

**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE**

**INQUIRY INTO  
CUSTOMS AMENDMENT (SMUGGLED TOBACCO) BILL 2012**

**SUBMISSION OF THE AUSTRALIAN GOVERNMENT DEPARTMENT OF  
HEALTH AND AGEING**

**JULY 2012**

## **Overview**

The Department of Health and Ageing supports strengthening penalties for tobacco smuggling as proposed in the Bill. Tobacco smuggling undermines Government efforts to reduce rates of smoking in Australia. In particular, smuggling reduces the effectiveness of tobacco excise as a tobacco control measure, and could reduce the effectiveness of plain packaging and expanded graphic health warning requirements that will take effect in full from 1 December 2012. The Bill is also consistent with Australia's international obligations under the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), and with the text of the draft WHO Protocol on Eliminating Illicit Trade in Tobacco to be considered for adoption by the Conference of the Parties of the FCTC in November 2012.

## **The Bill**

The Bill strengthens penalties for tobacco smuggling by creating new criminal offences for the smuggling of tobacco products and for the conveyance and possession of smuggled tobacco where the person conveying or possessing the tobacco knows the tobacco products were imported with the intent to defraud the revenue. The penalty for committing these offences will be up to ten years imprisonment and/or a fine of up to five times the amount of duty evaded.

## **Illicit Trade in Tobacco in Australia**

There is no official estimate of the size of the illicit trade in tobacco in Australia. However, the 2010 National Drug Strategy Household Survey found that 4.9 per cent of smokers used loose unbranded tobacco (commonly known as 'chop-chop'), and that 1.5 per cent of smokers used loose unbranded tobacco more than half the time.

On 3 May 2012, the tobacco industry released its report on the illicit trade in tobacco in Australia in 2011. The report was prepared for the tobacco industry by Deloitte. The report found that, in 2011, the size of the illicit tobacco market was equivalent to 13.4 per cent of the legal tobacco market. The Department considers that the Deloitte report contains a range of methodological flaws that lead it to substantially exaggerate the size of the illicit trade in tobacco in Australia.

Nevertheless, the illicit tobacco trade remains a public health concern in Australia, given its potential to undermine Government action to reduce smoking rates.

## **Health and social impact of tobacco use in Australia**

The World Health Organization (WHO) has described tobacco as "the only legal consumer product that kills when used exactly as intended by the manufacturer"<sup>1</sup>.

Smoking remains one of the leading causes of preventable death and disease among Australians, killing over 15,000 Australians every year<sup>2</sup>. The economic and social costs of

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<sup>1</sup> World Health Organization, "Call for Pictorial Warnings on Tobacco Packs" (29 May 2009), <http://www.who.int/mediacentre/news/releases/2009/notobaccoday20090529/en/index.html>.

<sup>2</sup> Begg, Vos T, Barker B, Stevenson C, Stanley L and Lopez A (2007). The burden of disease and injury in Australia 2003, section 4.3, PHE 82. Canberra: Australian Institute of Health and Welfare.

smoking (including health costs) are estimated at \$31.5 billion each year<sup>3</sup>. Although smoking rates are falling, approximately three million Australians still smoke<sup>4</sup>.

The current state of scientific knowledge, summarised in the 2004 US Surgeon General's report<sup>5</sup> (the report), is that smoking harms nearly every organ of the body, causing many diseases and reducing the health of smokers in general. The report highlights the authoritative and generally accepted scientific opinion that smoking is a cause of many forms of cancer (lung, larynx, lip, tongue, mouth, pharynx, oesophagus, pancreas, bladder, kidney, cervix, stomach and also acute myeloid leukaemia), several serious cardiovascular diseases, many kinds of respiratory diseases and impairments and some other diseases, and that smoking by women also reduces their fertility and has adverse consequences for expectant mothers, their unborn children – including adverse consequences for the course of a pregnancy itself – and their young infants, including sudden infant death syndrome. Further, the report states that the risk of such diseases reduces in groups of people who quit smoking, and the reduction of risk increases from quitting earlier.

### **Tobacco Control in Australia**

Australia is considered one of the world leaders in effective tobacco control<sup>6</sup>. Australia takes a whole of government approach to tobacco control with responsibility shared between the Australian Government and state and territory governments. As a result of concerted and comprehensive public policy efforts by Australian governments and action from public health organisations over a long period, the proportion of people in Australia aged 18 years or older who smoke daily has declined from 25 per cent in 1991, to 15.9 per cent in 2010<sup>7</sup>.

