

Submission

No 26

## INQUIRY INTO TOBACCO SMOKING IN NEW SOUTH WALES

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**Theme:**

**Summary**



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12 April 2006

The Director  
Joint Select Committee on Tobacco Smoking,  
Legislative Council,  
Parliament House,  
Macquarie Street,  
Sydney  
NSW 2000

**JSC TOBACCO SMOKING**

**13 APR 2006**

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

Please find enclosed the submission by Imperial Tobacco Australia to the Joint Select Committee on Tobacco Smoking in New South Wales.

A handwritten signature in black ink, appearing to read 'PG' followed by a flourish.

**PARDEEP GREWAL**  
**Legal & Corporate Affairs Director**



**Joint Select Committee on  
Tobacco Smoking in New South Wales**

***Inquiry into Tobacco Smoking in New South Wales***

**Submission by Imperial Tobacco Australia**

**April 2006**

## **Executive Summary**

- ITA supports sound, reasonable and practicable regulation of tobacco products. We believe that fair and reasonable regulation combined with well thought out local voluntary agreements is the most effective way to regulate tobacco.
- Tobacco is a legal product enjoyed by a large minority of the adult population. ITA contends that restrictions on the use of tobacco products must be proportionate, taking into account the preferences and rights of both non-smokers and smokers.
- ITA believes that the decision to smoke is a matter of informed choice only to be made by adults and recognises that youth smoking is a cause of concern.
- There is no evidence at all that the restriction or the ban on the display of tobacco will have any impact on total tobacco consumption. It will simply make it harder to compete and the major brands will increase market share at the expense of smaller brands and ultimately consumer choice.
- ITA recognises that other people's tobacco smoke can be unpleasant or annoying and can raise health concerns, but we believe that the scientific evidence, taken as a whole, does not demonstrate that

environmental tobacco smoke is a cause of disease, including lung cancer and heart disease. As a result, total bans on smoking in licensed premises and motor vehicles are disproportionate.

## **Introduction**

This submission is made by Imperial Tobacco Australia (ITA) in response to a specific request made by the New South Wales Joint Select Committee on Tobacco Smoking in relation to the Inquiry into Tobacco Smoking in New South Wales.

## **Background**

In 1999 the Australian Competition & Consumer Commission (ACCC) was concerned that the proposed global merger between British American Tobacco and Rothmans could breach section 50 of the Trade Practices Act (1974) by lessening competition in the Australian cigarette market.

This concern led to the ACCC encouraging Imperial Tobacco to enter the market. This resulted in Imperial Tobacco Group PLC establishing ITA and paying the merged company, British American Tobacco Australia, for a portfolio of tobacco trademarks.

Today, ITA currently employs 317 people and has offices in Sydney, Melbourne, Adelaide, Perth and Brisbane. In our financial year ended 30 September 2005 ITA contributed \$1.2 billion to the Federal Government through the collection of tobacco taxes.

ITA supports sound, reasonable and practicable regulation of tobacco products. We believe that fair and reasonable regulation combined with well thought out local voluntary agreements is the most effective way to regulate

tobacco. Effective consultation should involve all stakeholders including the Government, the health lobby and the tobacco industry. Open and transparent decision-making is important to ensure high quality regulation is achieved.

Often allegations by individuals or by anti-smoking organisations drive tobacco issues and decision-making. This in turn leads to an increase in unnecessarily burdensome regulation, without enough solid evidence being produced to show that such regulation or research has shown any effect on smoking behaviour. We would therefore urge the Committee to fully consider the views and expertise of all stakeholders before committing or recommending to any action.

ITA is a responsible, legitimate business and is not willing to accept, without challenge, regulation that is flawed, unreasonable or disproportionate, or regulation that is not based on sound legal or scientific foundations.

### **Anti-Competitive Regulation**

Whilst the ACCC, in its desire to maintain a competitive market place, encouraged ITA to make a significant investment and commitment to the Australian tobacco market it appears from the numerous regulatory changes that have taken place or have been proposed since, that competition and ultimately consumer choice is no longer a primary concern.

ITA, as the smallest and newest entrant of the three major tobacco companies, believes legitimate concerns, particular over competition are often

over looked by regulators and policy makers. Regulations restricting or banning outright tobacco displays and point of sale advertising simply make it harder for the smaller manufacturers to compete and to communicate with adult consumers. This also impedes the ability of government to communicate its health messages over tobacco products to consumers.

### **Youth Access Prevention**

ITA agrees with the NSW Government in its intention to eliminate youth smoking and would endorse any reasonable legislation to impose stricter penalties against any retailer selling tobacco to minors.

