

# Questions and answers on plain packaging in Australia

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*Prepared by the Cancer Council Victoria*

## Facts sheet no. 3:

### What happened to use of illicit tobacco after the introduction of legislation to standardise the packaging of tobacco products in Australia?

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In May 2015, Australian tobacco companies released the fourth<sup>[1]</sup> and in November 2015 the fifth<sup>[2]</sup> of 14 commissioned reports<sup>[3-5]</sup> <sup>[6-9]</sup> <sup>[10-12]</sup> <sup>[13, 14]</sup> <sup>[1, 2]</sup> estimating very high levels of use of illicit tobacco in Australia. Tobacco companies have argued that plain packaging would increase the level of use of illicit tobacco stating that plain packs would be much easier to counterfeit than fully branded packs.<sup>[15]</sup><sup>[16]</sup><sup>[17]</sup> (Critiques of subsequent reports released in May 2016, 2017 and 2018 can be found [here](#).)

#### **3.1. Don't reports by KPMG LLP provide reliable estimates of the size of the market for illicit tobacco in Australia?**

As with the previous three reports prepared by international consulting group KPMG LLP <sup>[3-5]</sup>, the reports released in May 2015<sup>[1]</sup> and November 2015<sup>[2]</sup> (covering the 2014 calendar year and the first half of calendar year 2015) included estimates of use of illicit unbranded tobacco derived from an internet survey of smokers and an estimate of use of contraband cigarettes based on a survey of discarded cigarette packs, adjusted to take into account an estimate of the number of packs discarded by international visitors. The validity of the 14.5% estimate of the size of the illicit market in Australia in 2014 (and 14.3% for the first half year of 2015) depends crucially on the representativeness of those two surveys and the adequacy of adjustments for legitimate non-domestic purchases.

#### ***Internet surveys of use of illicit unbranded tobacco***

Health groups have been highly critical of the internet surveys relied on in industry studies. These depend on smokers opting in to the survey, raising the possibility of a higher percentage of respondents being interested in illicit tobacco than would occur across the total population.<sup>[18-23]</sup> Results from large more representative surveys yield much smaller estimates of the extent of use—see 3.3 below.

### *Discarded pack surveys*

Discarded pack surveys are also problematic. No packs are collected outside capital cities and major regional centres (in which over 70% of the Australian population resides.[24]) The estimates of use of illicit tobacco are extrapolated from the results of surveys in towns and major cities to the entire population. However it is quite plausible that rates of use of illicit tobacco would be substantially lower in rural areas many hundreds of miles away from likely illicit distribution channels. No information is provided on the exact locations of collections (i.e. suburbs) within the listed cities. No detail is provided on the exact methodology of collection, however it seems likely that discarded pack surveys would collect more packs from areas with more public rubbish bins and areas where litter is more common.... for instance areas near public transport stations/stops, shopping strips, and restaurants and take-away food outlets. It could be that people—people such as tourists and overseas students and younger people more generally—using such non-domestic packs (both legal and illegal) would be more likely to be congregate in those sort of areas than in the rest of the country. Those who dispose of packs outdoors—leaving them on tables at outdoor venues or on street furniture, in bins or dropping on the pavement—may therefore not be representative of the total population of Australian smokers who would dispose of the majority of packs at home, work or elsewhere indoors.

### *Adjustments for legal domestic use*

Estimates of illicit manufactured cigarettes based on litter studies typically deduct a small amount to account for foreign packs that are in fact not illicit but are purchased legitimately overseas, for instance by returning travellers. The estimates for amounts of non-domestic purchases included in industry-funded reports have been based solely on the duty-free allowances for returning travellers and overseas visitors—e.g. see page 152 of Asia-14 report.[25] These are calculated based on the age structure of the population and smoking rates in the countries of origin of each visitor as well as applicable duty-free allowances. This calculation ignores the fact that younger adults (who generally have higher smoking rates) are more likely than people of other ages to be travelling to (or returning to) Australia. It also excludes non-smokers bringing in cigarettes for gifts for family members. And it ignores/excludes people visiting or returning to Australia who bring in cigarettes beyond the duty free allowance and simply declare these and pay customs duty.

