



Better Regulation
Victoria

Addressing Illicit Tobacco

Review into Victoria's
Approach to Illicit Tobacco Regulation

Disclaimer

The views expressed herein are those of Better Regulation Victoria and do not purport to represent the position of the Victorian Government. The content of this report is provided for information purposes only. Neither Better Regulation Victoria nor the Victorian Government accepts any liability to any person for the information (or the use of such information) which is provided in this report or incorporated into it by reference. The information in this report is provided on the basis that all persons having access to this report undertake responsibility for assessing the relevance and accuracy of its content.

Better Regulation Victoria
GPO Box 4379
Melbourne Victoria 3001 Australia
Telephone: 03 7005 9772
Email: contact@betterreg.vic.gov.au
Webpage: www.betterregulation.vic.gov.au

© State of Victoria 2022



You are free to re-use this work under a Creative Commons Attribution 4.0 license, provided you credit the State of Victoria (Better Regulation Victoria) as author, indicate if changes were made and comply with the other license terms. The license does not apply to any branding, including Government logos.

Copyright queries may be directed to IPpolicy@dtf.vic.gov.au

If you would like to receive this publication in a different format, please email contact@betterreg.vic.gov.au

This document is also available in Word and PDF formats at www.betterregulation.vic.gov.au



Contents

Foreword.....	ii
Executive Summary.....	iii
Recommendations.....	vi
Figures and Tables.....	viii
Table of Abbreviations.....	ix
Introduction.....	1
Terms of Reference.....	2
Structure of this Report.....	3
Background and Context.....	4
What is Illicit Tobacco?.....	4
What are the Impacts of Illicit Tobacco?.....	5
Lack of Data.....	8
Tobacco Supply Chain.....	9
How can the Victorian Government Act to Reduce the Sales of Illicit Tobacco?.....	17
License Tobacco Sellers.....	17
Provide for Clear and Effective Regulatory Oversight.....	24
Improve Enforcement Powers.....	32
Provide for effective deterrence through penalties.....	34
Invest in Strengthen Education and Support Programs.....	37
Develop a Coordinated, National Approach that Focuses on Long-term Elimination of Illicit Tobacco.....	38
Appendix 1: Key Stakeholder Meetings.....	40
Appendix 2: Written Submissions.....	41
Appendix 3: Terms of Reference.....	43
Appendix 4: Comparison of Tobacco Regulation Across Australian States and Territories.....	45
Appendix 5: MAV Submission – Local Council Officers’ Responses to Key Questions..	54



Foreword

This report *Addressing Illicit Tobacco* outlines the serious harms that illicit tobacco causes to Victorian communities and businesses. The report makes six recommendations to enable the establishment of an effective regulatory framework, backed by strong enforcement measures, to substantially reduce the supply and consumption of illicit tobacco in Victoria.

As part of the review, significant consultation has been undertaken with industry, health agencies and also across governments, at all levels and in different jurisdictions. The review benefitted enormously from these discussions, and I would like to thank everyone who contributed to the review for their input.

I would like to thank Helena Worthington particularly for her exceptional work on the review and also recognise the advice and feedback provided by Don Parker and other colleagues in the Better Regulation Victoria team.

Anna Cronin
Commissioner for Better Regulation



Executive Summary

This review was commissioned by the Victorian Government in response to concerns about access to illicit tobacco in Victoria and its associated harms, including significant negative health impacts and the links between illicit tobacco and organised crime activities.

For the purpose of this report, illicit tobacco is defined as tobacco that has been illegally imported or grown in Australia and therefore for which the required customs or excise duties have not been paid.

Under the Tobacco Act 1987, the maximum penalties for selling illicit tobacco were increased in 2014 to over \$40,000 for individuals and to over \$200,000 for companies. The Act also provides for a ban to apply to those found guilty of selling illicit tobacco from selling all tobacco products. Despite these more severe penalties, on the basis of the available information, it appears that the sale of illicit tobacco has continued to increase.

Reliable data on illicit tobacco trading is inherently difficult to source due to its illegality. The lack of information and data available to the Government is further exacerbated in the absence of a tobacco sellers licensing scheme. To inform the review, Better Regulation Victoria (BRV) has met with a number of stakeholders and utilised current research. BRV has benefited from other recent work including the 2020 report of the Federal Parliament's Joint Committee on Law Enforcement on illicit tobacco. Our information base also included 49 submissions and the 15 consultation meetings we held.

Regarding the current situation of access to illicit tobacco in Victoria, BRV learnt that the enforcement of illicit tobacco laws in Victoria is challenging. In Victoria, the majority of enforcement of our tobacco laws is carried out by local council environmental health officers. These officers often lack the skills and support to investigate offences involving people and businesses with links to organised crime gangs. BRV also heard that where actions have been taken, the penalties imposed have not deterred offenders due to their relative insignificance compared to the significant profits that can be made from the illicit tobacco trade.

Regulating illicit tobacco is complex. It involves local, state and federal agencies across a range of law enforcement bodies including border security, the Australian Tax Office (ATO), health departments and agencies, fair trading and local council officers. Coordination, collaboration, clarity of responsibilities and clear referral structures across these agencies is lacking and yet essential for effective enforcement and compliance.



Many of the views put forward during consultations related to the need for clarity in the roles and responsibilities of different agencies and reflected similar tensions and questions identified in the Australian Parliamentary Inquiry – particularly about whether illicit tobacco regulation is best considered as a health issue or a criminal issue. The majority of stakeholders viewed illicit tobacco as primarily a criminal issue, which as noted in the Australian Parliamentary Inquiry, seems to be consistent with the Australian Government’s approach¹.

A central theme of consultation focussed on whether Victoria should introduce a licensing scheme for tobacco retailers and wholesalers. Our jurisdiction is one of only two in Australia that does not have a licensing or notification scheme for the sale of tobacco and other smoking products. The Draft National Tobacco Strategy (published during our review) and the The World Health Organisation (WHO) Framework Convention on Tobacco Control, both make it clear that licensing of tobacco sellers is essential to regulate the illicit tobacco trade.

Based on our consultations and the available information, BRV has recommended the introduction of a licensing scheme in Victoria to cover the sale of tobacco products and e-cigarettes. This would enable ready identification – and therefore application of penalties – to those selling illicit tobacco. In making this recommendation we are mindful of the need to ensure that we minimise any increased regulatory burden to businesses operating legally and that we ensure that the proposed licensing scheme be coupled with a commitment to resource effective enforcement.

BRV have recommended a licensing scheme for retailers as well as wholesalers of tobacco products and e-cigarettes to be established using online platforms developed with the assistance of Service Victoria and consistent with the Victorian Government’s digital strategy. Applicants will need to demonstrate fitness and propriety, and licence holders would be required (among other things) to display their licence and to ensure staff are trained in the responsible sale of tobacco.

BRV has recommended that the administration of the new licensing scheme and the enforcement of tobacco control should be shifted to a state government regulator, possibly within the Department of Justice and Community Safety. The governance model should enable collaboration with Victoria Police on illicit tobacco enforcement and establish an advisory body that is made up of the regulator, relevant representatives from the health sector (both government and not-for-profit entities), Victoria Police and local councils.

¹ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf



The reforms to establish the new licensing scheme should have enhanced investigative powers which include strong powers of entry and seizure that are suitable to combat the activities of organised criminals. The regulator should also have the ability to immediately suspend licences where licensees are found to be selling illicit tobacco.

BRV recommends that the penalties for illicit tobacco sale should be strengthened and graduated to ultimately include imprisonment and that there should also be strong penalties for selling without a licence.

BRV also focuses on the need to invest in educating stakeholders about the proposed reforms including advising people about the impact of illicit tobacco sales on tobacco prevention strategies and their links to organised crime. In addition, the Government should continue to invest in health and support programmes, particularly targeted at groups vulnerable to illicit tobacco such as Aboriginal and Torres Strait Islanders, and people in lower socio economic and immigrant communities.

