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australian  
taxpayers'  
alliance  
fighting tax, regulation & waste

**To: Health Canada**

In the Matter of:  
**Tobacco Products Regulations (Plain and Standardized Appearance)**

Joint Comments of:

The Australian Taxpayers' Alliance (ATA) and MyChoice Australia (MC)

10 September 2018

**Introduction**

1. The ATA and MC thank Health Canada for the opportunity to provide the following comments on the above-mentioned proposal to amend tobacco control laws and regulations, with a focus on plain packaging.
2. The ATA is a grassroots not-for-profit public advocacy group with 75,000+ members across Australia. We stand for the principles of individual freedom and informed consumer choice. MC is our affiliate organisation which focuses on public health and consumer choice issues.
3. In 2012, Australia instituted world-first plain packaging laws for tobacco products. The Australian legislation shares the proposed Canadian regulations' objective of decreased tobacco consumption by reducing the attractiveness of tobacco products and increasing the effectiveness of existing health warnings which have existed in Australia since 2006. Like the proposed Canadian regulations, this was achieved by depriving private businesses of the ability to utilise branding and rights to their own intellectual property. Similar legislation has since been introduced and implemented in France and the United Kingdom (2017).

4. Restrictions on the use of a company's branding and intellectual property were justified on the basis that public health outcomes produced by the policy would outweigh these detriments.
5. It is our submission that evidence from the plain packaging experience of Australia, UK and France has overwhelmingly demonstrated that the laws are **ineffective in meeting their stated outcomes** with **evidence indicating that tobacco consumption in these countries has actually increased since their introduction, while contributing to the rise of the illicit tobacco black market which is already substantial in Canada**. In light of this evidence and review of the literature, the proposed regulations which abrogate the branding and intellectual property rights of private business cannot be justified from a public health or evidence-based policy standpoint.

### **Plain Packaging – Impact in Australia, UK and France**

#### **Australia**

6. The Australian government has claimed the following in relation to the impact of plain packaging: *“tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 and fell a further 7.9% in 2014. Tobacco clearances have fallen a total of 11.0% since 2012 when tobacco plain packaging was introduced...these growth rates do not take into account refunds of excise equivalent customs duty made under Customs' plain packaging related Tobacco Refund Scheme between December 2012 and May 2013. These refunds cannot be related to annual net clearances on a comparable basis to other data used to derive these growth rates.”*<sup>1</sup> While it is accurate to say that tobacco clearances in Australia fell between 2012 and 2013 by 3.4%, this does not point to the effectiveness of plain packaging or a reduction in tobacco consumption as plain packaging was introduced only in December 2012 and moreover, the figure of 3.4% is not adjusted for significant tax refunds which were paid by the Australian treasury in 2013 due to overpayment of tax on tobacco in 2012. Independent, peer-reviewed analysis by economist Professor Sinclair Davidson of RMIT University based on Australian government data instead confirms that *“when the 12-month period before December 2012 is compared to the 12-month period after December 2013, then tobacco clearances fell by*

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<sup>1</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>

0.8%. When we also take into account the double counting of excise/customs duty paid in 2012 and the refunds in 2013, it appears that **tobacco clearances increased by 0.5%** [over a 12-month timeframe after the introduction of plain packaging].”<sup>2</sup> The WTO panel’s decision at first instance is therefore erroneous as it is premised on the claim that plain packaging has achieved its objective of lowering tobacco consumption. The abovementioned data indicates that this is not the case.