ITA believes that the decision to smoke is a matter of informed choice only to be made by adults and recognises that youth smoking is a cause of concern. ITA continues to support the industry developed initiative “18+/It’s the Law” campaign – to highlight the law with regard to the sale of tobacco products. This campaign has proved to be an effective means of communication and raising awareness, both for consumers and retailers.

We are committed to promoting and selling our products responsibly, within the law. Imperial Tobacco does not direct any of its products or its marketing and promotional activities to those under 18 years of age and adheres to a stringent International Marketing Standard across its business. This standard can be viewed at [www.imperial-tobacco.com](http://www.imperial-tobacco.com)



The reasons why young people try smoking are complex and varied, and experts from around the world claim that one of the most important factors is the influence of friends and family. We therefore believe that in addition to action by the Government and the tobacco industry, parents and society as a whole have a role to play in ensuring that young people do not smoke.

### **Tobacco Display**

Proposals to ban or reduce visibility of tobacco products at point of sale is of particular concern to ITA, along with thousands of retailers large and small who sell legal tobacco products to informed adult smokers.

The proposal to severely restrict display of tobacco products appears to be based on the assumption that the mere sight of cigarette packs will cause people to start smoking or fail to quit. This assumption is not supported by any rigorous research.

We would argue that the role of display is not about encouraging people to take up smoking but to inform those adults that choose to smoke about what products are available. This view is shared by Victorian Premier, Steve Bracks, who has said the current level of display restrictions in Victoria allowed “information but not persuasion as part of what is presented when cigarettes are sold”<sup>1</sup>.

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<sup>1</sup> The Age, “Smoking deaths highest in rural areas”, 17 February 2005

ITA has the most fragmented brand and product portfolio of all the Australian tobacco manufacturers. Severe display restrictions will only allow for the largest selling and most popular brands and products to be on display – with many of ITA brands being hidden out of sight. In order for ITA to effectively compete against the two larger and better resourced manufacturers, whose brands and products are among the market leaders we require visibility and awareness amongst smokers of the availability of our product.

Given that display only serves to inform retailers and consumers of the brands and products on offer in the market place, the bigger brands will only get bigger and more popular, to the detriment of the smaller brands, product categories and manufacturers. These display restrictions will play into the hands of the larger companies who own the largest brands and ultimately reduce consumer choice.

Display restrictions can also potentially pose a drastic punitive threat to small, family-run businesses, tobacconists and convenience stores that depend on tobacco sales for their viability. Regardless of the Government's view of the merit of legal trade in tobacco products, it is a very real concern particularly to small retailers. If customers are unable to see particular brands on show they will be more inclined to shop at supermarkets or larger stores where they will assume the full range of brands are stocked.

This concern is supported by research that shows that the visibility of a brand, and the awareness of brands to the smoker, will impact on market share. There is a very positive correlation between the distribution level of a brand

(i.e. its appearance on the shelf) and its market share. Yet there is no evidence that the restriction or the ban on the display of tobacco will have any impact on overall tobacco consumption or on youth access to tobacco products.

In fact, recent comments from ASH and the Cancer Society - who both pushed for restrictions and bans on tobacco displays and smoking in licensed premises in New Zealand in 2004 - support this: - "The display restrictions are far too weak [and] have had no impact on cigarette sales"<sup>2</sup>.

Canada and recently Thailand are the only countries that currently have a total tobacco display ban, in spite of comments previously made to the Committee, Tasmania has not made any decision to place retail displays of tobacco out-of-sight.

### **Graphic Health Warnings**

The Trade Practices (Consumer Product Information Standards)(Tobacco) Regulations 2004, which commenced 1 September 2004, set out the new requirements for tobacco labelling. These Regulations required graphic health warnings (GHW) to cover 30% of the front and 90% of the back on packs of cigarettes. Fourteen warnings are required in total, seven to be rotated in year one with the additional seven in the second year.

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<sup>2</sup> Joint media release from Action on Smoking and Health (ASH) and Cancer Society of New Zealand, 30 March 2006

Manufacturers and retailers do not get to choose which GHW they print or display.

When these new requirements were announced in June 2004 by the Hon Tony Abbott, Minister for Health and Ageing, they were the largest tobacco health warnings in the world in terms of total surface covered – indeed, they still are.

