



Submission into Inquiry into Illicit Tobacco

Parliamentary Joint Committee on Law Enforcement

Introduction

The Australian Border Force (ABF) is responsible for combatting the importation of illicit tobacco into Australia, maintaining Australia's supply chain integrity, and managing the collection of duties and taxes on legitimate tobacco imported into Australia.

We play an important role in the whole-of-government approach to tobacco by leading operational activities and regulatory initiatives on illicit tobacco, and contributing to preservation of tobacco national health outcomes.

The Illicit Tobacco Taskforce (ITTF), led by the ABF, coordinates the expertise, capabilities and powers of federal government agencies to target, disrupt and dismantle serious criminal actors and organised crime groups that deal in illicit tobacco. The taskforce engages state government agencies, state law enforcement, and international partners to provide a holistic approach to the trade of illicit tobacco onshore and offshore.

Impact of illicit tobacco

The trade of illicit tobacco has significant implications for the community, legitimate businesses, national health policies, and the Australian Government.

- Serious criminal actors and organised crime groups make significant profits from the importation and distribution of illicit tobacco in Australia.
- Australian businesses selling tobacco that complies with legislation are undercut by businesses and individuals selling illicit tobacco at a lower price.
- Illicit tobacco undermines tobacco prevention and control initiatives such as plain packaging, graphic images and health warning requirements as well as increasing the accessibility and affordability of tobacco products.
- An estimated \$647 million of Australian Government revenue was evaded through the consumption of illicit tobacco in the 2017-18 financial year.

The Australian Taxation Office's (ATO) Tobacco Tax Gap (TTG), an estimate of evaded tobacco excise and customs duty, estimated that illicit tobacco resulted in \$647 million in lost revenue to the Australian Government. This equates to five per cent of the amount of collectable tobacco excise, indicating that the illicit tobacco market is approximately five per cent of the total tobacco market.

The Australian Government utilises the TTG to estimate the size of the illicit tobacco market, although other estimates can vary from the TTG figure. The most recent *Illicit Tobacco in Australia* report (dated 3 May 2019), commissioned by the tobacco industry, indicates that the Australian tobacco market comprises of 14.1 per cent illicit tobacco. The ABF notes the limitations of this methodology, including unrepresentative sample sizes, restrictive survey measures and drawing upon unreliable secondary sources to validate the results.

The Australian Government increases excise rates for tobacco by 12.5 per cent on 1 September of each year commencing 2017 through to 2020, as a result of measures announced in the 2016-17 Budget. Excise increases may impact the size of the illicit tobacco market, as the rising cost of licit tobacco may drive increased demand for cheaper alternatives, including illicit tobacco. Increasing excise rates may also increase potential profit margins for criminal actors that seek to avoid paying legitimate tax obligations. The current tobacco excise rates are \$1291.77 per kg of loose tobacco, and \$0.93653 per stick (cigarette), representing an increase of approximately \$200 per kg or \$0.12 per stick respectively from September 2018.

Illicit tobacco environment

Retailers and consumers

Investigations suggest that illicit tobacco follows similar distribution and sales patterns as licit tobacco and that illicit tobacco is available from some traditional tobacco retailers and tobacconists. Illicit tobacco is often concealed under the counter or in paper bags, suggesting that businesses selling illicit tobacco are often aware and complicit in the distribution of illicit tobacco. The ABF expects that some consumers make a conscious choice to consume illicit tobacco rather than licit tobacco.

Importers of illicit tobacco

Established organised crime groups are diversifying their commodities to include illicit tobacco as it is perceived as a low risk/high reward activity. New organised crime groups are emerging that purely focus on illicit tobacco importation and distribution. Importation occurs through sea cargo and mail, air and passenger streams. Organised crime syndicates have also been involved in unlicensed domestic growing.

Responsibility for illicit tobacco

The primary responsibility for addressing illicit tobacco at the federal level resides with the ABF and the ATO.

- ABF is responsible for illicit tobacco imported into Australia.
- ATO is responsible for illicit tobacco produced and/or manufactured domestically.

Other federal stakeholders with responsibility for aspects of regulating the illicit tobacco market include the Department of the Treasury (Treasury), Attorney-General's Department (AGD), Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC), Australian Competition and Consumer Commission (ACCC), and Department of Health (Health).

State and territory governments are involved in law enforcement activities for illicit tobacco and regulate tobacco sold in their jurisdictions. Relevant bodies include state and territory police, health departments and local councils.

Our role

The ABF is responsible for detecting and addressing the importation of illicit tobacco into Australia, maintaining Australia's supply chain integrity, and managing the collection of duties and taxes on legitimate tobacco imported into Australia.

