



**Australian
BORDER FORCE**

Submission to the Inquiry into the Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019

Senate Legal and Constitutional Affairs Legislation
Committee

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Submission

1. Introduction

The Australian Border Force (the ABF) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) inquiry into the Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019 (the Bill) following its introduction into the House of Representatives on 4 July 2019.

Illicit tobacco undermines public health measures to reduce the prevalence and uptake of smoking, bypassing important controls and standards relating to manufacturing, plain packaging and health labelling. Illicit tobacco can be manufactured in sub-standard processes, uses potentially poisonous ingredients, and inherently poses environmental and contamination risks.

The Australian Government is committed to combating the trade in illicit tobacco. This Bill, together with the measures implemented as part of the *Black Economy Package — combatting illicit tobacco* announced in the 2018-19 Budget, forms an important part of the Government's response to the dangers posed by illicit tobacco.

This Bill will empower the Comptroller-General of Customs, who is the Commissioner of the Australian Border Force, to deal with seized tobacco products in an appropriate manner, including immediate destruction of the goods. This will align the treatment of prohibited tobacco with certain other prohibited items.

The proposed changes will enable the ABF to respond in a dynamic and timely manner to the increasing volumes of tobacco and tobacco related seizures.

This submission explains the purpose and key measures contained in the Bill. It complements the information on the Bill contained in the Explanatory Memorandum, which is available at www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6326.

1.1. Reason for Referral

The Bill was referred to the Committee by a motion of the Senate on 4 July 2019.

2. Australian Border Force Submission

2.1. Purpose of the Bill

The Bill amends the *Customs Act 1901* (Customs Act) to empower the Comptroller-General of Customs to cause tobacco products seized as prohibited imports under the Customs Act to be dealt with in an appropriate manner, including the immediate destruction of the goods.

2.2. Background of the Bill

In the 2018-19 Budget, the Australian Government announced the '*Black Economy Package — combatting illicit tobacco*'. The package targets illicit tobacco trade with the establishment of the Illicit Tobacco Taskforce, a new framework to protect tobacco customs duty revenue, a permit system to import tobacco, and further resources to combat illegal domestic production of tobacco. Together, the measures are designed to disrupt illicit tobacco supply chains and deny criminal groups access to illicit profits that fund their other criminal and black economy activities.

This Bill complements this package of measures by strengthening the ABF's ability to manage unlawfully imported tobacco.

2.3. Current Requirements for the Destruction of Illicit Tobacco

The Customs Act currently requires seized prohibited imports to be stored for a minimum of 30 days before destruction. This storage requirement, together with legislative and administrative requirements for prohibited imports, impacts upon border operations of the Australian Border Force and limits the ability of the Government to regulate and manage illicit tobacco effectively.

Tobacco is now managed as a prohibited import following implementation of the import prohibition on 1 July 2019. This will result in a demonstrable increase of work to manage and store illicit tobacco seized at the border, and negatively impact the Australian Government's ability to effectively regulate tobacco permit conditions and other border operations.

2.4. Expected Impact and Benefits of the Bill

The amendments in this Bill will empower the Comptroller-General of Customs to cause tobacco products seized as prohibited imports under the Customs Act to be dealt with in an appropriate manner, including the immediate destruction of the goods. This power would reflect similar controls already existing for other prohibited imports, notably seized psychoactive substances and prohibited serious drug alternatives under subsection 206(2A) of the Customs Act.

Applying this same approach to seized tobacco products would significantly enhance the ability of Australian Border Force officers to effectively deal with imported illicit tobacco and would reduce the operational burden of implementing the illicit tobacco reforms. Immediate destruction would be a useful discretionary option to assist in management of seized tobacco products, particularly in cases where it is unlikely that the seizure would be challenged. This may include situations where tobacco is imported without a permit or in contravention of permit conditions.

The amendments will ensure that efficient border operations can continue under the new arrangements for tobacco products being implemented from 1 July 2019. These arrangements were implemented through the commencement of the *Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018* and the listing of tobacco products as a prohibited import under the *Customs (Prohibited Imports) Regulations 1956*.

The amendments in this Bill will further bolster the implementation of the *Black Economy Package — combatting illicit tobacco* by enabling the immediate destruction of tobacco products seized as prohibited imports. The Customs Act currently requires seized prohibited imports to be stored for a minimum of 30 days before they can be disposed of.

Managing tobacco products as a prohibited import will result in a demonstrable increase of work at the border that may impact the Australian Government's ability to effectively regulate tobacco permit conditions and other border operations.

2.5. Compliance with Domestic and International Obligations

This Bill supports the Government's commitment to improve health outcomes for Australians and combat illicit tobacco. It is consistent with the Government's Tobacco Strategy 2012-2018 (endorsed by all Australian Health Ministers) to reduce the affordability of tobacco products. It is also consistent with the World Health Organization's Framework Convention on Tobacco Control, which commits nations to implement policies to adopt measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

2.6. Industry Consultation

Home Affairs and the ABF, together with Treasury and the Australian Taxation Office, have conducted significant industry consultation to ensure the implications of new processes are understood. There is broad support within industry for this measure.

3. Conclusion

These amendments will improve the handling of seized illicit tobacco, resulting in effective regulation of tobacco permit conditions and enabling greater focus on targeting of illicit tobacco. This Bill will improve financial outcomes for the Government and enhance implementation of the new tobacco measures.