The Council of Australian Governments (COAG) committed in 2008 to reducing the adult daily smoking rate in Australia to 10 per cent by 2018, and to halving the Aboriginal and Torres Strait Islander adult daily smoking rate to 23.8 per cent over the same period<sup>8</sup>.

The Australian Government and state and territory governments are currently developing a new National Tobacco Strategy 2012-2018<sup>9</sup>. The strategy takes account of the key national and state policy contexts for tobacco control and recent tobacco reform initiatives.

The Department has taken a key role in implementing the Australian Government's comprehensive suite of measures designed to reduce smoking rates. Measures introduced by the Government include:

- a 25 per cent increase in tobacco excise in April 2010;
- more than \$85 million in investment in anti-smoking social marketing campaigns;
- world-first legislation to mandate the plain packaging of tobacco products;

<sup>3</sup> Collins D and Lapsley H (2008). *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*. Executive Summary xi. P3 2525. Canberra: Department of Health and Ageing.

<sup>4</sup> Australian Institute of Health and Welfare (2011), *2010 National Drug Strategy Household Survey report*. Drug statistics series no. 25. Cat. No. PHE 145, Canberra: AIHW.

<sup>5</sup> United States Department of Health and Human Services (2004). *The Health Consequences of Smoking: A Report of the Surgeon General* (SCB11 at 4365ff).

<sup>6</sup> World Health Organization (2011). *WHO report on the global tobacco epidemic, 2011 – warning about the dangers of tobacco*, MPOWER, Italy.

<sup>7</sup> AIHW (2011). *2010 NDSHS report*. Drug statistics series no. 25. Cat. No. PHE 145, Canberra: AIHW.

<sup>8</sup> National Healthcare Agreement 2008, [www.coag.gov.au](http://www.coag.gov.au)

<sup>9</sup> <http://www.nationaldrugstrategy.gov.au>.

- regulations to update and expand the graphic health warnings appearing on tobacco products, in line with plain packaging requirements;
- legislation to restrict internet advertising of tobacco products in Australia;
- the extended listing of nicotine replacement therapies and other smoking cessation supports on the PBS; and
- investment of more than \$100 million in support of Aboriginal and Torres Strait Islander communities to reduce smoking rates.

These measures come on top of a comprehensive suite of tobacco control measures already in place in Australia, including:

- minimum age restrictions on purchase of tobacco products;
- comprehensive advertising bans under the *Tobacco Advertising Prohibition Act 1992*;
- retail display bans;
- bans on smoking in workplaces, bars, restaurants and other indoor public spaces, and increasingly in outdoor places including where children may be exposed to environmental tobacco smoke;
- extensive and continuing public education campaigns on the dangers of smoking;
- subsidies for smoking cessation supports; and
- Quitlines and other smoking cessation support services in each state and territory to help people to quit.

The adoption of such measures demonstrates the long standing efforts of Australian governments to strengthen the policy environment and regulatory regime for tobacco products in order to achieve fundamental public health objectives.

### **Impact of tobacco smuggling on tobacco control**

The smuggling of tobacco products affects two key elements of Australia's comprehensive approach to tobacco control:

- smuggled tobacco products evade paying tobacco excise, thereby undermining the effectiveness of excise as a tobacco control measure; and
- smuggled tobacco products are unlikely to comply with Australia's plain packaging or graphic health warning requirements.

### *Excise*

Increasing the price of tobacco products via the imposition of excise is a highly effective way of reducing tobacco consumption. There is a general consensus across academic literature that increasing the price of tobacco products by ten per cent reduces tobacco consumption by around four per cent on average (in developed countries). Research further indicates that:

- for teenagers, a ten per cent increase in price reduces tobacco consumption by between five and twelve per cent;

- while the evidence is less conclusive, the balance of evidence indicates that lower socio-economic groups are more sensitive to price increases than the population as a whole.<sup>10</sup>

The 25 per cent excise increase in April 2010 was expected to increase the price of a packet of cigarettes by around 15 per cent (or \$2.16 for a pack of 30), reduce consumption by around six per cent and reduce the number of smokers by two to three per cent.<sup>11</sup>

### *Plain packaging*

All tobacco products manufactured or packaged in Australia from 1 October 2012 for domestic consumption will be required to be in plain packaging, and all tobacco products will be required to be sold in plain packaging by 1 December 2012.

