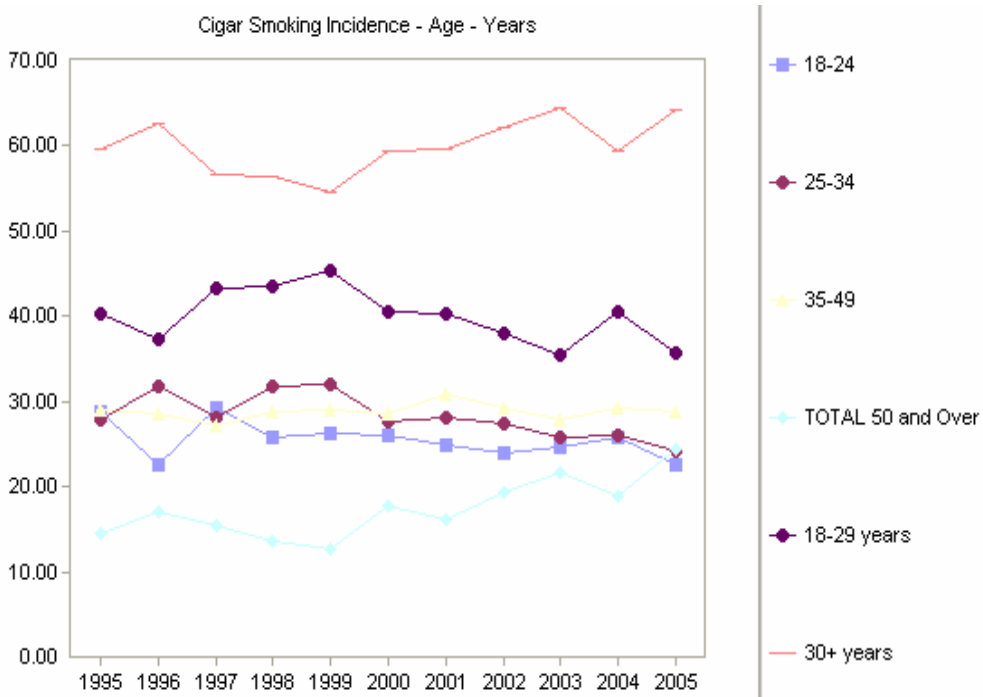
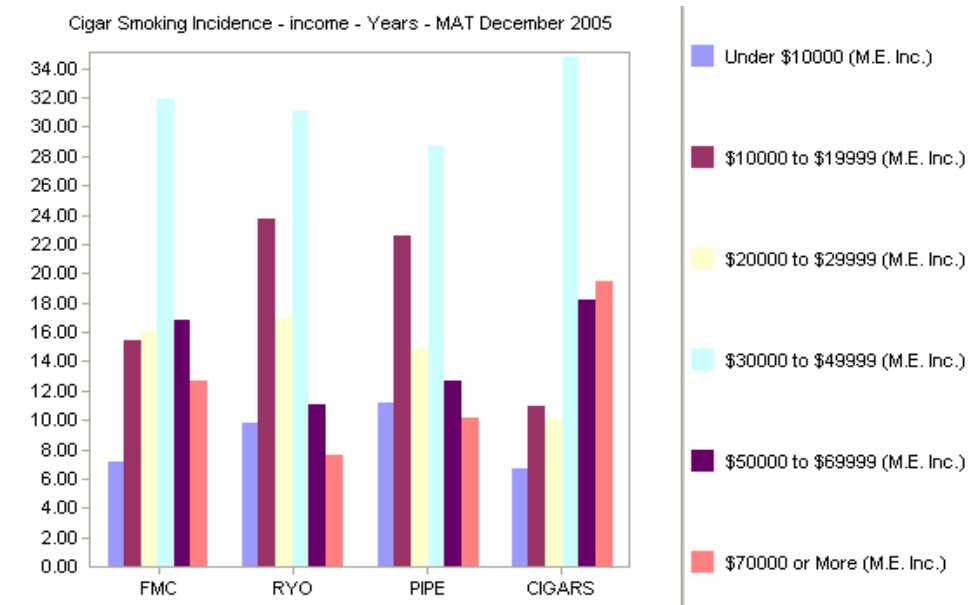
**TOBACCO SMOKE IS TOXIC**  
Health Authority Warning



Tobacco smoke is a complex mixture of toxic chemicals such as **nitrosamines** and **benzopyrenes** (which contribute directly to the formation of cancer in smokers), and **carbon monoxide** (which reduces the ability of blood to carry oxygen). These harmful substances can reach your brain, heart and other organs within 10 seconds of the first puff.

