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Review of Tobacco Control Legislation
Department of Health
GPO Box 9848, MDP 707
Canberra ACT 2601

Sent by email: tobaccoreview@health.gov.au

ACCC submission to the Review of Tobacco Control Legislation

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the *Review of Tobacco Control Legislation* Consultation Paper.

The ACCC is a whole of economy regulator that promotes competition and fair trading in markets to benefit consumers, businesses and the Australian community. One of the ACCC's key roles is to ensure that consumers are well informed about consumer products and can confidently participate in markets.

The ACCC is the Australian Government agency responsible for administering the *Competition and Consumer (Tobacco) Information Standard* (the Information Standard), which sets requirements for information and labelling of tobacco products, and is also responsible for a range of permanent bans and mandatory standards concerning some forms of tobacco and tobacco-related products. In making this submission, we note that the Department of Health has policy leadership on the health impacts of tobacco use.

The ACCC considers the overall system of tobacco control is likely to be improved if the administration and enforcement of all legislative interventions that relate to health impacts of tobacco use, including the administration and enforcement of the Information Standard, were centralised within the health portfolio.

The consumer product safety role of the ACCC

Through application of the Australian Consumer Law (ACL), the ACCC aims to minimise the risk posed by unsafe consumer goods, ensure consumers are fully informed about safety risks, and prevent misleading behaviour and unconscionable conduct.

The ACL defines consumer goods as goods that are intended to be used, or are of a kind likely to be used, for 'personal, domestic or household use'.¹ Tobacco and tobacco-related products are considered consumer goods.

¹ Section 2 of the Australian Consumer Law.

The ACCC's role with respect to tobacco and tobacco-related products primarily concerns the administration and enforcement of specific legislative instruments under the ACL.

These instruments can be enforced by the ACCC or state and territory consumer affairs agencies, and include:

- the Information Standard concerning graphic health warnings,
- a permanent ban on chewing tobacco and snuffs, and
- a mandatory safety standard for reduced fire risk cigarettes.

Potential enforcement action by the ACCC is assessed against a risk-based and principles-based approach set out in our Compliance and Enforcement Policy.² In relation to product safety matters, the ACCC allocates resources and prioritises taking action according to a published list of Product Safety Priorities.³

How the ACCC interacts with specialist regulators

Consistent with the Government's Statement of Expectations,⁴ the ACCC seeks to avoid duplicating regulatory oversight. Where a product safety matter also sits within a specialist regime, such as the health portfolio, the ACCC will refer such matters to the specialist agency for consideration. We consider, in the context of a highly specialised area such as the health impacts of tobacco, the Department of Health would be better placed to understand and respond to these issues, to ensure an integrated regulatory framework and to minimise compliance costs.

Comment on current tobacco control legislation

Two of the legislative instruments administered by the ACCC are focussed on the health outcomes associated with tobacco use and are based on health policy: the Information Standard and the permanent ban on the supply of chewing tobacco and snuffs.

It is the ACCC's view that the administration and enforcement of any legislative instruments that concern the health impacts of tobacco should be the responsibility of the Department of Health, given the Department's policy leadership in this area. The ACCC notes that while the ACCC has assisted the Department with investigations into non-compliance with tobacco-related legislation, the ACCC has not taken any enforcement action itself in this area.

In our experience, most complaints of non-compliance with the Information Standard concerning graphic health warnings are also likely to involve allegations of non-compliance with the plain packaging laws, which are the responsibility of the Department of Health. While any potential inconsistencies between the regimes can be managed by specific provisions in the plain packaging legislation, legislative consolidation is likely to have benefits, by streamlining administration and enforcement, and reducing compliance costs.

We consider the overall system of tobacco control is likely to be improved if the administration and enforcement of all legislative instruments relating to health impacts of tobacco, particularly the Information Standard and the permanent ban on chewing tobacco and snuffs, were consolidated and centralised within the health portfolio.

² ACCC 2019 Compliance and Enforcement Policy.

³ ACCC 2019 Product Safety Priorities.

⁴ Australian Government Statement of Expectations of the Australian Competition and Consumer Commission 2014.

If you would like to discuss any aspect of the ACCC's submission, we would be happy to arrange a meeting. Please contact Neville Matthew, General Manager, Consumer Product Safety Branch on 02 6243 1066 or at neville.matthew@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rayne de Gruchy', with a long horizontal flourish extending to the right.

Rayne de Gruchy
Chief Operating Officer