In its annual report released in October 2014, the Australian Customs and Border Protection Service included data on interceptions of cigarettes through the mail service in Australia.[26] In passing, the report mentions that 44% of tobacco noted in monitoring of the international mail stream was legal duty-paid. No allowance is made for duty-paid cigarettes received through the mail in the estimate of ‘legal non-domestic’ product in the KPMG or ITIC/OE studies.

For these reasons and given the likely unrepresentativeness of the discarded pack surveys, estimates of the prevalence of contraband tobacco in industry-funded reports are likely to be inflated.

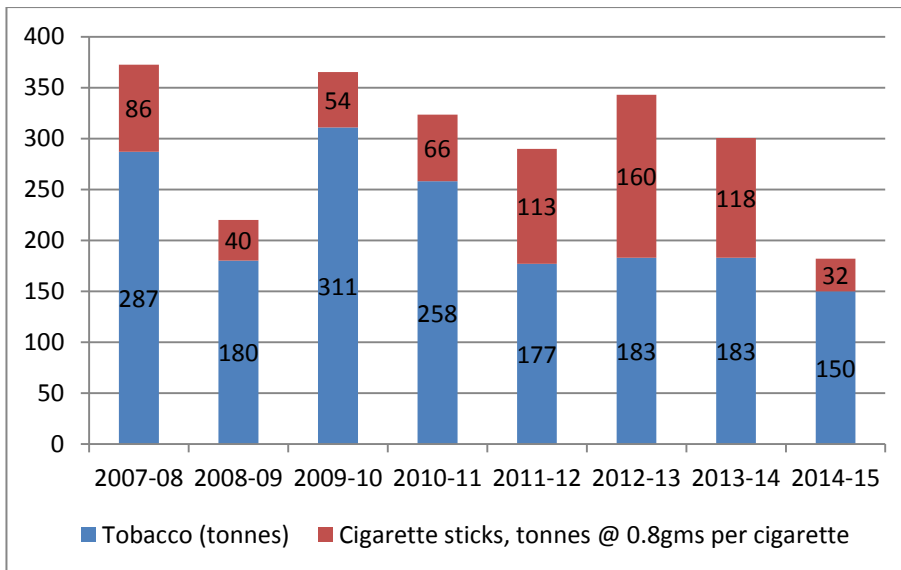
### 3.2. What do official government interceptions data suggest about the size of and trends in the illicit tobacco market in Australia?

Given concerns about the validity of industry estimates, it is useful to contrast data from these reports with data from official government sources, government surveys and surveys conducted by public health researchers.

#### *Interceptions of sea cargo and international mail*

Data on sea cargo interceptions by the Australian Customs and Border Protection Service over the past five years indicate an increase in seizures of contraband cigarettes commencing in 2010-11 when excise and customs duty in Australia increased by an unprecedented 25%.[27] Contraband cigarettes were being smuggled into Australia well before the introduction of plain packaging, and the total amount of tobacco seized over each of the past seven years—the number of tonnes of contraband cigarettes plus loose tobacco combined—has remained surprisingly constant despite the increased number of detections and the substantial increase in prices of tobacco products in Australia over that time[28-32]—see **figure 1**. Despite an increase in the number of detections, the total amount of tobacco intercepted in 2014–15 is considerably lower than in recent years.[33]

Year	No. of detections	Tobacco (tonnes)	Cigarettes (millions of sticks)	Duty evaded (\$ million)	Equivalent tobacco weight (tonnes)
2007-08	58	287	107	114	373
2008-09	33	180	50	70	220
2009-10	42	311	68	120	365
2010-11	55	258	82	135	324
2011-12	45	177	141	125	289
2012-13	76	183	200	151	344
2013-14	78	183	147	142	301
2014-15	91	150	40	103	182



