



## **Australian Government**

Australian Government response to the  
Parliamentary Joint Committee on Law Enforcement report:  
Inquiry into Illicit Tobacco

November 2021

## **Introduction**

The Australian Government welcomes the Parliamentary Joint Committee on Law Enforcement (Committee) – Inquiry into Illicit Tobacco Report (Report) and its eight recommendations to combat the trade of illicit tobacco in Australia.

The Government recognises the importance of combatting the trade of illicit tobacco, which has significant implications for the community, legitimate businesses, health policies, and protecting revenue that could be used for government services. The Australian Taxation Office (ATO) estimates the amount of evaded tobacco excise and customs duty to be \$822 million in the 2018-19 financial year.

The Government has committed significant resources to tackle illicit tobacco including the establishment of the Australian Border Force (ABF) led Illicit Tobacco Taskforce (ITTF), implementation of tobacco control and health measures, and the development of fora bringing together key government agencies, industry and retailers to raise illicit tobacco issues. These factors and the continued efforts of federal, state and territory agencies have led to Australia being recognised as having one of the strongest regulatory regimes for tobacco in the world.

The Government acknowledges there are opportunities to enhance our ability to combat the trade of illicit tobacco. In light of this, the Government appreciates the Committee's eight recommendations to further develop the Government's understanding of, and ability to combat, illicit tobacco. The Government would like to thank the submissions from government, industry, retailers, health professionals and other interested parties that informed the Committee's Report.

The Government's response to the eight recommendations is set out below and implementation has commenced on a number of these recommendations. For others, the Government will undertake detailed policy evaluation while continuing to support state and territory agencies.

## Recommendations

### **Recommendation 1:**

2.53 The committee recommends that the Australian Taxation Office continues with its tobacco tax gap project on a permanent basis and, where appropriate, uses all available external information to assist in developing its understanding of the scale of the illicit tobacco market in Australia.

Response: The Government agrees to this recommendation.

The ATO, in collaboration with the ABF, will continue to estimate the tobacco tax gap on an ongoing annual basis using the best available internal and external information.

### **Recommendation 2:**

2.55 The committee recommends that the Australian Criminal Intelligence Commission consider the inclusion of data on and analysis of illicit tobacco in future iterations of the Illicit Drug Data Report.

Response: The Government does not support this recommendation.

The Government agrees that collection and collation of data on the illicit tobacco market to enable analysis of market trends is important, however, notes the *Illicit Drug Data Report* (IDDR) is not the most appropriate avenue to achieve this outcome.

The IDDR provides government, law enforcement agencies and interested stakeholders with a national picture of the illicit drug market in Australia. The focus of the IDDR is on illicit drug markets, primarily amphetamine-type stimulants, cannabis, heroin and cocaine. While the IDDR reports on other drug markets that include licit substances with abuse potential – such as illicit pharmaceuticals, anabolic steroids and anaesthetics – the information available for these substances is limited. This is likely to be the case for illicit tobacco.

Through the National Wastewater Drug Monitoring Program (NWDMP), the Australian Criminal Intelligence Commission (ACIC) generates three public reports annually on the trends of consumption of 13 substances including nicotine, and there is ongoing wastewater-related research occurring to attempt to quantify the size of the illicit tobacco market.

In the future the NWDMP is likely to be better placed to provide relevant, timely information in relation to illicit tobacco markets noting collection for the program is ongoing and current, and as there are more opportunities to explore supplementary data sources to assist assessing the size of the illicit tobacco market, including via work that is already under way.

**Recommendation 3:**

3.83 The committee recommends that all aspects of illicit tobacco enforcement be removed from the portfolio responsibility of the Department of Health and transferred to the Department of Home Affairs.

Response: The Government notes this recommendation.

The Government agrees that illicit tobacco enforcement is best addressed as a law enforcement responsibility, most appropriately managed and coordinated by the relevant law enforcement agencies at the Commonwealth level in collaboration with state and territory police forces. Responsibility for combatting illicit tobacco, including enforcement activities, is shared between the Commonwealth and state and territory governments.

