



Submission from Cancer Council Australia

Parliamentary Joint Committee on Law Enforcement - Inquiry into Illicit Tobacco

April 2017

Summary of response to terms of reference

This submission provides comment on term of reference 'a' of the Inquiry into Illicit Tobacco, with particular reference to the prevalence of illicit tobacco in Australia and the factors which affect prevalence.

Cancer Council Australia supports evidence-based measures to control and minimise illicit tobacco in Australia. On that basis, we recommend that a high degree of caution be exercised when considering the estimate provided by KPMG in its 2015 report (and earlier reports) commissioned by the tobacco industry, regarding the size of the illicit tobacco market in Australia. As outlined in this submission, the tobacco industry, and companies engaged by the industry to analyse industry data, have a long history of publishing erroneous, exaggerated and misleading claims (underpinned by disclaimers) broadly relating to public health interventions such as tobacco excise which are shown by strong evidence to reduce overall tobacco consumption and, thereby, industry profits.

Cancer Council Australia is also concerned that during the hearing which took place before the Committee on 22 March 2017, there was some suggestion by the tobacco industry that increases in tobacco excise in Australia may result in an increase in the size of Australia's illicit tobacco market. Based on the available evidence, it is Cancer Council Australia's firm view that illicit trade in tobacco is not directly related to increases in tobacco excise. Increasing the excise on tobacco is the single most effective method available for reducing the prevalence of smoking. Cancer Council Australia urges the Committee to support annual significant increases in tobacco excise as a key tobacco control measure.

1.0 Introduction

Cancer Council Australia welcomes the opportunity to provide a submission to the Joint Committee on Law Enforcement ('the Committee') Inquiry into Illicit Tobacco.

Specifically, we provide comment on term of reference 'a' of the inquiry, with particular reference to the prevalence of illicit tobacco use in Australia (and the factors which affect prevalence).

2.0 Prevalence of illicit tobacco use in Australia

Enforcement of Australia's illicit tobacco laws is critical to reducing the prevalence of smoking in Australia, as it ensures that smokers remain in the legal tobacco market and are therefore subject to the full range of Australia's world-leading tobacco control efforts (including price measures, graphic health warnings and plain packaging). For these reasons, illicit tobacco use is an important public health issue, and we commend the ongoing work of Australia's law enforcement agencies in combating the use, manufacture, distribution and domestic cultivation of illicit tobacco.

As with all public policy issues, decisions regarding illicit tobacco should be made on the basis of evidence or, where evidence is unclear, consensus among independent experts and authorities who have no commercial stake in an outcome. We therefore take this opportunity to address claims made to this inquiry by the tobacco industry which are not supported by evidence from independent parties.

In particular, we note that in giving evidence before the Committee, the tobacco industry has relied heavily on data contained in the 2015 Full Year Report prepared by KPMG LLP, titled *Illicit Tobacco in Australia* ('the KPMG report')¹. Based on the KPMG report, the industry asserts that illicit tobacco represented 14% of Australia's total tobacco consumption in 2015. Cancer Council Australia strongly disputes the accuracy of this estimate.

A detailed explanation of the reasons why we consider this estimate to be inaccurate is attached (see 'Appendix 1').² Cancer Council Australia calls on the Committee to take this information into account when reaching any conclusions regarding the prevalence of illicit tobacco use in Australia.

As the Committee is aware, the estimate provided in the KPMG report significantly differs from data collected by the Australian Institute of Health and Welfare ('the AIHW') as part of the National Drug Strategy Household Survey.³ When considering the accuracy of the KPMG report, it is also important to note that estimates provided by previous KPMG reports commissioned by the industry have been dramatically inconsistent with a number of other studies regarding the prevalence of illicit tobacco use in Australia.

¹ Illicit tobacco in Australia: 2015 Full Year Report, KPMG, London 15 April 2016, <https://home.kpmg.com/content/dam/kpmg/pdf/2016/04/australia-illicit-tobacco-2015.pdf>

²Please note: the enclosed document refers to an earlier KPMG report (dated 30 March 2015 and covering the full year relating to 2014). However, the estimates provided in the 2016 report relating to the full year for 2015 are based on the same methodology as the estimates contained in the earlier report. The limitations identified in the attached document therefore apply equally to the 2016 report.