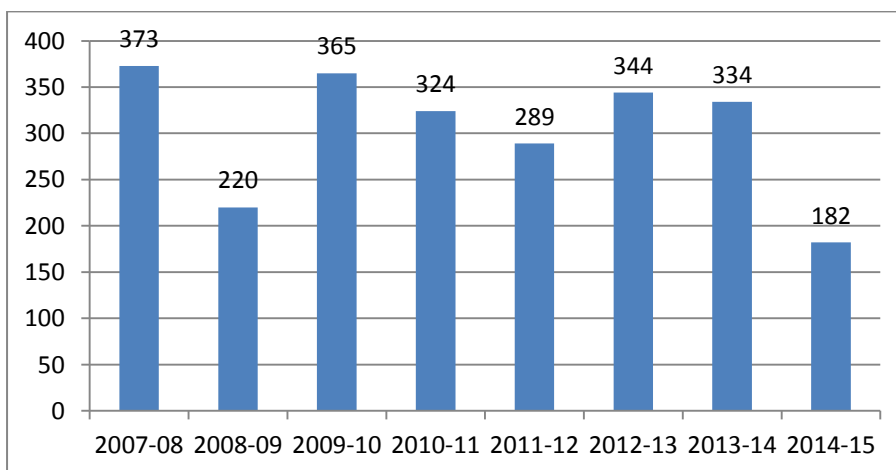
**Figure 1** Amounts of loose tobacco and contraband cigarettes intercepted in sea cargo bound for Australia, and total weight of tobacco intercepted—Australia 2007-08 to 2014-15

Note an additional 42 million sticks of undeclared cigarettes were intercepted in mail in 2013-14. Figures for previous years not reported

Source: Australian Customs and Border Protection Services annual reports. Available from:

<http://www.customs.gov.au/site/page4283.asp> .

Even including the cigarettes seized from international mail, data for which were included in the 2013-14 report but not in previous reports, the total amount of tobacco reported seized was lower in 2013-14 than in three of the previous six years—see **figure 2**. The figure for 2014–15 (not reported in the November 2015 KPMG LLP report,[2] see p32) was the lowest in eight years.



**Figure 2** Total weight of tobacco—cigarettes plus loose tobacco—reported seized, 2007-08 to 2014-15, including mail interceptions in 2013-14 only

Source: AC&BP annual reports, 2007-08 to 2014-15 Australian Customs and Border Protection Service. Annual Report 2013-14. Canberra: ACBPS, 2014. Available from: <http://www.customs.gov.au/site/page4283.asp>

### 3.3. What do official government survey data and other surveys suggest about the size of and trends in use of illicit tobacco in Australia?

#### Surveys of smokers

##### Use of unbranded illicit tobacco

Results from the National Drug Strategy Household Survey in 2013[34-36] suggest a significant decline since 2007 in the percentage of smokers who are aware of unbranded tobacco, who have ever smoked it and who currently use it.

**Table 1** Use of unbranded tobacco, among smokers aged 14 years or older, 2007 to 2013

	Persons		
	2007	2010	2013
<b>As a proportion of smokers</b>			
Aware of unbranded tobacco	48.0	46.3	33.9#
Smoked unbranded tobacco in their lifetime	27.0	24.0	16.5#
<i>Currently smoke it</i>	6.1	4.9	3.6#
<i>Use it half the time or more</i>	1.1	1.5	0.8
<i>No longer use it</i>	20.8	19.0	12.9#

Note: Survey questions relating to unbranded loose tobacco were modified in 2010 and only asked respondents about awareness and use of unbranded loose tobacco whereas in 2007 and 2013 respondents were asked about awareness and use of unbranded loose tobacco and unbranded cigarettes. This should be taken into account when comparing the 2010 results with the 2007 and 2013 results. The placement of the questions in the 2013 survey may have also impacted how people responded to these questions and results should be interpreted with caution.

# indicates a statistically significant decline from 2007 to 2013. Significance testing has only been performed between 2007 and 2013 (not 2010).

Source: Table 3.12, Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report: 2013 - Supplementary tables. Canberra: AIHW, 2014. Available from: <http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3>.

##### Use of cigarettes with indicators of illicit status

The National Drug Strategy Household Survey also reported on the number of smokers who had seen packs of cigarettes for sale that were not plainly packaged and did not bear Australian health warnings. The survey went on to ask how many ‘such packs’ the person had purchased<sup>1</sup> and 9.6% reported having purchased at least one non-compliant pack. The majority of these—5.3% of smokers—had purchased just one or two or a small number of non-compliant packs over that period, with 4.3% of smokers having purchased more than 15 such packs—see **Table 3**, reproduced from supplementary table 3.13 of that report.[35, 36]

<sup>1</sup> While the question was intended to refer to the previous three months it is possible that some smokers interpreted the question as covering a longer time frame.

