

15 March 2019



SUBMISSION TO THE CONSULTATION ON THE REVIEW OF TOBACCO CONTROL LEGISLATION IN AUSTRALIA

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BY THE DEPARTMENT OF HEALTH

Japan Tobacco International (**JTI**) is a leading international tobacco company with operations in more than 130 countries. It is the global owner of both Winston, the number two cigarette brand in the world, and Camel, outside the USA and has the largest share in sales for both brands. Other global brands include Mevius and LD. With its internationally recognized brand Logic, JTI is also a major player in the electronic cigarette market and has, since 2011, been present in the heated tobacco category with Ploom. Headquartered in Geneva, Switzerland, JTI employs close to 45,000 people and was awarded Global Top Employer for five consecutive years. JTI is a member of the Japan Tobacco Group of Companies. For more information, visit www.jti.com. JTI has no corporate presence in Australia and two of its tobacco products, Camel and Old Holborn, are distributed by Imperial Tobacco Australia Limited and Stuart Alexander & Co respectively.

1. Introduction

1.1 JTI welcomes the opportunity to respond to the Department of Health's (**DoH**) Public Consultation on the Review of Tobacco Control Legislation (**the Consultation**)¹ and, more specifically, in relation to the Tobacco Plain Packaging Act 2011 and the Tobacco Plain Packaging Regulations 2011 (**the Plain Packaging Legislation**).

1.2 In line with the Better Regulation Principles of the Organization for Economic Co-operation and Development (**OECD**)² that JTI supports, we remain open and transparent in our dialogue with government authorities and continue to offer rational and proportionate alternatives where we believe that proposed or enacted regulation is flawed and is based on speculative evidence.

1.3 JTI made its views on plain packaging known in its June 2011 Response to the Australian Government's Consultation Paper on the Tobacco Plain Packaging Bill 2011 Exposure Draft, its September 2011 Submission to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, and its March 2015 Response to the Australian DoH's Post Implementation Review of Tobacco Plain Packaging.

1.4 JTI was unsuccessful in its High Court challenge of the Plain Packaging Legislation.³

1.5 JTI's strong opposition to plain packaging has not changed since then and is now reinforced by official data from Australia that demonstrate clearly that it was not effective in reducing smoking prevalence and the use of tobacco products. On the contrary, the Plain Packaging Legislation has generated some real, actual negative consequences for legitimate businesses.

1.6 We also remain concerned that the alleged "effectiveness" of the Plain Packaging Legislation drives the expansion of this flawed policy across other countries. However, there is an opportunity now for Australia to admit publicly that its experiment has failed.

1.7 In this Submission, JTI therefore focuses on the factual evidence related to the Plain Packaging Legislation in Australia and addresses the followings:

Part 2: Executive summary

Part 3: The intended thematic review

Part 4: The predetermined evidence and the real evidence

Part 5: The negative consequences of plain packaging

Part 6: A better way forward

¹ See the Consultation Document via: <https://consultations.health.gov.au/population-health-and-sport-division/review-of-tobacco-control-legislation/>.

² JTI is committed to the OECD Better Regulation principles, summarized as transparency, participation, accountability, effectiveness, coherence and proportionality. As a founding member of the Asia-Pacific Economic Cooperation (**APEC**), Australia shares these core principles in implementing regulatory reform, endorsed by the Handbook of the Australian Office of Best Practice Regulation, June 2010, available at: <http://www.finance.gov.au/obpr/proposal/gov-requirements.html#handbook>. The APEC Principles also support "open and competitive markets" as key drivers of economic efficiency and consumer welfare. See APEC-OECD Integrated Checklist on Regulatory Reform, 2005. See also APEC Good Practice Guide on Public Sector Governance, 2011.

³ *JT International SA v Commonwealth of Australia*, [2012] HCA 43.

2. Executive summary

2.1 Australia has demonstrated that it wants to stay at the forefront of tobacco control with a very comprehensive legislative framework in place and even in terms of pioneering unknown experiments, such as the plain packaging of tobacco products.

2.2 However, not every experiment is successful in proving an effective intervention with real health benefits. Experiments can also fail, irrespective of being presented as a short-term or a long-term measure.

2.3 In February 2016, three years after the implementation of the Plain Packaging Legislation, the DoH claimed that *"Tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future"* [emphasis added].⁴

2.4 Sufficient time has now passed to check the validity of this claim and draw clear conclusions on the real effects of this policy. In the Government's own words: *"While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)"* [emphasis added].⁵

2.5 Although it is difficult to establish whether the Plain Packaging Legislation alone or as a part of an ineffective layering of regulations has contributed to this failure, **smokers clearly continue to consume tobacco products in Australia, irrespective of their "unattractive" packaging with "more noticeable" health warnings or the authenticity of these products.**

2.6 The only "achievement" that could be attributed to the Plain Packaging Legislation is the absolute attack on legitimate brand owners and the unnecessary intervention by the DoH into the everyday lives of Australians who have made an informed choice to smoke and who have right to choose and consume the legitimate tobacco products they prefer.

2.7 Unlike many Australians,⁶ JTI would like to believe that hard evidence and common sense will prevail, and that the Government will decide to sunset its Plain Packaging Legislation in order to focus instead on rational alternatives that are actually able to generate real health benefits, including the reduction of smoking prevalence.

2.8 Allowing electronic cigarettes to be sold in Australia, along with the creation of an appropriate regulatory framework for these and other potential reduced-risk products, would be the right direction to pursue.

2.9 In line with the OECD Better Regulation principles that the Government is committed to, **a regulatory measure can only be justified on the basis of clear evidence and a realistic assessment of its effectiveness and efficiency.** This is the intention of the sunset provisions⁷ in Australia.

⁴ See the DoH's "Post-Implementation Review, Tobacco Plain Packaging" 2016 (*the PIR*), page 4: *"In light of all of this evidence, the PIR concludes that tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future"*. Available at: <https://ris.pmc.gov.au/2016/02/26/tobacco-plain-packaging>.

⁵ See the National Drug Strategy Household Survey (*the NDSHS*) at: <https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary>. It demonstrates that after the implementation of plain packaging along with enlarged graphic health warnings, the historical downward trend in smoking has stopped with a not statistically significant decrease of 0.6 percentage points between 2013 and 2016.

⁶ See the results of a public survey conducted amongst Australians, following the 5th anniversary of the plain packaging policy in Australia: *"Almost 9 out of 10 Australian adults under 30 believe the Australian government wouldn't change or would be reluctant to change a preferred policy even if the evidence was weighted against it"*. Commissioned by JTI and available via: <https://www.jti.com/sites/default/files/key-regulatory-submissions-documents/expert-reports/consumer-survey-evidence/perception-of-plain-packaging-five-years-after-in-australia-canvasU.pdf>.

⁷ See, for example, 51A(1) of the *Legislation Act 2003* via: <https://www.legislation.gov.au/Details/C2017C00300>.