At this time The Hon Trish Worth MP, Parliamentary Secretary to the Minister for Health and Ageing, stated that *“There will be a phase-in period of 18 months from the date of gazettal of the regulations”*<sup>3</sup>. Since the gazettal of the Regulations. ITA has been working with the Department of Health and Ageing and the Australian Competition and Consumer Commission to ensure a smooth and practical implementation of the GHW requirements.

The Regulations clearly state that tobacco products manufactured on or after 1 March 2006 are required to carry the new GHW. Products manufactured and imported prior to this date can still be distributed and sold. Unfounded comments that manufacturers are “trying to delay it by stockpiling some of their old packaging”<sup>4</sup>, or that manufacturers have “dragged their heels”<sup>5</sup>, are untrue and neither helpful nor constructive. They are simply used as an opportunity to gain media coverage and discredit manufacturers. In fact, ITA was the first of the three largest cigarette manufacturers in Australia to

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<sup>3</sup> Department of Health & Ageing Media Release, 25 June 2004

<sup>4</sup> Adelaide Advertiser, Page 2, “Graphic cigarettes warning ‘delayed’”, 27 March 2006

<sup>5</sup> Todd Harper, Executive Director, Quit Victoria, Radio ABC 774 Melbourne, 3 April 2006

introduce GHW product in November 2005 on our John Player brand, over three months prior to March 2006.

ITA recognises that it is the role of governments to provide the general public with clear and consistent messages about the health risks to smokers that are associated with their smoking and we do not challenge these.

However ITA believes that GHW, instead of being a method of increasing consumer understanding, are an unwarranted attempt to vilify and embarrass smokers.

ITA does not believe that such excessive graphic warnings have any greater effect than the previous text only warnings in informing consumers of the risks associated with smoking, and evidence from countries where such warnings have been introduced, such as Canada, would support this<sup>6</sup>.

Furthermore, research undertaken for the UK Department of Health demonstrates that by exaggerating and simplifying risk, which picture warnings generally do, the credibility of the warning is greatly reduced and that creating fear through picture warnings not only fails to deter but is often counterproductive in that it heightens the attractiveness of the very behaviour it is intended to discourage.<sup>7</sup>

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<sup>6</sup> Environics (2001a) Baseline Surveys: The health effects of tobacco and health warning messages on cigarette package (final report). Environics (2001b) Evaluation of New Warnings on Cigarette Packages. Prepared for Canadian Cancer Society.

<sup>7</sup> Smoking and Society. Smoking in Adolescence: images and identities, London and New York, Coleman J, ed., Routledge, 1998

The erosion of our intellectual property rights and trademarks through ever increasing and intrusive warnings and pictures, together with other messages and information that we are required to include on our packs, is also of significant concern. We believe that we are entitled to use our packs to enable our consumers to distinguish our high quality products from those of our competitors.

ITA does not agree with any further enlargement of the new graphic health warnings nor the introduction of generic packaging. ITA would be interested to see any data, following a twelve month period after introduction of GHW, by which the effectiveness of this form of regulation can be evaluated.

### **Licensing**

ITA supports the NSW Government in imposing penalties on retailers who sell tobacco products to children, and on those who trade in smuggled or counterfeit products. We believe that such sales can be controlled through the cooperation of the tobacco industry and national authorities, without unnecessarily bureaucratic and costly retailer licensing which does little to combat counterfeiting or the smuggling of tobacco products.

A recent comment to the Committee that they should “consider restricting hours of sale [of tobacco products] to sober hours of the day”<sup>8</sup> is quite ridiculous. Based on this principle, should the Government then also consider

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<sup>8</sup> NSW Joint Select Committee, Inquiry into Tobacco Smoking in New South Wales 21 March 2006

restricting the hours of fast food outlets and takeaways, or further restrictions on alcohol consumption?

In addition, suggesting that “governments could introduce a licensing scheme for tobacco users”<sup>9</sup> goes too far. The reaction to this particular comment appears not to have the support of many smokers: “Enough already. We, the smokers of this country, are sick of it. We’re sick of your high handedness, we’re sick of your one-upmanship in the get-tough regulation department, and we’ve had a gutful of being punished and turned into pariahs”<sup>10</sup>.

## **Ingredients**

ITA does not add anything to its products to make it more difficult for smokers to stop smoking, or to make its products attractive to children. Ingredients are not used to change the level or chemical form of nicotine in tobacco smoke.

Ingredients may be added to tobacco products during manufacture. Ingredients (for example, flavourings typically used in food), are sometimes used in some brands to enhance their overall flavour characteristics and aroma, giving each brand its own distinctive style, in line with consumer preferences.

