

This submission is based upon a paper I presented to the American Society of Public Administration's 75<sup>th</sup> Annual Conference, Washington, DC, 14-18 March, 2014. The paper was originally framed around the quality of governance associated with the then recent changes to the duty free allowance for tobacco entering Australia. Furthermore, it was drafted with an international audience in mind.

What follows is an abbreviated version retaining an outline of the circumstance surrounding Australian tobacco control policy including corruption at the border and some data on illicit tobacco trafficking. What then follows is a brief discussion on the impact of the new duty-free policy on governance at the border. Wherever possible, data has been updated.

The research found that at the end of 2013, it was likely many travelers entering Australia, both citizens and foreign nationals, were ignoring the reduced duty free-limits for tobacco products. The then Australian Customs and Border Protection Service were not in a position to effectively enforce the new government policy for a number of reasons. Resources, pressure to process passengers and internal policies all contributed.

### **The Australian Case**

Governance of the tobacco industry in Australia is balanced between the federal and state governments. The level of government that has the greater influence on tobacco governance, however, is difficult to judge. State governments are responsible for laws dictating when and where tobacco can be consumed, and how it can be physically advertised. Revenue from tobacco, control of imports and exports and electronic advertising are under federal jurisdiction. Packaging of tobacco has been ceded to federal regulation, which dictates plain packaging with a uniform olive drab colour, standardized fonts for brand names and large health warnings – a world first under ongoing challenge from the tobacco industry (Figure 1 below).

Plain packaging is only one of the health aspects of tobacco policy, other aspects are divided between both state and federal levels of government. The Federal government administers Medicare, a taxpayer funded universal health insurance system available to all Australians, while at the same time distributing tax revenue to the states to administer delivery of health services directly. To further complicate matters, Australian health insurance is a mixture whereby public policy encourages those who can afford it to take out private insurance, leaving Medicare as a social safety net. The prevalence of smoking among poorer Australians—which matches global trends (Siahpush, McNeill, Borland, & Fong,

2006)—places further strain on the public healthcare system at both Federal and State levels.

Table 1 provides a timeline of significant policy events in Australia related to tobacco.

Table 1

*Timeline of Australian Tobacco Policy and Regulation*

Year	Policy / Event
1901	Excise Act (C'th) and Customs Act (1901) (C'th) – duty on tobacco products <sup>2</sup>
1974-89	Victoria introduces a licence fee on tobacco in 1974, followed by other states <sup>2</sup>
1973	Public health warnings on packaging and advertising <sup>1</sup>
1976	Ban on television and radio advertising <sup>1</sup>
1982-6	Victoria introduces Hypothecated taxes to buy out tobacco sponsorship <sup>1</sup>
1982-6	South Australian Tobacco Control Act <sup>1</sup>
1983	State 'Quit' campaigns commence <sup>1</sup>
1983	Excise and Customs duty linked to the consumer price index (CPI) <sup>2</sup>
1986-87	Smoke-free workplace introduced in Federal public sector then all indoor workplaces <sup>1</sup>
1987	New health warnings on packaging <sup>1</sup>
1986	Excise on all tobacco products equalized <sup>2</sup>
1992-5	excise increases - \$5 / kilo (1992); 3% / kilo (1993); 10% / kilo (1994 and 1995) <sup>2</sup>
1995	New health warnings on packaging <sup>1</sup>
1996	By this time, all state & territory licence fees at 100% of sales <sup>2</sup>
1997	National tobacco campaign <sup>1</sup>
1997	<i>Ha &amp; Anor v. NSW &amp; Ors</i> case in the High Court of Australia – All state tobacco licence fees are ruled unconstitutional. Therefore, the Commonwealth began to collect the revenue on states' behalf. <sup>2</sup>
1999	Tax under the Excise Act changed from by weight to per stick <sup>1</sup>
2000	Smoke free restaurants <sup>1</sup>
2001	GST introduced increasing price by 9.1% <sup>1</sup>
2006	Smoke-free bars and pubs <sup>1</sup>
2006-11	NSW bans the retail displays of tobacco at point of sale, followed by the other states and territories
2009	<i>Australia's Future Taxation System</i> (AFTS) recommends increasing tax on tobacco products, linking excise to wage increases <b>and the abolition of Duty-Free Tobacco</b> (Henry, Harmer, Piggott, Ridout, & Smith, 2009, pp. 451-455)
2011	Plain packaging introduced
2012	AFTS implemented –duty-free limit is reduced from 250 to 50 cigarettes per inbound adult traveller