Finally, in recognition of the fact that the illicit tobacco trade is a national issue that will not be overcome by reforms in Victoria alone, BRV recommends that the Victorian Government call for increased national efforts to regulate the illicit tobacco trade. These could include enhancing networks with, and referral processes to, relevant Commonwealth agencies, information sharing with the Commonwealth and relevant tobacco control agencies across Australia and supporting the development of a nationally consistent licensing scheme. Given the significant revenues collected by the Commonwealth from the sales of tobacco, Victoria (and other jurisdictions) should call for financial support from the Commonwealth to meet the cost of enhanced enforcement activities.



Recommendations

In response to the issues described in this report, BRV recommends that the Victorian Government and its agencies take the following actions:

Recommendation 1 – Establish a licensing scheme

That the Victorian Government introduce a licensing scheme for sellers of tobacco products and e-cigarettes, including both retailers and wholesalers.

That the Government ensures that the administrative burden associated with these new measures be as low as possible, ideally relying on digital application forms through Service Victoria. That is why we recommend that as many activities associated with the new licensing scheme as possible (including the applications for the licensing scheme, reporting obligations and Responsible Sale of Tobacco training) should be able to be undertaken via online platforms.

Please refer to page 17 for further details.

Recommendation 2 – Provide for clear and effective regulatory oversight

The licensing scheme should be administered by a state government body, such as the Department of Justice and Community Safety (possibly with enforcement undertaken by that department or organisation within that department, in collaboration with Victoria Police and Commonwealth agencies).

BRV also recommends the establishment of a statutory advisory committee comprising representatives from other relevant state agencies, as well as representatives from health advisory bodies and industry. This committee could be established based on similar arrangements to those for the statutory committee in the building system, the Building Regulations Advisory Committee.

Please refer to page 24 for further details.

Recommendation 3 - Enhance investigation and enforcement powers

A full suite of investigative powers should be provided to officers/inspectors authorised by the state regulator and to Victoria Police.

Please refer to page 32 for further details.

Recommendation 4 - Provide for increased deterrence via stronger penalties

That the *Tobacco Act 1987* and other relevant legislation be amended to provide for a significantly stronger penalty regime for unlicensed sale of tobacco products and for illicit sale of tobacco.

Please refer to page 34 for further details.



Recommendation 5 – Education and support

The Government should invest in education about the new licensing scheme and other reforms and explain how illicit tobacco often funds organised crime and undermines public health measures.

The Government should also continue to support programs to reduce the use of tobacco products by vulnerable persons and communities including persons under 18, Aboriginal and Torres Strait Islanders, ethnic communities (where smoking is common) and other socially disadvantaged groups which have high levels of tobacco use.

Please refer to page 37 for further details.

Recommendation 6 - Continue to support campaigns discouraging smoking and collaborate with relevant Commonwealth agencies and other jurisdictions

That the Victorian Government continues to collaborate with the Commonwealth to finalise the National Tobacco Strategy which should provide nationally coordinated approaches to illicit tobacco trading. This should include:

- national laws (enacted by all States and Territories) for the licensing of tobacco retailers and wholesalers;
- the establishment of a Commonwealth body to assist with information sharing, data collection, and collaboration across Australia, including with state and territory regulators;
- funding for States and Territories from customs and excise revenue to support education programs, and to administer and enforce nationally consistent licencing schemes so that licensing fees for legitimate sellers can be kept to a minimum; and
- continued participation in cross jurisdictional engagement on tobacco control enforcement and compliance including advocating for the establishment of formal governance arrangements to support regular and ongoing commitment to improve the effectiveness of detection and prevention of the sale of illicit tobacco. Such collaboration should be part of the role of the statutory authority that has been recommended under recommendation 2 above.

Please refer to page 38 for further details.



Figures and Tables

Table 1: Key Abbreviations Used in this Report.....	ix
Table 2: Recommended Retail Price of Cigarettes sold in Australia.....	7
Table 3: Summary of licensing requirements across Australian jurisdictions.....	15
Table 4: Analysis of regulatory roles and capabilities to administer a tobacco licensing scheme for three Victorian government agencies	29
Table 5: Key Stakeholder Meetings.....	40
Table 6: Submission Via Engage Victoria.....	41
Table 7: Written Submissions	41
Figure 1: Tobacco supply chain in Australia.....	10
Figure 2: Journey Map of Illicit Tobacco Investigations.....	27



Table of Abbreviations

The key abbreviations used in this report are listed below:

Table 1: Key Abbreviations Used in this Report

Abbreviation	Meaning
AACS	Australian Association of Convenience Stores
ABF	Australian Border Force
ACT	Australian Capital Territory
ALNA	Australian Lottery & Newsagents Association
ATO	Australian Taxation Office
BLA	Business Licensing Authority
BRAC	Building Regulations Advisory Committee
BRV	Better Regulation Victoria
CAV	Consumer Affairs Victoria
DJCS	Department of Justice and Community Safety
DJPR	Department of Jobs, Precincts and Regions
DOH	Department of Health
EHO	Environmental Health Officer
MAV	Municipal Association of Victoria
MGA	Master Grocers Australia Independent Retailers
NSW	New South Wales
NT	Northern Territory
QLD	Queensland
SA	South Australia
TAS	Tasmania
VCGLR	Victorian Commission for Gambling and Liquor Regulation
VGCCC	Victorian Gambling and Casino Control Commission
VIC	Victoria
WA	Western Australia
WHO	World Health Organisation

Introduction

On 4 October 2021, the Minister for Regulatory Reform, the Hon Danny Pearson MP, requested that the Commissioner for Better Regulation, Anna Cronin, undertake a review of Victoria's approach to illicit tobacco regulation. The Minister asked the Commissioner to provide a report to Government, defining the issues and identifying ways the Victorian Government could assist to address them. The Terms of Reference for the review are set out in Appendix 3 (on page 43).

In completing the review, BRV has worked closely with the Victorian Department of Health (DOH)'s Public Health Division, Quit Victoria, tobacco retailers, newsagents, supermarkets and local councils. BRV also consulted with several Commonwealth agencies including the Australian Border Force (ABF), the Australian Taxation Office (ATO) and the Commonwealth Department of Health, as well as with tobacco regulators in other jurisdictions. Appendices 1 and 2 lists all meetings held and written submissions received. The involvement of so many national organisations reinforces the importance of an overarching national response – which is considered in this report.

BRV has had regard to a number of other reviews of illicit tobacco and tobacco control issues in recent years. For example, in 2019 -2020 the Australian Parliament's Joint Committee on Law Enforcement undertook an inquiry into illicit tobacco². The report of this inquiry has been a useful source of information for our review. The World Health Organisation (WHO) Framework Convention on Tobacco Control, Guidelines for Implementation article 5.3 has also been of value.³

A report provided to the Commonwealth Department of Health and Ageing by The Allen Consulting Group in 2002⁴, although dated, was useful in understanding the potential costs and benefits of licensing. The World Bank produced a comprehensive report in 2019 which examined the illicit tobacco trade across 19 countries and set out the causes and strategic steps to reduce illicit trade in tobacco products⁵.

² Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

³ World Health Organization. (2003). *WHO Framework Convention on Tobacco Control*. Geneva: WHO FCTC. Retrieved from <https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=CF2CEC4BF278092EFE512EB9E07CDAA0?sequence=1>

⁴ The Allen Consulting Group. (2002). *Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements*, Sydney. Retrieved from [https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/\\$File/license.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/$File/license.pdf)

⁵ The World Bank Group, Global Tobacco Control Program. (2019). *Confronting illicit tobacco trade: a global review of country experiences*. Retrieved from <https://documents1.worldbank.org/curated/en/677451548260528135/pdf/133959-REPL-PUBLIC-6-2-2019-19-59-24-WBGTobaccoIllicitTradeFINALvweb.pdf>

Terms of Reference

The terms of reference for this review are set out in Appendix 3 (on page 43). Notably the focus of the terms of reference is on the regulation of illicit tobacco products. Tobacco products are defined in the *Tobacco Act 1987* as:

tobacco product means tobacco, cigarette or cigar or any other product containing tobacco and which is designed for human consumption.

The terms of reference do not seek a review of tobacco control regulations applying to legally imported tobacco products more broadly or of the regulation of other smoking products that may not contain tobacco such as e-cigarettes, pipes and shisha products. However, in our review of the tobacco licencing laws in other states and territories, we have found that all of those jurisdictions with a licence or notification scheme for tobacco sales apply their scheme to the sale of e-cigarettes and other smoking products⁶. Consistent with these other schemes, in recommending a licensing scheme be introduced in Victoria, BRV suggests that the Government also consider its extension to sellers of other smoking products and e-cigarettes.