3. The intended thematic review

3.1 JTI welcomes the opportunity to respond to Phase 1 of the Consultation as a part of the thematic review of both the Tobacco Advertising Prohibition Legislation (the Tobacco Advertising Prohibition Act 1992 and the Tobacco Advertising Prohibition Regulation 1993) and the Plain Packaging Legislation, which aims to identify whether they are “*fit for purpose for current and future opportunities and challenges*”⁸ and whether otherwise both sets of legislation should be repealed in light of similar objectives that they pursue.⁹

3.2 As a matter of principle, JTI does not object to the alignment of the dates (i.e. 1 April 2022) for applying the “sunsetting clause”¹⁰ should the Government decide to repeal both sets of legislation.¹¹

3.3 With regard to the Tobacco Advertising Prohibition Legislation, we refer to two 2006 studies by Goel and Nelson¹² and by Nelson.¹³ Nelson published a meta-analysis focused exclusively on advertising elasticities and his estimates of the advertising elasticities were found to be small and not significantly different from zero. These findings were complemented by Goel and Nelson’s conclusions, namely that the effectiveness of restricting advertising is, at best, inconclusive.

3.4 Sunsetting the Tobacco Advertising Prohibition Legislation would therefore be the right decision.

3.5 However, JTI acknowledges that the Tobacco Advertising Prohibition Legislation implements Australia’s obligations under Article 13 of the Framework Convention on Tobacco Control (*the FCTC*) of the World Health Organization, to which Australia is a signatory. Withdrawal of the ineffective Tobacco Advertising Prohibition Legislation, while correct as a matter of principle, would be contrary to these obligations.

3.6 Our Submission therefore focuses on the Plain Packaging Legislation, which is not a requirement of the FCTC, and where the evidence is clear and convincing that **plain packaging has not been effective in reducing smoking prevalence and the consumption of tobacco products¹⁴ and is not efficient, also in light of the negative effects associated with its implementation.**

3.7 JTI would welcome an invitation to the stakeholder workshops that form Phase 2 of the Consultation to provide more detailed views on how tobacco control legislation should be improved, based on our long-standing experience and in line with the Better Regulation principles.

3.8 Despite JTI’s and others’ views on the Plain Packaging Legislation having been previously ignored by the DoH, JTI would like to believe that this Consultation and the intended thematic review will not just be a “box-ticking” exercise but an objective evaluation of both sides of the issue in order “*to improve consistency, ensure the legislation and instruments are contemporary and reduce unnecessary regulation*”.¹⁵

3.9 This is also an opportunity to prove to Australians that their Government can reconsider a previous intrusion into their private lives and instead focus on workable solutions that have a real potential to improve public health.

⁸ See the Consultation Document, page 3.

⁹ See the Government’s primary objectives in tobacco control (“*to reduce smoking prevalence and the use of tobacco products*”) in the Consultation Document, page 3 and in the “*Legislation (Tobacco Instruments) Sunset-altering Declaration 2018, Explanatory Statement*” (*the Explanatory Statement*), page 2, available via: <https://www.legislation.gov.au/>.

¹⁰ See 51A(1) of the Legislation Act 2003.

¹¹ According to the Explanatory Statement, Section 51A enables the Attorney-General to align the sunsetting dates of two or more instruments by declaration. The instruments will then all cease to be in force on the day specified in the declaration instead of the scheduled sunsetting day of each instrument.

¹² Goel, R.K. and Nelson, M.A. (2006) “*The Effectiveness of Anti-Smoking Legislation: A Review*”, Journal of Economic Surveys, 20 (3), 325–55: <https://doi.org/10.1111/j.0950-0804.2006.00282>.

¹³ Nelson, J.P. (2006) “*Cigarette Advertising Regulation: A Meta-Analysis*”, International Review of Law and Economics, 26 (2), 195–226: <https://doi.org/10.1016/j.irle.2006.08.005>.

¹⁴ See Footnote 9 above in relation to the primary objectives.

¹⁵ See page 2 of the Explanatory Statement. It reiterates the purpose of the thematic review, i.e. “*to improve consistency, ensure the legislation and instruments are contemporary and reduce unnecessary regulation*”.

4. The predetermined evidence and the real evidence

4.1 In order to evaluate the actual impact of the Plain Packaging Legislation, JTI addresses the studies and data that informed the outcome of the PIR, as well other official data released at a later stage.

The PIR - related evidence

4.2 In February 2015, the DoH engaged Siggins Miller Consultants to undertake a consultation of stakeholders that had been impacted by the Plain Packaging Legislation and to conduct a cost-benefit analysis to inform the development of a PIR.

4.3 JTI's 2015 Response to this consultation was complemented by a report prepared by Dr. Andrew Lilico, a leading economist, who concluded that plain packaging had had no statistically significant impact upon Australia's pre-existing decline in tobacco consumption and prevalence.¹⁶

4.4 Dr. Lilico's analysis and JTI's 2015 Response were ignored by Siggins Miller and the DoH, as was most of the input provided by other stakeholders directly impacted by this legislation. It was therefore not surprising that the results of the PIR were based on one view of the "evidence" in order to justify the effectiveness and the efficiency of the Plain Packaging Legislation (see below).

4.5 The PIR that was released in February 2016¹⁷ reflected nothing more than the unnecessary and ineffective layering of regulations, which made it impossible to analyze the effects of individual measures that were implemented simultaneously in Australia (i.e. plain packaging, enlarged health warnings and tax increases):

- I. On the one hand and unsurprisingly (given that the DoH was reviewing the effectiveness of its own policy which it had claimed would be successful), the PIR concluded that *"tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future"*.¹⁸
- II. On the other hand, the PIR acknowledged that it was impossible to analyze the full effect of plain packaging, as a number of regulatory measures had come into force simultaneously.¹⁹

4.6 Fully dismissing the evidence put forward by some stakeholders during the Consultation, the PIR relied instead on a questionable selection of reports and data to justify the effectiveness of the Plain Packaging Legislation.

4.7 **Dr. Tasneem Chipty's report:** In supporting its main conclusion that *"packaging changes have contributed to declines in smoking prevalence"*,²⁰ the PIR relied on a report (published along with the PIR),²¹ prepared by Dr. Tasneem Chipty.

¹⁶ See Dr. Andrew Lilico, Europe Economics "Review of Current Evidence Regarding the Impacts of Plain Packaging in Australia upon Consumption, Prevalence and Competition/Market Dynamics", March 2015, submitted to the DoH along JTI's March 2015 Response. Dr. Lilico reviewed publicly available primary and secondary data emerging from Australia and commented, based on the information and conclusions arising from those sources, on the impact of plain packaging upon tobacco consumption and/or prevalence and market dynamics: *"The reports I have reviewed are consistent in finding that plain packaging has had no statistically significant impact upon Australia's pre-existing decline in tobacco consumption and prevalence. In fact, some of the findings in these reports suggest that consumption may have risen, relative to previous trends (where controlled for), following the introduction of plain packaging."*

¹⁷ See the PIR at: <https://ris.pmc.gov.au/2016/02/26/tobacco-plain-packaging>. Following the introduction of the measure in 2012, the Government was required to commission a PIR to assess the actual public health impact of plain packaging **separately from the impacts of other tobacco regulations**. See the official guidance on conducting PIRs by the Australian Government Office of Best Practice Regulation, last accessed via: https://www.dpmc.gov.au/sites/default/files/publications/017_Post-implementation_reviews_0.pdf.

