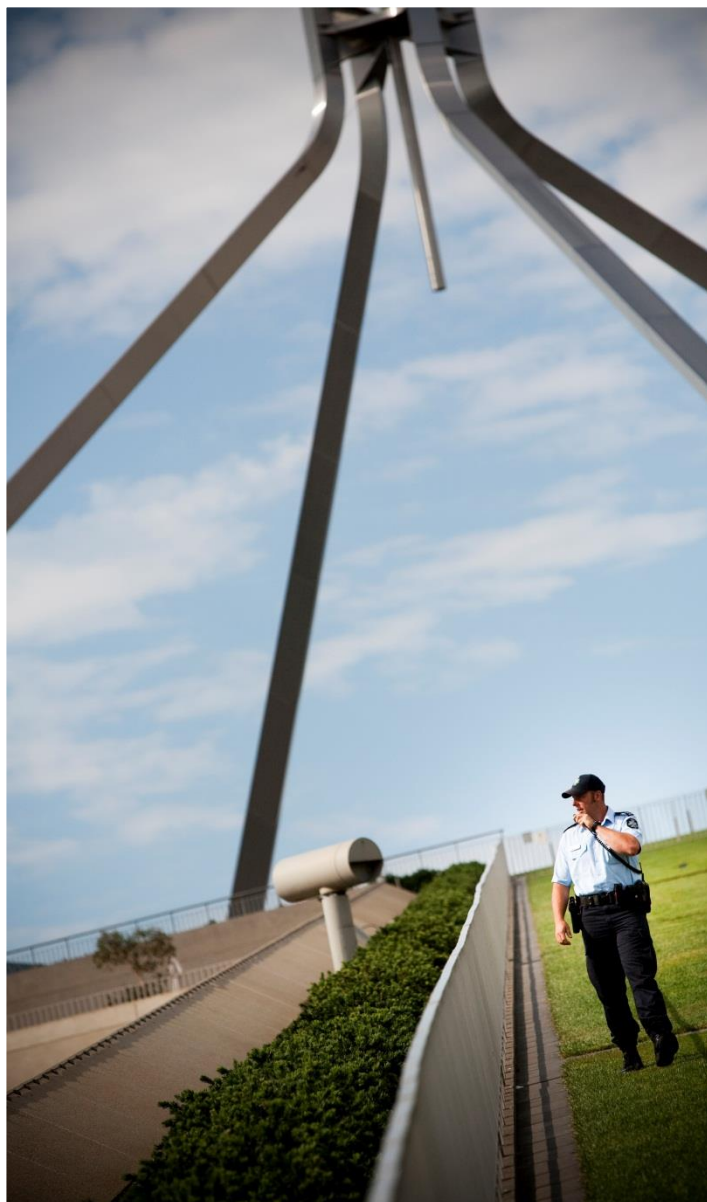


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Parliamentary  
Joint Committee  
on Law  
Enforcement  
Inquiry into Illicit Tobacco

February 2016

Australian Federal Police Submission

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### The AFP response to the Terms of Reference

#### **(b) the role of Commonwealth law enforcement agencies in responding to the importation, use, manufacture, distribution and domestic growth of illicit tobacco**

Historically, the primary responsibility for the investigation and prosecution of offences relating to the importation of illicit tobacco into Australia has remained with the Australian Customs and Border Protection Service (now Australian Border Force).

However, more recently the AFP has enhanced its role where there has been an infestation of organised crime involvement. This has included the Polaris Joint Waterfront Taskforce (JWFT), which has successfully dismantled a number of organised crime syndicates involved in importing illicit tobacco into Australia.

The Polaris JWFT was established in 2011 to “prevent, deter and defeat serious and organised crime and criminal facilitation involving goods under customs control with a focus on the sea cargo terminals in New South Wales.”

The majority of Polaris JWFT investigations have focused on organised crime syndicates facilitating illicit drug importations through the waterfront environment. However, since inception the Polaris JWFT also seized 121 tonnes of smuggled tobacco leaf products and 94 million smuggled cigarettes, preventing the evasion of \$129.93m in excise and customs duties to the Commonwealth.