The *Tobacco Plain Packaging Act 2011* will prohibit tobacco industry logos, brand imagery, colours and promotional text other than brand and product names in a standard colour, position, font style and size. Tobacco product retail packaging will be required to appear in a drab dark brown colour in matt finish. Cigarette packs will be required to have standardized shapes and openings. Plain packaging will be applied not just to cigarette products but to all tobacco products, including loose leaf tobacco, cigars and bidis.

Plain packaging of tobacco products is the next logical step in banning one of the last forms of tobacco advertising in Australia. The objectives of the plain packaging measure are to:

- reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;
- increase the noticeability and effectiveness of mandated health warnings;
- reduce the ability of the retail packaging of tobacco products to mislead consumers about the harms of smoking; and
- through the achievement of these aims in the long term, as part of a comprehensive suite of tobacco control measures, contribute to efforts to reduce smoking rates.

### *Graphic health warnings*

Under the *Competition and Consumer (Tobacco) Information Standard 2011*, tobacco products will be required to display updated and expanded graphic health warnings from 1 December 2012. The warnings will cover 75 per cent of the front of cigarette packets, up from 30 per cent. The warnings will continue to cover 90 per cent of the back of cigarette packs. A commensurate change has been made to warnings on non-cigarette tobacco products.

### **International treaty obligations**

The Bill is consistent with Australia's obligations under the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC).

The FCTC is the first treaty negotiated under the auspices of the WHO and provides a global policy framework for parties to implement strong measures against the death and disease

<sup>10</sup> See, for example, *Effectiveness of tax and price policies for tobacco*, International Agency for Research on Cancer, 2011, Chapter 10.

<sup>11</sup> See: <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/factsheet-prevention-01>.

caused by smoking. Australia is a strong advocate of the treaty and has been an active and constructive participant in the work of the FCTC's governing body, the Conference of the Parties (CoP).

Article 15 of the FCTC:

- notes that Parties to the FCTC recognise that the elimination of all forms of illicit trade in tobacco products is an essential component of tobacco control; and
- mandates a range of measures to counter the illicit tobacco trade, including 'enacting or strengthening legislation, with appropriate penalties and remedies, against illicit trade in tobacco products'.

The Bill is also broadly consistent with the text of the draft Protocol on Eliminating Illicit Trade in Tobacco (see [http://apps.who.int/gb/fctc/PDF/it5/FCTC\\_COP\\_INB-IT5\\_5-en.pdf](http://apps.who.int/gb/fctc/PDF/it5/FCTC_COP_INB-IT5_5-en.pdf)).

In 2007, the CoP established an Intergovernmental Negotiating Body (INB) to negotiate a supplementary protocol on illicit trade in tobacco products. The Department led Australia's participation in the INB in consultation with relevant Commonwealth agencies.

The INB finalised the text of the draft Protocol at its fifth session held in Geneva from 29 March to 4 April 2012. The draft Protocol would require parties to:

- impose a range of controls on the supply chain for tobacco products (for example, establish a system for tracking and tracing tobacco products);
- create a range of offences for supplying tobacco products in breach of supply chain controls and apply appropriate enforcement measures; and
- cooperate with other parties to implement the protocol – for example, assist with investigating and prosecuting offences.

The text of the draft Protocol will now be considered and potentially adopted by the CoP in Seoul, Republic of Korea in November 2012. If adopted, the Protocol will become a treaty-level text, binding on those parties which sign and ratify it.

Australia played an active and constructive role in the conclusion of the negotiations on the draft Protocol and will soon commence formal domestic processes that precede a decision on whether to sign and ratify the Protocol. These processes include a regulation impact statement and consultation with states and territories.

## **CONCLUSION**

The Department of Health and Ageing supports the strengthening of penalties for tobacco smuggling as proposed in the Bill. Tobacco smuggling undermines Government efforts to reduce rates of smoking in Australia. In particular, smuggling reduces the effectiveness of tobacco excise as a tobacco control measure, and could reduce the effectiveness of plain packaging and expanded graphic health warning requirements that will take effect in full from 1 December 2012. The Bill is also consistent with Australia's international obligations under the FCTC, and with the text of the draft Protocol on Eliminating Illicit Trade in Tobacco to be considered for adoption by the FCTC CoP in November 2012.