³See Winstanley MH. 'The tobacco industry and the illegal tobacco market', in Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2010. Available from <http://www.tobaccoinaustralia.org.au/chapter-10-tobacco-industry/10-9-the-tobacco-industry-and-the-illegal-tobacco/>

For example, data from the 2013 Victorian Smoking and Health Survey showed that the percentage of Victorian smokers who had purchased unbranded illicit tobacco (i.e. unbranded tobacco sold as loose tobacco in plastic bags, or rolled into unbranded cigarettes) in the previous 12 months was 4.0%.⁴ In comparison, a previous report prepared by KPMG on behalf of the industry claimed that in 2013, approximately 17% of survey respondents had reported purchasing unbranded tobacco in the previous 12 months.⁵

Similarly, data from the National Plain Packaging Tracking Survey showed that between December 2012 and March 2014, the percentage of Australian smokers who had reported any unbranded tobacco use was 3%.⁶ Again, this figure is clearly inconsistent with the 2013 KPMG figure of 17%.

We note that the tendency for industry-commissioned reports to overestimate the size of the illicit tobacco market has also been observed by researchers overseas. In 2010, Phillip Morris International commissioned a report from KPMG on the European illicit tobacco market. The data referred to in that report has been criticised by researchers due to its inconsistency with data from independent sources, including a 2010 pan-European survey.⁷

In view of the above, and given the limitations with the KPMG LLP report identified in Appendix 1, Cancer Council Australia recommends that the a high degree of caution be exercised when considering the estimates contained in the report, due to the risk of industry bias. We do not believe that the figure of 14% provided in the KPMG report should be relied upon as an accurate estimate of the size of the illicit tobacco problem in Australia.

3.0 Factors affecting prevalence of illicit tobacco use

Cancer Council Australia is also concerned that during the hearing which on 22 March 2017, there was some suggestion by the tobacco industry that increases in tobacco excise in Australia may result in an increase in the size of Australia's illicit tobacco market.⁸

Cancer Council Australia is not aware of any evidence suggesting that increases in excise in Australia have led to an increase in the size of Australia's illicit tobacco market. We note that independently financed research undertaken internationally suggests that illicit trade is not directly related to tobacco prices, and that various factors other than price are likely to influence illicit trade in tobacco (such as corruption levels, the ease and cost of operating in illicit trade in a particular country, the likelihood of being caught and the extent of any penalties).⁹

⁴See Scollo M, Zacher M, Durkin S and Wakefield M. '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.' *BMJ Open*; 2014. Available from: <http://bmjopen.bmj.com/content/4/8/e005873.short>.

⁵See page 33 of KPMG LLP, 'Illicit tobacco in Australia, 2013 Full Year Report'. 3 April 2014. Available from:

<https://www.pmi.com/resources/docs/default-source/pmi-sustainability/illicit-tobacco-in-australia--2013-full-year-report.pdf?sfvrsn=0>

⁶See Scollo M, Zacher M, Coomber K and Wakefield M. 'Use of illicit tobacco following introduction of standardised packaging of tobacco products in Australia: Results from a national cross-sectional survey.' *Tobacco Control*; 2015. Available from: http://tobaccocontrol.bmj.com/content/24/Suppl_2/ii76.short

⁷See Gilmore AB, Rowell A, Gallus S, Lugo A, Joosens L and Sims M. 'Towards a greater understanding of the illicit tobacco trade in Europe: a review of the PMI funded 'Project Star' report.' *Tobacco Control*; 2013. Available from: <http://tobaccocontrol.bmj.com/content/early/2014/01/16/tobaccocontrol-2013-051240>

⁸ See comments at page 9 of Proof Committee Hansard, Parliamentary Joint Committee on Law Enforcement, Illicit Tobacco. Canberra. 22 March 2017.

⁹Joosens L, Lugo A, La Vecchia C, Gilmore AB, Clancy L and Gallus S. 'Illicit cigarettes and hand-rolled tobacco in 18 European countries: a cross-sectional survey.' *Tobacco Control*; 2014. Available from: <http://tobaccocontrol.bmj.com/content/23/e1/e17>

Further evidence for the absence of a causal relationship between tobacco excise increases and an increase in the size of the illicit tobacco market can be drawn from various studies regarding the prevalence of illicit tobacco use in Australia.

