



Australian Government

**Department of Immigration
and Border Protection**

Inquiry into illicit tobacco

Parliamentary Joint Committee on Law Enforcement

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Introduction

The Department of Immigration and Border Protection (the Department), including its operational arm, the Australian Border Force (ABF), is responsible for detecting, deterring and disrupting the illicit trade of tobacco before the border, at the border and in the post-border environment. The Department also manages the flow of legitimate tobacco trade across the Australian border and collects customs duty and taxes on imported tobacco products.

Combatting the importation of illicit tobacco is a key operational priority for the Department, particularly given the involvement of serious and organised crime groups. The Department is committed to combatting tobacco smuggling in partnership with government, law enforcement and international partners. We also work with the tobacco industry, obtaining information from them to assist us to target illicit importations.

We play an important role in whole-of-government activity by leading operational and regulatory initiatives to tackle the illicit tobacco trade, managing the tobacco excise equivalent goods regime in partnership with the Australian Taxation Office (ATO), and contributing to national health outcomes.

Portfolio Submission

Impact of the illicit tobacco trade

The illicit trade in tobacco products in Australia significantly affects government, industry, healthcare and the economy, as it:

- causes loss of Commonwealth revenue;
- acts as a funding source for serious and organised crime;
- undermines tobacco prevention and control initiatives of the Australian Government by increasing the accessibility and affordability of tobacco products, particularly where these do not meet plain packaging, graphic image and health warning requirements.

The Australian Government increased excise rates for tobacco by 12.5 per cent on 1 December 2013, 1 September 2014 and 1 September 2015 as part of its tobacco control strategy, with a further 12.5 per cent increase to occur on 1 September 2016. Excise increases may impact on the size of the illicit trade in tobacco; as legitimate tobacco becomes less affordable, this could result in an increase in potential profits to be made through the illicit trade.

The size of the illicit tobacco market in Australia is unknown. Estimates vary considerably; data from the *National Drug Strategy Household Survey* indicates the illicit market comprises approximately three per cent of the overall market, while the most recent *Illicit Tobacco in Australia* report (dated 9 October 2015) produced by KPMG LLP and commissioned by the tobacco industry indicates the illicit market comprises 14.3 per cent of the overall market.

The Department has assessed recent and previous KPMG LLP reports commissioned by industry into illicit tobacco and considers the findings unreliable due to a number of methodological shortcomings. These include unrepresentative sample sizes, restrictive survey measures and drawing upon unreliable secondary sources to validate the results.

The Department is considering alternative models to estimate the size of the illicit tobacco market. The Department is also working with the ATO in relation to similar work that it is undertaking.

The illicit tobacco environment

The nature of the illicit tobacco environment is a matter for the Department of Health; however, the Department's experience in relation to illicit tobacco may provide context.

The Department's investigations suggest that sales of illicit tobacco follow similar distribution and sales patterns as duty-paid tobacco, and that illicit tobacco is available from a number of traditional tobacconists and tobacco retailers. In our experience, illicit tobacco is usually concealed under the counter or in a paper bag, indicating that retailers make a conscious choice to purchase and then sell illicit tobacco and that illicit tobacco smokers make a similarly conscious choice to purchase illicit tobacco.

The Department's experience indicates there are three types of offenders: organised criminal groups that use established smuggling mechanisms to trade in a range of illicit commodities; commercial enterprises that engage in the import and trade of illicit tobacco; and opportunists who smuggle tobacco primarily for personal use. The Department's experience also indicates that there are people engaged in the legitimate tobacco supply chain who facilitate the illicit trade in tobacco, such as customs brokerage companies and freight forwarding firms.

The Department has some evidence to suggest that illicit tobacco is more prevalent in regional centres than metropolitan environments. Illicit tobacco also appears to be more prevalent in Middle Eastern and South East Asian communities; there are criminal groups that specifically cater to these parts of the illicit tobacco market.

