

Parliamentary Joint Committee Inquiry into Illicit Tobacco

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Terms of Reference

Pursuant to the committee's functions set out in paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will examine the use and consequences of illicit tobacco in Australia, including the importation of contraband, counterfeit, and unbranded tobacco as well as domestically grown illicit tobacco.

In particular, the committee will examine:

- a. the nature, prevalence and culture of illicit tobacco use in Australia, including in indigenous, regional and non-English speaking communities;
- b. the role of Commonwealth law enforcement agencies in responding to the importation, use, manufacture, distribution and domestic growth of illicit tobacco;
- c. the loss of revenue to the Commonwealth arising from the consumption of illicit tobacco products;
- d. the involvement of organised crime, including international organised crime, in the importation, distribution and use of illicit tobacco in Australia;
- e. the effectiveness of relevant Commonwealth legislation; and
- f. other related issues.

Declaration of Interest

In addition, much of what is written in this report has previously been provided to the Australian Border Force during my employment with that agency.



Executive Summary

The illicit tobacco market in Australia is flourishing due to a range of influences. Chief among these is the lack of coordinated enforcement response. When combined with progressive tax rises and no appropriate policy guidance, a low risk/high reward crime environment has been created that is being increasingly exploited by organised crime and other opportunists.

The size and seriousness of the illicit tobacco problem in Australia has yet to be fully recognised by any of the responsible agencies and this has suppressed motivation for action. Furthermore, the failure to understand the scope and nature of the issue has meant that no National Illicit Tobacco Strategy has been created to help guide an effective response.

Numerous regulatory and legislative amendments have been introduced pursuant to Australia's "National Tobacco Strategy". These have been designed to control and discourage the use of tobacco and there is evidence that they have been effective. However, this Strategy, which is led by respective Federal and State Departments of Health fails to adequately acknowledge and address the illicit tobacco problem. The failure to recognise and therefore constrain illicit tobacco undermines both the health and budgetary objectives of the Australian Government.

The widespread availability of a cheap alternative to fully taxed tobacco products diminishes the incentive to quit smoking and exposes many thousands of Australians to an unregulated product. Of equal significance, however, particularly in the current fiscal environment, is the failure to categorise the issue as a law enforcement problem that causes substantial revenue losses for the Commonwealth.

As with other forms of taxation, excise on tobacco products is prone to the vagaries of public perception of whether it is being levied proportionately and used equitably. Even in markets where relatively low taxation contributes to still relatively affordable tobacco products, or where increases are low in absolute but sharp in relative terms a belief can arise that lower, illicit price points are "fairer". The current tobacco price, in conjunction with a perception that the only victims of the illicit trade are corrupt, inefficient governments and arrogant tobacco manufacturers, has helped drive smokers toward the illicit product.

The nature of the illicit tobacco industry has many similarities with the criminal methodologies employed by the illegal narcotic industry. Both have international and domestic aspects that are largely controlled by organised crime. The most obvious difference however is that while drugs are illegal, tobacco is taxed. As such, the deception involved in smuggling or growing tobacco to evade the payment of duty, makes illicit tobacco an issue of fraud. If only a fraction of the effort and resources that are dedicated to the narcotic problem were directed towards preventing and enforcing these sophisticated frauds, the Government's health and revenue objectives would be greatly enhanced.

This paper will highlight reasons as to how this situation has developed over the past 20 years and detail the current illicit tobacco environment. More importantly, it will outline the need for a pathway by which the problem can be formally understood and accepted by law enforcement agencies thus forming the basis for an effective response to be developed and implemented.



My background

I joined the Australian Federal Police (AFP) in 1991 and worked in a variety of crime types and locations in that organisation. I developed a reputation as an excellent investigator particularly in relation to fraud, corruption and financial crime matters. That reputation grew from a strong understanding of, and compliance with, the law and was motivated by the desire to assiduously enforce Australia's legislation for the betterment of our country. My numerous achievements in the AFP include laying the first Foreign Bribery charges in Australia and were exemplified by my selection as the inaugural Superintendent of the Fraud and Anti-Corruption Division in 2013.

In June of 2015, I joined the then Australian Border Protection and Customs Service which became the Australian Border Force (ABF) on 1 July 2015. On joining the ABF, I immediately took a keen interest in Illicit Tobacco and established investigative and intelligence teams dedicated to this crime type. These teams later became known as the "Tobacco Strike Team" (TST) following the Minister's announcement on 16 October 2015.

From that time, until leaving the ABF on Monday 21 November 2016, I was responsible for strategic direction and management of all its illicit tobacco-related investigative and operational activities. I was actively involved in every illicit tobacco related investigation handled by the ABF and many of the illicit tobacco matters handled by other Commonwealth law enforcement agencies. In addition, I led Australia's international engagement with other customs and law enforcement agencies on illicit tobacco matters.

Through the experiences outlined above, I became Australia's foremost law enforcement expert in illicit tobacco. I am pleased to share my experience with the Committee both through this paper and, if necessary, in person.



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The nature, prevalence and culture of illicit tobacco use in Australia, including in indigenous, regional and non-English speaking communities

Nature of illicit tobacco use

Illicit tobacco use in Australia is widespread and easily available from many, if not most, traditional tobacconists and tobacco retailers in markets. As such, sales of illicit tobacco follow similar distribution and sales patterns as duty-paid tobacco. Illicit tobacco has been long established in the Australian market and therefore, sells to an entrenched and loyal market of users. The methods used to deceive law enforcement efforts are also well established and practiced.

Culture of illicit tobacco use

The criminal syndicates involved in illicit tobacco operate in a very low risk environment. Some illicit tobacco criminals use basic methods that demonstrate their blasé attitude to law enforcement and while this provides opportunities for interdiction, it also demonstrates the lack of risk within the environment in which they operate.

Retailers and users try to conceal their activities by using techniques such as hiding illicit tobacco under the counter or providing it in plain paper bags. These rudimentary methods show that they know what they are doing is illegal but again, with no real risk of law enforcement action, there are a growing number of users willing to purchase the product. In my experience, it is uncommon for illicit tobacco smokers to use these products in public as the cigarette packaging can now be an obvious indicator of an illicit product.