**Table 2** Proportion of smokers<sup>(a)</sup> and total population, aged 14 or older, that have seen tobacco products without graphic health warnings and number of packets purchased<sup>(b)</sup>, 2013 (per cent)

Behaviour	Smokers <sup>(a)</sup>			All persons		
	Males	Females	Persons	Males	Females	Persons
Have seen tobacco products without plain packaging	18.7	18.3	18.5	13.3	11.7	12.5
Have not purchased tobacco products without plain packaging	91.3	89.1	90.4	98.0	98.2	98.1
Have purchased tobacco products without plain packaging	8.7	10.9	9.6	2.0	1.8	1.9
<b>Amount purchased</b>						
Purchased 1 – 2 packets	2.2	2.8	2.5	0.6	0.6	0.6
Purchased 3 – 5 packets	1.7	1.6	1.7	0.4	0.2	0.3
Purchased 6 – 9 packets	*0.5	*0.6	0.5	*0.1	*<0.1	0.1
Purchased 10 – 14 packets	*0.6	*0.7	0.7	*0.1	*0.1	0.1
Purchased 15 or more packets	3.6	5.1	4.3	0.8	0.8	0.8

(a) Includes people who reported smoking daily, weekly or less than weekly.

(b) This question asked about seeing {...} tobacco products without plain packaging in the previous 3 months. The survey period was 31 July to 1 December 2013, more than six months after 1 December 2012, when all tobacco products sold in Australia were required to comply with plain packaging legislation.

Source, Table 3.13 Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report: 2013 - Supplementary tables. Canberra: AIHW, 2014. Available from: <http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3>.

The proportion of packs purchased in Australia without required health warnings can be roughly estimated by examining data from the survey on each age group on both reported purchase of packs without health warnings and total reported consumption. Depending on the assumption made about how many packs on average are purchased by those who report '15 or more', it would seem most likely that about 2% of total packs used are packs without health required health warnings—see calculations in **Table 3**. This estimate for 2013 on use of cigarettes from packs without health warnings is roughly a quarter of estimates generated in empty pack surveys.

**Table 3** Estimated percentages of cigarettes smoked per quarter from packs without required health warnings—by age group and total

Age range	Mean reported total number of cigarettes smoked per quarter	Percentage of smokers who report having purchased a pack without health warnings: 1–2 packs, 3–5 packs, 6–9 packs, 10–14 packs	Percentage of smokers who report having purchased 15 + packs without health warnings:	Estimated percentage of total cigarettes smoked if mean 15+ = 15	Estimated percentage of total cigarettes smoked if mean 15+ = 25	Estimated percentage of total cigarettes smoked if 90% of all cigarettes smoked are without health warnings
18–24	1090.6	4.1, 1.7, 0.5, 1.1	7.4	2.6%	4.0%	9.3%
25–29	994.2	2.9, 1.9, 0.3, 1.1	4.2	1.8%	2.7%	5.6%
30–39	1015.3	1.6, 2.3, 0.9, 0	2.7	1.2%	1.7%	3.6%
40–49	1370.2	1.4, 1.5, 0.3, 0.7	5.4	1.4%	2.2%	6.3%
50–59	1527.5	2.6, 1.7, 0.1, 0.5	3.9	1.0%	1.5%	4.5%
60–69	1524.9	3.0, 1.1, 0.6, 0.8	2.9	0.9%	1.2%	3.4%
70+	1479.4	3.1, 1.0, 0.8, 0.6	3.3	1.0%	1.4%	4.0%
<b>Total</b>	<b>1244.1</b>	<b>2.5, 1.7, 0.5, 0.7</b>	<b>4.3</b>	<b>1.4%</b> <b>Lower limit</b>	<b>2.1%</b> <b>Most likely</b>	<b>5.4%</b> <b>Upper limit</b>

Source: ANU NDSHS Data file

Notes: Calculation based on mid-point of range for each range up to 14, with three different estimates provided for the 15+ group; Questions asked “In the last 3 months have you seen any tobacco products which do not have the new plain packaging with the graphic health warnings?” and ‘How many of these packets have you purchased?’ The second question did not specify a time frame so that some respondents may have interpreted this as extending back further than three months. This may have resulted in some over-estimation both because of the longer duration and because surveys conducted early in the collection period may have taken place only a few months after introduction.