During our review BRV received several submissions about strengthening controls on the sale of legally imported tobacco and other smoking products more generally. Our recommendations are primarily directed at reducing the use of illicit tobacco products.

Some of the suggestions made to BRV to strengthen tobacco control more broadly (which sit outside of the review's scope) include:

- extending recommendations made in this report to other smoking products such as pipes, bongs and shisha products (in addition to e-cigarettes);
- requiring licensed retailers to locate tobacco goods away from children's toys and children's reading material;
- prohibiting persons aged under 18 years from selling tobacco products;
- including provisions that would allow a licensing authority to require information and relevant updates to be posted at the point of sale (for example new information on the health effects of smoking and e-cigarette use);
- prohibiting sales of tobacco products from vending machines;
- prohibiting sales of tobacco products in areas where alcohol is being consumed; and
- removing the existing exemption that allows specialist tobacconists⁷ to display tobacco products.

⁶ It is noted that the sale and use of e-cigarettes containing nicotine is prohibited across Australia unless prescribed by a medical practitioner.

⁷ A certified specialist tobacconist is a retail business that derives 80 per cent or more of its gross turnover from the sale of tobacco products

Some stakeholders also referred to tobacco control initiatives currently underway in New Zealand, which aims to be 'smoke free' by 2025 by raising the legal smoking age each year to create a smoke-free generation.

Our recommendations, if accepted will result in significant legislative and regulatory reform. They could also lay the foundations for the Government to consider tobacco reforms more broadly, to address the concerns raised by stakeholders as noted above that sit outside the scope of our terms of reference for this review of the illicit tobacco space.

Structure of this Report

The report is divided into the following sections:

- Background and Context where we define the issues and explain the market and impacts. This section includes:
 - What is Illicit Tobacco?
 - What are the Impacts of Illicit Tobacco?
 - Lack of Data
 - Tobacco Supply Chain
 - Government Agencies and Regulation
 - Jurisdictional Analysis
- Setting out 'How the Victorian Government can act to reduce the sale of illicit tobacco' by outlining what stakeholders told us, our analysis of the issues and our recommendation to the Victorian Government. In this section the topics are:
 - Licensing of tobacco sellers
 - Providing for clear and effective regulatory oversight;
 - Improving enforcement powers;
 - Providing for more effective deterrence through increased penalties;
 - Investment in education and support programs
 - Development of a coordinated national approach to the regulation of illicit tobacco.

Background and Context

What is Illicit Tobacco?

Tobacco products are excisable goods, meaning they are subject to either an excise duty (if produced within Australia) or a customs duty (if imported to Australia)⁸. Illicit tobacco is any tobacco product on which legally required duties and taxes have not been paid. These include processed or unprocessed tobacco, manufactured tobacco products and cigarettes produced domestically, smuggled over borders or diverted from a shipment where excise or customs duties have not been paid on all products. There have been no licenced tobacco growers or manufacturers in Australia since 2006⁹ and so therefore any tobacco grown in Australia is illicit.

As outlined in a 2019 report by KPMG¹⁰, there are broadly two types of illicit tobacco available in the Australian market:

- **Unbranded tobacco** includes:
 - Loose-leaf tobacco: known as roll your own (RYO) tobacco and colloquially termed 'chop-chop' and 'molasses tobacco'. Loose-leaf is any cut, chopped or granular tobacco sold in packages.
 - Pre-filled tubes: are products in which illicit loose-leaf tobacco has been inserted into cigarette tubes¹⁰
- **Manufactured tobacco products** include:
 - Counterfeit tobacco products: cigarettes and cigars manufactured illegally and smuggled into Australia. These products are not sold by the trademark owner¹¹.
 - Contraband tobacco products: cigarettes and cigars legitimately manufactured by the trademark owner but diverted from the legal market to avoid the payment of excise or illegally smuggled into Australia^{11, 12}
 - Illicit whites: similar to contraband products but have been smuggled across borders during their transit to the Australian market¹¹. In contrast to contraband, illicit whites are produced with the intention of selling them on the illicit market¹².

⁸ Australian Taxation Office. (n.d.). *Excise on tobacco*. Retrieved on November 16 2021, from <https://www.ato.gov.au/Business/Excise-on-tobacco/>

⁹ Australian Taxation Office. (n.d.). *Illicit tobacco*. Retrieved on November 16 2021, from <https://www.ato.gov.au/general/the-fight-against-tax-crime/our-focus/illicit-tobacco/>

¹⁰ KPMG. (2020). *Illicit Tobacco in Australia 2019 Full Report*.

¹¹ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

¹² Quit Victoria. (n.d.). *Illicit tobacco*. Retrieved on 3 February 2022, from <https://www.quit.org.au/resources/policy-advocacy/policy/illicit-tobacco/>

Data on the prevalence of the use of these different types of tobacco products is poor. Further discussion on the challenges of data availability and access is found at page 8.

What are the Impacts of Illicit Tobacco?

As well as adding to the negative health impacts of smoking, the sale of illicit tobacco has impacts including undermining tobacco control policies, financial consequences on businesses which trade in legally imported tobacco and supporting links to organised crime. Consultations with stakeholders indicated that organised crime is using the high returns from sales of illicit tobacco to finance other activities, all of which pose significant and ongoing costs to the community.

Undermining tobacco control policies aimed at reducing health impacts

Australia has some of the strongest tobacco control policies in the world. They are intended to address the significant health impacts of smoking, most recently highlighted in the Draft National Tobacco Strategy 2022 – 2030, which states that:

“Tobacco smoking remains the leading cause of preventable death and disability in Australia and is estimated to have killed 1,280,000 Australians between 1960 and 2020”¹³.

With smoking expected to kill approximately 20,000 people each year in Australia¹⁴ this puts pressure on Australian health care systems, with the annual national cost of healthcare due to smoking estimated to be \$6.8 billion¹⁵.

Tobacco control policies aimed at reducing health impacts have led to a number of regulatory controls around the sale of tobacco. These include: promotion of not smoking as a benefit to health and longevity; plain packaging laws, a requirement for health warnings; prohibiting smoking in public places; advertising bans; and, increasing the cost of tobacco products through customs duties imposed on imports. There is a strong link between these policies and the associated improved health

¹³ Commonwealth of Australia as represented by the Department of Health. (2022). *Consultation Draft National Tobacco Strategy 2022–2030*. p2 (Publications No. 12710). Retrieved from: https://consultations.health.gov.au/atodb/national-tobacco-strategy-2022-2030/supporting_documents/Draft%20NTS%2020222030%20for%20consultaion%20hub.pdf

¹⁴ Whetton. S., Tait. R. J., Scollo. M., Banks. E., Chapman. J., Dey. T., Halim. S. A., Makate. M., McEntee. A., Muhktar. A., Norman. R., Pidd. K., Roche. A., Allsop. S. (2019). *Identifying the social costs of tobacco use to Australia in 2015/16*. National Drug Research Institute, Curtin University. Retrieved from <https://ndri.curtin.edu.au/ndri/media/documents/publications/T273.pdf>

¹⁵ Australian Institute of Health and Welfare. (2017). *Admitted patient care 2015–16: Australian hospital statistics* (Health services series no.75. Cat. no. HSE 185.). Canberra: AIHW. Retrieved from <https://www.aihw.gov.au/getmedia/3e1d7d7e-26d9-44fb-8549-aa30ccff100a/20742.pdf.aspx?inline=true>

outcomes from reduced smoking rates¹⁶ and reduced opportunities to be exposed to second-hand smoke in Victoria (leading to a reduction in cardiovascular diseases and reduced mortality rates over the long term¹⁷).

While it is not possible to attribute specifically a proportion of health costs and fatalities to the use of illicit tobacco, it is a matter of logic that the sale of illicit tobacco undermines tobacco prevention policies in particular, pricing controls and that, by making tobacco products cheaper, poses a significant threat to health outcomes. Although some stakeholders debate how effective pricing controls are given the inelastic demand for tobacco products, there is evidence that increases in the price of tobacco have been influential in encouraging people to smoke less frequently, quit and in preventing young people from taking up smoking¹⁸. A study by Gallet and List¹⁹ suggests that the mean price elasticity of demand for tobacco is about -0.48 , meaning that on average a 10% increase in the price of tobacco would result in a 4.8% decrease in consumption.