In 2014-15, tobacco and cigarette detections through the sea cargo environment continued to account for the majority of tobacco detected by weight. However, the Department is seeing increased activity in undeclared small consignments through the passenger, air cargo and international mail streams, which indicates a shift in smuggling methodology. Strategies are in place and continually assessed to address the shifting smuggling methodologies.

The Department's role and approach to illicit tobacco

Our role

The Department shares responsibility for illicit tobacco at the Commonwealth level with the ATO, which is responsible for illicit tobacco produced and/or manufactured domestically. Other Commonwealth stakeholders include the Treasury, the Attorney-General's Department, the Australian Federal Police, the Australian Crime Commission and the Australian Competition and Consumer Commission. The Department of Health is the policy lead for tobacco control more generally at a Commonwealth level. States and territories regulate tobacco sold at retail outlets in their various jurisdictions.

The Department has established an interdepartmental committee (IDC) to endorse, drive and coordinate the delivery of a whole-of-government forward work agenda, which contributes to tackling the illicit trade in tobacco. The IDC consults with state and territory authorities as necessary.

Over the past twelve months, the Department has increasingly worked with industry to combat illicit tobacco. In particular, the ABF engages closely with the tobacco industry on operational matters; referrals from industry have resulted in a number of significant detections and seizures.

Our approach

The Department applies an intelligence-led model and pursues a holistic view of risk, to enable us to identify and respond to threats and opportunities in the illicit tobacco trade before the border, at the border and in the post-border environment. We leverage domestic and international law enforcement capabilities across the border continuum to detect, deter and disrupt the trade in illicit tobacco through coordinated and sustained law enforcement action.

The Department works with domestic and international partners in law enforcement and policy to safeguard and streamline the legitimate tobacco trade, disrupt illicit activity offshore and develop global responses to this transnational crime.

There is a range of options available to the Department when dealing with imported illicit tobacco. These include pursuing prosecutions for smuggling offences and imposing administrative penalties. The course of action taken is determined by the particular circumstances of the individual case.

Tobacco detected at the border may also be counterfeit. The ABF may seize goods that infringe the import provisions under the *Copyright Act 1968* and the *Trade Marks Act 1995* in certain circumstances; however, the ABF is more likely to seize tobacco for revenue evasion.

The ABF has made only one detection of counterfeit plain packaged tobacco at the border since the introduction of plain packaging legislation. The ABF has seen no discernible impact on the illicit tobacco trade as a result of the introduction of plain packaging.

There are a number of domestic controls that apply to tobacco at the point of sale, including plain packaging, health warnings and safety requirements, which importers are not required to comply with at the border. The Department is considering reform measures to address this inconsistency as part of the whole-of-government forward work agenda on illicit tobacco.

Illicit tobacco operations

During 2014-15, there were 91 detections of illicit tobacco in the sea cargo environment, comprising 150 tonnes of loose-leaf tobacco (including molasses tobacco) and 40 million sticks, with a total estimated revenue evasion of \$103 million. One of the most significant detections took place in June 2015, when Operation Wardite resulted in the ABF intercepting 71 tonnes of loose leaf tobacco; 47 tonnes in two containers intercepted in Sydney, and another 24 tonnes seized in Indonesia. This operation alone, which demonstrates the ABF's close working relationship with Indonesian authorities, prevented the evasion of over \$27 million in revenue.

In the first six months of 2015-16, there have been 43 detections of illicit tobacco in the sea cargo environment, comprising 16 tonnes of loose-leaf tobacco (including molasses tobacco) and 31 million sticks (equivalent to an additional 24 tonnes of tobacco), with a total estimated revenue evasion of \$26 million.

These figures do not include tobacco detected in the air cargo, international mail or traveller streams, although there have already been a number of significant seizures in these streams this financial year:

- In July 2015, the ABF seized 1.92 million cigarettes and made two arrests after executing a number of warrants on residential properties, storage facilities and a licenced customs brokerage across Melbourne's western and northern suburbs, with the assistance of the Australian Federal Police. The cigarettes had been removed from an air freight container located in a licenced warehouse, and represented over \$1 million in revenue.