7. The Australian government released its Post-Implementation Review of the plain packaging policy in February 2016. This review included an econometric analysis by Tasneem Chipty Ph.D (MIT) of the United States based Analysis Group, Inc.<sup>3</sup> The non-peer reviewed analysis estimated a 0.55% decline in the prevalence of smoking due to the effects of plain packaging, yet this falls under the sample error of the author’s data which is 0.6%. This analysis also used a narrow and unreliable tobacco consumer base of an unmarried, Australian-born male who is tertiary-qualified and full-time low-income earner living in the state of Victoria. These methodological flaws coupled with peer-reviewed analysis of the government data which arrives at a different conclusion and the fact that the analysis’s concluded figure falls under the margin of error, hence preclude its use to support the claim that plain packaging has achieved or is likely to achieve its stated public health objective of reducing smoking prevalence.
8. Furthermore, in relation to whether plain packaging has reduced the prevalence of smoking, the latest data from the Australian government confirms that whilst Australia has traditionally been regarded as a model example of tobacco control, the National Health Survey 2016 found that there had been no statistically significant decline in smoking prevalence since 2013. This despite exacerbation of the world’s strictest punitive tobacco regulations including plain packaging laws and significant increases to tobacco excise over this period. The statistically insignificant decline (from 12.8% to 12.2%) was the first to be recorded over a three-year timeframe in decades. By contrast, the UK and

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<sup>2</sup> Davidson, S. 2016c. [Submission to the Slovenian Restriction of the Use of Tobacco \(Products\) and Related Products Act Inquiry](#); Davidson, S. and A. de Silva. 2014. [The Plain Truth about Plain Packaging: An Econometric Analysis of the Australian 2011 Tobacco Plain Packaging Act](#). *Agenda: A Journal of Policy Analysis and Reform*. 21(1): 27 – 43.

<sup>3</sup> Tasneem Chipty, 2016, Study of the Impact of the Tobacco Plain Packaging Measure on Smoking Prevalence in Australia. In Post-Implementation Review: Tobacco Plain Packaging. [https://www.health.gov.au/internet/main/publishing.nsf/content/491CE0444F7B0A76CA257FBE00195BF3/\\$File/PIR%20of%20Tobacco%20Plain%20Packaging%20-%20with%20Addendum.docx](https://www.health.gov.au/internet/main/publishing.nsf/content/491CE0444F7B0A76CA257FBE00195BF3/$File/PIR%20of%20Tobacco%20Plain%20Packaging%20-%20with%20Addendum.docx)

USA which have traditionally experienced lower smoking cessation rates than Australia, have had significantly greater success despite the non-existence of plain packaging laws in these countries over the same period.

### Change in the number of adult daily smokers in Australia, 2010-2016

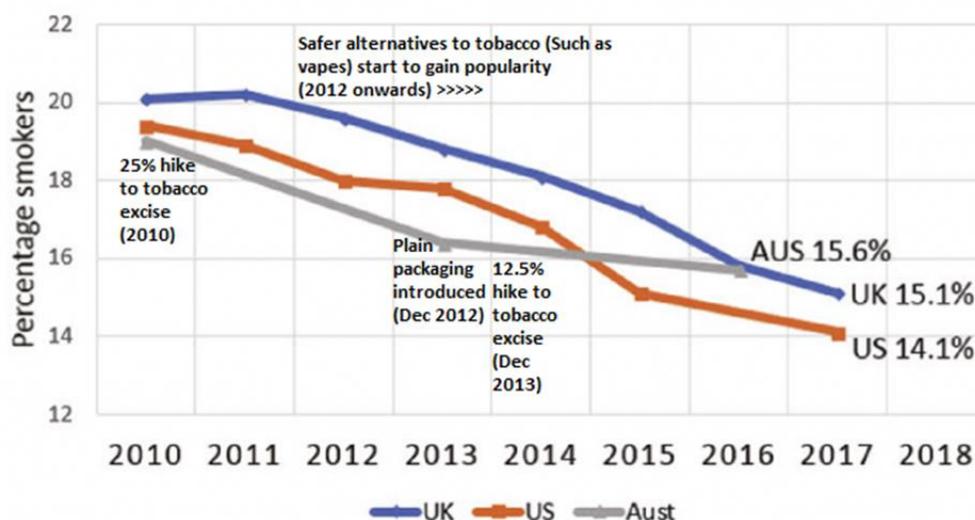
Ref	Daily smoking rates 18+	Population 18+ (ref 4)	Number of daily smokers 18+	Difference
1 2010	15.9%	16,972,406	2,698,613	
2 2013	13.3%	17,906,642	2,381,583	317,030 less than 2010
3 2016	12.8%	18,770,982	2,402,686	21,102 more than 2013

Note: The total number of smokers (ie all ages and daily + non-daily) in Australia is just under 3 million.