¹⁸ See the PIR, page 4: *"In light of all of this evidence, the PIR concludes that tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes into the future"*.

¹⁹ *Ibid*, page 4.

²⁰ *Ibid*, page 4.

²¹ See Dr. Tasneem Chipty "Study on the Impact of the Tobacco Plain Packaging Measure on Smoking Prevalence in Australia", January 2016. See Appendix A at: <https://ris.pmc.gov.au/2016/02/26/tobacco-plain-packaging>.

4.8 On the basis of the Roy Morgan Single Survey (**RMSS**), a private commercial dataset covering the period of 1 January 2001 to 30 September 2015 (which was not made publicly available at the time of the release of Dr. Chipty's report), she contended that the plain packaging requirements together with enlarged health warnings on tobacco packaging had resulted in *"a statistically significant decline in smoking prevalence of 0.55 percentage points over the post-implementation period, relative to what the prevalence would have been without the packaging changes"*.²²

4.9 Part of the RMSS data²³ used in Dr. Chipty's analysis was made available by the DoH in May 2016 in response to a Freedom of Information request. Dr. Lilico reviewed the data as well as the analysis undertaken by Dr. Chipty and concluded that, since 2001, there have been two earlier statistically significant breaks, which, when considered, have the effect of removing the impact that was reported by Dr. Chipty.²⁴

4.10 Applying this analysis, **there becomes no basis for suggesting that there was a statistically significant decline in smoking prevalence since the introduction of plain packaging in Australia.**

4.11 Professor W. Kip Viscusi, another leading economist, described Dr. Chipty's report as *"unreliable"* with *"highly speculative conclusions"* due to *"the failure to consider the nonlinearity of the temporal trend in smoking prevalence rates and the omission of cigarette prices from the model"*.²⁵

4.12 It is therefore not surprising that the PIR and, particularly, Dr. Chipty's report remain subject of serious criticism.²⁶

4.13 In addition to the failure to isolate the specific impact that plain packaging or enlarged health warnings (if any) are said to have had on smoking prevalence and the omission of cigarette prices in Dr. Chipty's model, another obvious shortcoming of this analysis is that no conclusions in respect of the impact of plain packaging on smoking prevalence among minors in Australia have been drawn. This is odd as Dr. Chipty appears to have had access to the RMSS data for 14 to 17 years old.²⁷

²² See via: <https://ris.pmc.gov.au/2016/02/26/tobacco-plain-packaging/>.

²³ These data reflect the average monthly percentage level of smoking prevalence from January 2001 to September 2015, derived from the full RMSS dataset. They do not include any other indications, in particular demographic data on age, sex, education or various other characteristics of respondents.

²⁴ See Dr. Andrew Lilico, Europe Economics *"Analysis of the Chipty Report's conclusions regarding packaging changes and smoking prevalence in Australia"*, August 2016, commissioned by JTI. Available at: <https://www.jti.com/about-us/our-business/key-regulatory-submissions>. Dr. Lilico explains that the use of orthodox econometric techniques calls into question the reliability of Dr. Chipty's conclusion. His analysis finds two earlier statistically significant breaks which, when introduced into models based on the data he has considered, have the effect of removing the impact reported by Dr. Chipty. It is only by ignoring these breaks that Dr. Chipty is able to find an effect. In Dr. Lilico's time series models, both with and without additional economic factors, there is no such impact.

²⁵ See Professor W. Kip Viscusi *"An assessment of the effect of Australian plain packaging regulations: analysis of Roy Morgan Research Data, CITTS Data, and NTPPTS Data"*, January 2018, pages 10-11, available at: [http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/\\$FILE/medMDAVXMEV.pdf?openelement](http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/$FILE/medMDAVXMEV.pdf?openelement).

²⁶ For example, see Professors Sinclair Davidson and Ashton de Silva *"Stubbing Out the Evidence of Tobacco Plain Packaging Efficacy: An Analysis of the Australian National Tobacco Plain Packaging Survey"*, May 2016. Available at SSRN: <http://ssrn.com/abstract=2780938>.

The Dominican Republic (that appealed the WTO Dispute Settlement Panel decision in August 2018 - see below) had stated: *"Dr. Chipty's PIR Report provides a flawed and misleading assessment based on a narrow and self-serving selection of datasets, behavioral metrics, and methodologies presented in the WTO proceedings. Conveniently, Australia fails to mention in the PIR that Dr. Chipty's PIR analysis – largely recycled from the WTO proceedings with a few novel tweaks – has been subject to detailed criticisms by the complainants' experts, such as her failure to control for breaks in the secular smoking trend, or reweighting"*. The Integrated Summary of its Submissions to the WTO Dispute Settlement Panel (2016) was last accessed via: [http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20\(EN\).pdf%20](http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20(EN).pdf%20).

²⁷ See, for example, Appendix D at page 33 of Dr. Chipty's Report.

4.14 Despite all these shortcomings, Dr. Chipty's analysis was accepted by the Dispute Settlement Panel (*the Panel*)²⁸ of the World Trade Organization (*WTO*) in its June 2018 report.²⁹ In short and based on Dr. Chipty's flawed analysis and other predictive evidence that was put forward by Australia, the Panel concluded that plain packaging together with enlarged health warnings reduced smoking prevalence and consumption in the first three years of its implementation.³⁰

4.15 The PIR, Dr. Chipty's analysis and, consequently, the Panel's decision, however, are all contradicted by the **NDSHS data 2013-2016**,³¹ the clearest evidence that has emerged from Australia after the WTO case was filed and heard (see below).

4.16 **Other prevalence, consumption, expenditure and market data:** In addition to the RMSS data used for Dr. Chipty's analysis, the PIR also considered the NDSHS 2010-2013 data published by the Australian Institute of Health and Welfare (*the AIHW*) and 2015 data released by the Australian Bureau of Statistics (*the ABS*), amongst others.

- I. The NDSHS 2010-2013³² data demonstrated that daily smoking prevalence declined by 2.3 per cent between 2010 and 2013, consistent with the pre-existing trend. The introduction of plain packaging in December 2012 did not accelerate this pre-existing trend.
- II. Similarly, the ABS 2015 data³³ did not show any acceleration of the pre-existing trend of decline in smoking prevalence since the implementation of the Plain Packaging Legislation.

4.17 **Consumer research:** In stating that: "*[i]n light of all this evidence, the PIR concludes that tobacco plain packaging is achieving its aim of improving public health in Australia and is expected to have substantial public health outcomes in the future*"³⁴ [emphasis added], the PIR relied on studies and consumer surveys that were prepared by tobacco control advocates, but did not demonstrate that they had been critically reviewed. These studies and surveys generally examine what the hypothetical reactions of people to plain packaging might be, rather than measuring their actual smoking behavior (i.e. they do not measure initiation, usage and quitting effects).³⁵ Obviously, hypothesis cannot constitute reliable evidence to justify a policy. Indeed, expert review of this consumer research concludes that it "*does not provide reliable evidence that plain packaging will be effective in further reducing smoking or increasing smoking cessation*".³⁶

²⁸ Although the WTO Panel remained skeptical about hypothetical studies in relation to plain packaging and smoking behavior that were put forward by Australia in support of its measure, it endorsed Dr. Chipty's defective analysis. See more in Professor Sinclair Davidson's statement at: <http://catallaxyfiles.com/2018/06/30/wto-rules-on-plain-packaging-evidence/>.