Illicit Tobacco Taskforce (ITTF)

The Government established the Illicit Tobacco Taskforce (ITTF) on 1 July 2018. The ITTF embodies a coordinated, whole-of-government strategy to combat illicit tobacco that draws together the expertise, capabilities and powers of members from Commonwealth agencies to:

- Reduce the supply and demand for illicit tobacco;
- Protect Commonwealth revenue; and
- Safeguard Australian communities from the significant threats posed by illicit tobacco and the criminals who profit from it.

The ITTF draws on the expertise and advanced capabilities of the ABF and Department of Home Affairs, ACIC, Australian Transaction Reports and Analysis Centre (AUSTRAC), Commonwealth Director of Public Prosecutions (CDPP) and the ATO. The ITTF engages state government, state law enforcement, and international partners to provide a holistic approach to combat the trade of illicit tobacco onshore and offshore.

The ITTF protects Commonwealth revenue by utilising a range of enforcement options and legislative powers at its disposal to meet its objectives.

Our approach

The ABF applies an intelligence-informed and risk-based model to identify and respond to threats and opportunities in the illicit tobacco trade before the border, at the border and in the post-border environment.

The ABF leverages domestic and international law enforcement capabilities across the border continuum to detect, deter and disrupt the trade in illicit tobacco through coordinated and sustained law enforcement action.

The ABF consults with international stakeholders including ABF Overseas Posts, international customs organisations and foreign government bodies to identify and pursue serious actors and organised crime groups facilitating the illicit tobacco trade.

The ABF has a range of options to deal with imported illicit tobacco. These include pursuing prosecutions for smuggling offences and imposing administrative penalties. The course of action taken is determined by the particular circumstances of the individual case.

Tobacco detected at the border may also be counterfeit. The ABF may seize goods that infringe the import provisions under the *Copyright Act 1968* and the *Trade Marks Act 1995* in certain circumstances; however, the ABF is more likely to seize tobacco for revenue evasion.

Illicit tobacco seized

In the 2018-19 financial year, the ABF seized in excess of 633 tonnes of tobacco. This is equivalent to more than \$670 million in duty evaded for the Australian Government.

Total undeclared tobacco detections (excl. abandoned)	2018-19
Number of Detections	286,663
Tobacco Weight¹ (tonnes)	311.99
Cigarettes (millions)	426.27
Equivalent Tobacco Weight² (tonnes)	633.18
Duty Evaded \$m (ex GST)	670.46

¹ Tobacco weight includes the total weight of leaf and molasses tobacco detected.

² Equivalent weight represents the total weight of loose leaf and molasses tobacco detections together with the total weight of cigarette sticks (calculated using 0.8 grams of tobacco per stick).

In the 2018-19 financial year, ITTF related illicit tobacco seizures totalled approximately 61 tonnes of tobacco and 182 million sticks with an estimated value of around \$213 million in evaded duty. This activity represents approximately one third of total ABF tobacco seizures by weight (ABF 633 tonnes, ITTF 206 tonnes) and by value (ABF \$670 million, ITTF \$213 million) in evaded duty.

Below are examples of ITTF operations conducted in the 2018-19 financial year. These operations include the illicit growing of domestic crops and importation of tobacco into Australia.

- With support from the Northern Territory Police, the ITTF ran its first operation on 24 and 25 July 2018, to seize and destroy suspected illicit tobacco crops in Katherine, Northern Territory. The operation uncovered more than 17 acres of illegal tobacco crops and six tonnes of tobacco leaf, with an estimated excise value of AUD \$13.3 million.
- On 20 February 2019, a Malaysian man was sentenced to five years in prison for smuggling more than six million cigarettes into Australia, concealed within sophisticated cover loads. A second Malaysian man was sentenced in April 2019, to four and a half years in prison for his role in this illegal operation. The cigarettes originated from Malaysia with a total duty evasion of more than AUD \$4 million.
- On 9 and 10 April 2019, the ITTF conducted search warrants at storage facilities and residential properties across Sydney. Items located and seized included a \$100,000 casino token, approximately \$23,000 cash and around one million cigarettes (with an estimated evaded tax value of \$800,000). One man was arrested and charged in relation to the illegal importation of tobacco.
- On 29 and 30 October 2019, the ITTF executed multiple search warrants at a number of premises across Melbourne including four residential addresses, a storage facility and three commercial properties. The ITTF seized a large quantity of illicit cigarettes, rough-cut tobacco (chop chop), cigarette manufacturing supplies, drug paraphernalia and one vehicle. The ITTF discovered a cigarette manufacturing operation at two of the residences, in addition to three unlawful non-citizens working within the illicit operation. The three unlawful non-citizens were taken into detention. This investigation is ongoing.