Indigenous communities

I have no personal knowledge of the prevalence of illicit tobacco in indigenous communities but if illicit tobacco patterns were to follow general smoking patterns with respect to lower socio-economic groups then it could be assumed illicit tobacco is present. I note that in the last KPMG report the prevalence of illicit tobacco in Far North Queensland and Darwin has risen dramatically in the last 6 months and this may indicate the problem has gained a foothold in indigenous communities. During my tenure with the TST,

Regional communities

The TST received numerous pieces of intelligence that suggested the illicit tobacco problem is significant in regional centres. This could be the result of socio-economic factors and



The TST noted the problems that arise when one proprietor sells cheaper illicit brands near a competitor who wishes to obey the law. It is said that cigarettes can account for up to 30% of a retailer's turnover so the loss of potential consumers severely effects the profitability of those stores. These imbalances are accentuated in country towns where the market is smaller and therefore more susceptible to distortion. These issues have been raised by State Police who are the first called to resolve perceived illegality in their towns. Often, State Police, who are willing and resourced to assist, are stymied by a lack of a suitable law with which to act.

Non-English speaking communities

Illicit tobacco is most prevalent in communities where smoking is most common. These communities include persons from all South-East and Central Asian nations, those from the Middle East and most Europeans. These countries are also where many Australian immigrants have originated in the last 10 years. These countries are predominantly non-English speaking. It follows then that if the percentage of illicit smokers in these communities follows the trend of the broader population, there are many illicit smokers from non-English speaking backgrounds.

These illicit smokers are well catered for by criminal groups of similar ethnicity who understand and seek to satisfy the market. The international organisers of the illicit tobacco trade to Australia are predominantly



The role of Commonwealth law enforcement agencies in responding to the importation, use, manufacture, distribution and domestic growth of illicit tobacco

Before discussing the role of the various agencies in responding to illicit tobacco, it is appropriate to detail the involvement of the relevant players along the supply chain. All of these groups contribute to the illicit tobacco issue and enforcement efforts could be equally directed at them to help strengthen compliance at all points of the supply chain.

Organisers

The persons who organise the shipments of illicit tobacco are seen to be based either in Australia or overseas but often with an Australian-based person managing their business. The price of cigarettes in Australia has attracted overseas suppliers of illicit products. These suppliers have long established smuggling routes to other parts of the world and have quickly channelled some of their focus towards our lucrative market.

Organisers are rarely seen near a consignment of illicit tobacco and are therefore difficult to prosecute. Several joint agency taskforces, (using all available police tools such as telephone intercepts and tracking devices), such as Trident or Polaris, have been successful in identifying and charging the heads of criminal syndicates.

Manufacturers

Illicit cigarettes are often manufactured lawfully in countries such as China or the United Arab Emirates and as such are difficult to constrain. The ABF are, however, making attempts to engage with their partners in these countries to better understand and identify the flow of any illicit products our way.

Loose leaf tobacco is imported from mainly Indonesia and China. In July 2015, Australia received information from Indonesia that led to a large seizure of loose leaf tobacco. These tip offs are rare however as tobacco forms a significant part of the Indonesian economy. Economic imperatives are often more important to a country of origin than the problems they may create at the destination.

The manufacturers of domestically cultivated tobacco are largely unknown however they are believed to have links with the imported products.

Molasses tobacco originates predominantly from the Middle East.



Brokers/Freight forwarders

Criminal syndicates cannot bring their products into Australia without the help of a Customs Broker or Freight Forwarder who help organise the Customs formalities of the shipment. Some of these persons, who are licenced by the ABF to conduct their duties, are complicit in the crime and others turn a blind eye to their facilitative role in the smuggling. The border environment could be hardened if these choke points were more comprehensively addressed.

While legislation will be addressed later in this paper, it is worth noting here that the activities of brokers and other key enablers is rarely captured by the current offences.

Warehouses/Depots/Storage facilities/Distributors/Wholesalers/Conveyers

As per the description above, incoming illicit shipments often require the services of warehouses or storage facilities before they are illegally diverted into home consumption. Once again, there are varying degrees of knowledge held by these facilitators of the illegal importation and a smuggling offence, that includes _____, would help address the critical role these persons play.

Retailers/Customers

In Australia, illicit tobacco is primarily sold via retailers. This is, of course where the criminal syndicates generate their large profits. The TST discovered that major organised crime groups often _____ in order to reliably get their product to market. The cash profits are then returned to the organisers and subsequently laundered.

The method of sale varies but often involves some type of "under the counter" or other concealment to disguise the illegality. Users often purchase the cheap products in plain paper bags which again, is designed to hide the illicit nature of their purchase. These common methods of sale show that the retailers and users both know that they are purchasing an illegal product and yet, without the specific knowledge of the importation, there appear to be no applicable Commonwealth offences with which to curb their behaviour.

Role of Commonwealth agencies

In respect of tobacco and other illicit goods, the traditional role of "Customs" has been to find the goods at the border. The role of the AFP has been to investigate organised crime-related importations and the ATO has had responsibility for excise evasion with respect to domestically



grown tobacco. These roles are based on long-held assumptions about the size and nature of the illicit tobacco market however several critical circumstances have now altered significantly and these should cause the agencies to review their previous positions.

Some of the key changes in the illicit tobacco environment in the last 20 years are:

1. Excise rates have risen significantly and with that the losses to the Commonwealth revenue are now in the billions of dollars
2. Organised crime has infiltrated and exploited the high taxing/low risk environment
3. Criminal syndicates have corrupted many players along the supply chain from the overseas growers and manufacturers, through the border to the retail level
4. Criminal syndicates have honed their sophisticated importation and distribution methodologies
5. There is no longer any legal domestic tobacco cultivation or manufacture
6. The high profit margin on illicit tobacco has made losses of imported or domestic product through seizure easy to recover.

Due to the recent emergence and rapid expansion of this crime type, Commonwealth agencies are yet to realise that illicit tobacco has become a serious crime in its own right and are therefore ill-equipped to respond to its consequences.

Role of the ABF

While the primary role of the ABF is to protect our borders, in the illicit tobacco context the ABF must view the border as a continuum along which there are many players who wish to do harm to the country. Viewing the border as a continuum is an objective listed in the ABF's 2020 Strategy document and yet submissions made to this Committee show that the ABF's enforcement focus remains primarily at the border. An effective law enforcement response needs to be able to disrupt and dismantle all players "from leaf to light".

The ABF's efforts to counter illicit tobacco are hindered in several ways. Firstly, they have no tobacco investigators based offshore. These persons might leverage other agencies and gain valuable intelligence to prevent the product arriving at our shores. At the border, the ABF have few powers or investigative tools to respond appropriately to the organised crime threat. Past the border, where many players assist the distribution and sale of the smuggled product, the ABF appear to have no clear direction as to their role or responsibility.

