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of Australia**

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## **INQUIRY INTO ILLICIT TOBACCO**

### **SUBMISSION**

The Police Federation of Australia (PFA), representing in excess of 63,000 police officers across state, territory and the federal police, has had a long-standing role in providing submissions to and appearing before, Parliamentary Inquiries seeking to tackle serious and organised crime issues.

The PFA was one of the first organisations to call for a national criminal intelligence data base, which has now morphed into the National Criminal Intelligence System (NCIS) and for the implementation of harmonised Unexplained Wealth legislation, both, through the Parliamentary Joint Committee on Law Enforcement.

We are therefore pleased to make this submission to the Illicit Tobacco Inquiry, on the invitation of the Committee.

We consider the strong growth of the illicit tobacco market in Australia a matter of major national concern for Australian police forces. This seemingly innocuous trade is now a major source of revenue and activity for serious and organised crime groups both domestic and international.

KPMG's Illicit Tobacco in Australia's 2018 Report suggests that illegal tobacco is costing the Australian economy up to \$2 billion a year and the Australian Taxation Office (ATO) estimates reveal that for the 2016–17 financial year, illicit tobacco cost the Australian community approximately \$647 million in lost excise revenue alone, equating to 5% of the amount of collectable tobacco excise.

An investigation by the Australian Financial Review (AFR), reported in March 2019<sup>1</sup>, suggests that illegal tobacco sales are flourishing in suburban and rural shopping centres, outraging retailers and frustrating renewed government efforts to crack down on a trade estimated to cost taxpayers up to \$3.8 billion a year.

And the Department of Health's website, suggests that alongside their education campaigns and limits on amounts of duty-free tobacco that can be brought into Australia, two of the other key control measures being undertaken are –

- taxes on tobacco; and
- penalties for smuggling or growing illicit tobacco

however, both these strategies are being undermined by the flourishing illicit tobacco trade.

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<sup>1</sup> Retailers tell government to stop rampant illicit tobacco sales, AFR 8 March 2019

Whatever the true amount, the illicit tobacco trade is a large and growing issue in law enforcement as well as a significant loss of revenue to the Commonwealth, and less so to the states via evaded GST. It is also adversely impacting on the Government's health campaigns to reduce smoking rates.

It is universally agreed that serious and organised crime is behind the illicit tobacco trade and the AFR investigation suggests that industry sources claim importing and distribution of the illegal tobacco is under the control of Asian and Middle Eastern crime gangs and fear links are being established with South American gangs. Multiple police sources confirm this.

It is also widely recognised that these crime gangs are using their profits from the sale of illicit tobacco, to fund other criminal activity including illicit drug importation.

The Government is to be congratulated for the introduction of the Illicit Tobacco Taskforce (ITTF) in July 2018. As espoused on the ATO's website, the ITTF "...will enhance the ability of the ATO and partner agencies to protect Commonwealth revenue, by proactively targeting, disrupting and dismantling serious organised crime syndicates that deal in illicit tobacco". The ATO website, further describes them as "...multimillion-dollar crime syndicates".

Another issue that is becoming indisputable, is that the high rate of tax on tobacco is making its illegal sale, very attractive to the crime groups who are using the proceeds of illicit tobacco sales to fund other criminal activity. Unfortunately, it is also attractive for dependent smokers, especially those on low incomes, who are unfortunately being drawn into this illegal world. Indeed, many people regard illicit tobacco as almost a "victimless crime". However, given the control exercised by organised crime gangs, it is far from victimless.

The Australian Criminal Intelligence Commission's (ACIC) 2017 – 18 Annual Report suggests that as, "tobacco is one of the most highly taxed commodities in Australia, serious and organised crime groups find it attractive, as lucrative profits can be made through tax evasion and most of these profits are channelled back into organised crime".

The AFR report suggests, “High tobacco excise means it is more valuable in weight than silver, which makes it very profitable and less risky for organised crime than dealing in other drugs.”

The PFA also notes the transcript of evidence to this Committee on 23 November 2016, in particular pages 13 – 14, where the Chair questions “...jurisdictional divisions about who has responsibility”.

The Chair asked, “A law-abiding citizen goes to buy something from a tobacconist’s shop and he is offered illegal product. Who should he be contacting and who would then have responsibility to go inspect that shop or take action? Is it Border Protection? Is it the state police? Is it the AFP?”

There were also questions in that Hearing by Senator Abetz, about licensing requirements to sell tobacco products, the outcome of which confirms by and large, that licensing requirements are a state issue.

### **Licencing and enforcement**

Senator Abetz’s questions brings into debate the whole regulatory regime of tobacco sales and what, if any role, state and territory police forces and other agencies, could or should play in the regulation, investigation, detection and prosecution of illicit tobacco sales.

Based on our conversations with numerous police about this issue, including front line operational officers, all agree that the key task is to increase engagement with state/territory police forces, particularly in front line policing.

Key issues to come from those discussions include –

- Now that the Commonwealth has introduced an import licence, legal provenance can be easily proven if a linked system of licencing applies all through the supply

chain, ie the states/territories to introduce full licencing from licenced importers through wholesale and retail sales;

- That penalties and offences should be aligned with newly strengthened Commonwealth provisions;
- That a breach of such licencing arrangements should be able to be dealt with by way of an infringement notice issued by state/territory police (or relevant agencies if appropriate);
- That any revenue from the above infringement notices should be retained by the relevant state/territory; and
- That the Commonwealth should develop a fund for financing the costs of illicit tobacco operations in the states/territories, with a specific focus on retail sale enforcement. The reason for this is that the Commonwealth gains almost all of the revenue from legal tobacco sales. This will ensure that already stretched state/territory resources will not be diverted from other important policing priorities.

