

# Questions and answers on plain packaging in Australia

---

*Prepared by the Cancer Council Victoria*

## Facts sheet no. 3:

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

---

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 because, it was claimed, plain packs would be much easier to counterfeit than fully branded packs.<sup>[15-17]</sup>

#### **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 illicit tobacco 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.<sup>[24]</sup>) 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 congregated 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.

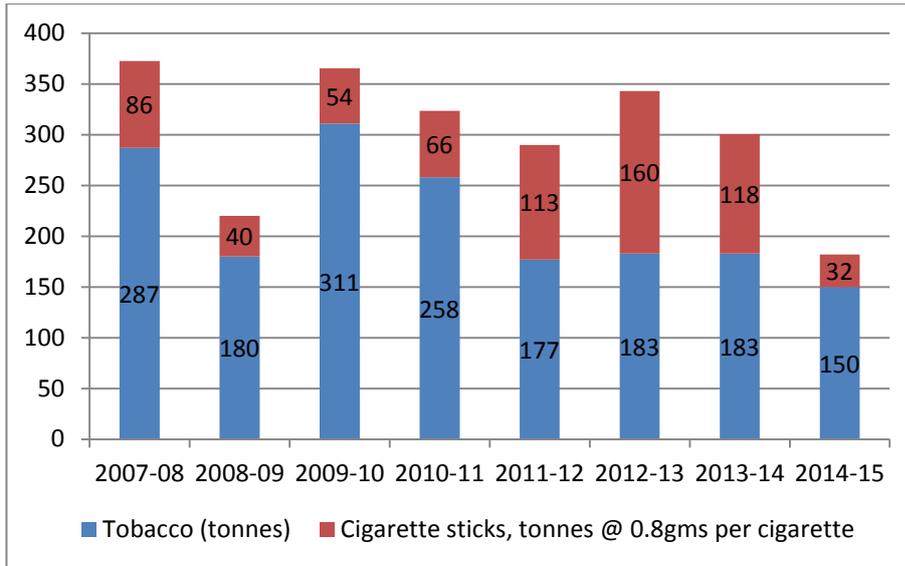
### 3.2. What do official government interceptions data suggest about the size of and trends in the illicit tobacco market in Australia?

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

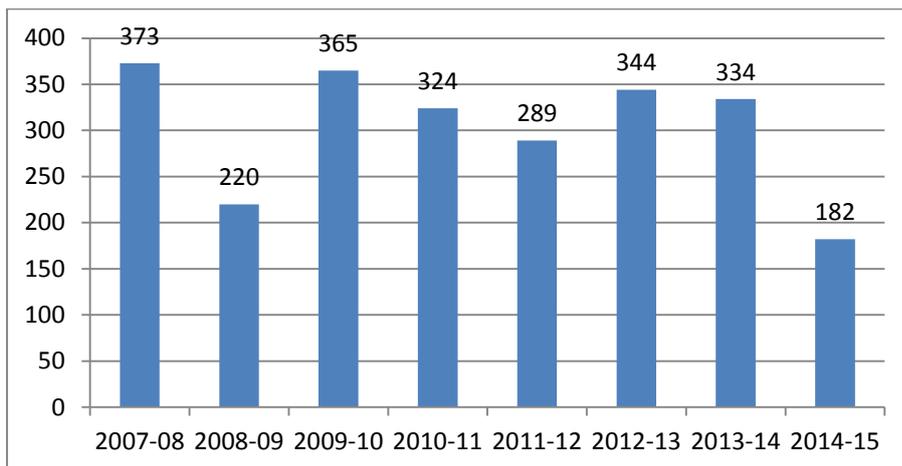


**Figure 1** Amounts of loose tobacco and contraband cigarettes intercepted in sea cargo bound for Australia, and total weight of tobacco intercepted—Australia 2007-08 to 2014-15

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.