History of the Tobacco Strike Team

When I joined the ABF (then ACBPS) in June 2015, I recognised the opportunity that illicit tobacco presented for the ABF and compiled a plan to combat it. The plan was formulated after considering the strategic objectives of the ABF and the capability of the agency to deal with the growing threat of illicit tobacco.



The plan involved the creation of a multi-agency taskforce which could leverage off the powers and tools of all relevant agencies. In the current legislative and regulatory environment, the concept of a taskforce, including and utilising all the necessary police powers and tools, remains the most logical and wholistic response to this organised crime problem.

The ABF did not proceed with the taskforce concept so I created an internal unit that had investigators . On 16 October 2015, after the Minister's announcement, this large team became known as the Tobacco Strike Team (TST).

The TST's innovative methods allowed us to build our knowledge as to the true nature and size of the issue and for the TST staff soon became the most knowledgeable illicit tobacco experts in the country.

During my time with the TST, we built numerous productive relationships with global organisations, international law enforcement counterparts and domestic agencies and were leaders of the illicit tobacco fight. However, it soon became obvious that the ABF was ill-equipped to fight this issue.

The ABF, and Customs before it, have been given powers, tools and resources that may have been appropriate for its traditional role of finding things at the border but illicit tobacco has grown into such a serious and sophisticated crime that the TST found ourselves merely scratching at the surface of a much larger problem. While the TST's early successes were encouraging, these results should not distract the Committee from the fact that the ABF have no ability to investigate the most serious organised crime groups and it is these well-entrenched syndicates who are controlling the vast majority of the illicit tobacco market.

Role of the AFP

The AFP are Australia's leading law enforcement agency and the primary agency responsible for countering organised crime and for protecting the Commonwealth's revenue. However, they are yet to turn their full attention to illicit tobacco. This may be because the size and nature of the problem has not been outlined to them.

Where the AFP have participated in joint taskforces investigating illicit tobacco, their tools and experience have been used effectively although these instances are rare and short-lived.

The ABF are then required to deal with these serious matters with the inadequate resources and powers they have. The few illicit tobacco prosecutions that have resulted in the last 5 years, despite the widespread criminality, exemplifies the difficulties faced by the ABF.



Role of the ATO

The ATO are responsible for the enforcement of the *Excise Act* which, in part, was designed to regulate and protect the local tobacco industry. Now that there is no longer any local tobacco manufacture, the *Excise Act* and the ATO's role could be reviewed.

The ATO once had numerous inspectors ensuring that excise from local growers and manufacturers was being responsibly captured. With the removal of tobacco growing licences, the ATO determined that the risk of further domestic cultivation of tobacco was low and consequently reduced its capability in this area. Now that the excise rates have increased to a level that makes growing tobacco an attractive option for criminals, the ATO could review their efforts to protect the Commonwealth's interests and assign resources commensurate with the revenue leakage domestic crops create.

In relation to domestic cultivation, although the ATO are responsible for this issue, the TST received much information about it over the past year. This information gave them a good understanding of the extent of the problem. The TST came to understand that while there is no longer legal tobacco cultivation in Australia, the knowledge, opportunity and motivation to grow tobacco is still present.

In addition to information received about specific crops, the TST also monitored the importation of
by known criminals.

When the potential profits of growing tobacco domestically are combined with little risk of prosecution, it creates an extremely attractive environment for organised criminal groups to cultivate their own tobacco.

I note that the Victoria Police recently seized 130,000 tobacco plant seedlings during a drug raid. This inadvertent seizure highlights the growing prevalence of domestically cultivated tobacco.

The TST also discovered that many millions of cigarettes are being imported into ATO-regulated warehouses on a "duty-delayed" basis and are then diverted into home consumption without the duty being paid. These warehouses are being exploited by organised crime groups with relative ease due to

It is important to understand that cigarettes are not being stolen from these warehouses, they are being smuggled out of them via a variety of methods involving poor, false or non-existent record keeping. As such, the applicable offences are *Customs Act* smuggling offences or *Criminal Code* fraud offences. The nature of this offending is not well understood, nor is the relevant enforcement agency easy to identify or quick to claim responsibility for it. Since the regulation of these warehouses moved from Customs to the Tax Office, it has proved extremely difficult for agencies to keep track of the goods



The TST calculated, with a high degree of confidence, that the diversion from these warehouses equals million cigarettes (\$ million revenue) per year. The vast majority of these are cigarettes in plain packaging from non-traditional manufacturers that are being sold in the marketplace for about half the normal retail price.

The ATO may also have a role to play in the regulation of shops that sell "Shisha" or water pipe tobacco. These shops are selling an illicit product and all profits could be considered proceeds of crime. The ATO is yet to address this issue.

The ATO could also play a role in recouping the illicit proceeds from the sale of illicit tobacco. While they have powers and responsibilities with regard to identifying unexplained wealth, I am not aware of any ATO activity in this area with respect to illicit tobacco.

Role of the Department of Health and Australian Competition and Consumer Commission

The Department of Health (DoH) are responsible for enforcing the Plain Packaging Act (PPA). Despite having the ability to prosecute offenders and deliver heavy fines, I am unaware of the DoH prosecuting any offenders in relation to this Act.

When designing the new Act, legislators may have assumed most tobacco manufacturers would abide by the new regulations and certainly, the main industry players present their products pursuant to the regulations. It is perhaps an unintended consequence of the PPA however, that the drivers of the illicit market continue to import products in flagrant breach of the PPA making these importers fall into the remit of the DoH. The DoH's investigative unit is ill-equipped to enforce the many hundreds of breaches of this Act by organised crime.

The Australian Competition and Consumer Commission (ACCC) are responsible for ensuring consumers are protected.

There have been many breaches of the safety regulations with respect to the fire-retardant cigarette paper and some illicit tobacco importers may have been indirectly responsible for deaths caused by their dangerous product. There have also been concerns about the tobacco itself which is not subject to the rigorous quality assurance processes that the primary manufacturers use. (This issue could equally cause a concern for the Australian Quarantine and Inspection Service). There are so many illegal importers and illicit products in the market that the ACCC must struggle to meet their obligations to the community.

Role of State Police Forces

The TST had many interactions with State Police forces due to the cross-over in our respective responsibilities. State Police have noticed and are responsible for the growth in organised crime generally, the disruption to communities caused by unfair work practices (particularly in the country areas) and in the violence associated with robberies at retail outlets.



