



Australian Government
**Australian Customs and
Border Protection Service**

CHIEF EXECUTIVE OFFICER

Customs House
5 Constitution Avenue
Canberra City ACT 2601

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Ms Dennett

Thank you for your letter of 2 July 2012 inviting the Australian Customs and Border Protection Service to provide a submission to the *Customs Amendment (Smuggled Tobacco) Bill 2012* (the Bill) Inquiry.

Tobacco smuggling is identified as one of Customs and Border Protection's key border risks and the legislative changes proposed in the Bill will enhance our capacity to manage this risk.

Smuggling of illicit tobacco and tobacco products not only poses a risk to Commonwealth revenue, but also poses risks to the community, the economy and the environment. Smuggled tobacco products commonly contain dangerous contaminants and much higher levels of carcinogens than legitimate products. Smuggled tobacco products also circumvent quarantine controls, thereby increasing the potential for exotic pests and diseases to be introduced. Should this occur, the adverse impact on both the economy and the environment could be significant.

Tobacco smuggling offences are often committed by organised criminal syndicates who view tobacco smuggling as a high return and relatively low risk venture. Inexpensive tobacco products can be legitimately accessed overseas, with the sale of smuggled tobacco products in the Australian domestic market being very profitable given the high rates of excise duty. The profits made by these syndicates can also potentially be used to fund other criminal activities.

When an importation of illicit tobacco is detected, the offence is generally investigated by Customs and Border Protection as a smuggling offence under section 233 of the *Customs Act 1901*. The penalties associated with this offence are pecuniary and are imposed at between two and five times the amount of duty evaded. Our experience is that only a fraction of the fine imposed is ever able to be recovered. These penalties are no longer an effective deterrent to tobacco smuggling activities and do not significantly disrupt the syndicates involved.

In order to effectively manage the risks that tobacco smuggling pose, it is important that the penalties associated with these offences negate the profitability of the smuggling activities and reflect the seriousness of the crimes being committed. The Bill proposes a number of amendments to the *Customs Act 1901* designed to achieve this. New offences include smuggling tobacco products and conveying or possessing tobacco products, with penalties of up to 10 years imprisonment, in addition to the existing pecuniary penalties, are proposed. Importantly tobacco smuggling can be considered a specific example of fraud upon the Commonwealth and the penalty proposed for these new offences is consistent with the maximum penalty for the fraudulent conduct offences in the Criminal Code.

These new offences will be subject to existing arrest powers under section 210 of the *Customs Act 1901* which enable an officer of Customs or police to arrest a person without warrant in certain circumstances. This power can only be exercised if an officer believes on reasonable grounds that proceeding by summons against the person would not achieve one or more of several purposes, including appearance of the person before court in respect of the offence. There are additional safeguards required by the legislation, including a requirement that a person be informed of the circumstances of their arrest and that they are taken before a magistrate as soon as practicable.

The combined effect of these changes is to introduce penalties for tobacco smuggling which more accurately reflect the risks posed to the Australian community, the seriousness of the offences being committed, and provide a strong deterrent to criminals.

If you have any further questions, the contact officer within Customs and Border Protection is _____ and he may be contacted on _____

Yours sincerely

Michael Carmody
Chief Executive Officer

// July 2012