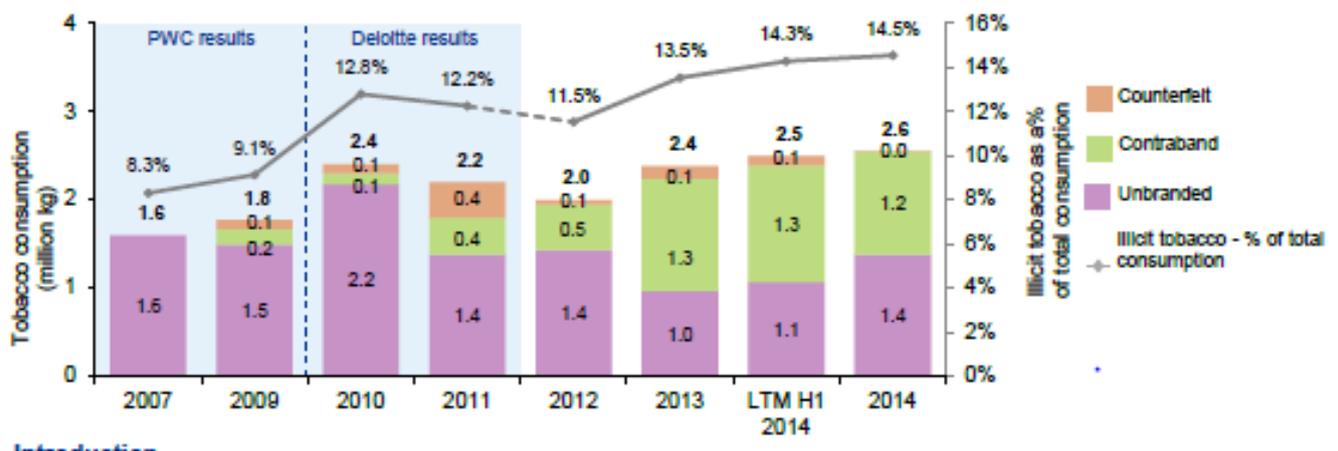
Source: KPMG LLP Illicit tobacco in Australia, May 2015, full year report, p42

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. In a letter to UK Public Health Minister Jane Ellison, dated 2 May 2014 and released under the Freedom of Information Act, Robin Cartwright, a KPMG partner indicated that “The report we released recently, Illicit Tobacco in Australia–2013 Half Year Report, has been somewhat misrepresented by others, without our consent, to suggest it supports the contention that plain packaging could lead of itself to an increase in tobacco smuggling and duty avoidance.”[39]

It is important to note the disclaimers at the beginning of the KPMG reports. The disclaimer for the report prepared for the 2014 year[1] states

LONDON E 14 5UL  
United Kingdom

30 March 2016

LONDON E 14 5UL  
United Kingdom

9 October 2016

#### IMPORTANT NOTICE

This report on illicit tobacco consumption in Australia (“Report”) has been prepared by KPMG accordance with specific terms of reference (“terms of reference”) agreed between British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited (together “Addressees”), and KPMG LLP.

KPMG LLP has agreed that the Report may be disclosed to any party on the basis set out here. KPMG LLP wishes all parties to be aware that KPMG LLP’s work for the Addressees was performed in accordance with specific terms of reference agreed between the Addressees and KPMG LLP and that there are no particular features determined for the purposes of the engagement.

The Report should not therefore be regarded as suitable to be used or relied on by any other party for any other purpose. The Report is issued to other parties on the basis that it is for their information only. Should any party choose to rely on the Report they do so at their own risk. KPMG LLP does not accordingly accept no responsibility or liability in respect of the Report to any party other than the Addressees.

#### IMPORTANT NOTICE

This presentation of key findings (the “Report”) has been prepared by KPMG LLP in the UK (“KPMG UK”) for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, described together in this Important Notice and in this Report as the “Beneficiaries”, on the basis set out in a private contract dated 26<sup>th</sup> May 2015 agreed separately with the Beneficiaries.

Nothing in this Report constitutes legal advice. Information sources, the scope of our work, and scope and source limitations, are set out in the Appendices to this Report. The scope of our review of the contraband, counterfeit and unbranded segments of the tobacco market within Australia was fixed by agreement with the Beneficiaries and is set out in the Appendices.

We have satisfied ourselves, so far as possible, that the information presented in this Report is consistent with our information sources but we have not sought to establish the reliability of the information sources by reference to other evidence.

This Report has not been designed to benefit anyone except the Beneficiaries. In preparing this Report we have not taken into account the interests, needs or circumstances of anyone apart from the Beneficiaries, even though we have been aware that others might read this Report.

This Report is not suitable to be relied on by any party wishing to acquire rights or assert any claims against KPMG LLP (other than the Beneficiaries) for any purpose or in any context.

At the request of the Beneficiaries and as a matter of practical convenience we have agreed to publish this Report on the KPMG UK website, in order to facilitate demonstration by the Beneficiaries that a study into the matters reported has been performed by KPMG UK for the Beneficiaries.

Publication of this Report does not in any way or on any basis affect or add to or extend KPMG UK’s duties and responsibilities to the Beneficiaries or give rise to any duty or responsibility being accepted or assumed by or imposed on KPMG UK to any party except the Beneficiaries. To the fullest extent permitted by law, KPMG UK does not assume any responsibility and will not accept any liability in respect of this Report to anyone except the Beneficiaries.