Although they are not responsible for enforcing the importation, distribution or the revenue aspects of illicit tobacco, they would like access to these Federal offences as they may be the most appropriate means to meet their own objectives. State tobacco laws do not currently reflect the seriousness of the issue to Australian communities. Any National Illicit Tobacco Strategy that might be considered in the future must include State Police so that their state-wide resources can be utilised when required.

The need for greater enforcement

The current legislative and enforcement regimes have not kept pace with rises in tobacco taxes and so a large illicit tobacco market has emerged. It is critical to the Government's health and revenue objectives to have credible enforcement mechanisms where appropriate penalties are enforced.

Deterrence is where prevention begins. People must believe that there is a real chance they will get caught and if they are caught, something will happen to them. The punishment could be any of prosecution, loss of licence or fines, but a credible mechanism is about creating the perception that there is a cost in engaging in this conduct.

Speeding and drink driving are examples where the risk of being caught is so high that very few people deliberately breach these laws. It is a principle of law enforcement that rigorous action deters many others from participating in the crime. While it is accepted that enforcement action cannot be the sole focus of the response, at present in Australia there is little enforcement action taken in relation to illicit tobacco and so the risk balance is not consistent with the threat.

Examples of enforcement failure

Example 1 – ABF seizure of 71 tonnes of loose leaf tobacco

This seizure was announced on 16 October 2015 during a joint press conference between the Immigration Minister and the ABF Commissioner. (The actual seizure took place some 4 months prior) It coincided with the announcement of the TST. The seizure involved coordinated action in Australia and Indonesia and involved a well-entrenched transnational criminal syndicate.

No Brief of Evidence was produced in relation to this matter as the ABF found it difficult to penetrate this organised crime syndicate. The lack of prosecutorial action with a seizure this large exemplifies the difficulties the ABF have with gathering evidence against any of the major importing syndicates. The criminals involved with this case merely lost a shipment, the cost of which can quickly be recovered by the next successful importation. In addition, the reduced number and quantity of seizures since this action may mean that the criminal syndicates are utilising a more sophisticated way of getting their product across the border.



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Without the ability to dismantle the entirety of criminal syndicates, the organisers remain free to plan yet more importations.

Examples of enforcement success

Example 1 – Operation Fordo (Joint AFP/Customs investigation)

In 2001, I led a multi-agency taskforce consisting of the AFP, CUSTOMS and AUSTRAC into the activities of an organised crime group diverting duty free cigarettes into the domestic market. The result of a year-long investigation was that 12 offenders were charged and convicted with evading over \$18 million in duty (over \$60 million at current duty rates). The offenders included corrupt freight forwarders who helped facilitate the sophisticated crime. \$6 million was seized as Proceeds of Crime from Lebanese bank accounts. As a result of this investigation, an entire criminal syndicate was dismantled and appropriately punished, the tobacco industry tightened their duty-free sales procedures and a vulnerability in the supply chain was identified and plugged.

Example 2 – Operation Peacham/Farlax (Joint Waterfront Taskforce Victoria)

In 2013, the Joint Waterfront “Trident” Taskforce in Victoria investigated organised criminals importing tobacco via sea freight. This investigation, known as Operation Peacham/Farlax resulted in the seizure of multiple containers of illicit product and the arrest of members of a significant crime family. In addition, some property of syndicate members was restrained. Intelligence summaries of these events report that the syndicate attempted to exploit various vulnerabilities in the supply chain however their criminal enterprise was brought undone using the full suite of law enforcement interception and tracking tools.

Industry analysts noted that these seizures did have a temporary impact on the flow of illicit tobacco to the marketplace however the illicit supply soon returned to previous levels once the investigation had been completed.

When multi-agency and sustained investigations of the magnitude of Peacham/Farlax are undertaken a large quantity of intelligence is gathered. Intelligence Reports generated in the wake



of these investigations recommended numerous other matters that could be addressed to harden the border and prevent a repeat of the methodology.
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This operation was also notable for the close cooperation between law enforcement and the tobacco industry who provided valuable assistance during the evidence gathering phase.

Since this activity, there has been no coordinated approach to illicit tobacco by law enforcement in NSW. Thus, various agencies report that the illicit tobacco market in NSW is stable and that law enforcement interventions have not dented the flow of importations.

Summary of Case Studies

The examples above show that a dedicated and well-resourced multi-agency taskforce utilising the full suite of police powers and support staff can effectively enforce the current laws and make a significant difference to the crime environment in this area. However, they also show that random or ad hoc targeting of criminal syndicates results in ongoing challenges not being addressed nor major vulnerabilities corrected.

An effective law enforcement response to counter illicit tobacco must include the following:

1. A thorough understanding of the size and nature of the problem
2. Acceptance of a serious law enforcement problem involving organised crime and revenue evasion
3. Coordinated action by several relevant agencies
4. Coordinated and integrated intelligence and investigation resources
5. The full use of police powers and tools including
6. Action being taken by the responsible agencies over an extended period



The loss of revenue to the Commonwealth arising from the consumption of illicit tobacco products

The Commonwealth's anti-smoking policy is based on two pillars; deterrence through raising the price of tobacco and plain packaging. Law enforcement agencies have a key role in ensuring the first of these pillars is regulated in such a way as to produce the Government's desired result which is a reduction in the number of smokers generally and to collect the revenue from those who do. This revenue then goes some way to defraying the medical costs these products cause.

It is important to understand that a smoker, when considering the effect of an excise hike on their pack of cigarettes, has more than the two most obvious options, namely to pay the increase or quit. They also have a third option of purchasing an illicit product, which may be inferior, but is so substantially cheaper that it becomes an attractive alternative. The illicit product is well known, widely available and risk-free so it quickly acts as an escape valve for these consumers who would likely otherwise have considered quitting altogether. It is my view that the current excise rates have caused cigarette prices to reach a level whereby even persons who would normally be law abiding citizens are seeking the cheaper option.

My estimate of the illicit market is the equivalent of \$3.82 billion in duty. But this figure of potential revenue loss is based on two assumptions, 1) that the importer has an option of paying the actual duty rate and 2) that if the illicit tobacco trade were stopped those smokers would switch to smoking a licit product and therefore pay the applicable taxes. Neither of those assumptions are accurate and this makes announcements of revenue evasion related to seizures as somewhat disingenuous. Indeed, the Government's health plan is based on the opposite presumption, i.e. that the smokers of illicit products, if forced to smoke duty-paid products, would give up due to the cost and therefore improve the overall health of the community. In other words, no additional revenue should be raised.