The Commonwealth Department of Health (Health) administers the *Tobacco Plain Packaging Act 2011* (TPP Act). The TPP Act does not contain provisions specific to illicit tobacco nor is the TPP Act seen by Government as an illicit tobacco enforcement regime. However, where Health identifies potential instances of illicit tobacco through inspections or complaints received, Health makes referrals to the ITTF for intelligence gathering and further investigation. These referral opportunities are made possible through Health's use of legislative measures linked to health warnings and associated deterrent measures. As such, Health should maintain these activities within its remit, and continue to focus its expertise and resources on the administration of associated compliance under the TPP Act.

The Government notes that the Home Affairs Portfolio plays a significant role in illicit tobacco enforcement through the ABF-led ITTF. The Government established the ITTF to protect Commonwealth revenue by proactively targeting, disrupting and dismantling serious actors and organised crime syndicates that deal in illicit tobacco. The ITTF complements the efforts made by Health to control tobacco through the administration of the TPP Act.

The Home Affairs Portfolio includes law enforcement and customs functions, which complement the administrative and policy functions of the functions of Health. The Home Affairs Portfolio and Health will work to bolster coordination between Commonwealth agencies on tobacco, including activities to combat the illicit tobacco trade.

**Recommendation 4:**

5.43 The committee recommends that the Department of Home Affairs develop a strategy for the use of monies from the proceeds of crime account to fund law enforcement operations of the Commonwealth and states and territories targeting illicit tobacco.

Response: The Government does not support this recommendation.

The Confiscated Assets Account (the Account) is not designed to provide ongoing financial support to law enforcement operations and as such, the development of a strategy would not be appropriate.

The Minister for Home Affairs is responsible for funding law enforcement projects from the Account under section 298 of the *Proceeds of Crime Act 2002*. Funding is approved on an annual basis and is dependent on the balance of the Account. The Account is not designed to provide ongoing financial support to law enforcement operations.

Funding for law enforcement programs may only be allocated from the Account if these programs are non-ongoing. The Account is not a suitable source of funds for ongoing operational commitments. In addition, the Account should not be relied on to fund major ongoing programs, as the balance of the Account varies considerably and is subject to the resolution of asset confiscation matters, where timeframes are unpredictable. Committing future funds from the Account to tobacco confiscation operations would also reduce the available funds for other law enforcement and crime prevention measures, limiting the Minister's ability to fund new and innovative proposals as they arise.

The Minister for Home Affairs has discretion in funding activities for specific purposes, including tobacco. The Department of Home Affairs may seek funding from the Account to fund tobacco related activities from time to time. The Department of Home Affairs may develop proposals in collaboration with states and territories in line with strategic objectives and government priorities.

**Recommendation 5:**

5.65 The committee recommends the Australian Government explore options to develop a nationally consistent licencing regime for tobacco products, including tobacco product manufacturing supplies and equipment.

Response: The Government notes this recommendation.

State and territory governments have responsibility for the licensing requirements for tobacco retailers within their own jurisdiction, including product manufacturing supplies and equipment.

Different regulatory arrangements apply in state and territory jurisdictions in relation to:

- Licensing fees;
- Display requirements;
- Background checks to ensure a person is fit and proper to hold a license; and,
- Types of licensing regimes, such as
  - ‘positive’ licensing scheme, which involves an application and fee to hold a tobacco retail license;
  - ‘negative’ licensing scheme, which does not involve applications or fees, however a person may be banned from selling tobacco; or a
  - ‘notification’ licensing scheme, which requires a person to notify the authority of their intent to sell tobacco without an application or fees, however a person may be banned from selling tobacco.

The Government supports a nationally consistent approach to licensing suppliers (including retailers, wholesalers and manufacturers) of tobacco products and related product manufacturing supplies and equipment. A licensing regime would support law enforcement of illicit tobacco through information gathering as part of the licensing process. A nationally consistent approach to licensing may also benefit industry by providing more consistent treatment for businesses in different jurisdictions.