For example, data obtained by the AIHW as part of the National Drug Strategy Household Survey indicates that consumption of unbranded loose tobacco in Australia decreased steadily between 2007 and 2013 (see figure 1 below). This was the case, despite the fact that on 29 April 2010, the federal government increased the excise and excise-equivalent customs duty rate applying to tobacco products by an unprecedented 25%.

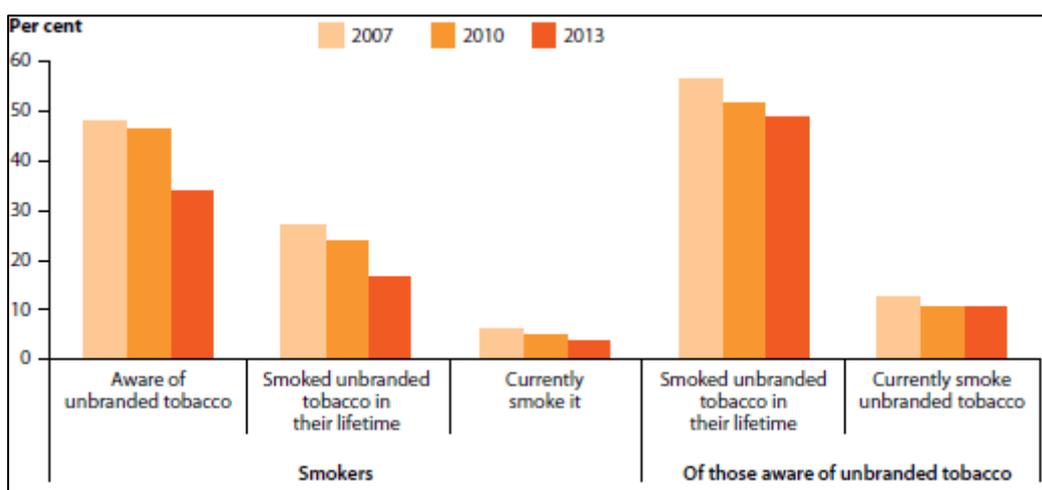


Figure 1 – Use of unbranded loose tobacco by people aged 14 or older, 2007 to 2013 (per cent).

Source: Figure 3.4, Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report: 2013. Canberra: AIHW, 2014. Available from: http://www.aihw.gov.au/alcohol-and-other-drugs/data-sources/ndshs-2013/ch3/#3_10

Note: The survey questions relating to unbranded loose tobacco were modified in 2010 and only asked respondents about awareness and use of unbranded loose tobacco whereas in 2007 and 2013 respondents were asked about awareness and use of unbranded loose tobacco and unbranded cigarettes. This should be taken into account when comparing the 2010 results with the 2007 and 2013 results.

In fact, we note that the latest KPMG LLP report (covering the year 2015) itself does not appear to support the assertion that tobacco excise increases give rise to an increase in illicit tobacco consumption. As noted further above, the KPMG report estimates that illicit tobacco represented 14% of Australia's total tobacco consumption in 2015. This is *lower* than the estimate of 14.5% provided in the KPMG report for 2014, despite excise *increases* of 12.5% coming into effect on 1 September 2014 and 1 September 2015 respectively.

Increasing the excise on tobacco is the single most effective method available for reducing tobacco consumption, increasing attempts to quit, and reducing smoking prevalence, thereby reducing death and disease caused by smoking.¹⁰¹¹

Furthermore, Article 6 of the World Health Organization Framework Convention on Tobacco Control ('the FCTC') recognises tax as an effective and important means of reducing tobacco consumption by various segments of the population, particularly young people.

¹⁰The World Bank, *curbing the epidemic: governments and the economics of tobacco control*. Washington: World Bank; 1999. Available from <http://documents.worldbank.org/curated/en/1999/05/437174/curbing-epidemic-governments-economics-tobacco-control>.