The resources that the Government dedicate to the regulation of illicit tobacco should not therefore be seen solely through the prism of our revenue collection role. Our actions in preventing access to the illicit product should, if we were effective, remove the alternative option for smokers. This would cause smokers to make the choice that the Government's health policy wants them to make, i.e. give up or pay up. In the event they choose the healthy option, the Government's revenue take will actually decrease in the short term while the health of the community improves.

There have been published studies on this issue in the UK which show that excise hikes cause roughly one third of smokers to quit, one third carry on smoking and one third start smoking illicit products. In the Australian context, while the excise rate has more than doubled in the last 5 years, revenue returns have remained roughly equal. This would suggest that the numbers of smokers should have halved, but this is not the case. The reduction in smoking rates has been relatively small suggesting that there is a substantial revenue shortfall and this equates to the leakage to the illicit market. This leakage undermines both objectives of the Government's tobacco strategy in that neither the revenue nor the health of the community is being substantially improved. Unless the relevant laws are rigorously enforced, the low-risk option of illicit tobacco will remain a consideration for smokers.



Molasses or Water-Pipe Tobacco

Molasses tobacco is often overlooked when discussing the revenue loss from illicit tobacco however as you will see from the table below, I estimate (conservatively) that 1000 tonnes of molasses is consumed in Australia each year. Only a small fraction of molasses importations are duty paid thus a revenue shortfall of \$750 million is occurring annually. This figure does not include the potential proceeds of crime action that could be taken against each of the shops selling the illegal product.

Molasses tobacco is sold and smoked in over 100 registered "Shisha" bars across Australia. There are many more unregistered cafes where this increasingly popular pastime is practised. It is also common for Middle-Eastern families to smoke Shisha at home.

In 2012, a change was made to the way duty was calculated on molasses tobacco. Prior to that time, only the percentage of tobacco in the product was dutiable and this figure was typically 5%. Due to the difficulty in verifying the tobacco content without a detailed, lengthy and expensive chemical analysis, the duty was changed so that it became based on the full weight, i.e. 100%, of the product. This effectively increased the duty rate by 20 times overnight. In the cafes today, molasses is currently sold for 1/3 of the duty rate (currently \$763 per kilogram) which demonstrates the extent of duty avoidance.

Since 2012, very little molasses tobacco has been paid for and yet the popularity of it in the community has risen dramatically. My estimate below is based on consumption rates combined with a comprehensive analysis of seizures and other pieces of intelligence. E.g. One syndicate in Sydney is said to have imported "hundreds of tonnes" of molasses alone.

The change in duty rate made importations of molasses tobacco economically unviable. Despite this, the shisha market is growing rapidly. In addition, the change in law did little to remedy the original problem. The ABF found that criminals were simply declaring the molasses product as being "tobacco-free" or as "herbal molasses", claims which again could not be verified without detailed analysis.



Previous Estimates

The Quit Victoria website currently contains the following information,

"The Australian Government has not regarded illicit tobacco as a major problem to date. The majority of seizures of smuggled tobacco at ports over the past 10 years have been for raw, unbranded loose tobacco known locally as chop-chop. The most recent government-funded survey found that 1.4% of smokers in 2010 used unbranded tobacco 'half the time or more'. Illicit branded cigarettes (counterfeit and other contraband cigarettes smuggled into the country without payment of customs duty) have also been noted in Customs seizures since 2001, but in much smaller quantities than unbranded loose tobacco. The tobacco industry has funded a number of reports with claims about the size of illicit tobacco trade in Australia. Critiques of these reports have highlighted numerous flaws in their methodology and show that tobacco industry figures for illicit tobacco contained in the reports are highly inflated compared to government figures on illicit tobacco use in Australia."

Australian government agencies, including the ABF, have been quoting an Anti-Cancer Council illicit market figure of 3% to various Government Committees including the original DIBP Submission to this Inquiry. I note that the Committee questioned the author of the 3% figure during an earlier Hearing and discovered that it was never designed to be an accurate estimate of the illicit market.

Regardless of reasons for the production and dissemination of these figures, the continued under-estimation of the illicit tobacco market has inhibited the drive or perceived need for an effective enforcement policy from being developed and implemented and this, in turn, has had the following effects:

1. The Government's policy of encouraging people to stop smoking via increase excise rates has been undermined
2. It has provided an opportunity for organised crime to prosper in a risk-free environment
3. It has increased the chances that smokers will be consuming sub-standard products
4. It has drastically reduced the government's revenue

As you are aware, there are no Government-produced estimates of the illicit market nor any previous attempts to do so. This has caused a vacuum of information that has been filled by both the smoking and anti-smoking lobby groups.

The tobacco industry have long attempted to bring the illicit tobacco issue to the attention of relevant government agencies. Their motivation for preventative action on this issue is obvious and understandable; the more illicit product in the marketplace, the less legitimate product they are likely to sell. The tobacco companies also understand that due to the nature of their product, government agencies have given little credence to reports produced solely by themselves. Perhaps because of that, they chose to sponsor a third party, KPMG, to conduct a comprehensive market survey on their behalf. KPMG sub-contracted some this field work to known companies such as Roy Morgan who gathered and compiled the questionnaire data. The KPMG report also partly uses the highly credible "Empty Pack Survey" method of analysis.



It is interesting to note that at the same time as describing the KPMG results as being “flawed” and “tobacco industry figures”, the anti-smoking lobby relies on figures that are also based on work sub-contracted to Roy Morgan.

During my time at the helm of the TST, we reviewed the KPMG Report in detail. We also asked and received data from KPMG with greater specificity than is contained in the public report to help guide some of our enforcement activities.

The TST concluded that the KPMG Report was flawed in that it ignored several critical and substantial areas of the illicit market such as molasses tobacco and illicit plain packaged cigarettes. We also felt the conclusions drawn with regard to loose-leaf tobacco were conservative. Thus, the final figures quoted in the KPMG Report are significantly less than the true market picture.

Size of the Illicit Market

The key to applying resources in the resolution of any issue is to understand its scale. However, the clandestine nature of illicit trade in tobacco makes it uniquely difficult to quantify. There is also significant mistrust and bad faith between the public health agencies and the tobacco manufacturers and this has led to estimates that are discounted or disputed among those organisations that have the greatest interest in combating illicit trade.