Illicit tobacco regulatory reform

The Australian Government announced a suite of measures to combat the trade of illicit tobacco in the 2017-18 and 2018-19 Budgets. These measures have significantly enhanced the Australian Government's ability to combat illicit tobacco. The measures implemented include:

- requirement for a permit to import tobacco; and
- payment of tobacco duties and taxes at the border.

Regulation of tobacco as a prohibited import

From 1 July 2019, tobacco is a prohibited import and most tobacco products require an import permit issued by the ABF. Tobacco imported without a permit can be seized by the ABF without warrant and offenders may also be charged with illicit tobacco offences. Permits are subject to conditions, including that tobacco cannot enter through international mail, a known supply path for illicit tobacco.

This strengthened border control deters trade in illicit tobacco by providing the ABF with new enforcement options to seize illicit tobacco and infringe tobacco smugglers.

Payment of tobacco duties and taxes at the border.

From 1 July 2019, all duties on tobacco must be paid immediately upon import to Australia. It is no longer possible to store tobacco products in a licensed warehouse without having paid duty before

clearing them from customs control. This change addresses revenue leakage that occurs when tobacco is moved illegally from warehouses to the illicit market before duty is paid. It is estimated that almost a quarter of Australia's illicit tobacco market stemmed from warehouse leakages.

Strengthened offences

As announced in the 2016-17 Budget, in August 2018, the *Customs Amendment (Illicit Tobacco Offences) Act 2018* introduced a comprehensive set of measures targeting the importation, possession, purchase, sale and production of illicit tobacco.

The amendment extends the investigation and enforcement powers of ABF officers to 'reasonable suspicion' offences contained in the *Taxation Administration Act 1953*. The amendment introduced new tobacco smuggling and possession offences, lowering the burden of proof, where the fault element is 'recklessness' rather than 'intention' or 'knowledge'.

The new offences address the 'proof of origin' issue, which limited prosecutions to situations where it could be proved that tobacco was either imported or produced domestically.

Immediate destruction of prohibited tobacco

On 2 October 2019, the *Customs Amendment (Immediate Destruction of Illicit Tobacco) Act 2019* came into effect, enabling the ABF to dispose prohibited tobacco when seized at the border.

This legislation streamlines border processes, allowing the ABF to focus resources on targeting illicit tobacco. Previous legislation required the ABF to hold seized tobacco for a statutory period before destruction, creating resourcing and security issues.

Illicit Tobacco Industry Group (ITIG)

The ABF's Illicit Tobacco Industry Group (ITIG) provides a forum for government representatives and members of the tobacco industry to raise issues relating to combatting the illicit trade of tobacco.

Through the ITIG, the tobacco industry can share industry information to assist the Government in targeting illicit tobacco importations. This may include illicit tobacco leads or referrals on illicit tobacco consignments, products, or persons of interest.

The ITIG operates within the parameters of Article 5.3 of the World Health Organization Framework Convention on Tobacco Control, which requires the Government to protect public health policy from commercial and other vested interests of the tobacco industry

Opportunities for future reform

One issue relates to the range of law enforcement powers that can be used by the ABF, which differs from those available to other law enforcement agencies. There have been a number of very successful joint operations that have relied on the ABF's powers as well as those of its partner agencies.

It is not, however, always possible for these agencies to provide their assistance; the application of partner agency resources to tobacco smuggling can often be overtaken by higher priorities, particularly if a case has no nexus between tobacco and serious and organised crime.

Opportunities also exist to establish greater consistency in state and territory health legislation across all jurisdictions. Current state and territory legislation with regard to tobacco varies, in some cases considerably, between jurisdictions. This variance has an adverse impact on the ability of agencies to manage the flow of illicit tobacco and to communicate policy messaging on the risks posed by illicit tobacco and the penalties that apply.

Conclusion

The ABF is responsible for operational, regulatory and engagement functions to detect, deter and disrupt the trade of illicit tobacco before the border, at the border and in the post-border environment.

The ABF-led ITTF coordinates the whole-of-government enforcement response to combat illicit tobacco with the support of federal and state/territory government agencies, law enforcement and international partners.

The ABF will continue to assess the illicit tobacco environment and respond to emerging trends and threats from both an enforcement and policy perspective to support the Australian Government's focus on combatting illicit tobacco.