



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

BILLS

**Customs Amendment (Illicit
Tobacco Offences) Bill 2018**

Second Reading

SPEECH

Tuesday, 14 August 2018

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner
Speaker O'Brien, Ted, MP

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Mr TED O'BRIEN (Fairfax) (12:14): The Customs Amendment (Illicit Tobacco Offences) Bill 2018, with measures making policing of the market in illicit tobacco more fit for purpose, is a very important part of the long-running, largely bipartisan effort to reduce the human and dollar costs of smoking. These costs come in at around 15,000 lives and \$30 billion in health services on an annual basis, and we can add to that a recent and rapidly increasing loss of revenue from the surging black market in illicit tobacco. These are enormous costs, and governments at all levels—federal, state and local—have been working to reduce them since the mid-1990s—with considerable success, I might add.

As recently as the mid-1990s, almost one-quarter of all Australian adults smoked. That is now down to about 13 per cent, with the trend suggesting it can and will be driven considerably lower, saving lives and billions of dollars, in what has been a remarkable policy turnaround spaced over several decades. In the 1930s, before the links between smoking and disease were established, the tobacco industry in Australia was actually promoted and protected. Federal law in that era required that 50 per cent of the tobacco in cigarettes be Australian grown, which embedded a strong tobacco-growing industry in Queensland and Victoria. The proportion of local content was even boosted, to 57 per cent, as late as 1977.

But progressively, and certainly very strongly by the early 1990s, a range of factors came into play that led to a pretty sudden and absolute about-face. Freer trade, with significantly lower tariffs, meant that previous constraints on the importation of cheaper tobacco were reduced, which in turn crippled the relatively high-cost local industry. After a restructuring scheme, the industry shrank from about 600 growers in the 1970s to no growers by 2006. Almost simultaneously, there was a growing awareness of the appalling health and financial costs of smoking, which quickly gave rise to a highly effective legislative and regulatory campaign against tobacco use in this country. Advertising was banned in 1992, and since then, especially over the past decade, antitobacco, pro-taxpayer measures have proliferated. Excise was increased by 25 per cent in 2010. Plain packaging with graphic health warnings was instituted in 2011. In 2013, annual 12½ per cent increases in excise began, going through to 2017. In the 2016-17 budget, those increases were extended through to 2020 as part of a broader package of measures instituted by this government to increase the national effort against smoking, with this bill being part of that package. As a result, thousands of lives will be extended, and many billions of dollars will now be available for more productive work on behalf of Australian taxpayers.

But the success of this ongoing campaign to reduce the human cost and the dollar cost of tobacco consumption has created major challenges for law enforcement. As a direct result of having created the most expensive tobacco market in the world, we have made ourselves a big target for illegal products, especially from countries to our north, who have some of the lowest tobacco prices in the world. In China, for example, a pack of 20 cigarettes retails for about \$3.40, compared with about \$25 to \$26 here. In South Korea, the price is about \$3.60. In Indonesia, it's under \$2 a pack. The temptation for criminals is obvious: produce or buy cheaply in any number of countries then smuggle the product into Australia, deliberately avoiding customs duties, and you'll make a lot of money. Today's illicit tobacco trade operates in much the same way cheap booze from Canada and the Caribbean flooded into the United States during the prohibition era—to enrich and empower vast criminal enterprises.

The ATO and the Department of Home Affairs estimate that almost \$600 million in tobacco duty was forgone in the 2015-16 financial year due to Australia's illicit tobacco trade. Regular reports by KPMG that seek to quantify the scale of the illegal market suggest the cost of this illicit tobacco could be as high as \$1½ billion in avoided duties, based on the estimate that about 14 per cent of tobacco sold in Australia is now illegal. If KPMG is right, one in seven cigarettes smoked in Australia avoid excise duty. The impact of that at a national level is twofold. One is revenue lost. Tobacco taxes currently contribute around \$9 billion annually for taxpayers, with that number set to grow exponentially given the ongoing big increases in excise. By 2020, excise revenue will likely be around \$13 billion. The second highly likely impact is a reduction in the rate at which people either quit or resist the smoking habit due to an increasingly ready access to cheap illicit tobacco products. Should

this impact be felt, any resurgence of tobacco use will, as a consequence, have a discernible negative impact on national life expectancy and health costs.