Commonwealth agencies currently have no means by which to measure the market and even if they did, those estimates would be vulnerable to the agendas of the proffering agencies whether seeking to inflate an issue to gain additional resources or power or to minimise to conceal inefficiency.

The TST, during my time as its leader, viewed illicit tobacco as a serious crime and collected and developed intelligence from all credible sources including the tobacco industry. While our motivation was one of law enforcement and protecting the government’s revenue, we soon discovered that the problem was far larger than had been previously understood. We recognised that the results of our work both justified the tobacco industry’s long held position on the size of the problem and helped protect their market share but that these consequences were unavoidable.

As the head of the TST between June 2015 and November 2016, I had access to all available intelligence and data in relation to illicit tobacco. Each day, over the course of these 17 months, my team and I collected and analysed every available piece of information from dozens of data sources, many of them previously untapped. This amounted to thousands of snippets of information being innovatively analysed by a dedicated group whose expertise quickly rose to a level that is unique in the Public Service.

I believe that my exposure to the illicit tobacco market over 17 months allow me to make a highly credible estimate based on the quantity and quality of information sources available to the TST and my access to skilled analysts. I am therefore able to draw the most informed and accurate inferences on the size of the illicit tobacco market ever seen. It is important for the Committee to understand that part of the reason my conclusions are different from all previous estimates is



because the issue has now been examined in far greater depth and accuracy than any previous analysis.

Some of the sources that have been used to draw my conclusions include:

1. The innovative analysis of ABF and DIBP data
2. An analysis and extrapolation of ABF seizure data from post, sea cargo, air freight and passengers
3. An analysis of criminal methodologies and supply chain vulnerabilities
4. Information received from human sources and via BorderWatch
5. Personal field research
6. Analysis of witness statements from over 100 community and supply chain witnesses
7. Informal discussions with people in freight, storage customs brokerage and transport industries
8. Analysis of submissions to this Inquiry
9. An analysis of the KPMG Report and other relevant reports
10. Tobacco industry information gathered domestically via investigative services
11. Tobacco industry information gathered internationally via investigative services
12. Information received from numerous state and federal law enforcement agencies and the analysis of their investigations and sources of intelligence
13. Information received from international counterparts and the analysis of related trends
14. Information received from local government agencies
15. Information received from retail groups

From the critical analysis of these and other sources, I make the following estimates of the size of the illegal tobacco market in Australia as at September 2016.

	Cigarettes	Loose leaf (Imported)	Loose leaf (Domestic)	Molasses Tobacco
# of legal/duty paid products imported	15.6 Billion	1,864 tonnes	Nil	14kg
# of illegal products in market	2.5 Billion	800 tonnes	1,200 tonnes	1,000 tonnes
% of total market	13.8%	30.0%	100%	99.99%
Revenue evaded (duty rate as at 09/16)	\$1.526 Billion	\$611 Million	\$915 Million	\$763 Million

I therefore conclude that the total tobacco revenue being evaded annually is approximately **\$3.82 billion**. Given the current annual excise take is approximately \$9.7 billion, my illicit estimate, in revenue terms, represents **28.2%** of the total market.

I would be pleased to provide the Committee greater insight into the sources of information and the process of inferential reasoning that has gone into producing these figures.



The involvement of organised crime, including international organised crime, in the importation, distribution and use of illicit tobacco in Australia

The evidence to support the conclusion that organised crime groups are the primary drivers of the illicit tobacco market is clear and I do not wish to regurgitate the comments made in the submissions of various law enforcement agencies including the Australian Criminal Intelligence Commission. However, I would like to add that it is often said that the profits made by illicit tobacco-focussed, organised crime syndicates are then channelled to fund more serious crime, even terrorism. Whether these comments are true or not,

, the effect they have on the general rhetoric around illicit tobacco is that it downplays the seriousness of the problem. Illicit tobacco should be seen as a serious financial crime in its own right that is driven by numerous organised crime groups who are content to restrict their illegal activities to this high profit/low risk crime type.

In that light, it is worth highlighting the profit margins that are applicable to illicit tobacco as this is the primary motivator for the growing involvement of organised crime and the reason why only a dedicated and fully empowered enforcement approach will be capable of constraining their illegal activities.

Investigations by the TST showed that illicit cigarettes are purchased overseas for approximately 1 cent each or 20 cents per packet. It may cost criminal syndicates another 20 cents per packet for freight. They are then sold for approximately \$12 representing 30 times the cost price. As each tax increase takes effect, the ability for criminals to grow their profit margin expands proportionally. These profit margins are as large as any other illicit commodity.

The profit margins outlined above are so attractive to law breakers that it is reasonable to conclude that opportunists will also seek to take advantage of the illicit tobacco market. The exponential rise of relatively small amounts of imported illicit tobacco via the post and in the luggage of travellers bears testament to the trend to non-compliance across the full spectrum of import streams.

More recently, my attention has been drawn to the growing prevalence of robberies on retail outlets that sell tobacco. Although these cigarettes have already had the duty paid on them, the increase in this crime type highlights the general demand for cheap cigarettes. It also highlights the emergence of associated criminality due to the value now attributable to tobacco products.



The effectiveness of relevant Commonwealth legislation

Co-ordination of agencies

The effectiveness of the relevant Commonwealth legislation is dependent on its appropriateness when compared to the threat and the willingness and ability of the responsible agencies to utilise it. If the effectiveness of Commonwealth legislation was measured solely on the prevalence of illicit tobacco in the marketplace, we could conclude that the legislation was flawed. But before considering the specifics of the legislation, we should consider the effect the lack of a coordinated illicit tobacco policy combined with a misunderstanding of the nature and seriousness of the issue has on the enforcement response.

The Commonwealth's premier law enforcement agency is the AFP yet the AFP, as the Committee has heard, does not consider illicit tobacco to be its primary responsibility. As such, it rarely initiates illicit tobacco cases. This is unfortunate given that the AFP's investigators enjoy access to the full suite of police powers, tools and legislation so that they can appropriately fight against this organised crime threat.

The ABF consider illicit tobacco, at the border, to be their responsibility and yet have no police powers or tools and very limited legislation with which to deal with this complex fraud issue. The ABF have also publicly stated that once the illicit goods move past the border it is no longer their responsibility despite the goods having been smuggled and being still subject to duty.

In effect, we have a situation where the only agency properly equipped to deal with organised crime and widespread revenue evasion, the AFP, have passed responsibility for imported illicit tobacco to the ABF who does not have the capability to address it.

