



**Australian Government**

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**Australian National Preventive Health Agency**

Australian National Preventive Health Agency (ANPHA) submission:

The Senate Standing Committee on Legal and Constitutional Affairs Inquiry on  
*Customs Amendment (Smuggled Tobacco) Bill 2012*

July 2012

*Contents*

1. ANPHA's role in preventive health
2. The Australian health context for preventing illicit tobacco use
3. Australia's obligations under the World Health Organisation's Framework Convention on Tobacco Control

The Australian National Preventive Health Agency (ANPHA) welcomes the Inquiry on the Customs Amendment (Smuggling Tobacco) Bill 2012 (the Bill) by the Senate Standing Committee on Legal and Constitutional Affairs (the Committee).

ANPHA notes the Bill will amend the Customs Act 1901 to create specific criminal offences and for the smuggling of tobacco products where the person conveying or possessing goods knows they were smuggled. In this submission to the Committee, ANPHA will address the use of illicit tobacco products and the impact on the health of Australians.

## **1. ANPHA's role in preventive health**

The Australian National Preventive Health Agency (ANPHA) was established on 1 January 2011 to strengthen Australia's investment in preventive health, following the commencement of the *Australian National Preventive Health Agency Act 2010*.

The Council of Australian Governments (COAG) agreed to establish ANPHA in November 2008, as part of the *National Partnership Agreement on Preventive Health*.<sup>1</sup> The creation of a national preventive health agency was also recommended in the National Health and Hospitals Reform Commission's Report (released in July 2009) and in the final report of the National Preventative Health Taskforce (released in September 2009).

ANPHA contributes to improving health outcomes for Australians by helping to reverse the rising prevalence of preventable chronic diseases. ANPHA supports all Australian Health Ministers in managing the complex challenges of preventable chronic diseases. ANPHA supports the development and implementation of evidence-based approaches to preventive health initiatives and has been charged with focussing its initial efforts on the risks and burdens of disease associated with obesity, tobacco and harmful alcohol use.

## **2. The Australian health context for preventing illicit tobacco use**

Tobacco smoking is the most preventable cause of ill health and death in Australia. Currently an estimated 15.9% of Australians aged 18+ smoke daily, with smoking estimated to be responsible for 7.8% of the burden of disease among Australians.<sup>2</sup> Reducing tobacco-related harm remains a priority of Australia's governments, with continued emphasis on the implementation of a comprehensive and complimentary range of strategies aimed at further reducing Australia's smoking rate.

The evidence has consistently and clearly shown that tax increases on tobacco products are the single most effective means available to governments to reduce tobacco consumption and therefore reduce death and disease due to smoking.<sup>3</sup> Smuggling and illicit trade of tobacco undermines the effectiveness of these tax increases and price policies: resulting in cheaper prices and potential increases in tobacco use.<sup>4</sup> This in turn has the potential to contribute to higher incidence of smoking related morbidity and mortality.

At present there is a paucity of available research on the health effects of illicit tobacco; however, the use of loose tobacco, or 'chop chop', has been associated with illness over and above that cause by commercially produced cigarettes due to bulking agents used such as twigs, raw cotton and grass

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<sup>1</sup> COAG 2008. *National Partnership Agreement on Preventive Health*.

[http://www.federalfinancialrelations.gov.au/content/national\\_partnership\\_agreements/HE004/Preventive\\_Health.pdf](http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/HE004/Preventive_Health.pdf)

<sup>2</sup> AIHW 2011. 2010 National Drug Strategy Household Survey report. Drug statistics series no. 25. Cat. no. PHE 145. Canberra: AIHW

<sup>3</sup> L.Joossens & M. Raw, 2012 *From Smuggling to illicit trade* Tobacco Control 2012;21:230-234

<sup>4</sup> J. Lieberman, E. Blecher, A. R. Carbajales & B. Fishburn *Opportunities and risks of the proposed FCTC protocol on illicit trade* Tobacco Control 2011; 20:436-438

clippings. Fungal (mould), mycotoxins, bacteria and actinomycetes have also been detected in chop chop. These contaminants have been linked to a number of adverse health effects in humans, including carcinoma of the lung.<sup>5</sup>

Australia has been successful in preventing the emergence of widespread illicit trade in tobacco. In 2010-11, Australian Customs and Border Protection seized 258 tonnes of tobacco, 82 million cigarettes and made 55 detections in sea cargo arriving in Australia.<sup>6</sup> As outlined in Australia's draft *National Tobacco Strategy 2012-18*, continued effort is required however, to prevent an increase in the availability and use of illicit tobacco products and contraband cigarettes – particularly following increases in the price of tobacco.

### **3. Australia's obligations under the World Health Organisation's Framework Convention on Tobacco Control**

The WHO Framework Convention on Tobacco Control (FCTC) – which was adopted in 2003, and came into force in 2005 – is now one of the most widely supported treaties in the history of the United Nations. The FCTC and its Articles (or guidelines) commit nations to implement tobacco-control policies – including combating illicit trade that are aimed at continuous and substantial reduction in a country's prevalence of tobacco use and exposure to tobacco smoke'.<sup>8</sup>

The primary obligations contained in the FCTC may be divided into two categories: those aimed at reducing the demand for tobacco products; and those aimed at reducing the supply of tobacco products.<sup>9</sup> As a signatory to the FCTC, Australia is legally bound to perform – in good faith – the full range of obligations. This includes Article 15 of the FCTC which states:

*1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.*

*2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status'.<sup>10</sup>*

The Customs Amendment (Smuggled Tobacco) Bill 2012 is consistent with Australia's obligations as a Party to the FCTC. It plays a key role in bettering the health of Australians by preventing the uptake and use of illicit tobacco; and supports Australia's broader tobacco control agenda.

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<sup>5</sup> Bittoun R. The medical consequences of smoking 'chop chop' tobacco. Report prepared for the Commonwealth Department of Health and Ageing. Canberra: Department of Health and Ageing; 2004

<sup>6</sup> Customs and Border Protection Services *Annual Report 2010-11*

<sup>8</sup> WHO Framework Convention on Tobacco Control, adopted 16 June 2003 (entered into force 27 February 2005) (FCTC). Available from: <http://www.who.int/tobacco/framework/en/>

<sup>9</sup> Tobacco in Australia: Facts and Issues. Available at: <http://www.tobaccoinaustralia.org.au>

<sup>10</sup> World Health Organisation Framework Convention on Tobacco Control. Available from: <http://www.who.int/tobacco/framework/en/>