²⁹ See the Panel's Report at: https://www.wto.org/english/news_e/news18_e/435_441_458_467r_e.htm. The Panel found that the Australian plain packaging measure does not violate WTO rules. The Report was appealed by Honduras and the Dominican Republic in July and August 2018, respectively, and the WTO dispute is ongoing.

³⁰ In its ruling that plain packaging is able to, and does, contribute to the reduction in the use of tobacco products, the Panel addressed the evidence in a partial and one-sided way in favor of Australia whereas it failed to explain its findings in light of all of the evidence pointing in the opposite direction.

³¹ Since 1995, every three years, the Australian Institute of Health and Welfare in its regular NDSHS has surveyed Australians aged 12 years and older. The last report spanning the period of 2013-2016 was released in 2017. See more below.

³² See at: https://www.aihw.gov.au/getmedia/c2e94ca2-7ce8-496f-a765-94c55c774d2b/16835_1.pdf.aspx?inline=true.

³³ See at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.001~2014-15~Main%20Features~Smoking~24>.

³⁴ See the PIR, page 4.

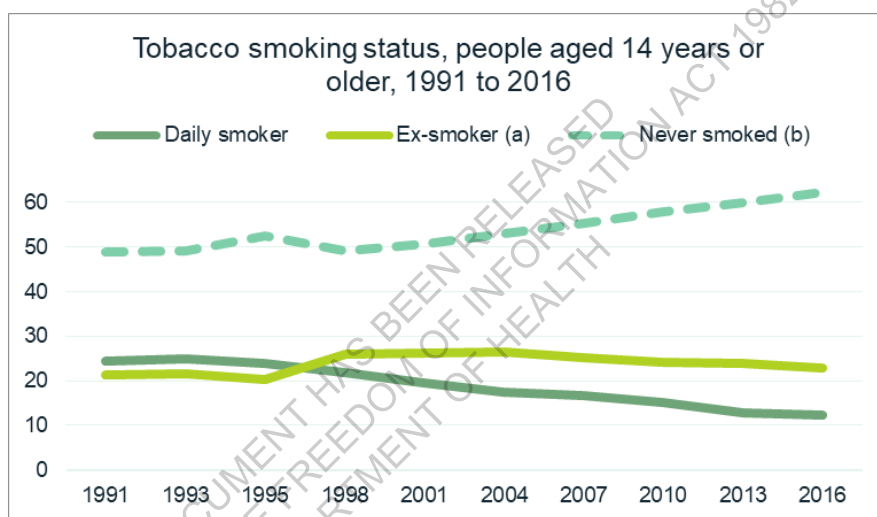
³⁵ See, for example, Footnote 82 in the PIR: M. Wakefield, K. Coomber, M. Zacher, S. Durkin, E. Brennan and M. Scollo, 'Australian Adult Smokers' Responses to Plain Packaging with Larger Graphic Health Warnings 1 Year After Implementation: Results from a National Cross-sectional Tracking Survey' (2015); Footnote 86 in the PIR: S. Durkin, E. Brennan, K. Coomber, M. Zacher, M. Scollo and M. Wakefield, 'Short-term changes in quitting-related cognitions and behaviours after the implementation of plain packaging with larger health warnings: Findings from a national cohort study with Australian adult smokers' (2015); Footnote 91 in the PIR: V. White, T. Williams M. and Wakefield, 'Has the Introduction of Plain Packaging with Larger Graphic Health Warnings Changed Adolescents' Perceptions of Cigarette Packs and Brands?' (2015); Footnote 92 in the PIR: V. White, T. Williams, A. Faulkner M. Wakefield, 'Do Larger Graphic Health Warnings on Standardised Cigarette Packs Increase Adolescents' Cognitive Processing of Consumer Health Information and Beliefs about Smoking-related Harms?' (2015). More studies considered by the PIR are reflected in Professor Timothy M. Devinney's 2017 report - see Footnote 36 below.

³⁶ See Professor Timothy M. Devinney "Analysis of Consumer Research Evidence Relied upon in Support of Plain Packaging for Tobacco Products", January 2017, available via: <https://www.jti.com/sites/default/files/key-regulatory-submissions->

Post - PIR evidence

4.18 **Extended RMSS data:** In addition to criticizing Dr. Chipty's PIR analysis,³⁷ Professor Viscusi extended Dr. Chipty's RMSS data period with 15 months of data to December 2016. He found that the impact of the Plain Packaging Legislation on smoking prevalence rates cannot be distinguished statistically from zero for this longer time period as well. His analysis of the extended RMSS data found that the decline in smoking prevalence rates in Australia is a continuation of past nonlinear time trends, overall economic trends such as the general Australian consumer price index, and influences such as rising cigarette prices, and is not significantly related to the adoption of the Plain Packaging Legislation: **"The only sound conclusion based on this evidence is that the 2012 Packaging Changes are not associated with any change in smoking prevalence rates."**³⁸

4.19 **NDSHS 2013-2016 data:** These key data emerging after the release of the PIR and the Panel's ruling, demonstrate that plain packaging (alone or in combination with other measures) has failed to reduce smoking rates in Australia. In summary, they confirm that **after the implementation of plain packaging and other far-reaching measures the long-term decline in smoking prevalence has come to a halt: "While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 years period (2013 to 2016)".**³⁹



(a) Smoked at least 100 cigarettes (manufactured and/or roll-your-own) or the equivalent amount of tobacco in their life and reported no longer smoking.

(b) Never smoked 100 cigarettes (manufactured and/or roll-your-own) or the equivalent amount of tobacco.

Source: NDSHS 2013-2016

4.20 **AIHW September 2016 Report:**⁴⁰ This report that presents the evolution of smoking rates since 2007-08 by State/Territory demonstrates a statistically significant decrease in the proportion of daily smokers observed between 2007-08 and 2014-15. However, the report does not make clear whether there has been a statistically significant decline between the 2011-12 and 2014-15 periods, i.e. around the

[documents/expert-reports/consumer-survey-evidence/1-professor-devinney---2017-report---final.pdf](#). This report summarizes the consumer research relevant to plain packaging, including Australia - specific studies by Wakefield, Durkin, Scollo, Zachar, Balmford, Hayes and Dunlop that were also referred to in the PIR, as a collective body of evidence, and reflecting his assessment on whether it is capable of demonstrating that such a measure would reduce smoking or increase smoking cessation.

³⁷ See paragraph 4.11 above. See also pages 10-11 and more in Professor Viscusi's report, available via: [http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/\\$FILE/medMDAVXMEV.pdf?openelement](http://www.bat.com/group/sites/uk_9d9kcy.nsf/vwPagesWebLive/DO9DKJEB/$FILE/medMDAVXMEV.pdf?openelement).

³⁸ See Professor Viscusi's January 2018 report.