In addition, the ATO have, to date, under-estimated the seriousness of the domestic threat and have dedicated few resources to finding and eliminating locally grown tobacco. It could also be argued that the ATO does little to raise the risks for criminals involved in this crime type.

The ACCC (consumer protection) and the Department of Health (Plain packaging) have been given responsibility for discrete aspects of the illicit tobacco problem but have been reluctant to utilise the legislative options they have been given.

The issue, with its increasing association with violent crimes and its marked effects in rural areas, has attracted the attention of State Police. They are currently hindered however by a lack of access to the Commonwealth legislation.

Due to a lack of a national illicit tobacco strategy and a misunderstanding of this revenue-related law enforcement problem, the agencies mentioned above are yet to launch a co-operative and holistic response in relation to illicit tobacco. Without an overarching policy, the illicit tobacco has no one Government Department or Commonwealth agency taking responsibility for the problem. As such, no one agency can be held accountable for it.



Legislation

The current Commonwealth legislation does not allow relevant agencies to mount a comprehensive and flexible response to the illicit tobacco risk. This situation has come about due to the historical formulation of Commonwealth Acts such as the *Customs Act* and the *Excise Act* which have been based on the past needs of the responsible agencies. The organised crime threat posed by illicit tobacco has now out-grown those pieces of legislation and the capabilities of the agencies who enforce them.

I am aware that the ABF, in consultation with other agencies, have begun a process to review the legislation. This process seems to have been commenced prematurely given that the findings of this Committee may have a significant impact on future legislation and the structure of the response. I am particularly concerned that this process has begun before the nature of the crime is properly understood.

Some of the critical issues that need to be addressed by any legislative review are:

1. Will the legislative changes incorporate international illicit tobacco conventions and examples of world's best practice?
2. Will the legislation capture the organised crime driven/complex fraud nature of the threat?
3. Will the legislation allow the Commonwealth to protect its revenue?
4. Will the legislation be mindful of the fact that there is no longer any tobacco production or manufacturing in this country?
5. Will there be appropriate offences for those who enable the crime at all points along the supply chain?
6. Will the extra-territorial nature of the crime be accommodated?
7. Will the actions of key enablers of the crime, such as Customs brokers, storage providers, transporters, distributors and retailers be addressed?
8. Will associated offending, such as money laundering and false documentation, be accessible by the relevant agencies?
9. Will the agency/s who are deemed responsible for this issue be given the necessary law enforcement powers and tools to appropriately respond to the issue?
10. Will any State or Federal law enforcement agency be given access to the legislation so that they can take appropriate action?

Appropriate legislation is a key enabler of any enforcement response but the mere presence of new legislation does not mean that agencies will seek to use it. A mechanism needs to be created whereby relevant agencies are encouraged to develop a coordinated and holistic enforcement response and are held accountable for the outcomes.



Other related issues

World Health Organisation Framework Convention on Tobacco Control (WHO FCTC)

Australia is a signatory to and has ratified the WHO FCTC. This document is considered the primary international tobacco control instrument. The FCTC comprises 38 Articles addressing many aspects of tobacco control. In my experience in the Commonwealth Public Service, the Article that draws the most attention from policy makers is Article 5.3 which states, "*In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.*" The policy areas of various Commonwealth agencies have debated the meaning of this Article in great depth. Various guidelines have been drafted in relation to it.

These guidelines define "public health policy" and "commercial and other vested interests of the tobacco industry" so broadly that it can inhibit law enforcement agencies from properly confronting illicit trade. In my experience that the fight against illicit trade greatly benefits from enhanced public/private partnership in the form of an agreed approach between the tobacco industry and government agencies. The Commonwealth agencies need to understand that in regard to reducing the illicit trade, the industry and government share parallel objectives.

While the sub-Article 5.3 is being comprehensively addressed, it could be said that Article 15 and its sub-Articles, which relate to illicit tobacco has not yet been fully implemented. This highlights Australia's emphasis on the health aspects of tobacco control while not giving proper regard to the law enforcement and revenue loss implications.

Any policy area that is set up to address illicit tobacco would take their lead with respect to guidelines and governance structures from Article 15 of the FCTC and the Convention's associated Protocol To Eliminate Illicit Trade in Tobacco Products.

World Health Organisation Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol)

The Protocol places a range of obligations on the contracting parties and tobacco manufacturers including supply chain control measures, such as licensing of manufacturers and distributors, enforcement in free trade zones, controls on duty-free and internet sales and the implementation of tracking and tracing technologies.

The Protocol was the first document created under the FCTC and was developed to more specifically address the illicit tobacco problem. Its recommendations are designed to help countries protect themselves from the threat.

Many countries including the UK and China have signed the Protocol. Australia has not. Again, this highlights the lack of focus Australian agencies have given to the issue.



Example of World's Best Practice

The United Kingdom's response to illicit tobacco presents an opportunity for Australian agencies to learn from a country that has faced similar problems to our own. They began their response to the issue by first understanding and accepting the scale of the problem. This led to the informed development of appropriate policy and subsequent action.

The illicit tobacco crime environment in the UK is like our own in that organised crime largely controls the illegal importation and distribution of the product. The illicit market has also been driven by the high UK tobacco taxes compared to their European neighbours. Approximately 20 years ago, the UK sought to prevent the leakage of government revenue from illicit tobacco by developing an National Illicit Tobacco Strategy. This strategy, guided by adherence to the international protocols outlined above, is now known as its "Leaf to Light" strategy.

([https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418732/Tackling_illlicit_tobacco - From leaf to light 2015 .pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418732/Tackling_illlicit_tobacco_-_From_leaf_to_light_2015_.pdf))

Led by the relevant UK government departments, Treasury and Immigration, coordinated enforcement action has resulted in the containment and/or reduction of the problem. It has also protected the government's revenue via legitimate tobacco products. This dedicated domestic and international intelligence and investigative response has raised the risk to criminals of being caught and deterred other opportunists from participating in the crime type.

It is worthy of note that the UK Health Department, like in Australia, is responsible for the UK Tobacco Control Strategy while their Treasury and Immigration departments see illicit tobacco as falling into their bailiwick. This has allowed agencies, armed with the full suite of police powers (HMRC and UKBF), to properly address this organised crime problem.

