



British American Tobacco Australia Limited's
submission to the Parliamentary Joint Committee on
Law Enforcement Inquiry into illicit tobacco

November 2019

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1. Executive summary

British American Tobacco Australia Limited (BATA) welcomes the opportunity to make an additional submission to the Parliamentary Joint Committee on Law Enforcement (“the Committee”) inquiry into illicit tobacco. BATA acknowledges and commends the recognition by the Parliament of the need to disrupt the smuggling and distribution of illicit tobacco in Australia, including the additional funding that has been allocated as part of the black economy package into combating illicit tobacco. The recently enacted reforms, including prohibiting the importation of specified tobacco products without a permit and the immediate destruction of illicit tobacco are welcomed and will help recapture the estimated \$2 billion¹ in lost tobacco excise revenue by the Commonwealth each year.

1.1 Detailed response to terms of reference

BATA has provided submissions to this inquiry in the past and was privileged to attend a hearing of the Committee previously. In our previous submission, detailed responses to the Committee terms of reference were provided. This submission supplements BATA’s previous submission, providing updates and new information rather than specifically addressing the Terms of Reference.

1.2 Illicit tobacco consumption over 14%

Despite the ongoing success of the Illicit Tobacco Task Force (ITTF) and Australian Border Force (ABF) illicit tobacco continues to be a significant problem. Estimated at 14.1%² of total tobacco consumption, illicit tobacco deprives government of excise revenue estimated at \$2.02 billion per annum, inhibits the effectiveness of public health policies, funds organised crime and negatively impacts small businesses.

However, recent analysis suggests that illicit tobacco is increasing, particularly in major capital cities. A comprehensive approach by government at both a state and federal level is required to manage the drivers of illicit tobacco in Australia.

1.3 Recent legislative change

The Federal Government as part of the 2018-19 Budget introduced several key reforms to address illicit tobacco in Australia. These reforms included collecting tobacco duties and taxes at the border, abolishing licensed warehouses and requiring importers of tobacco to hold a valid import permit. Additionally, the Government created a multi – agency ITTF coordinating multiple agencies working cooperatively to address illicit tobacco.

These changes along with legislative reforms such as the *Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018*, *Customs Amendment (Illicit Tobacco Offences) Act 2018* and the *Customs Amendment (Immediate Destruction of Illicit Tobacco) Act 2019* have helped address the importation of illicit tobacco into Australia. However, without states and territories working with the Federal Government to address the retail availability of illicit tobacco these reforms risk being undermined.

¹ KPMG ‘Illicit Tobacco in Australia’ (2018) Report

² Ibid

1.4 Ongoing cooperation by industry and consistency of application of WHO FCTC Article 5.3

In the ongoing engagement and cooperation with government agencies on illicit tobacco matters, many government agencies refer to Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control. BATA notes that Article 5.3 does not prohibit the tobacco industry transparently engaging with government. Rather, it is aimed at protecting public health policies when it comes to tobacco control from the vested interests of the tobacco industry. When it comes to combating illicit tobacco, the interests of industry and government are in fact aligned. That is, BATA and the government have the same objective of reducing the availability and supply of illicit tobacco to consumers.

1.5 Development of a national anti-illicit tobacco strategy

BATA recommends the Committee consider the merits of developing a national anti-illicit tobacco strategy for Australia. Such a strategy could clearly set out the government's priorities, provide clarity to agencies and set out a road-map for achieving desired policy outcomes. In addition, the strategy could be an engagement tool to educate businesses and the community and reduce the acceptance of illicit tobacco.

A national strategy would create alignment across agencies, in particular State and Territory agencies with Commonwealth agencies, to ensure that illicit activities are dealt with in a consistent manner.

2. The nature and prevalence of illicit tobacco in Australia

2.1 Industry estimates

BATA commends the ongoing work of law enforcement agencies to combat illicit tobacco. Unfortunately, despite increased seizures, the illicit tobacco trade appears to remain in growth.

As outlined in our previous submission, by market share, the illicit tobacco "industry" is the fourth largest competitor in the Australian tobacco market. The KPMG *'Illicit Tobacco in Australia'* 2018 Full Year Report (KPMG) estimates that illicit tobacco comprises 14.1% of total tobacco consumption. The full year outcome indicates a marginal decline of 0.9%, which could have been driven by the success of the ITTF that was formed in the second half of 2018. However, the illicit market continues to represent a \$2.02 billion annual loss in excise revenue for the Australian government.³

Despite this decline, it appears that ongoing 12.5% per annum tobacco excise increases and the profit margins which they offer criminals are proving an ongoing boost to the illicit tobacco market. One shipping container of cigarettes, filled for as little as \$200,000, can very quickly be turned into over \$6 million in street value by evading excise.⁴

³ KPMG LLP, *'Illicit Tobacco in Australia'* (2018). 2018 Full Year Report, page 6.