### References

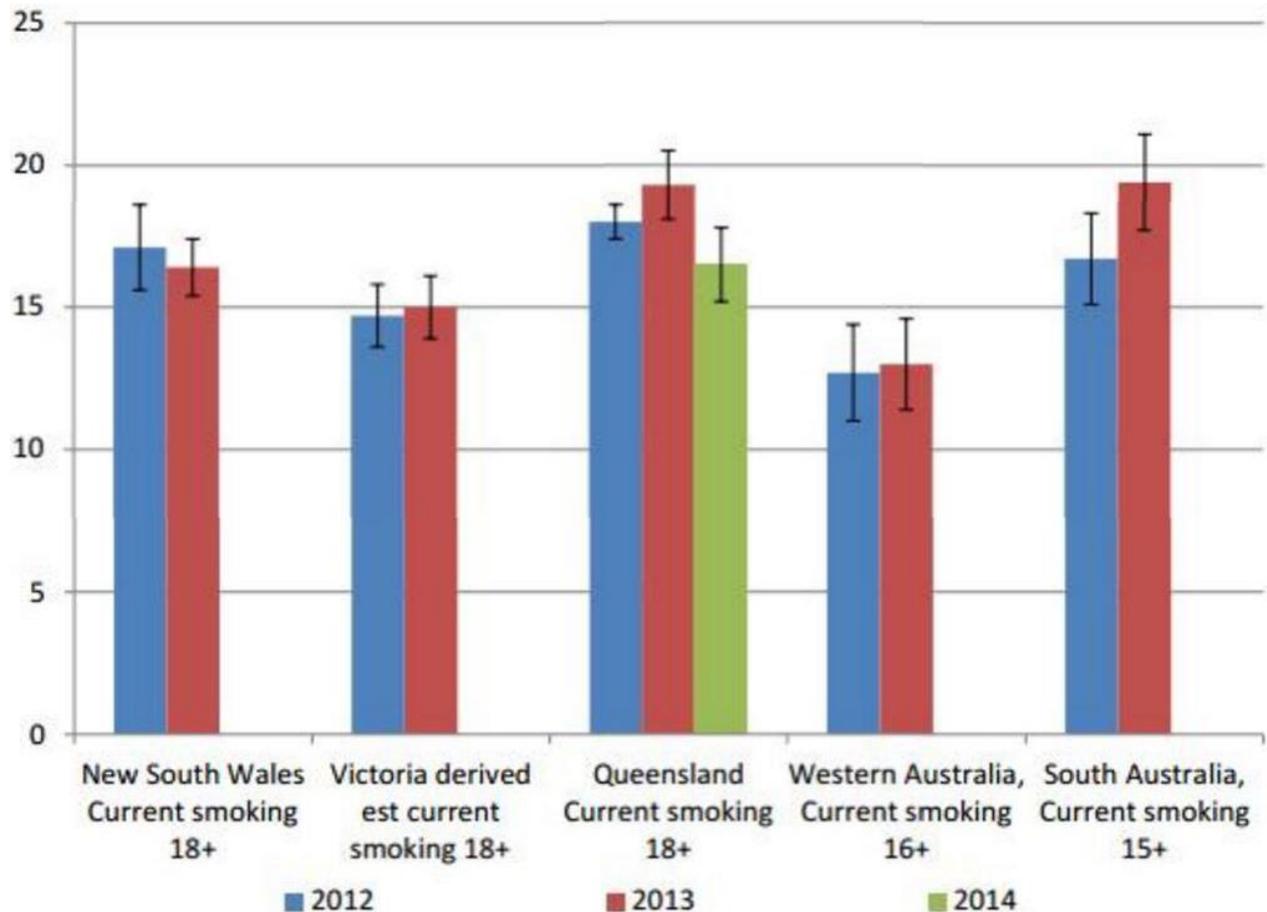
1. Australian Institute of Health and Welfare (2011), National Drug Strategy Household Survey 2010. Available at <http://www.aihw.gov.au/publication-detail/?id=32212254712&tab=3>. Supplementary table: [Proportion of adult daily smokers by jurisdiction, 1998 to 2010 \(33KB XLS\)](#)
2. Australian Institute of Health and Welfare (2014), National Drug Strategy Household Survey 2013, Table 2 -available at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548784>.
3. Australian Institute of Health and Welfare (2017), National Drug Strategy Household Survey 2016, Table 2 -available at: <http://www.aihw.gov.au/alc-hw-and-other-drugs/data-sources/ndshs-2016/data/>.