In particular, and without limiting the general statement above, since we have prepared this Report for the Beneficiaries alone, this Report has not been prepared for the benefit of any other manufacturer of tobacco products nor for any other person or organisation who might have an interest in the matters discussed in this Report, including for example those who work in or monitor the tobacco or public health sectors or those who provide goods or services to those who operate in those sectors.

The disclaimer in the report prepared in late-2015[2] is even more guarded, reading

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[40] 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 [41] 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%)

d) Gave specific information	0	3 (1.7%)	3 (1.8%)	2 (1.2%)	1 (0.6%)	4 (2.4%)
e) Offered to sell chop-chop	<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>
Total Positive Responses (c+d+e)	15 (9.2%)	10 (5.8%)	12 (7.1%)	6 (3.5%)	9 (5.3%)	13 (7.7%)
Suspicious of fieldworker	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,[41] 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.

A May 2016 report by the Australian National Audit Office[42] identified several shortcomings over the previous few years in coordination between the (then) Department of Customs and Border Protection (DCBP) and the Australian Tax Office (ATO), with DCBP having fallen short on its obligations to provide access to information and systems necessary for the ATO to carry out its roles.

In 2010, nearly all of the top-selling cigarette brands in Australia were manufactured here in just a couple of tightly controlled factories. In the wake of very large increases in excise and customs duty in April 2010, December 2013 and September 2014 and 2015, all manufacturing of tobacco products has moved off-shore.<sup>2</sup> All of the major popular brands

<sup>2</sup> Note that tobacco companies have specifically stated that moves offshore are not due to plain packaging. British American Tobacco Australia. BAT forced to close Australian factory, 2014, BATA: Sydney. Available from:

in Australia are no longer manufactured in Australia, but are imported from a wide variety of countries e.g. *Marlboro*, *Peter Jackson* and *Longbeach* from the Philip Morris manufacturing plant in Korea; *Winfield* and *Benson & Hedges* from Singapore, *Rothmans* from Malaysia, *JPS* and *Horizon* from New Zealand and Peter Stuyvesant from the Ukraine. This dramatic change in supply arrangements poses a new set of challenges for enforcement agencies. The risk level for illicit tobacco was raised by the ATO from 'low' to 'moderate' in 2014 and then again from 'moderate' to 'significant' in 2015 due to an increase in 'the number of touch points by other entities when tobacco product is imported, moved or stored. This is where revenue leakage can occur.' The audit report pointed to 'known weaknesses in the administration of the under-bond system for excise equivalent goods' and calls for improvements in compliance checking.[42]

While the audit report pointed to the need for better compliance strategies to improve visibility and assurance around storage of tobacco, it concluded

"Since mid-2015, there has been a renewed and positive focus within Department of Immigration and Border Protection on arrangements with the ATO for administering tobacco excise equivalent goods. The two agencies are working more closely together to address many long standing issues noted in this report that, when fully implemented, would support more accountable, effective and streamlined administration of excise equivalent goods more broadly." ANO 2016[42], p8

The last federal Budget in Australia in addition to announcing four further 12.5% increases in excise/custom duty in Australia between 2017 and 2020,[43] made provision for extra funding for enforcement by the Department of Immigration and Border Protection, with an extra \$7.7million for 'strike teams'.[44] The ATO response to the audit report included a commitment to taking responsibility for estimating and monitoring the size of the illicit market through its 'tax gap' initiative.[42] More reliable estimates of the size of the illicit market will allow the impact of compliance activities to be more effectively monitored into the future.