³⁹ The results of the NDSHS 2013-2016 demonstrate that the continued downward trend in smoking has stopped with a not statistically significant decrease of 0.6 percentage points between 2013 and 2016.

⁴⁰ See AIHW 2016. *Tobacco indicators: measuring midpoint progress – reporting under the National Tobacco Strategy 2012–2018*, available via: <http://aihw.gov.au/publication-detail/?id=60129557116&tab=3>.

introduction of plain packaging. It shows only that smoking rates went down significantly in one single state – Southern Australia, the fifth most populous of Australia's six States and two Territories – after the introduction of plain packaging with enlarged health warnings and tax increases. Moreover, recent data from South Australia (but from a different dataset)⁴¹ shows that in 2017 the smoking rate was almost the same as in 2012, before plain packaging was introduced (16.7% in 2012 vs 16.5% in 2017). If there was an initial decline in smoking rates in South Australia, it appears at the very least to have been followed by an increase.

4.21 It is clear that not a single piece of credible evidence exists that proves the “effectiveness” of the Plain Packaging Legislation in “*reducing smoking prevalence and the use of tobacco products*” amongst Australians. It is also not surprising that the historical decline in smoking prevalence has stopped after the implementation of this legislation.

4.22 Perhaps for these reasons, some Australian public health experts have now started to openly acknowledge the failure of national tobacco control policies in changing smoking behavior: “*punitive and coercive*” policies to curb smoking have “run out of steam.”⁴²

4.23 Furthermore, data emerging from the first stages of plain packaging implementation in France and in the UK also do not demonstrate that the policy is effective in reducing smoking prevalence there.⁴³

4.24 Even the French Health Minister admitted that plain packaging “*does not lead smokers to stop smoking*” and that it did not contribute to reducing tobacco sales in France,⁴⁴ which is an important precedent of admitting the failure of an own policy that Australia should follow.

⁴¹ See more at: https://www.sahmri.org/m/downloads/Key_Smoking_Statistics_for_SA_2017_-_April_2018.pdf.

⁴² See, for example, the statement by Professor Colin Mendelsohn, an expert in public health at the University of New South Wales. In addition to highlighting the results of the NDSHS 2016 (“*For the first time ever, there has been no statistically significant reduction in the smoking rate, and an increase in the number of smokers in Australia....*”), he noted: “*...the nation's smoking rate was now higher than in the US for the first time in a decade. This is despite plain packaging and the most expensive cigarette prices in the world*”. Last accessed via: <http://colinmendelsohn.com.au/posts/number-smokers-australia-has-increased-over-last-3-years/>. See also: <https://insightplus.mja.com.au/2018/19/time-for-a-new-approach-to-tobacco-control/>.

⁴³ Data emerging from the early stages of the plain packaging implementation in the UK and France show similar effects in both countries where plain packaging was introduced along with other regulations. For example, a recent analysis by Dr. Lilico indicates that the combination of plain packaging and the requirements of the revised EU Tobacco Product Directive (*the TPD2*) have not had any discernible effect on tobacco consumption both in the UK and France. See Dr. Andrew Lilico, Europe Economics “*TPD2 and standardised tobacco packaging —What impacts have they had so far?*”, December 2018, available at: http://www.europe-economics.com/publications/tpd2_and_standardised_tobacco_packaging_dec_2018_1.pdf. His analysis shows that there has been no statistically significant impact on consumption in France and no statistically significant impact on prevalence in the UK. In addition, the introduction of TPD2 and plain packs has been associated with an increase in tobacco consumption in the UK.

Dr. Lilico's conclusion is consistent with data published by the French public authorities (*OFDT* – Observatoire français des drogues et des toxicomanies) that demonstrate that the number of cigarettes shipped to retailers remained largely unchanged (-0.7%) in 2017, while the amount of roll-your-own tobacco decreased by 5.1% as a result of large excise tax increases in February and November 2017. See OFDT data regarding the volumes of tobacco products distributed to retailers, as reported by the Customs authorities (Direction Générale des Douanes et Droits Indirectes), available at: <https://www.ofdt.fr/statistiques-et-infographie/tableau-de-bord-tabac/>.

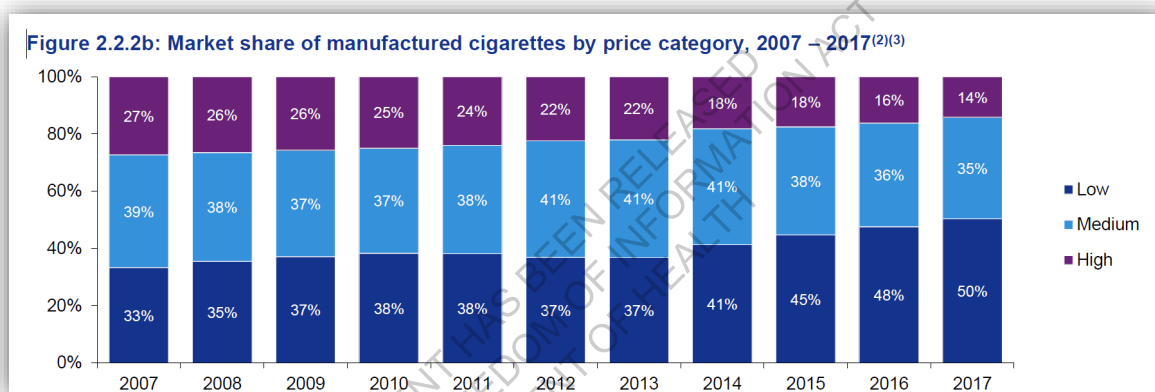
⁴⁴ See French Health Minister Agnès Buzyn's November 2017 statement during a parliamentary debate on the Social Security Finance Bill and in response to a Member of Parliament, who questioned her on the effectiveness of plain packaging. Available (In French) at: <http://www.assemblee-nationale.fr/15/cr/2017-2018/20180075.asp>.

5. The negative consequences of plain packaging

5.1 In contravention of the Better Regulation principles, the Government added multiple layers of regulations (i.e. plain packaging, enlarged health warnings and tax increases) on top of the existing tobacco control legislation in Australia, which has made it nearly impossible to analyze the impact of plain packaging separately from other measures implemented from 2012. **The PIR itself acknowledges this failure.**

5.2 It is not surprising that **this flawed approach has not changed whether Australians smoke but has changed what they smoke in view of the increasing consumption of smuggled cigarettes, chop chop tobacco and other illegal products.**⁴⁵

- I. The available evidence on consumption and prevalence demonstrates that the total number of cigarettes legally sold in Australia continues to decline at the same rate as before, indicating that plain packaging (along with other measures) has had no effect on the size of the market.⁴⁶
- II. Indeed, due to the downtrading that accelerated following a number of large tax increases and the Plain Packaging Legislation, the market share of low-priced cigarettes has considerably increased at the expense of mid-priced and premium categories of cigarettes, negatively impacting legal competition and premium-brand owners.⁴⁷



Source: KPMG 2017 Full-Year report "Illicit Tobacco in Australia"

As highlighted in JTI's 2015 Response, although JTI's products represent a small share of the Australian tobacco market, plain packaging has reduced the value of JTI's brands in Australia and has unjustifiably damaged JTI's ability to compete.