Increased taxation has been a prominent tobacco control method in Australia and has largely determined retail prices of cigarettes²⁰. The recommended retail price of various cigarette packet sizes, for a number of leading brands sold in Australia are displayed in the Table 2 below and reflect progressive increases in customs duties.

¹⁶ Quit Victoria. (n.d.). *Smoking Rates*. Retrieved from: <https://www.quit.org.au/resources/fact-sheets/smoking-rates/>

¹⁷ Greenhalgh, EM., and Scollo, M. 15.9 Effectiveness of smokefree legislation in reducing exposure to tobacco toxins, improving health, and changing smoking behaviours. In Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria. (2018). Retrieved from <http://www.tobaccoinaustralia.org.au/chapter-15-smokefree-environment/15-9-effectiveness-of-smokefree-legislation-in-reducing-exposure-to-tobacco>

¹⁸ Greenhalgh, EM, Scollo, MM and Winstanley, MH. 13 *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria. (2020). Retrieved from <https://www.tobaccoinaustralia.org.au/chapter-13-taxation>

¹⁹ Gallet C and List J. (2003). Cigarette demand: a meta-analysis of elasticities. *Health Economics*, 12(10), 821–35. doi: 10.1002/hec.765

²⁰ Scollo, M, and Bayly, M. 13.3 The price of tobacco products in Australia. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria. (2022). Retrieved from <http://www.tobaccoinaustralia.org.au/chapter-13-taxation/13-3-the-price-of-tobacco-products-in-australia>

Table 2: Recommended Retail Price of Cigarettes sold in Australia

Brand	Winfield	Benson & Hedges	JPS	Peter Jackson	Longbeach	Horizon	Holiday
No. of cigarettes per pack	25	25	26	30	40	50	50
2015	23.65	25.45	20.80	27.25	34.70	38.75	38.05
2016	26.25	28.10	23.95	27.25	38.50	43.70	42.35
2017	29.60	31.50	27.70	33.80	43.40	49.90	N/A~
2018	33.65	35.40	30.85	38.10	48.75	56.80	53.65
2019	37.00	39.05	34.25	41.75	53.70	63.50	62.75
2020	48.70	51.35	41.70	53.75	66.40	88.15	N/A~

Recommended Retail Price

Source: <https://www.tobaccoaustralia.org.au/chapter-13-taxation/13-3-the-price-of-tobacco-products-in-australia>

While typically across Australian convenience retailers there is little variation between prices of leading cigarette brands, some are sold at discounted prices. These products are discounted typically when products are packaged in large quantities.

Data from health promotion agencies such as Quit Victoria suggest that smoking behaviour is inversely related to socio-economic status, with disadvantaged groups in the population being more likely to take up and continue smoking²¹, smoke a larger number of cigarettes a day, and smoke for longer periods of time prior to quitting²². Illicit tobacco products are often attractive to disadvantaged communities, as they are sold at considerably lower prices than regulated tobacco. Health experts advised therefore that there is a risk that the usage and impacts of illicit tobacco may be disproportionately high for Aboriginal peoples, Torres Strait Islanders and regional communities. It is also expected that illicit tobacco consumption will be most prevalent in communities where smoking is most common, including immigrant communities such as those from South-East and Central Asian nations, the Middle East and some European nations.

²¹ Scollo, M, and Bayly, M. 13.3 The price of tobacco products in Australia. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria. (2022). Retrieved from <http://www.tobaccoaustralia.org.au/chapter-13-taxation/13-3-the-price-of-tobacco-products-in-australia>

²² Greenhalgh, EM, Scollo, MM and Winstanley, MH. *Tobacco in Australia: Facts and issues*. Chapter 9. Melbourne: Cancer Council Victoria (2020). Available from <https://www.tobaccoaustralia.org.au/chapter-9-disadvantage/9-1-socioeconomic-position-and-disparities-in-toba>

Financial impacts on sellers of legal tobacco

The financial impacts of illicit tobacco sales were also highlighted by a range of stakeholders during our consultations. A submission from Ritchies IGA noted that, based on information provided by their staff and customers, approximately 80% of their supermarkets are operating near stores selling illicit tobacco. The Ritchies IGA submission notes the serious impacts that this has on supermarkets sales, staff wages and employment stating that:

"It's impossible to compete with [the prices of] illicit tobacco products... Lost sales to the illicit market is costing jobs".

The discrepancy of prices between illicit and licit tobacco products was also raised by Australian Association of Convenience Stores (AACS), Australian Lottery & Newsagents Association (ALNA) and Master Grocers Australia Independent Retailers (MGA), who noted the:

"enormous arbitrage opportunity for criminals to profit off smuggled cigarettes or illegally grown tobacco crops".

In a submission from a small regional retailer, it was estimated that its sales had decreased by 35 – 40% across all tobacco products and that since 2010:

"my store has suffered in tobacco sales, the loss increasing every year whilst the illegal store continues to operate".

Lack of Data

The illegality of illicit tobacco trading makes it difficult to source reliable and robust data. As pointed out by the Australian Department of Health in its submission to the Australian Parliamentary Inquiry, identifying illicit tobacco can be difficult as products can include both genuine and counterfeits of genuine products that have evaded duty²³. Furthermore, as different sources use different methods, estimates can vary widely²³. Annual reports by KPMG, which are jointly commissioned by British American Tobacco, Imperial Tobacco Australia and Philip Morris²³, estimate illicit tobacco use as a percentage of total tobacco consumption²⁴. KPMG uses an Empty Pack Survey to determine the consumption of illicit manufactured cigarettes, based on the collection of discarded cigarette packs from across Australia, and, on this basis, estimated that 20.7% of tobacco smoked in Australia during 2019 was illicit²⁴. Some retailers who were consulted during this review suggested this was likely to be an underestimate.

²³ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

²⁴ KPMG. (2020). *Illicit Tobacco in Australia 2019 Full Report*.

However, care must be taken in relation to these data as the figures estimated in KPMG's report seem to be inconsistent with estimates made by the ATO. From 2015 the ATO conducted annual tobacco tax gap studies to estimate the difference between the amount of excise or custom duties the ATO collects in practice during a financial year, and the amount that would have been collected if every taxpayer was fully compliant^{23,25}. The ATO has subsequently released 'tax gap' estimates for five financial years from 2015–16 to 2019–20²⁶. For 2019–20, the ATO estimates that there was a 6.2 per cent net tobacco tax gap, which equates to approximately \$909 million in lost annual excise revenue²⁵, falling well short of KPMG's estimated \$3 billion in lost annual excise revenue for 2019²⁴. The variance in the data highlights the intrinsic difficulty in making estimates of illegal activity.

While the Parliamentary Inquiry concluded that the ATO estimates are likely to be the most verifiable data to estimate the size of the illicit tobacco market, and that industry surveys may provide the upper and lower limits of illicit tobacco use²³, these discrepancies highlight the need for further data collection about tobacco supply and consumption. Without clear data it is difficult to get an accurate assessment of the tobacco market and consumption in Australia; this limits the ability of Governments to effectively respond to illicit tobacco concerns.