We assess the appropriateness and acceptability of the ingredients we use. We employ a panel of experienced toxicologists to carry out risk assessments

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<sup>9</sup> Sydney Morning Herald, “Smokers should be licensed: academic”, 26 March 2006

<sup>10</sup> Courier Mail, Page 23, “Smoke Signals”, 28 March 2006

on ingredients and to judge the suitability of these ingredients for inclusion in our products.

Information on the ingredients used in our cigarette brands is available on our website [www.imperial-tobacco.com](http://www.imperial-tobacco.com) . This information is also provided under a Voluntary Agreement formalised between the Federal Government and the three major tobacco companies in December 2000 which can be accessed via [www.health.gov.au](http://www.health.gov.au)

### **Environmental Tobacco Smoke**

Anti-tobacco organisations have outlined their expectations that, banning smoking in licensed premises will reduce the amount of environmental tobacco smoke (ETS) in the atmosphere and measurable public health improvements will be achieved.

ITA recognise that other people's tobacco smoke can be unpleasant or annoying and can raise health concerns, but we believe that the scientific evidence, taken as a whole, does not demonstrate that environmental tobacco smoke is a cause of disease, including lung cancer and heart disease. Consequently, ITA does not anticipate any improvements in the long-term health of non-smokers through the introduction of these measures, as we believe that the claimed risks are unfounded.

The tobacco control lobby has been particularly vocal in its support for a smoking ban on health grounds, and the volume of its campaign has been increasing. This includes using any opportunity to gain media coverage



including those witnessed on 28 March 2006 in Parliament when eight “non-smoking” anti-smoking protesters tried smoking in the public gallery<sup>11</sup>.

On that occasion ASH came out in support of the eight individuals. However, ASH were quick to react in New Zealand five days later when they were “shocked”<sup>12</sup> by a breach of the smoking restrictions at SkyCity. On that occasion stating that the culprit had showed contempt for the law.

Certain venues within the hospitality trade already choose to provide totally smoke-free premises in line with their commercial choice, and ITA supports such decisions inasmuch as they reflect the opinion and wishes of staff and offer customers choice.

When there is no choice customers may decide stay at home. Satellite firm Setanta Sports, which televises Scottish Premier League soccer matches in Scotland took more than 10,000 calls from new customers for home subscriptions in the first full weekend after the smoking ban was introduced<sup>13</sup>.

ITA therefore disagrees with excessive measures that remove such flexibility and choice from the trade thus requiring the introduction of total smoking bans.

We disagree that there is growing evidence supporting the medical establishment’s view that environmental tobacco smoke is harmful. In fact,

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<sup>11</sup> ABC News, “Protesters smoked out of Parliament”. 28/03/2006

<sup>12</sup> Herald on Sunday, “ASH smoking after Crowe lights up SkyCity gig”, 2 April 2006

<sup>13</sup> Daily Record, “10,000 Football fans sign up to beat fags ban”, 5 April 2006

despite over 20 years of intensive research, the scientific evidence which purports to show that ETS is linked with various diseases is unconvincing and the claim remains unsubstantiated. As recently as 2003, Richard Smith, editor of the British Medical Journal said, "We must be interested in whether passive smoking kills, and the question has not been definitively answered. It's a hard question, and our methods are inadequate."<sup>14</sup>

Given that the science does not demonstrate that ETS is a cause of disease, and that such doubts have been voiced by eminent independent scientists, a ban on smoking in public places and licensed premises is disproportionate.

**Smoke-Free Environment Amendment (Motor Vehicle Prohibition) Bill 2005.**

ITA does not support the Smoke-Free Environment Amendment (Motor Vehicle Prohibition) Bill, which would prohibit smoking in all motor vehicles and provide for a fine of \$550 or a maximum penalty of five licence points.

In the same way as smokers should show courtesy to other adults when smoking, this courtesy should be extended to children, who are often unable to exercise choice in their environment and surroundings in the way that adults can. Generally, most smokers do show courtesy to others when smoking. Encouraging considerate behaviour through education is the approach ITA favours rather than outright bans in motor vehicles.

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<sup>14</sup> Richard Smith, British Medical Journal, 2003; 327:505

ITA welcomes and supports NSW Premier Morris lemma's position on this issue. Mr lemma was recently quoted saying that banning smoking in cars was excessive. "I'd question whether it would be practical and enforceable and whether it would achieve the desired outcome to have such a measure"<sup>15</sup>

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<sup>15</sup> AAP Newswire, National " NSW: lemma says car smoking ban excessive", 28 February 2006