### **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>

## References

1. KPMG LLP. Illicit tobacco in Australia: 2014 full year report. Sydney: BATA, 2015. Available from:  
[http://www.bata.com.au/group/sites/BAT\\_9RNFLH.nsf/vwPagesWebLive/DOA3CJ84?opendocument](http://www.bata.com.au/group/sites/BAT_9RNFLH.nsf/vwPagesWebLive/DOA3CJ84?opendocument)
2. KPMG LLP. Illicit tobacco in Australia: 2015 half year report. Sydney: BATA, 2015. Available from:  
[http://www.bata.com.au/group/sites/bat\\_7wykg8.nsf/vwPagesWebLive/DO8H7FT9/\\$FILE/medMDA4AU8X.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO8H7FT9/$FILE/medMDA4AU8X.pdf?openelement)
3. KPMG LLP. Illicit tobacco in Australia: 2014 half year report. Sydney 2014. Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO9FC38M?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO9FC38M?opendocument&SKN=1).
4. KPMG LLP. Illicit tobacco in Australia: 2013 half year report. Sydney 2013. Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO9879X3?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO9879X3?opendocument&SKN=1).
5. KPMG LLP. Illicit tobacco in Australia: 2013 full-year report. Sydney 2014. Available from:  
[http://www.bata.com.au/group/sites/BAT\\_9RNFLH.nsf/vwPagesWebLive/DOA3CJ8E?opendocument](http://www.bata.com.au/group/sites/BAT_9RNFLH.nsf/vwPagesWebLive/DOA3CJ8E?opendocument).
6. Deloitte. Illicit trade of tobacco in Australia. Sydney: Prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, 2011 (Feb). Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1).
7. Deloitte. Illicit trade of tobacco in Australia: an update. June 2011. Sydney: Prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, 2011 (Jun). Available from: Not available on line.
8. Deloitte. Illicit trade of tobacco in Australia: Update for 2012: a report prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited. Sydney: British American Tobacco Australia, 2012 (Dec). Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO9879X3?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO9879X3?opendocument&SKN=1).
9. Deloitte. Illicit trade of tobacco in Australia: report for 2011. Sydney: Prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, 2012 (May). Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1).
10. PricewaterhouseCoopers. Research report on the illegal tobacco market. Document produced in 2005 tabled as part of a formal submission (no. 46) made by British American Tobacco Australia in relation to the Inquiry into Tobacco Smoking in New South Wales. Sydney: NSW Parliament, 2006. Available from:  
[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/2b14b998dda58536ca2571620017ecd2/\\$FILE/Sub%2046%20BATA%20-%20Attachment.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/2b14b998dda58536ca2571620017ecd2/$FILE/Sub%2046%20BATA%20-%20Attachment.pdf).
11. PricewaterhouseCoopers. Illegal tobacco trade: costing Australia millions. Strategies to curb the supply and use of illegal tobacco products. Report prepared for British American Tobacco Australasia (BATA). Sydney: PricewaterhouseCoopers, 2007. Available from:  
[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO7WZEXJ?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO7WZEXJ?opendocument&SKN=1).
12. PricewaterhouseCoopers. Australia's illegal tobacco market: counting the cost of Australia's black market. Sydney: British American Tobacco Australasia, 2010. Available from:  
[http://www.bata.com.au/group/sites/bat\\_7wykg8.nsf/vwPagesWebLive/DO7WZEXJ/\\$FILE/medMD82D43K.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEXJ/$FILE/medMD82D43K.pdf?openelement).

13. International Tax and Investment Center. The illicit trade in tobacco products and how to tackle it, second edition. Washington 2013. Available from: <http://www.iticnet.org/Home.aspx>.
14. International Tax and Investment Center and Oxford Economics. Asia-11: Illicit Tobacco Indicator 2012. Washington: International Tax and Investment Center, 2013. Available from: <http://www.iticnet.org/asia11>.
15. British American Tobacco Australia. Submission on the Tobacco Plain Packaging Bill 2011. Canberra: Department of Health and Ageing Consultation website, 2011. Available from: [http://content.webarchive.nla.gov.au/gov/wayback/20130904173432/http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/2EE2F6F3EC74F628CA2579540005F68B/\\$File/British%20American%20Tobacco%20Australia%20-%20Public%20Submission.pdf](http://content.webarchive.nla.gov.au/gov/wayback/20130904173432/http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/2EE2F6F3EC74F628CA2579540005F68B/$File/British%20American%20Tobacco%20Australia%20-%20Public%20Submission.pdf)
16. British American Tobacco (BAT). UK Standardised Packaging Consultation: Response of British American Tobacco UK Limited. 2012. Available from: [http://www.bat.com/group/sites/uk\\_3mnfen.nsf/vwPagesWebLive/DO8WZC5E/\\$FILE/medMD8WZC6J.pdf?openelement](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO8WZC5E/$FILE/medMD8WZC6J.pdf?openelement).
17. British American Tobacco (New Zealand) Ltd. Proposal to introduce plain packaging of tobacco products in New Zealand: Submission by British American Tobacco (New Zealand) Limited. Wellington: Parliament of New Zealand, 2014. Available from: [http://www.parliament.nz/en-nz/pb/sc/documents/evidence?Custom=00dbhoh\\_bill12969\\_1&Criteria.PageNumber=2](http://www.parliament.nz/en-nz/pb/sc/documents/evidence?Custom=00dbhoh_bill12969_1&Criteria.PageNumber=2).
18. Quit Victoria. Illicit trade of tobacco in Australia: a report prepared by Deloitte for British American Tobacco, Philip Morris Ltd and Imperial Tobacco: a critique prepared March 2011, updated August and November 2011. Melbourne, Australia: Cancer Council Victoria, 2011. Available from: <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=plainfacts-myths>.
19. Quit Victoria. Illicit trade of tobacco in Australia: a report prepared by Deloitte for British American Tobacco, Philip Morris Ltd and Imperial Tobacco Australia Limited: a critique prepared April 2012. Melbourne, Australia: Cancer Council Victoria, 2012. Available from: <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>.
20. Quit Victoria. Illicit trade of tobacco in Australia: a report prepared by Deloitte for British American Tobacco, Philip Morris Ltd and Imperial Tobacco Australia Limited: a critique prepared April 2013. Melbourne, Australia: Cancer Council Victoria, 2013. Available from: Quit Victoria.
21. Quit Victoria. Critique of, *Illicit tobacco in Australia: half year report*, 2013 by KPMG LLP. Melbourne, Australia: Cancer Council Victoria, 2013. Available from: <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>.
22. Quit Victoria. Critique of, *Illicit tobacco in Australia: full year report 2013* by KPMG LLP. Melbourne, Australia: Cancer Council Victoria, 2014. Available from: <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>.
23. Quit Victoria. Critique of, *Illicit tobacco in Australia: full year report 2014* by KPMG LLP. Melbourne, Australia: Cancer Council Victoria, 2015. Available from: <http://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>.
24. Australian Bureau of Statistics. 4102.0 - Australian Social Trends. ABS, 2013. Available from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30April+2013#back7>.
25. International Tax and Investment Center and Oxford Economics. Asia-14: Illicit Tobacco Indicator 2013. Washington: International Tax and Investment Center, 2014. Available from: <http://www.iticnet.org/asia14>.
26. Australian Customs and Border Protection Service. Annual Report 2013-14. Canberra: ACBPS, 2014. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>