But, in addition to the border national impacts of lower revenue and higher health costs, there are also some very important local impacts, including loss of income for many hardworking small businesses who are in fact selling the real deal, the real thing. While regularly doorknocking businesses across my electorate, it has become apparent to me how many small businesses are being hurt by this illicit trade. Many of these are convenience stores; they're tobacconists; they're newsagencies—businesses that already operate on very tight margins, and they rely on their local trade. These businesses already face the challenge of supplying a highly regulated product to an even smaller customer base—a customer base that has reduced significantly over the years, as we have already noted. However, while it has been government policy for many years to discourage tobacco use and offset the burgeoning public health cost, these retailers do remain law-abiding tax-paying businesses. These are Australian businesses, employing Australians. And while the ultimate public policy objective, through education, excise and regulation, remains consistent, this does not mean that small businesses should face the added burden of aggressive competition from a criminal black market in illicit tobacco. Clearly we need to increase our efforts to not just stall the growth of smuggled product but cut into it as deeply as possible with tougher laws and more rigorous controls at the border via new agencies, such as the Tobacco Strike Team recently established by Australian Border Force.

That's one task, but it's not the only one, because a second layer of activity in relation to excise avoidance is now also in play, with illegal onshore tobacco cultivation making something of a comeback. In March last year, a crop worth \$11 million was discovered in New South Wales near Cooma. In March this year, 4.2 tonnes of tobacco leaf and 12 acres of crop were discovered near Ballarat in Victoria. In April, in the largest cross-agency investigation that that Australian tax office has been involved in, a \$60 million operation was discovered in the Bundaberg region in Queensland. There are many other examples, but that sample is indicative of the fact that the profit motive for criminals intent on avoiding their liability to pay excise duty has grown domestically as well as internationally, in lock step with the increase in tobacco price.

In a 2015 report, the Australian Crime Commission suggested that organised crime syndicates are deeply involved in this multibillion dollar racket because the rewards are great and, currently, the risks are slight. The very clear likelihood—the inevitability, you could say—is that this sort of activity is going to increase unless it is checked by tougher laws and more rigorous activity by our border and tax authorities.

This bill involves giving Australian Border Force personnel improved tools for dealing what has proved to be a significant problem in prosecuting smugglers at the border under the current form of the Customs Act. The act requires that, in order to lay the groundwork for a prosecution, knowledge or intent by principals to avoid excise-equivalent customs duty is required. Experience has established that proving such knowledge or intent to the level necessary for a successful prosecution is extremely difficult. Indeed, it is nigh on impossible in the face of people who are well-trained agents of, typically, highly organised crime syndicates, with a fine understanding of the fact that the Australian law requires extremely high levels of proof.

The bill therefore amends the Customs Act. The Customs Act will be changed to reduce the onus from knowledge or intent to avoid duties to one of recklessness, whereby perpetrators will be culpable for what is a lesser offence if it is established that their involvement with the importation of illicit product was undertaken with a reckless attitude towards whether duty was intended to be paid or not.

Other linked measures are contained in a separate bill, the Treasury Laws Amendment (Illicit Tobacco Offences) Bill, which was introduced into the parliament on 15 February. That bill eases one of the biggest problems that officers of the Australian Taxation Office have in prosecuting matters around illicit tobacco when it is discovered beyond the border. A current requirement of the law is that officers must be able to determine whether the product they are dealing with has been produced domestically or overseas to establish whether the issue is one of customs duty or excise evasion. That is a requirement that has also proved extremely difficult to establish. Attempts have been made to analyse samples to establish whether their origins are local or international to settle that question, but such is the nature of tobacco plants that that has proved impossible. Lack of cooperation from those being investigated, or their lack of knowledge, can stymie authorities on the spot. The Treasury bill therefore removes the need to establish origin. What will have to be established is a reasonable suspicion that either customs duty or excise duty has been avoided, whatever the actual source of the product.

This is an important battle and these are important bills in that context. At stake is an improvement in life expectancy for a significant number of Australians. At stake is the massive health bill that this significant number incur. Also at stake are billions of dollars in revenue that should accrue on behalf of taxpayers but is currently going to criminals and often to well-organised crime syndicates that channel their gains to help finance even further crime. Destroying this criminal enterprise completely may be beyond us. Nonetheless, doing all we can to minimise it remains our key responsibility, and it's for these reasons that I commend the bill to the House.