

# Illicit Tobacco Review

## Victorian Government

SUBMISSION BY ROHAN PIKE



[www.pikeconsulting.com.au](http://www.pikeconsulting.com.au)  
[rohan@pikeconsulting.com.au](mailto:rohan@pikeconsulting.com.au)  
Ph: 0413 171717

Dear Commissioner,

I must firstly congratulate the Victorian Government for noting the Federal Government's recommendations, recognising the serious problem that illicit tobacco has become and for taking the pro-active step in requesting this Review.

One of the primary reasons that illicit tobacco has flourished in Victoria is the total lack of regulation at the retail level so I am delighted that this critical aspect of the supply chain is now being addressed. This illegal product is currently sold openly to the community via numerous shop fronts just like any other legitimate commodity. The absence of any risk associated with the sale and purchase of the product provides no deterrent effect to the consumer. It also allows the organised crime groups orchestrating this activity to easily distribute their product and produce vast profits without fear of law enforcement intervention. I estimate the illicit tobacco trade to be generating \$2 billion in illegitimate proceeds in Victoria per year.

## My background

Following a 24-year career in the Australian Federal Police, in June of 2015, I joined the then Australian Border Protection and Customs Service which became the Australian Border Force (ABF). On joining the ABF, I immediately took a keen interest in Illicit Tobacco and established investigative and intelligence teams dedicated to this crime type. These teams later became known as the "Tobacco Strike Team" (TST) and later, the Illicit Tobacco Task Force.

I was responsible for strategic direction and management of all its illicit tobacco-related investigative and operational activities. I was actively involved in every illicit tobacco related investigation handled by the ABF and many of the illicit tobacco matters handled by other Commonwealth law enforcement agencies. In addition, I led Australia's international engagement with other customs and law enforcement agencies on illicit tobacco matters.

Through the experiences outlined above, I became Australia's foremost law enforcement expert in illicit tobacco.

Since leaving the ABF, I have continued my involvement and interest with the Illicit Tobacco topic and have advocated for regulatory and legislative change in order for the issue to be brought under control. You may have noted my significant contribution to the Federal Parliament's PJCLE Enquiry Final Report.

## Disclosure relating to Article 5.3 of the FCTC

I am engaged on a part time basis by the Retail and Trade Brand Advocacy (RTBA) group as an “Illicit Trade Advisor”. This organisation educates and assists various retail groups to form and advocate positions relating to the sale of tobacco which comprises a significant proportion of their trade. Milk bars, convenience stores, supermarkets and petrol stations are all adversely affected by this illegal trade.

This submission is made in my own name and has not been commissioned by the RTBA. My opinions have been formed over decades of law enforcement experience and remain identical to those I held when employed by the Australian Public Service. My views may well be similar and/or support positions held by the retailer groups as illicit tobacco is a scourge that directly affects their viability and I am sympathetic to their concerns. I attach my submission to the Federal Government’s PJCLE Enquiry in 2017 as evidence of the issue itself and my long-held and well-informed views.

## Response to the Terms of Reference

Illicit tobacco has long been a problem, particularly in Victoria, however in recent years, and as recognised the Federal Government PJCLE Report, the issue has grown exponentially. I say “particularly in Victoria” because when tobacco was grown and manufactured in Australia, Victoria was the both the prime growing region and the focal point for tobacco diversion to the black market. Illegal distribution networks have therefore long been in place. Sales of these products late last century were suppressed by the legislation and enforcement conducted by Australian Taxation Office (ATO) investigators who were protecting the Commonwealth’s Excise take. When legitimate tobacco production ceased about 20 years ago, so did the ATO’s surveillance of the illicit industry. Since then, the sale of illicit tobacco has enjoyed and exploited a virtual enforcement-free environment post-border. When combined with the massive increase in excise rates, it could be said that state and federal government policy has inadvertently encouraged and enabled the growth of a crime industry without interference.

As you would be aware, the responsibility for the enforcement of all tobacco, including illicit tobacco, in Victoria falls to the Department of Health. The utility of having a Health department prevent an organised crime problem was examined in the PJCLE Review. They concluded and recommended that the responsibility for policy direction and enforcement move to a law enforcement body. Federally, this would be the Home Affairs Department.

In Victoria, the ability to recognize and react to this crime problem is similarly beyond the comprehension of the Department of Health. Only the Victoria Police have the experience and expertise to effectively counter this crime issue.

Department of Health inspectors are not trained, equipped or resourced to deal with what is an organised crime problem. They have been understandably reluctant to wade into this area due to their legitimate concerns around personal safety. Councils have also been reticent to spend the time and funds required to prosecute these matters.

Tobacco in Victoria is regulated via the *Victorian Tobacco Act 1987*. There are very few examples of breaches of this *Act* by legitimate retailers. The word “illicit” is not mentioned in the *Act* and there is no other state legislation covering the current practice of selling illicit tobacco.

The issue of enforcement of the existing laws is the key reason why this review cannot merely look at the regulation concerning illicit tobacco but must also consider who will be enforcing those regulations and how it will be done. While various Federal agencies share the responsibility for illicit tobacco at the national border and in relation to domestic production, responsibility at the retail/market level has never been formally assigned an owner. As such, illicit tobacco at the retail level remains unregulated in Victoria.

The majority of other states have adopted a licensing regime over the sale of tobacco and while there has been compliance with that process by legitimate retailers, the black market has continued to proliferate. Although illicit tobacco is a common issue in other states, it is somewhat smaller in jurisdictions that have a tobacco licensing scheme and include state police in the definition of authorised officers. These jurisdictions recoup much of the cost of managing this scheme via the levying of substantial fines.

I am aware that Victorian retailers would support further regulation in the form of an appropriate licensing regime if it were to be rigorously enforced. I believe that if such a regime were to be introduced, it must include provisions to include Police as authorised officers, allow ease of access to commercial premises that are suspected of selling illicit tobacco (as per the W.A. legislation) and significant penalties be issued to those who are unlicensed or who sell an illegal product. While a properly enforced licensing regime may have some affect on the size of the black market, my view is that only a concerted and sustained effort by the Victoria Police, backed by strong powers and laws, would make a meaningful difference to the proliferation of illicit tobacco in this state.

## Conclusion

If the Victorian government wishes to curb the problem of illicit tobacco, then it needs to implement legislative reform that recognises it as an organised crime problem. While solving the problem would also assist the Government's health objectives by forcing more smokers to quit, it is the Victoria Police who are best equipped to take responsibility for the policy and enforcement of this crime issue.

Yours sincerely,

Rohan Pike

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