27. Scollo M. Chapter 13. The pricing and taxation of tobacco products in Australia, in Tobacco in Australia: Facts and Issues. Scollo M and Winstanley M, Editors. Melbourne, Australia: Cancer Council Victoria; 2013. Available from: <http://www.webcitation.org/6QsaCaM3R>
28. Australian Customs and Border Protection Service. Annual report 2007–08. Canberra: Australian Government, 2008. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>.
29. Australian Customs and Border Protection Service. Annual report 2008–09. Canberra: Australian Government, 2009. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>.
30. Australian Customs and Border Protection Service. Annual report 2009–10. Canberra: Australian Government, 2010. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>.
31. Australian Customs and Border Protection Service. Annual report 2010–11. Canberra: Australian Government, 2011. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>.
32. Australian Customs and Border Protection Service. Annual report 2011–12. Canberra: Australian Government, 2012. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>.
33. Australian Customs and Border Protection Service. Annual Report 2014-15. Canberra: ACBPS, 2014. Available from: <http://www.border.gov.au/about/reports-publications/reports/annual>
34. Australian Institute of Health and Welfare. Highlights from the 2013 survey: Tobacco Smoking. Canberra: AIHW, 2014. Last update: 27 July; Viewed AIHW cat. no. PHE 145. Available from: <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>.
35. Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report: 2013. Cat. no. PHE 183 Canberra: AIHW, 2014. Available from: <http://www.aihw.gov.au/publication-detail/?id=60129549469&tab=3>.
36. 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>.
37. British American Tobacco Australia. First counterfeit plain packs hit the streets. Sydney: BATA, 30 Jan 2015. Available from: [http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO9T9289?openDocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO9T9289?openDocument&SKN=1)
38. Kerr C. Fake cigarettes spark counterfeit flood fear. The Australian 2015; 17 Feb.
39. Doward J. How big tobacco lost its final fight for hearts, lungs and mind. The Guardian, 2016; 22 May 2016. Available from: <http://www.theguardian.com/society/2016/may/22/big-tobacco-final-fight-cigarette-branding-uk>
40. 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>
41. 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>
42. Australian National Audit Office. Administration of Tobacco Excise Equivalent Goods. Report no 34, 2015-16, 5 May Canberra: ANO, 2016. Available from: <https://www.anao.gov.au/work/performance-audit/administration-tobacco-excise-equivalent-goods>.

43. Morrison S. Budget 2016-17. Budget speech. Canberra: Treasury, 2016. Available from: <http://budget.gov.au/2016-17/content/speech/html/index.htm>.
44. Morrison S. Budget 2016-17. Budget paper no. 2. Budget Measures 2016-17, Part 2 Expense measures. Canberra: Treasury, 2016. Available from: <http://budget.gov.au/2016-17/content/bp2/html/>.