- III. Already in 2011, JTI noted that plain packaging would affect potential new entrants and companies with small market shares, such as JTI, to a greater extent than their competitors with larger market shares. Indeed, since the introduction of plain packaging our Camel and Old Holborn products have experienced a significant drop in Australian sales, with sales of both having more than halved since 2012. As noted earlier, in view of the trend in consumption remaining stable, it is highly likely that consumers of these two brands chose another brand to smoke.

⁴⁵ It has been also reported that tobacco consumption in Australia "has risen for the first time in more than a decade". See more at: <https://www.theaustralian.com.au/news/health-science/16bn-up-in-smoke-as-tobacco-use-rises-for-first-time-in-decade/news-story/e73b828e467d48ae091b11702144f84d>.

⁴⁶ See, Part 4 of this Submission.

⁴⁷ See KPMG's 2017 Full-Year Report "Illicit Tobacco in Australia", April 2018, page 11. Available at: https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/05/australia_illicit_tobacco_report_2017.pdf.

It is undeniable that **price has become a key driver of tobacco product selection in Australia** as there are no other means left for legitimate manufacturers to differentiate cigarettes and available variants. This was reinforced by Euromonitor when they reported that plain packaging “*contributes to consumer purchasing decisions motivated largely or exclusively by price*”.⁴⁸

The increasing shift into loose tobacco is also an indication of the price-driven purchasing decisions.⁴⁹

- IV. It is also notable that some brands became obsolete, creating a concentration in the legitimate tobacco market. For example, by 2014, two of the twenty-one premium brands available before plain packaging had been discontinued.⁵⁰
- V. Most importantly, the available data⁵¹ demonstrate that illegal tobacco consumption increased in Australia after the implementation of plain packaging, enlarged health warnings and large tax increases in 2012 and subsequent years.
- New illegal brands, which look like they are legitimate “plain packs”, have since been found in Australia.⁵² In respect of “branded packs”, packs of Chinese and Indonesian origin accounted for the majority of non-domestic flows into Australia in 2017.⁵³
 - The level of illegal tobacco consumption has increased significantly since plain packaging and other measures were introduced. In 2017, it reached **15% of total consumption** (the country’s highest level on record), up from 11.5% in 2012.⁵⁴ If it had been sold legally, the illegal tobacco consumed in Australia in 2017 would have represented an estimated excise value of AUD 1.91 billion.⁵⁵
 - It is also notable that the 2014 survey by Scollo et al⁵⁶ that purports to provide evidence about Australians’ use of illegal tobacco, reports the following limitations: “*recent purchase of potentially illicit branded (contraband) tobacco was only assessed in one survey year (2013), and therefore we could not determine whether it had increased between 2011 and 2013*” and “*respondent error and misreporting may have affected prevalence estimates for illicit unbranded tobacco, considering its illegal status*”. In other words, despite its conclusions about not finding evidence of an increase in use of illegal tobacco, the study’s limitations prevented it from actually measuring what it was supposed to measure.

⁴⁸ See Euromonitor International “*Passport: Tobacco Legislation*”, December 2017, page 15. Available at: <http://www.euromonitor.com/>.

⁴⁹ See, for example, Euromonitor “*Passport: Tobacco in Australia*”, August 2018 and KPMG’s 2017 Full-Year report.

⁵⁰ Factory made cigarettes and roll-your own tobacco brands by market segment and manufacturer, available from April 2012 to March 2014: http://tobaccocontrol.bmj.com/content/suppl/2015/02/09/tobaccocontrol-2014-052071.DC1/tobaccocontrol-2014-052071supp_table1.pdf

⁵¹ See, for example, KPMG’s 2017 Full-Year Report. Despite the PIR dismissing KPMG’s analysis, the methodology that KPMG uses to track illegal trade in Australia has been recognized by the AIHW as “*probably the most appropriate way of collecting that type of information and tracking it over time.*” See Dr. Tim Beard, AIHW, Parliamentary Joint Committee on Law Enforcement, illicit tobacco, March 2016, page 33.

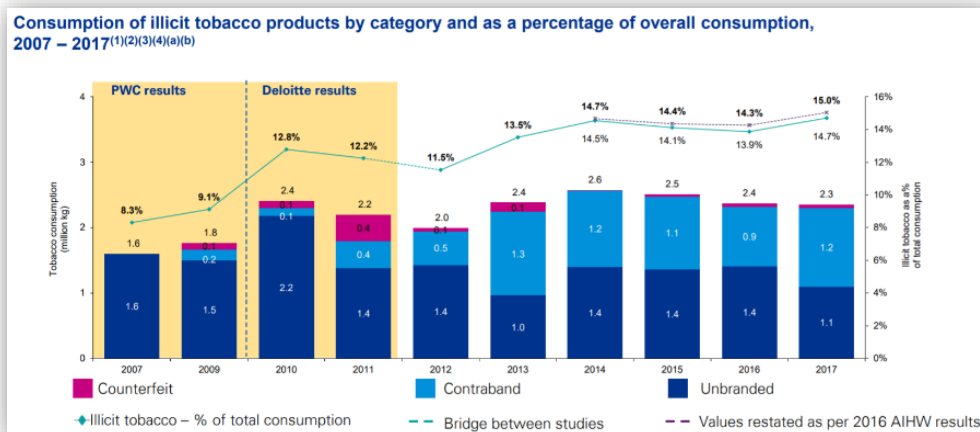
⁵² See JTI’s response to the UK Department of Health’s Consultation on “*The introduction of regulations for standardized packaging of tobacco products*”, August 2014, paragraph 3.16, page 66. Available at: <https://www.jti.com/about-us/our-business/key-regulatory-submissions>. However, it has been reported that “*Counterfeit remains a very small share of illegal tobacco consumption [in Australia]*”. See KPMG’s 2017 Full-Year Report, page 6.

⁵³ See KPMG’s 2017 Full-Year Report, page 6.

⁵⁴ *Ibid*, page 6.

⁵⁵ *Ibid*, page 6.

⁵⁶ See Scollo M, et al (2014) “*Early evidence about the predicted unintended consequences of standardised packaging of tobacco products in Australia: a cross-sectional study of the place of purchase, regular brands and use of illicit tobacco*”, available at <https://bmjopen.bmj.com/content/bmjopen/4/8/e005873.full.pdf>.



Source: KPMG 2017 Full-Year report "Illicit Tobacco in Australia"

VI. Even if the DoH again ignores KPMG's analysis and contends that illegal trade in Australia has not benefitted from plain packaging (alone or as a part of the ineffective layering of regulations), the Australian customs authorities themselves report that the illegal trade in tobacco is rising exponentially, in ordinary postal mail alone by 10 to 15 % every year.⁵⁷ For example, in the period of June to December 2016, the Australian Border Force (**ABF**) seized 145 tons of illegal tobacco products from the International Mail Centre in Western Sydney, which equates to AUD 21 million in lost government revenue.