### 3.4. Why are estimates generated by empty pack surveys so much higher than those generated by surveys of smokers?

Surveys of smokers may underestimate the use of illicit tobacco if surveys under-represent users or if users are concerned about admitting to purchasing an illicit product. However, Australia’s National Drug Strategy Household Survey has wide coverage and good response rates. It provides credible assurances of anonymity and in any case the question about health warnings is asked in a neutral, matter-of-fact way.

Surveys of discarded packs are likely to over-estimate the proportion of ‘non-domestic’ packs that are illicit if

- they include packs purchased overseas and brought in by mail or on return from travel by Australian citizens who pay duty on products in excess of duty free allowance
- they over-represent packs legitimately purchased overseas by foreign students, tourists and other visitors (for instance because such people are more likely to dispose of packs outdoors).

Contraband cigarettes may be more likely to be represented in discarded pack surveys

- if the areas surveyed over-represent particular ‘hot-spots’ of high levels of use.

No allowance is made for duty-paid personal imports in the industry funded estimates of how much non-domestic product is illicit. And no information is provided on the exact method for selection of areas sampled.

But even a well-designed discarded pack study may overestimate the prevalence of illicit product

- if people who use contraband cigarettes (in particular, younger people) are more likely to dispose of packs outdoors, (leaving them on tables in outdoor cafes or pubs, placing them in outdoor disposal units that can be accessed by survey field staff)and/ or
- if people who use contraband cigarettes are also more likely to litter.

### **3.5. Has counterfeiting of cigarettes increased since the introduction of plain packaging?**

Neither the Australian Customs and Border Protection Agency nor the tobacco industry has so far detected a major problem with counterfeiting of plain packs. Litter surveys to the end of 2014 found no evidence of counterfeiting of plain packs, and a decline in the prevalence of counterfeited brands of foreign origin as well.

The empty pack survey indicated that 4.8% of counterfeit packs carried branding that was available in the Australian market prior to the introduction of Plain Packaging. To date there has been no evidence of counterfeit Plain Packaging cigarettes. This represents a change from 2012 where approximately 45% of counterfeit cigarettes consumed appeared to have been designed for the local market. This shows that since the introduction of plain packaging, Australian counterfeit cigarettes have declined.

Source: KPMG LLP Illicit tobacco in Australia, Nov 2014,[3] half year report. p40

Through to the end of 2014, there has been no evidence of counterfeit plain packaging cigarettes. This represents a change from 2012 where approximately 45% of counterfeit cigarettes consumed appeared to have been designed for the local market.