<sup>1</sup> (Chapman, 2008; Winstanley 2012)

<sup>2</sup> (Scollo, 2008a, pp. 16-18)



Figure 1 – Example of plain packaged cigarettes in Australia (DoHA 2011)

Each of the changes to tobacco policy listed on Table 1 has been directed at raising revenue or improving public health. In more recent years, both goals have been in the sights of government. This is despite the fact the policies are mutually exclusive – better health outcomes equate to less smoking, and consequent reduction in revenue. Table 1 illustrates the trajectory of tobacco control policy in Australia, moving from revenue to health and social control. An important aspect of this policy, beginning at the time of Federation in 1901, has been the control of tobacco at the border. To narrow the focus, this paper examines the quality of governance at implementing the effective abolition of the duty-free status of tobacco at the border in 2012.

### **Australia's border and corruption**

The task of border control is immense. For example, in the 2011/12 financial year, the then Australian Customs and Border Protection Service (ACBPS) processed 29.94 million passengers and 18.4 million air cargo consignments (ACBPS, 2012a). By 2014/15, these figures had increased to approximately 35 million passengers and 33.6 million air cargo consignments (ACBPS 2015). The facilitation of the movement of these people and products involved airlines, freight companies and associated public and private sector entities. Organizations such as ACBPS and the Australian Quarantine and Inspection Service (AQIS) are obvious examples of public bodies with this responsibility; however, other government agencies such as the Department of Health also play a role. In the non-government sector, there are also numerous entities, ranging from private security firms at the docks to the catering companies that service airlines (Brewer 2013). All are vulnerable to varying degrees to corruption.

Corruption at the Australian border has proved to be a sensitive issue. For example, in 1988 the Australian Customs Services (now part of the ACBPS) commissioned historian

David Day (1996) to produce a two-volume history of customs in Australia. The first volume covered the era from European settlement until Federation in 1901. The second volume examined the following period until the time of his writing. Day found that from the outset border breaches were available for a price. What is obvious from Day's (1996) work is that the sheer size of the task for customs control presents Australia with some unique challenges. These include the long expanses of coastline and the number of ports under the watch of too few Commonwealth officials or representatives. When the customs agents in far North Queensland in the earlier part of the twentieth century accepted bribes to allow trafficking of drugs and people, the result was that access through the entire region was effectively up for sale.

In more recent years, a number of instances of corruption have been uncovered in both the public and private agencies responsible for administering Australia's border controls (O'Brien, 2012; Welch, 2011). This activity was mainly in relation to the transfer of prohibited goods, particularly drugs and firearms. Corruption has also been a factor in illegal immigration and the issue of student visas (Neighbour, 2010). However, research in Australia and other developed countries has often treated corruption as a peripheral issue, focusing instead on the criminality involved in illegal cross-border transactions.

Corruption at the border is different to the well-studied field of police corruption. Corruption in police services has undergone extensive scrutiny, both inside and outside academia (Barker 2011; Goldsmith & Lewis 2000; Huberts Kaptein & Lasthuizen 2007; Prenzler 2009; Sherman 1978). In Australia, several royal commissions and other inquiries have identified corrupt practices and groups within the various state police services and made recommendations to alleviate the problem (For an overview of these inquiries and the results see Prenzler, 2011). The most significant of those that touched on corruption and the border was the Costigan Royal Commission (1980-84). The commission report made strong links between the Federated Ship Painters and Dockers Union and drug trafficking (OPI, 2007, p. 122), thus showing that corruption at the border also included non-government entities. More recently, the Wheeler review (2005) of airport security again treated corruption as a side issue. However, it did take into account the threat to security posed by the numerous public and private organizations that operated in, or had access to, Australia's major airports. Both Costigan's findings and those of the Wheeler review highlight the difference between the functions of policing society and of controlling the border. The former is entrusted to a public body and the latter is effectively dispersed among numerous public and non-government

institutions and organizations. Simply using principles and knowledge of police corruption as a direct template for border control may not be theoretically appropriate.