### UK, US, Australia 18y+ smoking rates, 2010-2017



Sources: UK. Annual Population Survey, Office of National Statistics; US. National Health Interview Survey, CDC National Centre for Statistics; Australia. National Drug Strategy Household Survey, Australian Institute of Health and Welfare

9. A factsheet from the Victorian Cancer Council premised upon Australian government data,<sup>4</sup> also indicates that smoking prevalence increased in four out of five of Australia's mainland states in 2013 compared to 2012.



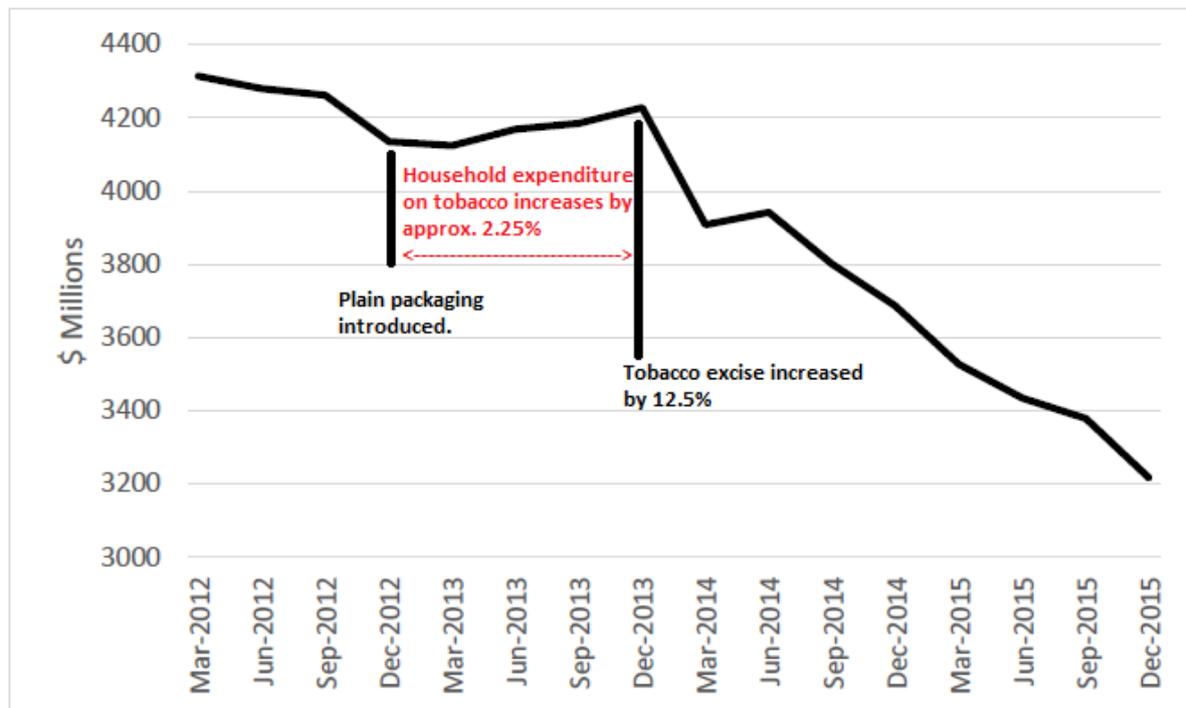
10. In relation to household tobacco expenditure, Professor Davidson notes the following based on the below Australian government data:<sup>5</sup> *“In December 2012 – the month plain packaging was introduced in Australia – household expenditure on tobacco products was \$4.134 billion. By December 2013 – exactly one year later and when the Australian government imposed a 12.5% increase in tobacco excise – **household expenditure on tobacco products had increased by some 2.25% to \$4.228 billion.** Following the increase*