Source: KPMG LLP Illicit tobacco in Australia, May 2015, full year report, p42

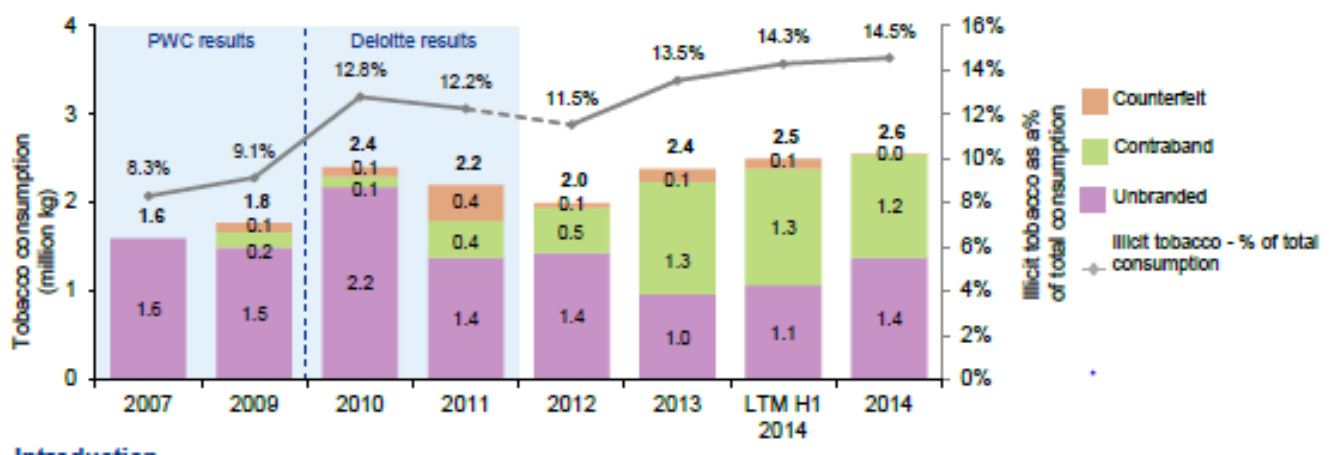


The first report of sale of counterfeit plain packs in shops emerged almost two and a half years after plain packs first started appearing on the market.[37] The packs were clearly irregular, in a pack size not sold in Australia, and failing to bear the correct variant name.[38]

### 3.6. While the overall estimates of the scale of the problem might be exaggerated, don't the industry studies suggest that use of illicit tobacco overall increased in Australia following the introduction of plain packaging?

The KPMG LLP reports certainly conclude that the size of the illicit market is increasing, estimating that the market increased from approximately 2.0 to 2.6 million kilograms of tobacco between 2012 and 2014.

Figure 1.1 Consumption of illicit tobacco products by category and as a percentage of overall consumption, 2007 – 2014<sup>(1)(2)(3)(4)(a)</sup>



Source: Extract snipped from KPMG 2015[1]

No confidence intervals around the estimates are provided, so it is difficult to interpret the significance of reported changes. It should also be noted that a different company undertook the litter surveys from 2013 onwards, so it is possible that part of the increase observed in prevalence of non-domestic packs in litter surveys is attributable to different processes in relation to areas selected, time spend collecting in each area and so on. These figures also need to be understood against the backdrop of steeply rising prices of cigarettes in Australia since an unprecedented increase in excise duty on the 29<sup>th</sup> April 2010, inflated by compounding increases in prices following each indexation of excise and customs duty on tobacco on eight occasions up to the collection period in May 2014, as well as a further large real increase on the 1<sup>st</sup> December 2013. Cigarettes in Australia are orders of magnitude more costly than in neighbouring countries, so it is not surprising that illicit tobacco is present in Australia as it is elsewhere in the world, or even that the market might be

increasing over time. Whether the size of the market is increasing or not, there is no evidence that use of illicit tobacco is attributable to plain packaging.

Apart from the fact that counterfeiting has not so far been identified as problematic, other studies that have specifically examined changes immediately before and after introduction of the legislation have failed to detect increases in use of illicit tobacco.

### *Surveys of smokers 2011 or 2012 compared to 2013*

A study published in August 2014 in *BMJ Open*[39] analysed cross-sectional data from smokers interviewed before, during and one year after the introduction of plain packaging. The proportion of smokers reporting current use of unbranded illicit tobacco did not change significantly between 2011 and 2013—2.3% in 2011, 2.2% in 2012 and 1.9% in 2013.

**Table 4** Usual place of purchase, use of low-cost Asian brands, and use of unbranded illicit tobacco by year – unadjusted percentages and 95% Confidence Intervals (95% CI)

	2011		2012		2013	
	%	95% CI	%	95% CI	%	95% CI
<b>Unbranded illicit tobacco<sup>a</sup></b>						
Past 12-month use	4.4	2.4 – 6.3	4.9	2.4 – 7.4	4.0	2.0 – 6.0
Current use <sup>b</sup>	2.3	0.8 – 3.8	2.2	0.3 – 4.1	1.9	0.6 – 3.1

<sup>a</sup> Includes all current smokers, i.e. smokers who smoke daily, weekly or less than weekly (2011: n=754; 2012: n=590; 2013: n=601)

<sup>b</sup> Use daily, weekly, or less than weekly.