- In August 2015, the ABF intercepted an air freight consignment of 10 tonnes of tobacco, comprising 5.9 million cigarettes, which had been organised by a criminal syndicate in Melbourne's western suburbs. Had it been successful, the importation would have resulted in an alleged evasion of \$2.7 million in revenue.
- In October 2015, ABF officers together with biosecurity officers from the Department of Agriculture and Water Resources, discovered 46,000 undeclared cigarettes in two bags belonging to a traveller on a flight from China. The total duty payable on the cigarettes amounted to more than \$28,000.

The Department is developing a better system for the reporting of tobacco detection information to report on tobacco statistics in these streams.

In 2015, the Department established an intelligence unit to provide an improved understanding of the illicit tobacco market and the syndicates involved in tobacco smuggling activities. This unit develops a wide range of tobacco-specific intelligence products, which provide a focused and informed view of the environment, and the scope and the extent of the illicit tobacco threat. These products support and contribute to operational activities, identifying opportunities to intervene in the illicit trade of tobacco through Departmental operations as well as in joint responses with our law enforcement partners.

The ABF also established the Tobacco Strike Team in October 2015 to target serious organised crime syndicates and other commercial enterprises that are exploiting the border to make significant profits from illicit goods including tobacco.

The Tobacco Strike Team aims to:

- Gather and use intelligence from a range of sources to identify and investigate major targets;
- Coordinate national efforts in the disruption and investigation of illicit tobacco, including with partner domestic law enforcement agencies;
- Work with global law enforcement partners, including in key overseas countries where illicit tobacco is manufactured or through which illicit tobacco travels on its way to Australia, to prevent the flow of illicit tobacco; and
- Seize the proceeds of trade in illicit tobacco.

Existing waterfront taskforces have also been involved in the disruption of organised crime groups engaged in the illicit tobacco trade. In September 2015, a Polaris Joint Waterfront Taskforce operation resulted in the arrest of 18 people involved in an alleged large-scale illicit tobacco importation using corrupt industry officials involved in customs brokerage, freight forwarding and the Sydney waterfront. Members of the criminal syndicate responsible for the importation were also involved in the supply of commercial quantities of cocaine.

A tobacco detector dog capability was trialled in Melbourne during early 2015. The trial produced a number of positive outcomes supporting the ongoing viability of this capability into the future. Additional tobacco detector dog capabilities will be established in early 2016 as a result of the successful trial.

Illicit tobacco reform

The Department's ability to investigate and prosecute illicit tobacco offences is restricted by a number of issues with existing legislation.

One issue relates to the range of law enforcement powers that can be used by the ABF, which differs from those available to other law enforcement agencies. There have been a number of very successful joint operations that have relied on the ABF's powers as well as those of its

partner agencies. It is not, however, always possible for these agencies to provide their assistance; the application of partner agency resources to tobacco smuggling can often be overtaken by higher priorities, particularly if a case has no nexus between tobacco and serious and organised crime.

There are also inconsistencies between border regulations and domestic requirements, as noted above; tobacco must comply with requirements including plain packaging, health warnings and safety requirements at point of sale but not at the border.

In the post-border environment, there are issues resulting from the existence of two separate legislative schemes for illicit tobacco, under the *Customs Act 1901* and the *Excise Act 1901*. Illicit tobacco offences can only be successfully prosecuted if the illicit tobacco can be proved to be either imported or produced domestically; this is simple at the border, but can be difficult in the post-border environment. There are also inconsistencies between the two legislative schemes.

The Department is developing a number of reform activities to address these issues. Many of these reform activities will be progressed through the Department-led, whole-of-government IDC. The Department has also established an Illicit Tobacco Industry Advisory Group to work with industry more broadly on combatting illicit tobacco.