Further, it was reported that, in January 2017, the ABF seized a record volume of illegal cigarettes and loose tobacco in Sydney, including many products hidden inside fluffy toys, machinery, picture frames and platform shoes. It is notable that many of the seized illegal cigarettes appear to contain "metal shavings and even bird droppings".⁵⁸

More recently, authorities seized around 57 million illegal cigarettes (worth more than AUD 40 million in evaded duty). As the authorities reveal, a "serious organized crime syndicate" stands behind these activities.⁵⁹

VII. It is not surprising that in May 2018, the Treasurer announced the creation of a new multi-agency "Tobacco Taskforce" to crack down on crime syndicates and "dismantle illicit tobacco supply chains".⁶⁰

5.3 Increasing criminality has significantly impacted Australian retailers in terms of profit and the taxes they pay. They "are losing cigarette sales and paying higher insurance and security costs because they are increasingly the target of armed robberies who are after their regular cigarette stocks because of the lucrative black market."⁶¹ Their revenues are being "devastated" by more than 600 organized crime-backed illegal cigarette and tobacco shops costing up to AUD 5 billion a year in lost profits and taxes paid accordingly.

⁵⁷ Available at: <http://www.dailytelegraph.com.au/news/national/organised-crime-syndicates-smuggling-low-risk-tobacco-leaf-and-cigarettes-into-australia/news-story/81507f303ce6c7005b0f764afc10fe9b>.

⁵⁸ See more at: <http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470>. In relation to lost government revenues, see also at: <http://www.dailytelegraph.com.au/news/nsw/illicit-tobacco-imports-ripping-off-aussie-taxpayers-of-at-least-640-million/news-story/e8c1ff8ad04a466c94f4cba17c38e273>.

⁵⁹ See more at: <https://www.smh.com.au/national/queensland/nearly-60-million-illegal-cigarettes-seized-in-major-border-operation-20180704-p4zpga.html>.

⁶⁰ Last accessed via: <https://thewest.com.au/politics/budget/federal-budget-2018-government-focus-on-black-market-tobacco-trade-tobring-in-36-billion-ng-b88830165z>. This agency will be led by ABF, which had already set up a special strike team to combat the growing illegal trade issue in 2016.

⁶¹ See more: <http://www.afr.com/news/policy/tax/600-illegal-tobacco-shops-are-devastating-retailers-industry-warns-20170831-gy7w7a>.

5.4 In addition, the implementation of the Plain Packaging Legislation was associated with increased transaction times⁶² along with consumer confusion and frustration in retail outlets.

5.5 The Plain Packaging Legislation has also made it easier for parallel importers to repackage tobacco products from overseas markets, where prices are much lower, for re-sale in Australia, thereby negatively impacting manufacturers' or their authorized distributors' sales. Since the Plain Packaging Legislation was introduced, JTI has observed that its products such as Old Holborn and Natural American Spirit (which it does not currently sell in Australia), have been repackaged for re-sale in Australia by unauthorized parties. The process of parallel imports more generally does not provide any guarantee about the quality of re-packaged products, which could negatively affect legitimate consumers, as well as JTI's and other manufacturers' reputation.⁶³ Indeed, consumers of JTI products have complained that the quality of the parallel imports was inferior to that of products that were distributed by JTI's authorized distributors.

5.6 These obvious negative consequences seriously question the purported "efficiency" of the Plain Packaging Legislation.

5.7 Practical concerns with the Plain Packaging Legislation also include:

- I. the annual rotation of graphic health warnings for smaller volume products leads to significant cost/write-offs – a different rotation requirement for these smaller volume, slow-moving products could be envisaged;
- II. the requirement that production codes be printed and not embossed complicates JTI's manufacturing process as it requires the use of machines that cannot be used for most other countries – allowing embossing instead of, or in addition to printing would be an easy solution; and
- III. the tracking and tracing requirements imposed by the EU on products for export to Australia not being allowed under the Plain Packaging Legislation caused concerns – this has now been resolved with the Plain Packaging Legislation being amended in December 2018, but similar operational issues could happen again in the future as a result of contradictory regulatory requirements in different countries.

5.8 In summary, the Plain Packaging Legislation, alone or in the context of a very comprehensive tobacco control framework, is not effective in reducing smoking prevalence and the use of tobacco products in Australia, and is not efficient either, as it damages legitimate brands (as brand owners lose valuable assets) and legitimate competition, negatively impacts retailers, confuses smokers and reduces government tax revenues by accelerating downtrading and fuelling the illegal trade.

5.9 The only valid conclusion that could be drawn from the analysis of the "effectiveness" and the "efficiency" of the Plain Packaging Legislation is that, because it does not work, everyone loses, except criminals.

5.10 Despite the DoH's track record of earlier attempts to justify its failed experiment, the Government must now acknowledge the overwhelming evidence about the shortcomings of its Plain Packaging Legislation and let it sunset. Any other action will just be a continuation of this poor track record.

⁶² See Roy Morgan report "*The impact of plain packaging on small retailers wave 2*", September 2013, via: <https://csnews.com/australias-plain-packaging-law-negatively-impacting-retailers>.

⁶³ See more on these parallel imports in Australia via: <https://www.ipiustitia.com/2016/08/parallel-infringement-parallel.html>.

6. A better way forward

6.1 It is appropriate to maintain regulation that is proportionate and proven to be effective in tackling youth smoking and improving public health. However, plain packaging, regulation that has been in place for more than 6 years in Australia (and in the UK and France for a shorter period), is neither proportionate nor effective. Instead it has strong negative effects (such as an increase in illegal trade and unjustifiable attack on the key assets of legitimate businesses).⁶⁴

6.2 Plain packaging will not prevent smoking initiation or accelerate quitting in the future as tobacco packaging is simply unrelated to whether someone starts, continues or quits smoking. The actual determinants of smoking behavior are well-documented⁶⁵ and have been acknowledged also by tobacco control advocates⁶⁶ and Australia's experts at the WTO.⁶⁷

6.3 Regulation should be balanced, reliable and targeted at cases where action is needed.

6.4 It is only right to sunset the Plain Packaging Legislation and allow electronic cigarettes to be sold legally in Australia.

6.5 Electronic cigarettes are likely to be less harmful, and the creation of an appropriate regulatory framework for these and other products with the potential to reduce the risks associated with smoking would be the right direction to pursue.

6.6 These views have been supported by Australian health experts⁶⁸ and acknowledged by authoritative bodies, such as Public Health England and the Royal College of Physicians in the UK.⁶⁹

6.7 As also emphasized by the Science and Technology Committee of the UK House of Commons: *"There is clear evidence that e-cigarettes are substantially less harmful than conventional cigarettes"*.⁷⁰

6.8 It is notable that in New Zealand, the sale and import of electronic cigarettes with nicotine have been legalized in May 2018, and the Government has been working on creation of regulatory framework for electronic cigarettes. The New Zealand Ministry of Health itself acknowledges the reduced-risk

⁶⁴ It terms of negative effects associated with the implementation of plain packaging, it is also notable that the volume of counterfeited products in France tripled in 2018, compared to 2017 data, based on Empty Pack Surveys in France and the UK. The situation with an increasing number of counterfeited products appears to be similar in the UK, based on the same source of information. It is not surprising that UK authorities discovered counterfeit "plain" packs as early as one month after plain packs appeared on retailers' shelves. See via: <https://www.betterretailing.com/first-fake-plain-packs-discovered>.