A recent report by the Centre for the Study of Democracy (Gounev, Dzhekova, & Bezlov, 2012) focused on anti-corruption measures in border control in the European Union (EU). The EU study found three types of corruption that occurred at the border: ‘organized crime related; “petty” (small-scale) corruption; and administrative corruption similar to that which may occur in other large institutions’ (Gounev et al., 2012, p. 12). The contextual differences between Australia and the EU means a different mix of types of border corruption is to be expected. For example, petty corruption, which ‘might include activities such as providing a ‘normal passage fee’ to speed up border traffic (extortion) or waive minor irregularities, including petty smugglers to pay small bribes to ensure problem free passage or seeking payment for allowing the passage of known or wanted individuals’ (Gounev et al., 2012, pp. 12-13) is unlikely to be a problem in Australia. This is because the points where individuals cross the border are heavily monitored. Therefore, the customs officers do not have the same autonomy as their counterparts at remote European land borders. While the report provides a useful backdrop for this paper, there remain significant contextual differences that make it impossible to draw similar conclusions for Australia. These include the jurisdictional diversity applicable to the EU border, the extensive land borders, and the historical shifts in borders that have not necessarily matched the social realities of Europe’s border zones.

### **Illicit tobacco trafficking and Australia**

Trafficking of tobacco products is a global problem, estimated to cost governments up to \$US40 billion in lost revenue globally every year (von Lampe, 2011, p. 148). Estimates on the size of the illicit tobacco market attribute 10.7% of cigarettes consumed worldwide to illicit sources (LeGresley et al., 2008, p. 203). Available data show that the percentage of contraband consumption in Australia was trending upwards (Scollo, 2008b). Research in Europe indicates unlawful international transport of cigarettes and tobacco has been driven by inconsistent taxation regimes and fraud (Joosens & Raw 1998). However, corruption has been linked to individuals and groups within border control authorities, who do not perceive serious criminality in what they see as essentially a supply and demand issue regarding a legal product (Gounev et al., 2012). For example, consumer attitudes in Scotland toward suppliers of contraband cigarettes considered the smugglers were ‘providing a valuable service’ (Wiltshire, Bancroft, Amos, & Parry, 2001, p. 203). Evidence of similar attitudes has

been found amongst individuals and groups within Australian authorities tasked with border control (ACLEI 2013, p. 9).

The growth in the tobacco black market in recent years has led to seizures by border control authorities—the ACBPS, the Australian Federal Police (AFP) and the Australian Taxation Office (ATO)—that have been significantly greater in volume than prohibited narcotics such as heroin and cocaine. Table 2 below shows that between 2007-08 and 2014-15, more than 1700 tonnes of illicit loose tobacco and nearly 835 million cigarettes were seized from sea cargo bound for Australia. This represents \$960 million in evaded duty. Corruption proved to be an element in some of this illicit trafficking.

Table 2  
*Tobacco detections in Australian sea cargo and duty evaded 2007/08 – 2011/12*

Year	Number of detections	Tobacco (tonnes)	Cigarettes (millions of sticks)	Duty evaded (\$ million)
2007–08	58	287	107	114
2008–09	33	180	50	70
2009–10	42	311	68	120
2010–11	55	258	82	135
2011–12	45	177	141	125
2012-13	76	183	200	151
2013-14	78	183	147	142
2014-15	91	150	40	103
Total	478	1729	835	960

(ACBPS 2012a, 2013a, 2015)

The profitability for organized smugglers has a corrupting effect on border control policy. In 2011, cigarette smugglers attempted to bribe Commonwealth officers (Cueno & Klein, 2011), two people were arrested in 2011-12 for bribery related to tobacco smuggling (P. Maley, 2012, p. 112) and a firm contracted by ACBPS to destroy seized goods, including cigarettes, diverted them from the furnace by using a trapdoor in the conveyor belt (Baker, McKenzie, & Butcher, 2012). In terms of organized crime and corruption of those entrusted with keeping the border, these numbers are remarkably low. However, given that Australian cigarettes are among the most expensive in the world and there are still more than three million Australians smoking (Chapman, 2008), it may be reasonable to hypothesise that there will be an increase in the cross border traffic in illegal cigarettes, with consequent corruption of border control. Recent research has found that high taxation, stable smoking prevalence and the high-profit/low-risk associated with the trade in illicit tobacco products create an illicit market that is highly attractive to organized criminal groups (Angelini & Calderoni,

2015). As we move toward de facto prohibition, there is no reason not to believe the increased revenue for tobacco in Australia will not have the same criminogenic effect that is found in Europe.