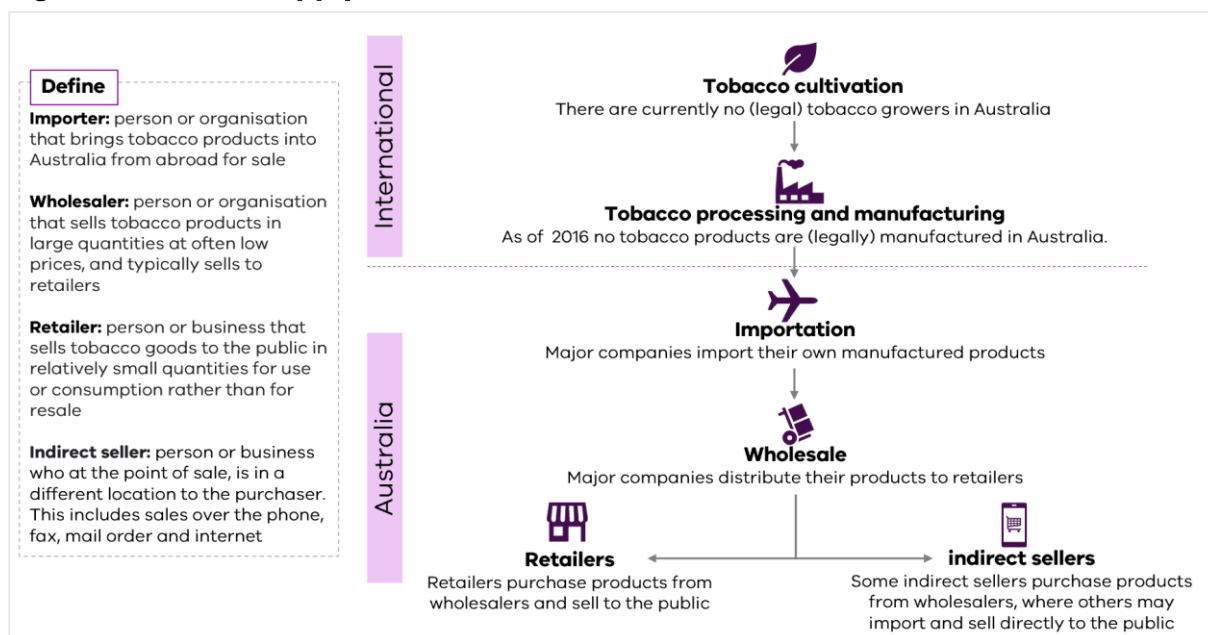
Tobacco Supply Chain

In order to regulate the illicit tobacco trade, it is important to understand how the tobacco supply chain operates in Australia. The growing of tobacco and manufacturing of tobacco products is prohibited in Australia, therefore the key legal players in the supply chain are importers, wholesalers and retailers. Figure 1 illustrates the supply chain.

²⁵ Australian Taxation Office. (2022, 5 January). *Illicit Tobacco: Tobacco Tax Gap*. Retrieved from <https://www.ato.gov.au/general/the-fight-against-tax-crime/our-focus/illicit-tobacco/>

²⁶ Australian Taxation Office. (2021, 19 October). *Tobacco Tax Gap: Trends and latest Findings*. Retrieved from <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Tobacco-tax-gap/?anchor=Trendsandlatestfindings1#Trendsandlatestfindings1>

Figure 1: Tobacco supply chain in Australia



Licit Tobacco Market

British American Tobacco Australasia, Philip Morris International and Imperial Tobacco Australia are the three primary tobacco suppliers in Australia, and none of these manufacture cigarettes in Australia any longer²⁷. These companies act as wholesalers and importers of their parent companies' tobacco brands and hold a combined market share of around 85% of the wholesale market²⁸. Smaller independent wholesalers comprise the remaining 15% of licit tobacco sold, and many independent wholesalers are buying groups for franchises, predominately supplying the three major tobacco companies' products²⁸.

Supermarkets and grocers are the largest retailers of tobacco products, with convenience stores and newsagents also being key suppliers²⁷. Smaller retailers include specialist tobacconists, cigarette vending machines, clubs, restaurants, hotels and duty-free shops.

²⁷ Australian Competition and Consumer Commission. (2017, 23 June). *Determination: Application for authorisation lodged by British American Tobacco Australia Limited, Imperial Tobacco Australia Limited and Philip Morris Limited in respect of a proposed agreement to cease supply of tobacco products to retailers and wholesalers that supply illicit tobacco products*. Retrieved from <https://www.accc.gov.au/system/files/public-registers/documents/D17%2B85182.pdf>

²⁸ IBISWorld. (2016). *Tobacco Product Wholesaling: Australian Industry Report*

Illicit Tobacco Importation

According to the Australian Crime Commission, illicit tobacco in Australia is almost entirely sourced internationally²⁹ although there have been some recent seizures of locally produced illicit tobacco crops³⁰.

Organised criminal groups, with links to Asia and the Middle East, are believed to be the primary facilitators of the illicit tobacco trade in Australia, with the main source countries including China, Indonesia, the United Arab Emirates, Malaysia, Singapore, and the Philippines²⁹. According to the ABF and the Australian Federal Police (AFP), criminal organisations are likely to be involved in all aspects of the illicit tobacco supply chain^{29,31} and operate both within and outside of Australia. The number of criminal syndicates operating within Australia is difficult to determine.

As part of the black economy package to combat illicit tobacco, the Australian Government introduced a prohibited import control in 2019, requiring organisations and individuals to be granted a permit before tobacco products arrived in Australia (with the exception of certain exempted products)³². With the implementation of the permit, the point of duties payable moved to the border, no longer permitting the importation and storage of tobacco ahead of customs and excise duties being paid^{29,31}.

The ATO's submission to the Australian Parliamentary Inquiry suggested that with a low level of cultivated illicit tobacco seizures since 2006, domestically grown illicit products are likely to be small part of the supply chain²⁹. However, during the review's consultation, some stakeholders suggested that domestically cultivated tobacco could become an increasing concern as more efforts are directed at improving border controls.

²⁹ Australian Crime Commission. (2015). *Organised Crime in Australia*. Retrieved from <https://apo.org.au/sites/default/files/resource-files/2015-05/apo-nid54772.pdf>

³⁰ Australian Taxation Office. (n.d.). *ATO destroys \$171 million of illicit tobacco*. Retrieved on 16 November 2021, from [https://www.ato.gov.au/Media-centre/Media-releases/ATO-destroys-\\$171-million-of-illicit-tobacco/](https://www.ato.gov.au/Media-centre/Media-releases/ATO-destroys-$171-million-of-illicit-tobacco/)

³¹ Interpol Office of Legal Affairs. (2014). *Countering Illicit Trade in Tobacco Products: A Guide for Policy makers*. Retrieved from: <https://www.aph.gov.au/DocumentStore.ashx?id=704d9168-2aa7-4df4-bb81-0fe1f357dfa6&subId=408832>

³² Australian Border Force (2021, 3 August). *Prohibited Goods: Importing or bringing tobacco into Australia*. Retrieved from <https://www.abf.gov.au/importing-exporting-and-manufacturing/prohibited-goods/categories/tobacco#:~:text=As%20a%20traveller%2C%20you%20can,of%20other%20tobacco%20products%3B%20and>

Government Agencies and Regulation

There are a number of government agencies which develop, support and/or enforce tobacco controls in Victoria at Federal, state and local government levels. The *Tobacco Act 1987* (the Act) is Victoria's primary legislation which prescribes requirements, offences, and responsibilities to agencies.

[The Tobacco Act 1987](#)

The Act aims to lower rates of smoking in Victoria by prohibiting certain sales and promotion of tobacco products. Since the Act was came into force in 1987, it has been subject to a number of amendments to deliver reforms aimed at increasing controls with the view to reducing harms associated with smoking.

As prescribed in the Act, the Secretary of the Department of Health can appoint persons as inspectors to carry out enforcement activities³³. Inspectors commonly include Environmental Health Officers (EHO) appointed by councils as prescribed under section 29 of the *Public Health and Wellbeing Act 2008*^{34, 35} giving local government a primary role in enforcement of tobacco laws in Victoria.

Powers are given to inspectors under the Public Health and Wellbeing Act to aid enforcement including:

- the right for an inspector to request that a person state their name and address if there is reasonable belief that the person has or is about to commit an offence against the Act³⁶;
- the right to enter and search a premise, with the consent of and signed acknowledgement from the occupier, and upon the inspector producing their identity card (which states the inspector's name and appointment as an inspector) and informing the occupier of the purpose of the search³⁷;

³³ *Tobacco Act 1987* (Vic) s.36 (Austrl.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

³⁴ *Tobacco Act 1987* (Vic) s.3 (Austrl.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

³⁵ *Public Health and Wellbeing Act 2008* (Vic). s.29 (Austrl.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2021-12/08-46aa053%20authorised.pdf>

³⁶ *Tobacco Act 1987* (Vic) s.36C (Austrl.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

³⁷ *Tobacco Act 1987* (Vic) s.36D (Austrl.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

- the right to enter and inspect any part of premises that, at the time of entry and inspection, are open to public³⁸;
- the right to seize anything found on the premises which the inspector believes, on reasonable grounds, is connected with non-compliance, with the consent of and signed acknowledgement from the occupier³⁷; and
- the right to apply to a magistrate for the issue of a search warrant (with the approval from the Secretary or Chief Executive Officer of the inspector's council)³⁹.