⁴ One 40ft shipping container can transport 400,000 packets of contraband cigarettes. The current average retail price for a packet of contraband cigarettes is \$17.00 yielding a street value of \$6.8mn for a single container

Analysis of the illicit tobacco market undertaken in quarter two 2019 has highlighted increases at levels well above 2017-18. If this trend continues, the illicit tobacco rate in Australia is likely to increase to levels well above 15%.

A recent trend (presumably in response to container seizures and crop destructions) is an increase in tobacco smuggled through the mail system.

A scan of online marketplace websites demonstrate that criminals are seeking out a whole new avenue to sell illicit tobacco.

2.2 Observations of law enforcement activity and reporting

BATA's observations of ongoing increases in illicit tobacco levels appear to align with what law enforcement agencies are observing.

The ongoing focus on illicit tobacco by the Federal Government is demonstrated by the number of illicit tobacco detections by the ABF who in 2018–19 made a total of 286,663 detections of illicit tobacco, with an equivalent weight of 633.18 tonnes. This is a significant increase from 432.9 equivalent tonnes in 2017–18; representing \$670.46 million in evaded duty. This increase is due to the excellent work of enforcement agencies, but also highlights the ongoing lucrative market that exists for tobacco products in a market like Australia.

Recent media reports show that the Department of Home Affairs in 2018-19 detected over 260 thousand parcels containing illicit tobacco in the international mail stream, a significant increase from previous years.

It is worth noting that this figure is higher than the ATO's tobacco tax gap which estimated that in the 2017–18 financial year, illicit tobacco cost the Australian community approximately \$647 million in lost excise revenue.

3. The involvement of organised crime in illicit tobacco in Australia

Tobacco is one of the most smuggled legal products in the world, and tobacco smuggling is a form of transnational organised crime. The illicit trade in tobacco, including cigarettes, has been linked to the financing of terrorist organisations⁵. In most cases, smugglers deal in tobacco and other illegal commodities or activities, such as drugs, weapons, money laundering and counterfeit goods.

The involvement of organised crime in the illicit tobacco trade has been well documented, including recently by Australian Border Force Commissioner Mr Michael Outram who said at a recent Senate Estimates hearing,

“What we're seeing is that the organised criminal groups who have sometimes been involved in the trafficking of other illicit commodities, some are now focusing on just tobacco. They are retargeting Australia from a number of other countries in order to get their tobacco through the border.”⁶

⁵ ACIC, Media release, 22 May 2019, <https://www.acic.gov.au/media-centre/joint-media-releases/organised-criminal-syndicate-dismantled-terrorism-investigation-squad>

⁶ Senate Legal and Constitutional Affairs Legislation Committee, Monday 21 October 2019.

Following the February 2019 seizure of 12 tonnes of illicit tobacco in Sydney ABF Regional Investigations NSW A/g Superintendent John Fleming said:

“Individuals must realise that when they buy a packet of illegal cigarettes, they are supporting a market dominated by criminal syndicates who use the profits from illicit tobacco to fund other illegal activities⁷.”

As recently as November 2019 a former Sydney real estate agent faced sentencing after pleading guilty to conspiring to smuggle millions of cigarettes and tobacco and an 800kg shipment of MDMA into Australia⁸. This again demonstrates the links between organised crime and those involved in illicit tobacco.

4. The effectiveness of state and territory legislation

The comprehensive reforms made by the Federal Parliament and increased enforcement risk being undermined unless there is a coordinated national tobacco control strategy.

This was highlighted at a recent Senate Estimates hearing where Ms Mandy Newton, Deputy Commissioner, Operations, Australian Border Force stated:

“We always work with the states and territories in regard to particularly illicit activity that flows between the border as well as a state and territory jurisdiction. But, like every organisation, each of the local jurisdictions have limitations on their capability, and it's a decision for the states and territories as to how much effort they can put into local small shops that might be selling illicit tobacco.⁹”

5. Excise policy

The growth of illicit tobacco in Australia is, in large part, driven by substantial punitive excise increases. In 2010, tobacco excise was increased by 25% and since 2013 Australian smokers have been subjected to 12.5% increase every year. A cumulative effect of 357% excise increase since 2010 and a corresponding growth in the illicit tobacco market of 154%.