The PFA considers illicit tobacco to be an excellent example of where Commonwealth/State co-operation could be improved, particularly in any training that might be required by state/territory police to enhance their ability to operate in this space. There is a role for the Commonwealth to assist in this process.

## **Intelligence**

As crime becomes more sophisticated, the need for good intelligence is increasing. We consider that increased retail disruption has significant potential to provide intelligence which will be useful in the ongoing fight against serious and organised crime.

The issue of “intelligence” is another important facet that was raised in the November 2016 Hearing and the importance of the sharing of that information between the AFP, state and territory police, the ABF and the ACIC.

As earlier indicated, the PFA was one of the first organisations to recommend the development of a national criminal intelligence data base, so we are strong supporters of the gathering and disseminating of such important intelligence, nationally. Once all state and federal information/intelligence is fed into the NCIS, then it provides the opportunity for a national view of the problem. The advantage is that all the information is accessible in one place.

This provides better opportunities for analysts to discover and target organised crime links. The NCIS therefore offers an excellent vehicle for such a process that can be effectively built on, to ultimately house a specific reference for illicit tobacco related intelligence with links to serious and organised crime figures.

The AFR story, mentioned earlier, also identifies that, “Illegal tobacco sales are flourishing in suburban and rural shopping centres, outraging retailers and frustrating renewed government efforts to crack down...”. This, of course, means that legitimate retailers are put at a tremendous competitive disadvantage – and hence probably, tempted to enter the illegal space as well.

The AFR story for example, quotes the chief executive of Richies Supermarkets as saying, "This is a disgrace. How can illegal tobacco sales be so blatant and obvious? It just proves how rampant it is. The government needs to commit more police resources."

The AFR suggests that retailers have been lobbying state and federal governments to shut down the illegal outlets that have a massive pricing advantage because they do not pay tax.

And in another recent disturbing development, not only are legitimate retailers suffering due to competition through illegal shop outlets, there is now clear evidence of ‘uber style’ delivery services, particularly of Chinese cigarettes, in both Melbourne and Sydney with

traders in these cigarettes using dedicated websites and apps to promote their illicit product in the supply chain.

## **Conclusion**

Based on the foregoing, and as the basis for –

- Protecting Commonwealth revenue;
- Maintaining the Health Department’s strategy of reducing smoking rates by increasing the cost of tobacco products;
- Denying profits from illicit tobacco sales to organised crime groups;
- Protecting state GST; and
- Encouraging a greater role for states and territories in the detection, investigation and prosecution of illicit tobacco sales

The PFA believes it is imperative that the Commonwealth develop appropriate strategies to more fully engage states and territories, particularly their police and other agencies, in the fight against the sale of illicit tobacco.

Whilst state and territory police have very well-developed professional relationships with Commonwealth agencies working in this space, particularly at the higher, ‘organised crime’ level, there appears to the PFA, that more emphasis could be placed on cooperation with local police at the local, point of sale level of these illicit products.

Disrupting the point of sale of illicit tobacco –

- would greatly inhibit the organised crime groups from selling their products to the general public; and
- is consistent with the Government’s health strategy of increasing the cost of tobacco products through taxation.

To do this would entail a greater role for state and territory, local police and possibly other state and local agencies eg Departments of Fair Trading, local councils etc.

However, the PFA is acutely aware of the already competing demands on state and territory police resources. We therefore preface all our observations and recommendations by indicating, that just placing additional responsibilities in the hands of local state and territory police, without simplifying and clearly articulating the role they're expected to play and the Commonwealth assisting with resourcing and any required training, will not have any impact.

By targeting the 'point of sale' transactions of illicit products, it would significantly disrupt illicit tobacco sales. By using a licensing regime, if the point of sale retailer could not prove the provenance of the product they are selling, then that could constitute an offence under the respective state or territory legislation. This could be enhanced by complimentary national legislation.

By using infringement notices, with significant monetary penalties attached to penalise offending retailers, it would act as an efficient method of local police intervention and as a real deterrent for anyone thinking of undertaking such sales.

There would be a number of positive outcomes from such a process -

1. It would disrupt the retail 'point of sale' of such illicit products by significant monetary penalties for those selling the product;
2. It would be a major deterrent for others contemplating getting into the market of illicit sales;
3. Because the fines would be via state-based legislation, any monetary penalties would go to the respective state;
4. It would make local police intervention an easier and less time-consuming task; and
5. It would be an excellent intelligence gathering tool about the point of sale of such illicit products, who is involved and their potential links to serious and organised crime.



## Recommendations

1. That a licensing system be introduced that covers the provenance of tobacco products through, importers, wholesalers and retailers;
2. that an offence be committed if at any time through the provenance process, the importer, wholesaler or retailer commits an offence if they cannot prove the provenance of the tobacco product in their possession;
3. that an infringement notice system be introduced for such penalties applying at the retail end of the provenance chain;
4. that such infringement notices be implemented by way of state/territory legislation supported by complimentary Commonwealth legislation;
5. that such infringement notices carry a significant monetary penalty (eg \$3,000 - \$5,000) per offence;
6. that the Australian Government establish a fund to encourage local police and/or other agency operations, targeted at retailers of illicit tobacco products. Such fund should also be available for the training of state/territory police in any new powers given to them by virtue of this provenance licensing regime;
7. that this matter be referred to a future Ministerial Council for Police and Emergency Management;
8. that the Committee support the continued roll out of the National Criminal Intelligence System (NCIS) with a view to having a specific focus on illicit tobacco;
9. that state and territory police forces be encouraged to develop strategies to disrupt the use of websites and apps for the distribution of illicit tobacco.

Yours sincerely

Scott Weber  
Chief Executive Officer