### **Discussion: meeting the integrity values of quality of governance**

The quality of governance framework focuses this paper on the processes of governance. In this case, the 2012 changes to the duty-free allowances for tobacco referred to in Table 1 above are the policy under analysis. In 2009, a major review of Australia's taxation system (the AFTS) recommended the removal of the duty-free allowance for tobacco, reducing it from 250 cigarettes to 25 – the estimated daily allowance for a heavy smoker, a move expected to increase revenue by \$200 million (Henry, Harmer, Piggott, Ridout, & Smith, 2009, pp. 451-455). A modified version of this recommendation—with the duty free allowance reduced to 50, not 25 cigarettes—was implemented in September 2012, with revenues projected over the forward years estimated to be \$127 million in 2012/13 (the new policy operating only nine months of the financial year) increasing to \$192 million by 2015/16 (Australian Government 2012, pp. 5-16). Despite an increase in the revenue per cigarette from \$0.25833 to \$0.40196 between 2009 and 2012 (Henry, Harmer, Piggott, Ridout, & Smith, 2009; ACBPS 2013a), the budget estimates fall short each year of what the AFTS estimated, even when accounting for the higher duty-free allowance that eventuated.

Managing the duty-free system is a matter of governance, not strictly government. Although the ACBPS *Practice Statement on Passenger and Duty Free Concessions* (ACBPS 2012b) states that 'policy and legislative responsibility for application of the duty free concession scheme rests with the Australian Customs and Border Protection Service', customs officials at the docks and airports are reliant on passengers completing their inward passenger cards in an honest manner, declaring items that would otherwise attract duty. In this, passengers who are smokers are part of the governance process at the border. ACBPS processing of passengers is done in line with a policy focused on giving the best impression to visitors and citizens alike:

*For many international travelers, their first impressions of Australia are created by their experience at our entry control points. This experience should be as welcoming and non-confronting as possible for the travelling public* (ACBPS 2013b).

The policy goes on to describe a commitment by customs to 'optimize the traveler experience' and that clearance processes are 'undertaken quickly and efficiently' (ACBPS 2013b). With nearly more than 17.5 million inbound passengers annually and the overall value of tourism and foreign business travelers to Australia a significant part of the economy,

these demands are understandable. Furthermore, the sheer numbers alone necessitate passenger cooperation in the governance process wherever possible. It would be impossible for every bag of every passenger to be searched for contraband in excess of duty-free allowances.

It could be argued the system of passenger processing is simply one of government providing service to the travelling public who adopt the role of customer or client. However, this perspective is simplistic and misleading. Thomas (2012) characterizes the public in three roles when contributing to public management. As citizens, the public contributes to the shaping of decisions that affect them and ‘joining with public managers in deliberating about the nature of public programs and their implementation’ (p. 6). As customers (or clients), the public receives services such as the issuance of licences. These services are at the individual level, and not the benefit of society at large (pp. 8-9). The third role of the public in public management is as partner, whereby the public contributes toward meeting the goals of government (p. 10). In the processing of passengers, the public is clearly not involved in the deliberative processes of shaping revenue, health or border policy, they are not seeking an individual service, but they do, through the volunteering of information on what they are bringing into the country, contribute toward meeting government health, revenue and border control goals. Thus, the system of administering duty-free concession arrangements is reliant on the cooperation of travelers, thereby making it a governance system.

### **Efficiency and effectiveness – Incorruptibility and impartiality**

It is difficult to judge the efficiency and effectiveness of any new policy. However, in the first annual report by ACBPS since the change to the tobacco duty-free limit, the reported figures are less than promising. According to this report, ‘between September 2012 and June 2013, approximately \$3.653 million in duty and GST was collected with 70,760 cartons of tobacco abandoned by travellers during the period’ (ACBPS 2013a, p. 56). With the duty on 200 cigarettes (a carton) at \$80.40 (ACBPS 2013a), the total value paid or abandoned by smokers equates to \$9.342 million. In other words to the 70,760 passengers who abandoned their (no-longer) duty-free cigarettes, another 45,435 can be added to show 116,195 passengers directly complied with the new policy. This number is well short of the number of smoking passengers estimated to travel at this time.