A quick comparison of the UK response to illicit tobacco to our own is below:

#	UK Response	Australian Response
1	The UK have long recognised illicit tobacco as a significant revenue evasion issue.	Australia has not seen illicit tobacco as a serious law enforcement issue.
2	The UK government have measured the tax gap for cigarettes as being in the high teens and loose leaf tobacco in the 30's.	The Australian government has made no attempt to measure the size of the illicit market. It has relied on figures supplied by the Anti-Cancer Council stating the figure to be 3% or less.
3	They determined that this law enforcement issue required a substantial law enforcement response and the two logical departments, Treasury and Immigration, developed an Illicit Tobacco policy drawing on, guiding and coordinating their combined resources.	Australia's "Tobacco Policy" is governed by the Department of Health. Consequently, the law enforcement and revenue issues have not been adequately recognised or addressed. Australia has no Illicit Tobacco Policy.



4	The UK have signed the WHO Protocol to Eliminate Illicit Trade in Tobacco Products.	Australia have not signed the Protocol. Australia's "Tobacco Policy" makers have advised against it.
5	Her Majesty's Revenue and Customs and the UK Border Force have close to 1,000 experienced, skilled and trained analysts and investigators working together to combat Illicit Tobacco.	Australia have very few experienced investigators in this field and there is little coordination amongst the relevant agencies.
6	HMRC and UKBF have the full suite of covert electronic police powers and tools in their fight against illicit tobacco.	The ABF and the ATO have no police powers or tools to address this organised crime issue.
7	HMRC have over 40 staff strategically placed offshore to identify and intercept illicit tobacco before it reaches the UK.	Australia have no offshore resources dedicated to illicit tobacco.
8	UK legislation is appropriate to address the problem at all points along the border continuum, "From leaf to light".	Australian legislation does not reflect the criminal methodologies involved
9	UK agencies interact with and gain valuable intelligence from the tobacco industry. These interactions are regulated via Memorandums of Understanding.	Australian agencies are discouraged from speaking with tobacco companies.
10	UK agencies have strictly monitored enforcement measures.	Australian agencies have no set objectives or performance measures
11	The UK seize 1.3 billion cigarettes per year and dismantle over 70 Organised Crime Groups, conducting hundreds of prosecutions.	Australia are unable to accurately measure seizure rates Few OCG's have been dismantled Less than 5 prosecutions per year have been conducted.
12	Despite the vast resources dedicated to the issue, the UK has only managed to reduce the percentage of illicit cigarettes to about 16% of the market and the illegal loose leaf importations are 35% of that market. Their aspirational target is to reduce illicit tobacco to 10%.	The percentage of illicit tobacco in Australia's market is increasing.



Return on investment

The Australian Government has shown a willingness to provide additional funding to agencies to help increase their enforcement and compliance efforts with a view to generating increased taxation returns. Some recent examples of this include:

1. "Trusts Taskforce" - In the 2013–14 Budget, the government provided \$67.9 million over four years to the ATO for targeted compliance action against people evading tax via trusts. This measure was estimated to increase revenue by \$379 million over the same period, i.e. A projected 5.6 to 1 return on investment. The taskforce actually returned more than expected.
2. In 2016, the ATO received an additional \$678 million over four years with an expected return of \$3.9 billion over the same period. This funding was provided to create a 1,300-strong taskforce. Again, these figures represented an expected 5.7 to 1 return on investment.
3. Project Wickenby, a fully funded multi-agency taskforce and Australia's largest tax recovery project ran for 10 years from 2006. It recouped \$985.7m of the estimated \$2.3 billion in identified tax liabilities and again secured more revenue than it cost to run.

There is also evidence proving that Project Wickenby's work did more than just re-coup funds, its interventions also improved taxpayers' willingness to comply with their taxation obligations and showed that people in Wickenby's sights voluntarily lodged more accurate tax returns and paid more tax than previously. It could therefore be said that the enforcement action taken by Project Wickenby changed behaviors, deterred potential tax evaders and prevented future revenue losses.

While Australian agencies have not yet measured the size of the illicit tobacco market or made requests for funding on a return for investment basis, the UK agency primarily responsible for illicit tobacco, HMRC, have made successful representations to the UK Government in this regard. HMRC have sought additional funding on the basis that they could return 37 pounds for every pound of additional funding. It must be remembered that HMRC have all the police powers and highly effective domestic and international structures so they can legitimately claim to be using the extra funding wisely. HMRC have been able to prove to the UK Government that they consistently meet their projected targets with this funding.

Assuming my calculations are correct and the annual revenue loss to the Commonwealth from illicit tobacco is near \$4 billion or 28% of the total tobacco market, the Government must be willing to invest a substantial sum to ensure the expected tax receipts from tobacco are realised.



Recommendations

It is recommended that the Australian Government:

1. Classify illicit tobacco as a serious financial crime
2. Consider adding illicit tobacco to the National Organised Crime Response Plan (2015-2018)
3. Consider asking the ACIC to create a Reference for illicit tobacco
4. Create a body consisting of personnel from the Treasury, Justice, Attorney-General's and Immigration Departments, to develop and implement a National Illicit Tobacco Strategy (NITS)
5. Give prominence to the views of State and Federal law enforcement and other relevant stakeholder agencies and take its lead from international conventions and proven best practice
6. Clearly define each agency's roles and responsibilities under the NITS, including appointing a lead agency, and should outline the schedule of reporting required by those agencies to Government with respect to their obligations
7. Instruct Commonwealth agencies to create a fully funded, multi-year and multi-agency taskforce in each state and territory designed to conduct integrated intelligence and enforcement action and to coordinate the broader enforcement and compliance responses from their home agencies

Conclusion

When the Government decided to use the excise rate as a pillar of their health policy it created greater opportunities in the illicit tobacco environment for established smugglers as they saw their profit margins increase. This highly-taxed commodity has also delivered rich-pickings for opportunistic players.

The exponential growth of the illegal tobacco industry over the past 20 years could have been curbed by proportionally increasing the efforts put into regulating the market. This would have required an increase in funding, resources, powers, investigative tools and updated legislation. In fact, none of these things have occurred. What has happened in that time is that, while the focus of government and law enforcement agencies has been understandably diverted towards national security and narcotics, organised crime have exploited the low risk/high profit environment of illicit tobacco and become entrenched in it.

If the Government wishes to redress the imbalance that has given criminal syndicates a significant advantage and ensure Commonwealth revenues are protected, it needs to create a national illicit tobacco policy that, through coordinated and consistent enforcement activity, generates compliance with of our laws and dissuades potential smugglers from entering this lucrative but illegal trade.

Rohan Pike

12 January 2017