<sup>4</sup> Victorian Cancer Council figure of smoking prevalence in Australian mainland states Source: Fact sheet no. 4: What is happening to the prevalence of smoking in Australia? (2015)

[http://www.cancervic.org.au/downloads/plainfacts/Facts\\_sheets/Facts\\_Sheet\\_no.4\\_PrevalenceMar16.pdf](http://www.cancervic.org.au/downloads/plainfacts/Facts_sheets/Facts_Sheet_no.4_PrevalenceMar16.pdf)

<sup>5</sup> Household Final Consumption Expenditure on Cigarettes and tobacco March 2012 – December 2015: Chain volume measure, seasonally adjusted. Source: Australian Bureau of Statistics (ABS) Cat. 5206.0 Table 8.

*in [tobacco] excise and changes to excise indexation and then also subsequent excise increases, household expenditure on tobacco resumed its long-term decline.”<sup>6</sup>*



The data shows that plain packaging has not only failed to reduce tobacco consumption and smoking prevalence, it is also highly unlikely to have contributed to the impact of increased tobacco excise in lowering tobacco consumption as household tobacco expenditure actually increased during the 12-month period following the introduction of plain packaging albeit prior to the introduction of the tobacco excise hike.

11. Contrary to claims that plain packaging regulations have enhanced the effectiveness of graphic health warnings, an Australian government-commissioned post-implementation review of plain packaging laws found that it was impossible to isolate the effectiveness of plain packaging laws from that of graphic warnings which have existed in Australia since 2006.<sup>7</sup> Survey data has shown that graphic health warnings on tobacco packets, which have existed in Australia since 2006, are regarded by consumers as unappealing.<sup>8</sup>

<sup>6</sup> Davidson, S. 2016c. [Submission to the Slovenian Restriction of the Use of Tobacco \(Products\) and Related Products Act Inquiry](#); Davidson, S. and A. de Silva. 2014. [The Plain Truth about Plain Packaging: An Econometric Analysis of the Australian 2011 Tobacco Plain Packaging Act](#). *Agenda: A Journal of Policy Analysis and Reform*. 21(1): 27 – 43.

<sup>7</sup>[https://www.health.gov.au/internet/main/publishing.nsf/content/491CE0444F7B0A76CA257FBE00195BF3/\\$File/PIR%20of%20Tobacco%20Plain%20Packaging%20-%20with%20Addendum.docx](https://www.health.gov.au/internet/main/publishing.nsf/content/491CE0444F7B0A76CA257FBE00195BF3/$File/PIR%20of%20Tobacco%20Plain%20Packaging%20-%20with%20Addendum.docx).

<sup>8</sup> Wakefield, Melanie, et al. "Australian adult smokers' responses to plain packaging with larger graphic health warnings 1 year after implementation: results from a national cross-sectional tracking survey." *Tobacco control* 24.Suppl 2 (2015): ii17-ii25.

However, an independent 2017 review of the study and data found that the effectiveness of graphic health warnings in deterring smoking did not increase since the introduction of plain packaging and that the combined effect of graphic health warnings and plain packaging did not contribute to an increase in actual smoking cessation attempts by consumers.<sup>9</sup>

**12. Plain packaging has increased the market share of cheaper tobacco:** The removal of tobacco branding destroys brand loyalty. The result is that competition based on price becomes the predominant factor driving consumer choice, thereby increasing the market share of cheaper tobacco and incentivising the production of cheaper tobacco. According to Australian industry monitor InfoView, the market share of deep discount and low price tobacco increased significantly since the introduction of plain packaging in December 2012, rising from 32% to 37% over 2013, while the market share of mid-price and premium tobacco diminished.<sup>10</sup> Australian Association of Convenience Stores spokesperson Jeff Rogut has noted that since the introduction of plain packaging, consumers have frequently asked store owners for the cheapest product available.<sup>11</sup>