Offences and powers specific to illicit tobacco

Since 2000, under the Victorian Tobacco Act it has been an offence to possess tobacco products that are illegally imported. Retailing and wholesaling businesses are prohibited from the possession or control of tobacco products which are *'smuggled goods or prohibited imports within the meaning of the Customs Act 1901 of the Commonwealth'* or *'are excisable goods within the meaning of the Excise Act 1901 of the Commonwealth upon which excise duty has not been paid'*⁴⁰. The maximum penalty for possessing or controlling illicit tobacco is currently 240 penalty units for individuals (equivalent to a \$43,617.60 fine) and 1200 penalty units for body corporates (equivalent to a \$218,088.00 fine)⁴⁰.

Retailers can also be prohibited from selling tobacco products at the premise where offences have been committed, if they or an associate are found guilty of a 'relevant offence', including breaching laws regarding prohibited imports and goods that have not paid excise duty⁴¹. If determined by the magistrates court, some retailers may be prohibited from selling tobacco at new premises within 5 kilometres of the current premises where the offence was committed⁴¹. The maximum penalty for retailers who do not comply with these imposed restrictions is 120 penalty units for individuals (equivalent to a \$21,808.80 fine) and 600 penalty units for body corporates (equivalent to a \$109,044)⁴¹.

³⁸ *Tobacco Act 1987* (Vic) s.36E (Austral.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

³⁹ *Tobacco Act 1987* (Vic) s.36F (Austral.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

⁴⁰ *Tobacco Act 1987* (Vic) s.11A (Austral.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

⁴¹ *Tobacco Act 1987* (Vic) s.15D (Austral.). Retrieved from:

<https://content.legislation.vic.gov.au/sites/default/files/2020-05/87-81aa094%20authorised.pdf>

Jurisdictional Analysis

Each state and territory has their own laws that regulate the sale of tobacco products and their own tobacco or drug prevention strategies. Across all jurisdictions, the following tobacco controls apply:

- prohibition on sales to persons under 18;
- requirements for signage at point of sale about the prohibition of sale to persons under 18;
- a requirement to comply with packaging requirements;
- smoke free areas;
- bans on loyalty schemes for smoking products;
- bans on imitation smoking foods or toys; and
- bans on selling less than 20 cigarettes.

Five jurisdictions (ACT, NT, TAS, WA and SA) have a licensing scheme for tobacco sellers. One, NSW, has a notification scheme for retailers and the remaining two, Queensland and Victoria have no licensing or notification schemes. Victoria and NSW can ban retailers from selling tobacco in certain circumstances.

Table 3 displays licensing requirements across Australian states and territories and the relevant legislation for tobacco control policies.

Table 3: Summary of licensing requirements across Australian jurisdictions

State	Is a licence required?			Relevant legislation
	Retailers	Wholesalers	Indirect sellers	
WA	✓	✓	✓	<ul style="list-style-type: none"> Tobacco Products Control Act 2006 Tobacco Products Control Regulations 2006
ACT	✓	✓		<ul style="list-style-type: none"> Tobacco and Other Smoking Products Act 1927
TAS ⁴²	✓	✓	✓	<ul style="list-style-type: none"> Public Health Act 1997 Public Health (Smoking Product Licence) Regulations 2019
SA	✓	✗	N/A Indirect tobacco sales, are prohibited	<ul style="list-style-type: none"> Tobacco and E-Cigarette Products Act 1997 Tobacco and E-cigarettes Products Regulations 2019
NT	✓	✗		<ul style="list-style-type: none"> Tobacco Control Act 2002 Northern Territory Tobacco Control Regulations 2002 Northern Territory
A notification scheme is used, where retailers must notify the NSW Ministry of Health to be issued with a tobacco retailer notification number				
NSW	✗	✗	✗	<ul style="list-style-type: none"> Public Health (Tobacco) Act 2008 Public Health (Tobacco) Regulation 2016
QLD	✗	✗	✗	<ul style="list-style-type: none"> Tobacco and Other Smoking Products Act 1998 Tobacco and Other Smoking Products Regulation 2010
VIC	✗	✗	✗	<ul style="list-style-type: none"> Tobacco Act 1987 Tobacco Regulations 2017

A more detailed comparison table of tobacco laws across the 8 states and territories is found in Appendix 4 (on page 45). The similarities and differences are summarised below.

In 3 jurisdictions (WA, TAS and NT), the government collects information from licensees about tobacco sales to inform its enforcement and compliance activities. In 4 of the 5 jurisdictions where there is a licensing scheme, the licence holder must display their licence at the point of sale. Maximum penalties for sale of tobacco products without a licence range from around \$8000 for a first offence in Tasmania to \$78,500 in the Northern Territory and in WA \$80,000 for a body corporate committing a second or subsequent offence. Licence fees range from \$248 a year in NT to \$1,185 a year in Tasmania.

Tobacco laws are administered by state or territory government health departments. In other jurisdictions, enforcement is generally also done by state or territory government officers. In some cases, local council officers undertake enforcement in relation to no smoking areas. As noted above, this is in contrast to Victoria where

⁴² Tasmania does not have different licence categories, but rather prohibits all unlicensed sales of tobacco and smoking products

almost all of the tobacco control enforcement work that is carried out is expected to be undertaken by local council EHOs.

All jurisdictions that have notification or licensing schemes apply those schemes to the sale of tobacco and e-cigarettes (noting only e-cigarettes that do not contain nicotine can legally be sold and used in Australia⁴³).

⁴³ It is illegal to possess, supply or sell e-cigarettes containing nicotine in Australia, except when they are supplied or accessed through a prescription.

How can the Victorian Government Act to Reduce the Sales of Illicit Tobacco?

There is a range of responses that the Victorian Government could make to reduce illicit tobacco trading. Following extensive consultations, BRV's recommended approach can be summarised as follows:

1. License tobacco sellers
2. Provide for clear and effective regulatory oversight
3. Improve enforcement powers
4. Increase penalties
5. Strengthen education and support programs
6. Support a coordinated, national approach that focuses on long-term elimination of illicit tobacco

BRV's specific recommendations in these areas reflect our own work in terms of improving regulation in Victoria more generally, across over 60 regulators – as well as the results of consultation with a wide range of stakeholders including, local retailers, supermarkets, retail associations, Commonwealth agencies, law enforcement agencies, health experts and agencies, state and territory Health Officers, local government agencies and Victorian government departments. For a complete list of stakeholder meetings, please refer to Appendix 1.

Below we discuss the feedback from stakeholders, BRV's analysis of the issues and our recommendations to the Government. We then set out further details for consideration in implementing the recommendations.

License Tobacco Sellers

What stakeholders told us

All stakeholders with whom BRV engaged had views on whether illicit tobacco trading could be regulated more effectively if Victoria introduced a licensing scheme for tobacco sellers. The broad consensus was that a self-funded licensing scheme should be introduced, noting that other than Queensland, Victoria is the only jurisdiction that had no licensing or notification scheme for tobacco sellers. Many told us that with no mechanism to determine legal sellers of tobacco products, there has been a significant increase in illicit tobacco trading.

A joint submission from the AACS, ALNA and MGA stated that:

"enforcement authorities are on the back foot when it comes to knowing what stores they should be monitoring' and that 'the absence of a licensing scheme not only inhibits the ability of an enforcement authority to effectively monitor how tobacco is being sold it also means there are fewer disincentives for retailers to sell illicit tobacco."