Sales data from British American Tobacco recently requested by the author indicated a 53% decline in Industry Shipment volumes for the duty free channel:

- October 2011 to September 2012 - 163, 679, 600 sticks

- October 2012 to September 2013 - 76, 437, 750 sticks

Like all data, this decline can be read a number of ways. It could reflect a success of government policy – the 53% decline attributed to inbound passengers only and the remaining trade representing continuity of sales to those outbound. Alternately, if the decline is evenly split over inward and outward passengers, then it would indicate a significant rise in people chancing their luck at bringing in more than they are lawfully allowed to.

While budget papers provided no estimated number of smoking passengers, this figure can be calculated through a process of reversal using the formula  $R / D_C = NS_{PAX}$  – or revenue divided by duty per carton of 200 cigarettes equals the number of smoking passengers. The government estimate was therefore  $\$127m / \$80.40 = 1,579,602$  smoking passengers expected to arrive or return to Australia in the reporting period. Subtracting those directly complying, over 1.4 million smoking passengers remain. It would be ludicrous to suggest all these people complied with the new policy,<sup>1</sup> just as it would be equally ludicrous to suggest they all intentionally breached it. However, even a small number – say 10% – acting dishonestly and bringing in over their limit is indicative of a policy that has turned 140,000 travellers from smokers to smugglers.

The problem for the customs officials here tasked with ‘optimizing the traveller experience’ and at the same time consistently applying the duty free concession arrangements – both requirements under existing policy (ACBPS 2012b, 2013b), is that these requirements are almost certainly mutually exclusive. Application of the concession arrangements would result in sub-optimal experiences for travellers such as long delays in customs queues. Alternately, the optimized traveller experience precludes full and proper application of duty-free concession rules. The decisions made on a day-to-day basis by customs officials fall into an ethical grey-zone. Frederickson (1993) described this as ‘bounded ethics [where] the administrator functions within the limitations of enabling legislation, with limited budgets, usually advocating or at least supporting the purposes of the agency’ (p. 249). Similar problems related to resource limitations, conflicting goals and unrealistic performance measures is not new for public servants like customs officers, who have to deal directly with the public – isolated in many ways from those who formulate the unrealistic policies (see for example Lipsky 1980). Therefore the policy fails to meet two aspects of quality of governance – application of the policy is not efficient and effective and further, it fails to meet the incorruptibility test of quality of governance.

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<sup>1</sup> The author has had several conversations with people who have ignored the duty-free allowance.

## **Conclusion**

Australian tobacco policy spans three broad policy arenas – health, revenue and border control. The success of the policy objectives is dependent on the cooperation of the smoking public on a number of levels. Public health policy outcomes rely on smokers making the decision to quit. Revenue policy is dependent on smokers consuming licit tobacco products. Finally, border policy is underpinned by the cooperation of travelling smokers in honestly complying with duty-free concession rules. This paper has looked at the big picture of tobacco policy in Australia and how it has developed in the three policy arenas. By focusing on Hubert's (2012) integrity values of quality of governance, this paper demonstrates how problems associated with the implementation of policy are pre-determined at other stages of the policy cycle.

In the main, this research shows the quality of governance in respect of Australian tobacco policy is good. The policy demonstrates high levels of democratic legitimacy, supported by a majority of both the non-smoking and smoking communities. Public officials who are overwhelmingly professional and civil toward the travelling public implement Australian tobacco policies in an accountable, transparent and lawful manner. Furthermore, the policies are robust enough to withstand challenges from big tobacco. In terms of efficiency and effectiveness, there is room for doubt as to how much intended revenue is ultimately collected, and short of searching every piece of luggage, this doubt must remain. Ancillary to this doubt is the likelihood a large number of travelers are choosing to bypass or at least take their chances at bringing into Australia excess tobacco products. Confirming or denying this likelihood is similarly difficult to determine. However, if the true number of travelers choosing to forsake their obligations is the same, or even greater than that estimated above, this corruption of the border policy cannot be attributed to the public sector employees tasked with managing the policy. As argued above, this is a case of governance, not government, and such distortion of the public will is on the whole the responsibility of the governed who have a stake in the quality of governance.

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