⁶⁵ See Professor Laurence Steinberg's report *"Adolescent Decision-Making and Whether Standardized Packaging Would Reduce Underage Smoking"*, August 2016, commissioned by JTI and available at: <https://www.jti.com/about-us/our-business/key-regulatory-submissions>.

⁶⁶ For example, the Canadian Cancer Society identifies as the "reasons youth start smoking": *"Many young people between the ages of 10 and 18 begin to experiment with smoking due to peer pressure. Young people try smoking to be like others in their peer group or to appear cool and grown up. They also smoke to rebel against authority or to relax in awkward social settings"*. Last accessed via: <http://www.cancer.ca/en/cancer-information/cancer-101/what-is-a-risk-factor/tobacco/smoking-and-youth/#ixzz4DbpQ1fwl>.

⁶⁷ *"it is highly improbable that an adolescent who is interested in smoking will decline a cigarette from a friend because of the packaging"* and that *"young people do not pay attention to risk information"*. See the Integrated Summary of the Dominican Republic's Submissions to the WTO Dispute Settlement Panel, March 2016. Last accessed via: [http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20\(EN\).pdf%20](http://mic.gob.do/media/22058/20160323%20-%20DOM%20Integrated%20Executive%20Summary%20(EN).pdf%20).

⁶⁸ See, for example at: <https://insightplus.mja.com.au/2018/19/time-for-a-new-approach-to-tobacco-control/> and <https://athra.org.au/legalising-vaping-will-improve-health-and-save-money-study-finds/>.

⁶⁹ Recent authoritative reports have estimated from the data available that the use of electronic cigarettes is likely to be significantly less harmful to health than combustible cigarettes. See, notably, the Public Health England report, published in March 2018, at: <https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review/evidence-review-of-e-cigarettes-and-heated-tobacco-products-2018-executive-summary>. See also the report by the Royal College of Physicians at: <https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report>, and more at: <http://www.mailonsunday.co.uk/wires/pa/article-5370063/Vape-shops-help-smokers-quit-study-finds.html>.

⁷⁰ See page 15 of the report by the Science and Technology Committee of the UK House of Commons, published in August 2018 and available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/505/505.pdf>. It reinforces Public Health England's findings that electronic cigarettes *"are substantially less harmful—by around 95%—than conventional cigarettes"* (page 7) and refers to the National Institute for Care and Excellence's recent guidance on e-cigarettes, which similarly states that *"although not completely risk free, e-cigarettes are comparatively less harmful than conventional cigarettes"* (page 8).

potential of electronic cigarettes in an Impact Statement that was published in January 2019: *“it is clear that vaping is significantly less harmful than smoking”*.⁷¹

6.9 In addition to reinforcing the existing youth access prevention measures,⁷² **the Government should also strengthen and expand its public information campaigns and tailored education initiatives** that remind people that smoking is a cause of serious diseases and that they can stop smoking if they are determined to do so.

6.10 Indeed, educational campaigns can be an efficient means to reduce smoking prevalence and promote quitting in Australia, as it is the case in other countries.

- I. The US Food and Drug Administration states that its education campaign helped prevent a large number of teenagers from smoking initiation in the USA.⁷³
- II. Tobacco sales have been declining in both Japan⁷⁴ and Germany⁷⁵ where the Governments implemented public information campaigns and tailored education initiatives and where alternatives to cigarettes (heated tobacco products and electronic cigarettes in particular) are available for smokers to choose from. As the Federal Drug Commissioner of Germany stated: *“The positive developments that we have achieved in the areas of alcohol and tobacco, for example, make it clear: it is worth the effort to develop prevention program aimed at specific groups and implement them over the longer term”*.⁷⁶

6.11 JTI would be happy to elaborate these proposals in more detail during Phase 2 of the Consultation and to provide information on how tobacco control legislation could be improved in Australia to benefit public health, based on our long-standing experience and in line with the Better Regulation principles that both JTI and the Australian Government support.

15 March 2019

⁷¹ See *“Impact Statement: Supporting smokers to switch to significantly less harmful alternatives”*, January 2019, page 7. Available at: <https://www.health.govt.nz/system/files/documents/pages/ris-support-smokers-to-switch-to-alternatives-jan-2019.pdf>.

⁷² States and Territories make it an offence to sell tobacco products to minors and prohibit proxy purchasing. In addition, vending machines are required to be located in areas not accessible to minors, and retailers *must “not allow”* minors to obtain a tobacco product from a vending machine.

⁷³ It is notable that in the first 2 years since its launch, an evaluation of the *“Real Cost”* campaign suggested that it had prevented nearly 350,000 teenagers from starting to smoke cigarettes. See more via: <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm617131.htm>.

⁷⁴ See *Euromonitor International*, sales volume data for Japan from 2003 to 2016. Indeed, a number of anti-smoking campaigns have been held, including the one initiated by the Japanese Ministry of Health: *“In addition, smoking cessation treatments have been covered by health insurance since April 2006 and the effect of that is to be evaluated”* (see via: <http://www.mhlw.go.jp/english/wp/wp-hw2/part2/p2c1s3.pdf>). In May 2006, a *“Manual on Smoking Cessation Support”* was compiled and distributed to promote even more effective support for people to stop smoking. In addition, the Japan Society for Tobacco Control has launched a number of anti-smoking campaigns, such as dispatching doctors and nurses to certain venues to persuade smokers to quit smoking as well as telephone counselling (see via: <http://www.jstc.or.jp/modules/activity/index.php>). It is also notable that Japanese Circulation Society holds a “no smoking day” on the 22nd of every month to promote its anti-smoking campaign (see via: http://www.j-circ.or.jp/topics/kinen_campaign1.htm).

⁷⁵ Germany has put in place a number of education programs. In her 2015 *“Drug and Addiction report”*, the Federal Drug Commissioner stated: *“The positive developments that we have achieved in the areas of alcohol and tobacco, for example, make it clear: it is worth the effort to develop prevention program aimed at specific groups and implement them over the longer term”*. *“The non-smoking trend in those aged 12 to 17 has continued. In 2014, according to the survey carried out by the Federal Centre for Health Education (BZgA), 10 percent of this group were smokers, representing the lowest recorded level since 1979.”* *“Since 2005, the Federal Centre for Health Education (BZgA) has offered adolescents and young adults a free, interactive online cessation programme to stop smoking as part of the “Smoke-Free” youth campaign. A total of about 12,500 participants have used the online cessation programme until 2015.”* *“There are probably very few prevention projects that have been running for as long as the competition for smoke-free school classes “Be Smart – Don’t Start”. Since the 1997/98 school year, it has been motivating young people throughout Germany to lead lives that are smoke-free. In the current school year a total of 7,560 school classes with approximately 200,000 pupils are registered “Be Smart – Don’t Start” has contributed to the fact that today significantly fewer adolescents smoke than ten years ago.”* See *“Drogen- und Suchtbericht der Bundesregierung 2015”*, available (in German) at: <https://www.bundesregierung.de/Content/Infomaterial/BMG/2827.html>.

⁷⁶ See Footnote 75 above.