A submission from Quit Victoria outlined its view that the community would generally approve of a licensing scheme, with the results from the 2019 Victorian Smoking and Health Survey indicating that 83% of Victorians would support a law that would require Victorian retailers to obtain a license to sell tobacco products. Quit Victoria also argued that a licensing scheme would provide relevant government agencies with better data about who is selling tobacco and where it is being sold. Quit Victoria explained that this would not only allow better communication with retailers about their obligations under the Tobacco Act, but it would also facilitate planning and resourcing of inspections and enforcement activities. VicHealth also commented that a licensing scheme would enable

“effective and accurate communication between government departments and local authorities”.

An anonymous submission stated that:

“It appears manifestly wrong that a tobacco retailer can commence trading - selling products that harm human health without any notification or registration with local government (or other authority), yet food and health businesses must notify or register with their local council”

A number of submissions and initiatives supporting a Victorian licensing scheme were also received from Commonwealth agencies. For example, the AFP supports all jurisdictions having licencing for both wholesalers and retailers of tobacco products⁴⁴.

The draft National Tobacco Strategy (NTS) 2022-2030 was published during consultations for this review. It sets out a national policy framework for governments and non-government organisations to work together in reducing the prevalence of tobacco use and its associated harms⁴⁵. Priority Area 8.5 of the draft NTS is to establish a national licensing framework. One of its recommendations is to:

“Explore mechanisms to have a consistent licensing scheme in place for tobacco retailers and wholesalers in Australia, such as establishing a national framework for licensing schemes.”⁴⁶

⁴⁴ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

⁴⁵ Australian Government Department of Health. (2022, 10 February). *National Tobacco Strategy*. Retrieved from <https://www.health.gov.au/initiatives-and-programs/national-tobacco-strategy>

⁴⁶ Commonwealth of Australia as represented by the Department of Health. (2022). *Consultation Draft National Tobacco Strategy 2022–2030*. p23 (Publications No. 12710). Retrieved from: https://consultations.health.gov.au/atodb/national-tobacco-strategy-2022-2030/supporting_documents/Draft%20NTS%2020222030%20for%20consultaion%20hub.pdf

Throughout consultations, BRV was referred to the World Health Organisation's Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products. Under Article 15.5 it recommends that governments:

*"adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade"*⁴⁷.

Despite the strong support, retailers were concerned about the regulatory burden a licensing scheme would impose on those selling legally imported tobacco products both in terms of the process to obtain a licence and the annual cost to their business. BRV had many discussions with such retailers, emphasising our view that while a licensing scheme was necessary to reduce the use of illicit tobacco, it is vital to ensure that the administrative burden on suppliers of legal tobacco is as low as possible. We highlighted the advantages offered by the Government's digital programs in supporting the minimisation of administrative costs.

On the question of what an appropriate licence fee would be, many stakeholders suggested that fees should be set to recover costs of the licensing scheme to ensure its implementation is both effective and efficient. Stakeholders also suggested that these fees should be aligned with the fees charged by other jurisdictions that have licensing schemes. Retailers, associations and supermarkets noted that a balance needs to be struck so that the financial burden on industry is reasonable, but also ensuring the scheme is not under resourced so that effective compliance monitoring and enforcement is undertaken.

In a submission from Ritchies IGA and in a joint submission from the AACS, ALNA and MGA, it was that an appropriate annual fee would be one in alignment with Western Australia's (around \$305 per year for retailers and indirect sellers, and \$735 per year for wholesalers), South Australia's (\$309 per year for retailers), and the Northern Territory's (\$248 per year for retailers).

Quit Victoria explained that on the basis of its preliminary estimates, an annual license fee of \$495.99 for retailers (33 fee units) and \$1,487.97 (99 fee units) for specialist tobacconists and wholesalers would be expected to cover the fixed costs of the scheme and the ongoing costs associated with a small inspectorate. While this fee would be more than those in place in Western Australia, South Australia and the Northern Territory, it would be less than the current fees in the ACT (\$565) and Tasmania (\$1,183.05). Quit Victoria argued that:

"If the retail margin on a pack of 20 cigarettes is approximately \$2.50, then a retailer makes about \$900 a year from every pack-a-day customer that buys

⁴⁷ World Health Organization. (2003). *WHO Framework Convention on Tobacco Control*. Geneva: WHO FCTC. Retrieved from

<https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=CF2CEC4BF278092EFE512EB9E07CDAA0?sequence=1>

exclusively from their shop. It would only take one such additional customer buying from their shop rather than an illicit seller to cover the costs of a licence fee of the magnitude suggested above."

Analysis

The weight of submissions and reports support the view that Victoria should implement a licensing scheme and in BRV's view, such an approach is a necessary foundation of an effective strategy to address illicit tobacco. All other such schemes operating in Australia apply to tobacco products as well as e-cigarettes.

Minimising regulatory burden

Although there is broad support for a licencing scheme, retailers are concerned about the additional burden that this would impose on those that have been selling legally imported tobacco. It also presents the risk of creating burden for the Government to implement and operate such a scheme.

BRV is keen to ensure that the administrative burden associated with these new measures be limited. To meet this goal, we recommend that as many activities associated with the new licensing scheme as possible (including the operations of the licensing scheme, reporting obligations and Responsible Sale of Tobacco training) should be able to be undertaken via online platforms.

Leveraging digitisation, data sharing, and integrated Government systems is consistent with the role of Service Victoria and the government's digital strategy. Such approaches support the Government to minimise costs and create a user-friendly experience for applicants and licensees. A digital licensing scheme would, for example support automated administration and workflows for the regulating agency, enabling improved intelligence, efficiency, turnaround and responsiveness. This could also enable the Government to make available online a public register of all licensed tobacco sellers.

An interoperable design should be developed for a tobacco licensing scheme, which prevents applicants and licensees from being required to repeatedly submit the same information to government agencies (in other words, a 'tell us once approach'). Some stakeholders suggested that there may be opportunities to link a tobacco licensing scheme with the existing liquor licensing scheme, as there is likely to be a reasonable number of liquor retailers that also sell tobacco. Discussions with Service Victoria indicate that it would be possible to link new and existing schemes, provided that there are synergies between them, such as types of information collected by the regulator and the assessment criteria for applicants.

Establishing reasonable assessment criteria for licence applicants

By ensuring licensees are a 'fit and proper person', the Government could seek to prevent nefarious characters from obtaining a licence. Screening applicants would also reduce the risk of licensing persons who conduct illegal activities and include controls, such as the cancellation of licences (and therefore ability to legally sell

tobacco), which will impact those currently selling a mix of legally imported and illegally imported tobacco products.

BRV has reviewed 'fit and proper person' assessment criteria used in other licensing schemes, and believes a similar approach as those used by liquor licensing in Victoria could be used for the proposed tobacco licensing scheme. For example, criminal history checks, and a declaration of applicants' associates would help to reduce the risk of unknowingly licensing individuals who sell illicit tobacco.

Greater transparency over the supply chain

If Victoria were to implement a licensing scheme for retailers, and wholesalers, in combination with the Commonwealth's importation license, the majority of operators along the tobacco supply chain could be linked and legal (or illegal) provenance could be proven. Registering retailers and wholesalers and requiring retailers to purchase tobacco from registered wholesalers there will be greater transparency over the supply chain.⁴⁸

Further, if licensees were required to declare annually their sales figures to the state regulator, this information could be matched to provide data and improve intelligence about the tobacco market. Three other jurisdictions collect this kind of information to inform their enforcement and compliance activities.

Training for sellers

A common feature of other tobacco control schemes is to require licensees to ensure that staff selling tobacco complete training on the responsible sale of tobacco. Six jurisdictions impose or have the power to impose such requirements. BRV believes that this approach should be included in a Victorian licensing regime to ensure that licensees and their employees are aware of their responsibilities and the tobacco laws that apply. In order to minimise cost to licensees, the Government should develop an online training tool that can be readily accessible. The Tasmanian Government has a 20-minute online tool, which seems to be a relatively low burden for people to complete whilst improving the knowledge of those selling the products.

Online sales

There is a high likelihood that illicit tobacco is being purchased online from sellers, both within and outside of Victoria or Australia. Concerns have also been raised about the increased risk of sales to minors via online purchasing, although this risk would apply to the sale of legal and illicit tobacco. The Government should consider adopting a similar approach to South Australia by prohibiting online sales altogether. There appears to be little benefit to Victorian communities in making tobacco products available through online sales. By prohibiting this practice altogether, it

⁴⁸ The Allen Consulting Group. (2002). *Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements*, Sydney. Retrieved from [https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/\\$File/license.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/$File/license.pdf)

would mean any person caught selling tobacco or e-cigarette products online for delivery by transport or by post would be committing an offence.