Despite these continued excise increases Australia's smoking rate has not fallen significantly in recent years. *“In 2017-18, just under one in seven (13.8%) or 2.6 million adults were daily smokers... “Over recent years however, the daily smoking rate remained relatively similar (14.5% in 2014-15)¹⁰”.*

6. Undermining Australian tobacco control laws

The Australian Government's Black Economy Taskforce noted that *“As well as causing revenue loss, the wide availability of illicit tobacco has adverse public health effects. Illicit tobacco undermines the disincentive of pricing measures and is more easily accessible for underage users (who are sometimes able to buy single cigarettes). Plain packaging rules may be bypassed, as branded cigarette packs are*

⁷ <https://newsroom.abf.gov.au/releases/280afdce-f927-49b0-a8b3-60f48cbbec2c>

⁸ Sunday Telegraph, November 22 2019, <https://www.dailytelegraph.com.au/news/nsw/ryan-watsford-claims-michael-ibrahim-directed-him-to-smuggle-drugs/news-story/c8fd5497b3cf9025fb1f752751885838?btr=e0d8cc41e4af54498dac84fbc2f1a021>

⁹ Senate Legal and Constitutional Affairs Legislation Committee, Monday 21 October 2019

¹⁰ ABS National Health Survey: First Results, 2017-18, 4364.0.55.001, released 07/02/2019

sold. Further, while all cigarettes cause serious health problems, illicit tobacco can be even worse as it may be produced in unhygienic conditions and, if not properly dried, will be mouldy and can lead to complicated fungal and other lung infections.¹¹

7. Emerging illicit liquid nicotine market

In addition to illicit tobacco, a new and emerging illegal category is developing in nicotine vaping as a result of the current ban on nicotine e-liquids.

An opportunity exists for this inquiry to address the growing black market that exists in Australia for nicotine vapor devices and electronic cigarettes containing nicotine before Australia faces another illegal market.

BATA believes that the opportunity also exists for the PJCLE to seek involvement in these inquiries to best understand how these innovative products could stem the flow of consumers to the tobacco black market.

8. A comprehensive package of solutions addressing illicit tobacco

BATA has highlighted in our previous submission to this inquiry the advantages of a national anti-illicit tobacco strategy for Australia and submit that this should again be a key priority for the Government to address illicit tobacco in Australia.

This national anti-illicit tobacco strategy for Australia the Government should deliver a comprehensive approach to managing all drivers of illicit tobacco, including working with state and territory governments. Such an approach must take into consideration recent regulatory initiatives such as punitive tax increases and plain packaging of tobacco products which provide opportunities for criminal organisations to supply the growing consumer demand for illicit tobacco.

BATA submits that the Committee should consider the harmonisation of State and Territory legislative provisions to address illicit tobacco. A review of State and Territory provisions could be undertaken under a Council of Australian Governments process or similar.

Enhancing State and Territory legislative provisions would clarify the role of State agencies to respond to illicit tobacco, particularly where it exists at a retail level. Furthermore, the federal government should call on all jurisdictions to provide police with powers to investigate and seize illicit tobacco.

A further opportunity also exists for the Federal Government, through the ITTF to provide education and resources, where appropriate to manage illicit tobacco. Given the financial losses that the Commonwealth suffers as a result of illicit tobacco, the Government could consider an incentive scheme to encourage State and Territory Governments to address illicit tobacco at a retail level.

BATA recommends that the Government work with the legitimate industry to progress a formal information sharing process where retailers, manufacturers and the Australian public can provide meaningful information to a single law enforcement point of contact.

¹¹ Black Economy Taskforce, Final Report – October 2017

The profitable nature of illicit tobacco means that these illegal supply chains are becoming more agile. The rapid shift to mail smuggling indicates the adaptability and boldness of these operators. Mandate must be given to law enforcement to rapidly respond, upweighting resources in the mail centre and introducing of scanning technologies to drastically increase the number of parcels captured.

Where illicit tobacco does enter Australia there is an opportunity for the Federal Government to work with operators of Australian based websites to remove illicit tobacco listings and shutting down those exclusively selling illicit tobacco.

There is an opportunity for Australian Government Officials to work co-operatively with regional counterparts from known source markets of illicit tobacco. This regional cooperation allows the sharing of intelligence to intercept and seize illicit tobacco at the Australian border.

Finally, BATA remains of the view that the ITTF has proven to be a valuable weapon in addressing illicit tobacco in Australia and should be given additional and ongoing funding to help recoup the estimated \$2 billion in lost in excise revenue each year.

9. Conclusion

BATA appreciates this opportunity to contribute to the Parliamentary Joint Committee on Law Enforcement inquiry into illicit tobacco and would be happy to engage in further discussion on the issues in this submission as the inquiry begins to formulate its conclusions.

While the efforts of the Federal Government have been commendable to date, the agile and adaptive nature of those involved in illicit tobacco means that unless there is a whole of Government approach the Commonwealth will continue to be deprived of revenue and organised crime syndicates will continue to profit.

Continued focus and resourcing, not just at a Federal level, but across States and Territories is needed to ensure that emerging markets for tobacco are shut down and those involved are prosecuted and prevented from operating in Australia.

BATA welcomes any opportunity to discuss the suggestions outlined in our submission further.