Source: Scollo M, Zacher M, Durkin S, and Wakefield M. Early evidence about the predicted unintended consequences of standardised packaging of tobacco products in Australia: a cross-sectional study of the place of purchase, regular brands and use of illicit tobacco. *BMJ Open*, 2014; 4(8). Available from: <http://bmjopen.bmj.com/content/4/8/e005873.abstract>

### *Audit of retail outlets*

A study published in the *BMJ's* journal, *Tobacco Control*, in 2014 [40] found no evidence of increases in the willingness of small retailers to sell illicit unbranded tobacco to trained fieldworkers following introduction of plain packaging legislation and very low levels of positive responses overall—see **table 5**.

**Table 5** Responses to inquiry about illicit unbranded tobacco in small mixed-businesses in Melbourne, Sydney, Adelaide, and Perth—before during and after the implementation of plain packaging

	Pre-PP implementation		PP implementation	Post-PP implementation		
	Jun-12 n (%)	Sep-12 n (%)	Dec-12 n (%)	Feb-13 n (%)	Apr-13 n (%)	Jul-13 n (%)
<b>Total eligible stores (n)</b>	164	174	170	173	171	170
<b>a) No or don't know</b>	115 (70.1%)	133 (76.4%)	132 (77.7%)	147 (85.0%)	130 (76.0%)	131 (77.1%)
<b>b) Confused with RYO tobacco</b>	29 (17.7%)	20 (11.5%)	9 (5.3%)	12 (6.9%)	27 (15.8%)	19 (11.2%)
<b>Total Negative Responses (a+b)</b>	144 (87.8%)	153 (87.9%)	141 (82.9%)	159 (91.9%)	157 (91.8%)	150 (88.2%)
<b>c) Gave vague information</b>	13 (7.9%)	7 (4.0%)	8 (4.7%)	3 (1.7%)	7 (4.1%)	8 (4.7%)
<b>d) Gave specific information</b>	0	3 (1.7%)	3 (1.8%)	2 (1.2%)	1 (0.6%)	4 (2.4%)
<b>e) Offered to sell chop-chop</b>	<b>2</b> <b>(1.2%)</b>	<b>0</b>	<b>1</b> <b>(0.6%)</b>	<b>1</b> <b>(0.6%)</b>	<b>1</b> <b>(0.6%)</b>	<b>1</b> <b>(0.6%)</b>
<b>Total Positive Responses (c+d+e)</b>	15 (9.2%)	10 (5.8%)	12 (7.1%)	6 (3.5%)	9 (5.3%)	13 (7.7%)
<b>Suspicious of fieldworker</b>	5 (3.1%)	11 (6.3%)	17 (10.0%)	8 (4.6%)	5 (2.9%)	7 (4.1%)

Source: Scollo M, Bayly M, and Wakefield M. Availability of illicit tobacco in small retail outlets before and after the implementation of Australian plain packaging legislation. *Tobacco Control*, 2014;doi:10.1136/tobaccocontrol-2013-051353. Available from: <http://tobaccocontrol.bmj.com/content/early/2014/04/10/tobaccocontrol-2013-051353.abstract>

In the same study,[40] fieldworkers went on to purchase the cheapest pack of cigarettes available for sale in the store. Only 1.2% of packs were cheaper than 20% below recommended retail prices or failed to carry required Australian health warnings. Taking into account these criteria (as well as a number of contextual factors including usual pricing in each store), researchers judged that fewer than 0.2% of the 878 packs purchased after the introduction of plain packaging were likely to have been illicit. This compared to 1% of the 598 packs purchased prior to introduction.

Overall to date, data derived from sources independent of the tobacco industry suggests relatively low and stable levels of use of illicit tobacco in Australia.

### 3.7. So what is the Australian government doing about illicit tobacco?

Illicit tobacco is an important issue with potential to reduce the efficiency of tax policy in reducing consumption of tobacco products. The Australian Government is increasing attention to mail imports and continues to undertake surveillance of ports and to vigorously pursue offenders.

### 3.8. For further information

Detailed critiques of each of the reports estimated illicit tobacco in Australia produced for Australian tobacco companies by Deloitte Australia and KPMG LLP are provided at <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>

For further facts sheets on plain packaging in Australia see <https://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=factsheets1>

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