¹¹International Agency for Research on Cancer. *Effectiveness of tax and price policies for tobacco control*. Handbooks for Cancer Prevention, Vol 14. Lyon, France; IARC, 2011. Available from: <http://publications.iarc.fr/Book-And-Report-Series/Iarc-Handbooks-Of-Cancer-Prevention/Effectiveness-Of-Tax-And-Price-Policies-For-Tobacco-Control-2011>

Importantly, we note that the Guidelines for Implementation of Article 6 of the FCTC specifically state:

*'The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies...'*¹²

In view of the above, Cancer Council Australia urges the Committee to support annual significant increases in tobacco excise as a key tobacco control measure

4.0 Measures to reduce illicit trade in tobacco

In formulating policy proposals to reduce avoidance of tobacco duties, the Committee may wish to consider guidance issued by independent local and international authorities with expertise in the administration of excise and customs duty. The International Monetary Fund ('IMF'), for instance, has recently examined this issue and recommended a number of specific measures for administration and control of tobacco taxes and for fighting excise-related fraud.¹³ These recommendations include the following:

- that only licensed and strictly controlled economic operators be involved at any stage of imports, production and distribution (including retail);
- that legislation should define compulsory requirements, guarantees, safeguards and related controls under which tobacco products can be imported or produced and distributed;
- that the license should include concrete physical, administrative and financial conditions, and adherence to these conditions must be regularly controlled and non-compliance severely penalized including by suspending or withdrawing the license;
- that clear and complete records should be kept and information supplied seamlessly to the excise administration. The content and format of the records need to be defined by law and in the license;
- that excise stamps with strong security features affixed to the packs of cigarettes (as proof of payment of excise) can facilitate the collection of excise taxes and controls, as well as audits and enforcement action at each state of distribution;
- that internet sales be severely restricted and consideration be given to prohibiting them;
- that all operators throughout the industry be legally bound to report suspicious cases;
- that front-line border control offices be supported by appropriate intelligence, background support and services, guidance and supervision from management;
- that mobile excise control units stopping vehicles and verifying the legality of excisable goods within the country are often useful;

¹² See section 1.6 of 'Guidelines for implementation of Article 6 of the WHO FCTC: Price and tax measures to reduce the demand for tobacco.' Available from: http://www.who.int/fctc/guidelines/adopted/Guidelines_article_6.pdf

¹³ Fiscal Affairs Department. Fiscal Policy: How to design and enforce tobacco excises. *How to Notes*, International Monetary Fund Washington DC, 2016. <https://www.imf.org/external/pubs/ft/howtonotes/2016/howtonote1603.pdf>.

- that it is essential to gather information on both legal and illegal trade and production, movement import and export of tobacco products;
- that the faster that standard control measures, on the basis of such intelligence, can be adjusted at every step from pre-arrival control to post-clearance audits, the greater the chances to minimise revenue loss.

5. Concluding comment and recommendation

As the IMF has stated, understanding the size, characteristics and features of the tobacco market, both legal and illegal, is an essential pre-requisite for developing effective anti-fraud strategies and actions. At present no information is publicly available about the number and type of products sold by Australian retailers. No comprehensive information can even be purchased from commercial sources.

Cancer Council Australia urges the Committee to address this unacceptable deficiency as a matter of urgency.

Anyone involved in the importing or retailing of tobacco in Australia is fully aware that it is a product that causes premature death; the most recent estimate is that it will cause the premature death of two-thirds of customers who use it long term, many of whom will die in middle age.¹⁴ Every importer and retailer must know that the Government is attempting to do everything possible to minimise use of this product¹⁵ which contributes or worsens almost every known medical condition, causing in the process untold suffering, substantial disability and greatly reducing quality of life.¹⁶

Consistent with recommendations of the IMF, the Committee could consider recommending that anyone choosing to sell tobacco should hold a license that requires them to report on wholesale purchases and retail sales on a regular basis, and to submit to an inspection regime conducted by tax authorities.

In the meantime, Australia will not be well-served by relying on flawed estimates from poorly conducted, poorly described surveys funded by companies with a vested interest in opposing effective tax policy on tobacco.

¹⁴ Banks E, Joshy G, Weber MF, Liu B, Grenfell R, et al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC Medicine*, 2015; 13(1):38. Available from: <http://www.biomedcentral.com/1741-7015/13/38>

¹⁵ Intergovernmental Committee on Drugs Standing Committee on Tobacco. *National Tobacco Strategy 2012-2018*. Canberra: Australian Government, 2013. Available from: http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/national_ts_2012_2018.

¹⁶ US Department of Health and Human Services. *How tobacco smoke causes disease: the biology and behavioral basis for smoking-attributable disease*. A report of the US Surgeon General, Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010. Available from: <http://www.surgeongeneral.gov/library/tobaccosmoke/report/index.html>.