### CIGARETTE MARKET SEGMENTS



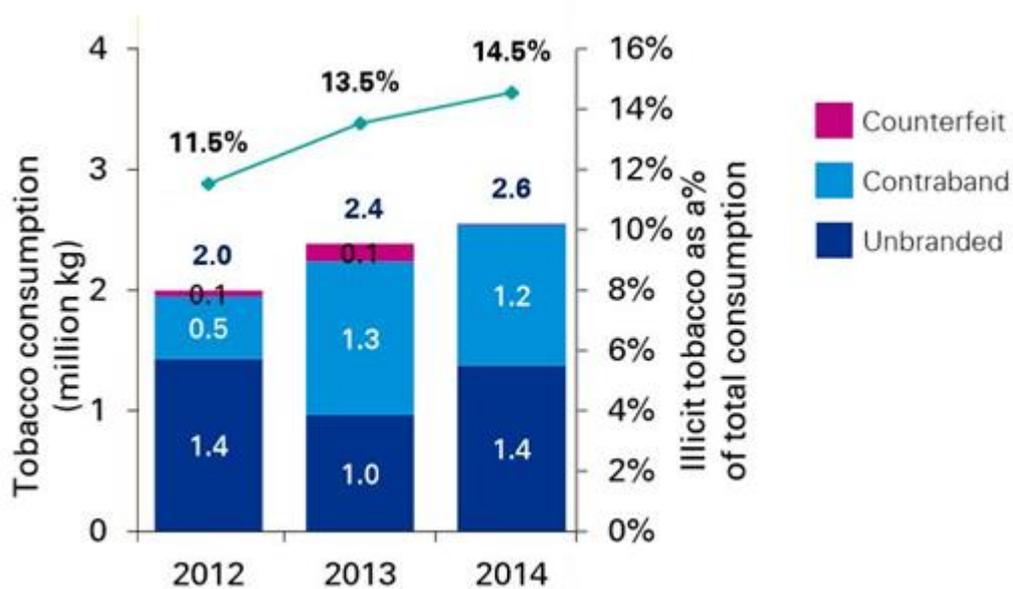
**13. Plain packaging has increased the size of Australia’s tobacco black market:** a report by international accounting firm KPMG has found that the market share of illicit tobacco

<sup>9</sup> Davidson, S. and A. de Silva. 2017. What the Government Demanded As Proof for Plain Packaging Efficacy: An Analysis the Public Health Lobby Did Not Perform. [SSRN Working Paper](#).

<sup>10</sup> Christian Kerr, “Labor’s plain packaging fails as cigarette sales rise” *The Australian* June 6, 2014 <http://www.theaustralian.com.au/national-affairs/labors-plain-packaging-fails-as-cigarette-sales-rise/news-story/78ee3d2608e1a01fbbb5fd4c22acafbc>

<sup>11</sup> Ibid.

in Australia rose sharply following the introduction of plain packaging laws in December 2012.<sup>12</sup> Since then, illegal tobacco sales have gone up by 30%. The black market in tobacco is now estimated to account for 15% of the total market – the country’s highest level on record. The absence of branding makes illicit products relatively less unattractive compared to legal products and ultimately contributes to this trend. The actual figure for the size of this market is likely to be even higher in light of recent evidence from the Australian Criminal Intelligence Commission (ACIC). ACIC found that compound levels of nicotine in population-wide samples of wastewater across all major Australian capital cities and tested regions in 2016-17, showed a rise which indicated increased consumption.<sup>13</sup>



The growth in the illicit tobacco market represents a significant loss in tax revenue for the government and contributes to the growth of other illicit enterprises.

**14. It is likely that a similar exacerbation of the black market will take place in Canada,** where contraband tobacco is already a billion dollar industry,<sup>14</sup> should the plain packaging restrictions pass. In Ontario province for example, it is estimated that one in three cigarettes sold are illegally sourced—often intended for First Nation reserves—selling for as little as \$8 for 200 cigarettes. A 2014 independent study in which

<sup>12</sup> [https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/05/australia\\_illicit\\_tobacco\\_report\\_2017.pdf](https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/05/australia_illicit_tobacco_report_2017.pdf)

<sup>13</sup> Jack The Insider “Smoke rises from a black hole” *The Australian* 21 March 2018. <https://www.theaustralian.com.au/opinion/smoke-rises-from-a-black-hole/news-story/513fd06176d2e785407dbf18a55293a5>