States and territories are responsible for the administration of tobacco retail licensing in their respective jurisdictions and each jurisdiction would need to make changes their legislation to ensure a uniform approach. The Government regularly consults states and territories on the administration and enforcement of tobacco matters including encouraging nationally consistent approaches wherever possible.

**Recommendation 6:**

5.83 The committee recommends the Department of Home Affairs work in collaboration with the relevant law enforcement agencies to provide definitive advice to the Australian Government on the implementation of a track and trace regime in Australia, and whether Australia should become signatory to the World Health Organisation Protocol to Eliminate Illicit Trade in Tobacco Products, provided it takes into account Australia's unique circumstances.

Response: The Government notes this recommendation.

The Government is committed to strengthening its efforts to reduce illicit tobacco and revenue evasion in Australia. As part of this commitment, the Government will consider the feasibility of implementing a tobacco track and trace system in Australia.

The ABF is responsible for managing the flow of tobacco across the Australian border and collecting customs duty and taxes on imported tobacco. The ABF leads Government efforts to combat illicit tobacco at the border and is the lead agency for consideration of a track and trace regime in Australia.

The ABF agrees to work with relevant government agencies to assess the role that a track and trace system could play in reducing revenue evasion on tobacco products and its applicability in the Australian context.

The implementation of a track and trace scheme in the supply chain would be required to comply with obligations under the World Health Organization Protocol to Eliminate Illicit Trade in Tobacco Products (the Protocol). Under domestic arrangements, Australia is only able to accede to the Protocol once all necessary domestic laws to implement obligations under the Protocol are in place.

As the responsible agency for policy relating to Australia's obligations under the World Health Organisation Framework Convention for Tobacco Control, Health will continue to work with law enforcement agencies to support the implementation of measures consistent with the requirements of the Protocol.

**Recommendation 7:**

5.83 The committee recommends the development of a National Illicit Tobacco strategy, in conjunction with state and territory police forces, as a co-ordinated, national law enforcement-led response that will:

- outline the roles and responsibilities of all relevant stakeholders and agencies;
- clearly articulate the actions and stratagems to be implemented;
- include strategies for improved information and data collection and sharing; and
- be published as a subset of the National Drug Strategy, while retaining confidentiality for operational material.

Response: The Government notes this recommendation.

A decision to develop and endorse a new sub-strategy under the National Drug Strategy, or include this issue in future versions of the National Tobacco Strategy or the National Strategy to Fight Transnational, Serious and Organised Crime, would be a matter for joint consideration by relevant Commonwealth, state and territory Ministers.

Responsibility for combatting illicit tobacco, including enforcement activities, is shared between the Commonwealth and state and territory governments. The Government's responsibilities include combatting the supply of illicit tobacco through operational activities at the Australian border and investigating the large-scale cultivation or manufacture of illicit tobacco in the community. The Government also undertakes activities to reduce tobacco consumption such as overseeing plain packaging in accordance with the TPP Act and enforcing product safety-related tobacco regulations. State and territory governments have responsibility for licencing and enforcing the sale of tobacco and any state or territory laws in relation to tobacco consumption. In some circumstances, local councils have been delegated inspection duties.

**Recommendation 8:**

5.103 The committee recommends that as part of the development of a National Illicit Tobacco strategy, that state and territory legislation be aligned with the new Commonwealth offences and enhanced penalties, to address in the current law. In addition, a strategy for the introduction of infringement notices for point of sale enforcement be developed with the Commonwealth providing adequate resources for the development and implementation of this strategy.

Response: The Government notes this recommendation.

A decision to develop and endorse a new sub-strategy under the National Drug Strategy, or include this issue in future versions of the National Tobacco Strategy or the National Strategy to Fight Transnational, Serious and Organised Crime, would be a matter for joint consideration by relevant Commonwealth, state and territory Ministers.

The Government notes the Committee's recommendation to develop a strategy to introduce infringement notices for point of sale enforcement. Considering the division of responsibilities between Commonwealth, state and territory governments, the Government's primary focus continues to be disrupting illicit tobacco at the most effective intervention points; at the Australian border, offshore, and during domestic cultivation onshore.