The AFP led Criminal Asset Confiscation Taskforce (CACT) has also provided support to the Australian Border Force (ABF) and formerly the Australian Customs and Border Protection Service, in relation to identifying and confiscating the proceeds of crime derived from the illicit tobacco market.

For example during December 2015 a twelve month multi-agency investigation culminated in the restraint of \$8.35 million in assets alleged to have been derived from the proceeds of illicit tobacco fraud.

#### **(d) the involvement of organised crime, including international organised crime, in the importation, distribution and use of illicit tobacco in Australia**

The Polaris JWFT has established that the illicit tobacco market continues to remain attractive for organised crime syndicates, given the potential for the significant profits coupled with relatively low risk (compared to other illicit commodities such as drugs or firearms). It has also been established that profits derived from illicit tobacco provide funding for other criminal activities, the importation of border controlled drugs and counterfeit goods.

The following two case studies demonstrate how high-level organised crime syndicates have attempted to infiltrate border controls and import illicit tobacco into Australia.

##### *Polaris JWTF case study 1 – Operation MINIMUM*

In 2015 a Sydney-based transnational organised crime syndicate allegedly purchased two shipping containers of cigarette packets from the Middle East, where the cigarettes were due to be sold on the Australian black market via retail outlets. The excise and customs duties alleged to have been evaded in this instance was more than \$8m.

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In total 18 offenders were arrested and charged with tobacco smuggling and money laundering offences. This matter is currently before the court.

### *Polaris JWTF case study 2 – Operation TUSKERS*

In 2011 a Sydney-based organised crime syndicate offered bribes to waterfront employees to assist in circumventing border controls and facilitate the importation of illicit tobacco via sea freight.

As a result of a controlled operation, the AFP and NSW Police seized two containers of illicit tobacco which were falsely declared as non-tobacco products. Three offenders were arrested and charged with Commonwealth bribery, fraud and money laundering offences.

### **(e) the effectiveness of relevant Commonwealth legislation**

In December 2011 the *Tobacco Plain Packaging Act 2011* (Cth) was passed into law, providing heavy financial penalties for retailers who sell non-plain packaged cigarettes and persons who purchase these products for any purpose other than personal use. This Act could be an effective tool in the dismantling of distribution networks of smuggled tobacco products. Polaris JWTF has twice referred serial offenders selling non-plain packaged cigarettes to the Department of Health.

In June 2012 the *Customs Act 1901* (Cth) was amended to create criminal offences under a new section (233BABAD) for importing, conveying, or possessing tobacco products with the intention of defrauding the revenue (i.e. evading the relevant duty). The offences carry a penalty of up to five times the duty evaded and up to 10 years imprisonment.

The intention behind s233BABAD was to provide a strong deterrent to criminals considering importing illicit tobacco, as well as to demonstrate the seriousness with which the Commonwealth treats such criminal acts. However, the AFP suggests there remain opportunities to further strengthen this deterrent and improve the operation of the offences.

### *Considerations for legislative amendments*

Currently, in order for an offender to be convicted under s233BABAD the prosecution must establish that the offender either intended to defraud the revenue (for the import offence), or knew the tobacco was imported with the intention to defraud the revenue (for the conveyance or possession offence). In practice there are often difficulties in satisfying this element of the offences.

As such, consideration could be given to amending s233BABAD to make importing, conveying, or possessing commercial quantities of non-plain packaged tobacco products without lawful excuse (i.e. tobacco products purchased under a duty free arrangement or held in bonded warehouse) *prima facie* evidence of smuggling. The AFP suggests a model similar to s307.14 of the *Criminal Code Act 1995* – Presumptions for importing and exporting border controlled precursors could be considered. These provisions provide for a rebuttable presumption of intention to either use the substance to manufacture a controlled drug (307.14(1)), or belief that another person intends to use the substance to manufacture a controlled drug (307.14(3)). For the purposes of s233BABAD, a presumption of intention (for 233BABAD(1)(c)) or knowledge (for 233BABAD(2)(c)) could apply where the tobacco products do not comply with the requirements of the *Tobacco Plain Packaging Act 2011*.