<sup>14</sup> <https://torontolife.com/city/ncact-sponsored-2/>

researchers collected and analysed butts from 130 sites Ontario-wide, including hospitals, high schools, office buildings and other public locations, found that a quarter of the cigarettes being smoked were illegal (licensed tobacco manufacturers use identifiable paper), with rates in some Northern Ontario cities in excess of 45%..<sup>15</sup> Cheaply available illicit tobacco is a serious threat to public health, costs governments billions of dollars in lost revenue annually, destroys jobs and often funds other, even more serious illicit enterprises such as drug trafficking and even terrorism.<sup>16</sup>

- 15. The regulations as they are currently contemplated have especially severe implications for growing the illicit tobacco market in Canada:** The specific regulations which are the subject of the current inquiry, differ from plain packaging regulations in Australia, the UK and France in that they only permit ‘slide and shell’ packs in the markets. These packs account for a substantial component of the illicit market, with a wider range of package formats across the legal market. It is submitted that applying this common format across legal and illegal products will eliminate product differentiation and hence have the perverse effect of pushing more smokers onto illicit products.

### **France**

16. France introduced its own plain packaging laws for tobacco products in 2017. French government data shows that tobacco consumption has **actually increased** since the laws came into effect. Data published by the French Observatory for Drugs and Addiction shows that one full year after the policy was implemented, tobacco products shipped to retailers remained broadly stable, with only a slight shift of -0.7% in volume, following a 1.3% increase in sales during the first half of the year.<sup>17</sup> French Health Minister Agnes Buzyn now explicitly concurs that plain packaging does not prevent individuals from smoking and therefore fails to achieve its stated public health objective.<sup>18</sup>

### **United Kingdom**

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<sup>15</sup> [http://ccentral.ca/wp-content/uploads/2014/02/OCSAConvenienceConnect\\_Jan2014\\_Issue1.pdf](http://ccentral.ca/wp-content/uploads/2014/02/OCSAConvenienceConnect_Jan2014_Issue1.pdf)

<sup>16</sup> <http://www.abc.net.au/news/2016-12-05/illegal-tobacco-trade-fuelling-drug-trafficking-and-terrorism/8075174>

<sup>17</sup> <https://www.ofdt.fr/ofdt/fr/tt171225.pdf>

<sup>18</sup> <http://www.assemblee-nationale.fr/15/crj/2017-2018/20180075.asp#P1117763>

17. A recent study (May 2018) examined the effectiveness of plain packaging in conjunction with EU Tobacco Packaging Directive 2 (which increases the size of graphic health warnings), and found that these have had no statistically significant impact on smoking prevalence or tobacco consumption in the UK since taking effect in 2016.<sup>19</sup>

18. Furthermore, the UK Tobacco Manufacturer's Association Smoking Toolkit Study shows that in 2017, there has been a slight increase in smoking rate after a long period of decline.<sup>20</sup> This has been confirmed by the UK Government's Office for National Statistics, which found that smoking.

### **Conclusion**

19. Plain packaging is a strategy of dubious effect that does not significantly impact tobacco cessation rates, does not make existing graphic warnings more effective, abrogates intellectual property rights and enhances the market share of cheap tobacco and black market tobacco products. The currently contemplated regulations which are the subject of this inquiry are likely to exacerbate Canada's existing illicit tobacco market to an even greater extent than the regulations already applied in Australia, the United Kingdom and France. The ATA and MC recommend that Health Canada consider the above-mentioned evidence from Australia by comparison to other nations and decline to pass the contemplated plain packaging regulations.



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Executive Director – Australian Taxpayers' Alliance

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<sup>19</sup> TPD2 and standardized tobacco packaging – What impacts have they had so far?", *Europe Economics*, May 2018: [http://www.europe-economics.com/publications/tpd2\\_and\\_standardised\\_tobacco\\_packaging\\_may\\_2018.pdf](http://www.europe-economics.com/publications/tpd2_and_standardised_tobacco_packaging_may_2018.pdf)

<sup>20</sup> <http://the-tma.org.uk/2018/05/14/plain-packaging-failing-one-year-after-full-introduction/>