You CAN quit smoking. Call **Quitline 131 848**, talk to your doctor or pharmacist, or visit [www.quitnow.info.au](http://www.quitnow.info.au)

## Roy Morgan Research 2006



### Commonwealth Excise

\$bn	1997-98	1998-99	1999-00**	2000-01*	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Total Australian Government revenue	136,968	146,444	166,617	161,526	162,388	175,014	187,559	206,218	218,622	237,182	247,319	258,587
Total Taxation Revenue	132,219	141,104	152,576	151,156	149,848	163,055	175,058	193,252	203,777	208,806	218,623	229,961
Total Indirect Tax Revenue	31,296	32,415	33,534	25,601	25,634	27,255	27,692	28,693	28,153	29,252	30,032	30,762
Total Excise Revenue	13,574	13,619	14,202	19,019	19,630	20,787	21,068	21,981	21,900	22,850	23,290	23,670
<b>Total Tobacco excise</b>	<b>1,655</b>	<b>1,528</b>	<b>1,740</b>	<b>4,637</b>	<b>4,847</b>	<b>5,212</b>	<b>5,247</b>	<b>5,237</b>	<b>5,340</b>	<b>5,360</b>	<b>5,380</b>	<b>5,410</b>
Excise as a proportion of total revenue (%)	9.91	9.30	8.52	11.77	12.09	11.88	11.23	10.66	10.02	9.63	9.42	9.15
Excise as a proportion of total tax revenue (%)	10.27	9.65	9.31	12.58	13.10	12.75	12.03	11.37	10.75	10.94	10.65	10.29
Excise as a proportion of total indirect taxation revenue (%)	43.37	42.01	42.35	74.29	76.58	76.27	76.08	76.61	77.79	78.11	77.55	76.95
Tobacco excise as a proportion of total revenue (%)	1.21	1.04	1.04	2.87	2.98	2.98	2.80	2.54	2.44	2.26	2.18	2.09
Tobacco excise as a proportion of total taxation revenue (%)	1.25	1.08	1.14	3.07	3.23	3.20	3.00	2.71	2.62	2.57	2.46	2.35
Tobacco excise as a proportion of excise revenue (%)	12.19	11.22	12.25	24.38	24.69	25.07	24.91	23.83	24.38	23.46	23.10	22.86
Tobacco excise as a proportion of total indirect taxation revenue (%)	5.29	4.71	5.19	18.11	18.91	19.12	18.95	18.25	18.97	18.32	17.91	17.59

\*\* Government changed from cash to accrual accounting in 1999-2000. Data from 2000-01 exclude GST. Sources: Final Budget Outcome various years; 2005-06 MYEFO: Budget Paper No. 1 various years

### State License Fees

Yr end 30 June	Rounded to nearest \$ million							ACT	QLD
	VIC	NSW	SA	WA	TAS	NT			
1975	1	-	1	-	-	-	-	-	
1976	12	19	6	4	-	-	-	-	
1977	25	31	7	8	-	-	-	-	
1978	26	36	8	8	-	-	-	-	
1979	30	39	10	9	-	-	-	-	
1980	35	42	12	10	-	-	-	-	
1981	38	45	11	10	2	-	-	-	
1982	42	46	15	12	4	1	-	-	
1983	48	51	16	17	5	2	-	-	
1984	84	70	29	47	10	2	-	-	
1985	105	78	39	50	14	5	-	-	
1986	107	113	39	57	19	9	5	-	
1987	113	157	41	62	19	10	8	-	
1988	113	170	44	65	26	10	8	-	
1989	127	204	51	71	27	11	9	50	
1990	174	282	55	93	33	13	11	126	
1991	224	297	85	111	34	17	11	136	
1992	268	388	92	108	34	18	16	159	
1993	360	585	145	129	41	22	22	271	
1994	446	633	192	212	63	31	31	367	
1995	439	647	185	248	76	36	33	403	
1996	591	871	212	282	83	43	39	501	
1997	651	947	236	293	86	48	41	554	
1998	59	82	21	24	7	4	4	48	
1998	544	811	224	277	80	47	36	476	