In reaching this view, BRV is mindful of the difficulties in identifying the entities selling the illicit products via websites and of enforcing offences against persons based outside of Victoria. This will make it hard to prevent this market from operating in the absence of national agreement to prohibit online sales. Additional incentives for online sales may be created through the proposed licensing scheme. Given the nature of online sales, this makes the Commonwealth's role in addressing this supply channel more critical. BRV recommends that the Government raise this issue as an urgent matter.

Licence Fees

Ideally licence fees should be set to recover the costs of administering the scheme, limit the financial burden on businesses, and impose no additional burden on Victorian taxpayers. This approach would include covering costs involved in the establishment of the scheme, administration and management, compliance monitoring and enforcement, staff, and IT infrastructure.

In a 2014 position statement from Quit Victoria, the Cancer Council Victoria, and the Heart Foundation (Victoria), it was estimated that tobacco was sold in over 8,000 Victorian retailers⁴⁹. BRV has not found any more current estimates. Feedback received from various stakeholder groups suggested that annual licensing fees should fall between \$250- \$500 for retailers and indirect sellers, and between \$700 to \$1,500 for wholesalers and specialist tobacconists. Using these fees and the 2014 estimate of the number of retailers as a guide, annual revenue from retailers could be \$2 – 4 million.

Quit Victoria suggested that the proposed licensing fees could be made up of an application fee and an annual licensing fee, and suggested that the application fee should be waived for existing tobacco businesses who apply for the license within the first three months of operation of the scheme to reduce financial burden. Those who apply after the specific period would be required to pay a one-off application fee in addition to the annual fee. BRV supports this approach but suggests the timing of any waiver may need to be around six months given it may take longer to process what could be thousands of applications. Communications with businesses and advertisements about the new scheme would also be essential to educate the current sellers and introduce the scheme smoothly.

⁴⁹ Quit Victoria, Cancer Council Victoria and Heart Foundation Victoria. (2014, July). *Position statement: Decreasing availability of tobacco*. Retrieved from: <https://www.quit.org.au/documents/76/decreasing-availability-tobacco-victoria-position-statement.pdf>

Recommendation 1 – Establish a licensing scheme

That the Victorian Government introduce a licensing scheme for sellers of tobacco products and e-cigarettes, including both retailers and wholesalers.

That the Government ensures that the administrative burden associated with these new measures be as low as possible, ideally relying on digital application forms through Service Victoria. That is why we recommend that as many activities associated with the new licensing scheme as possible (including the applications for the licensing scheme, reporting obligations and Responsible Sale of Tobacco training) should be able to be undertaken via online platforms.

Further details to support recommendation

Having regard to stakeholder feedback and BRV's understanding of other licensing schemes, the features of a Victorian licensing scheme should include the following:

- require a separate license for each retail premise and each wholesale business premise;
- prohibiting sales of tobacco products or e-cigarettes via online or telephone orders, including ordering tobacco products or e-cigarettes with meals or groceries or having products delivered via transport or post;
- require body corporate license holders to nominate one or more directors or other natural person to be responsible for compliance;
- provide for applicants to meet a 'fit and proper person' test which would include provision for refusal of applications where an applicant, nominee or their associate has committed relevant offences (such as breaches of the Act or of Commonwealth customs and excise laws) or been refused or had cancelled a relevant license (such as a liquor license or a tobacco licence issued by another jurisdiction). Similar assessment criteria to that used for liquor licensing should be considered;
- provide for licensed persons to have their license suspended or cancelled where they or an associate commit breaches of the Tobacco Act including where they are found selling illicit tobacco products;
- require licensed retailers to only purchase from licensed wholesalers, and for licensed wholesalers to only sell to licensed retailers;
- require licensed retailers to display their certificate, license number, and specific information on the responsible service of tobacco at the point of sale;
- require licensed retailers to ensure that any person selling tobacco from their premises successfully completes 'Responsible Sale of Tobacco Product' training and keeps records of evidence of training;
- require licensed wholesalers to display their licence details at their place of business;
- require retailers and wholesalers to report on tobacco sales periodically as required by the regulator (businesses' use of digital technology including

spreadsheets can minimise the impost on business while providing governments with useful trends and data on tobacco sales);

- require that wholesalers based outside of Victoria cannot sell into Victoria unless they hold a license to sell in Victoria; and
- provide for a public register of all licensed tobacco sellers which is available online.

Provide for Clear and Effective Regulatory Oversight

What stakeholders told us

Importantly, all stakeholders emphasised that a licensing scheme must be supported with effective enforcement, making the point that a licensing scheme without enforcement is actually worse than not having a licensing scheme at all, as it not only allows illegal trading to continue but puts financial burden on retailers who are complying with the law and are already losing income to illicit tobacco sales.

While there was a general willingness to report illicit tobacco trading to authorities, those that had done so said limited enforcement action was taken as a result. Ritchies IGA said:

"Ritchies has tried to report the sale of illicit tobacco in the past, but the process has been frustrating..... everyone [Commonwealth, state and local government agencies] seems to suggest that it's somebody else's responsibility".

Many smaller local retailers also echoed this dissatisfaction with one commenting that:

"we are totally frustrated with the inaction at all levels".

A local government submission said that:

"The line between licit tobacco and illicit tobacco is not distinguished" and that "there is inadequate clarity around roles and responsibilities with respect to illicit tobacco".

Another local council representative noted that because of this lack of clarity:

"The public do not understand who the lead regulator is and where to report sellers of illicit tobacco".

The same submission also noted that:

"To manage such safety concerns, the City has previously requested assistance of Victoria Police. Unfortunately, such requests have been denied, with Victoria Police citing the difficulties they experience when attempting to prosecute matters relating to illicit tobacco".

Mixed views were expressed among stakeholder groups regarding whether local government and EHOs should be responsible for investigating the sales of illicit tobacco. In the written submission from AACS, ALNA and MGA, they suggest that local councils and EHOs:

"do not possess the appropriate skills, training or experience to deal with illicit tobacco"

and demonstrated this point by refereeing to current job advertisements that suggest

"candidates for these roles are [not] suitably trained or experienced in disrupting criminal activity".

The Ritchies IGA submission recommended that:

"Any new framework for dealing with illicit tobacco in Victoria, must remove enforcement responsibility from EHOs"

and noted that

"the sale of illicit tobacco is not a minor health offence... It is a criminal activity committed by serious organised crime groups because of the huge profits that can be made. Enforcement responsibility should be reassigned to an agency with appropriate training in disrupting criminal activity, such as Victoria Police".

Written submissions from the tobacco industry also raised similar concerns for the safety of local council inspectors (particularly in regional and rural Victoria, where inspectors will be better known to the community) and the skills required to investigate illicit trading - which that is often associated with serious criminal networks.

At the local government level, there were mixed views about the role their staff should play in investigating illicit tobacco, but there was general consensus that other law enforcement agencies should be involved. In a submission from MAV, which collated local council officers' responses to BRV's key questions (refer to Appendix 5 on page 54), two thirds of those who responded believe that councils should play only a small role in illicit tobacco investigations.

Another submission from the Greater City of Bendigo highlighted the:

"well-established connection of illicit tobacco sales to organised crime" and noted that "this presents an unacceptable safety risk to our officers".

A submission from a Victorian EHO noted that:

"The greatest concern for local government regarding illicit tobacco are the very relevant and real links to organised crime. Local governments are not an

appropriate agency to deal with matters relating to organised crime syndicates”.

A submission from the Maroondah City Council said that:

“Council is of the view that Victoria Police involvement investigating and enforcing illicit tobacco sales would have a positive impact on regulating this issue in Victoria”.

Other submissions from local councils suggested that EHOs were inhibited from effectively investigating illicit tobacco due to limited powers prescribed under the Tobacco Act (see ‘Improve Enforcement Powers’ section on page 32) and limited training and resources. Submissions noted that local councils’ skills shortages also impact local councils’ ability to investigate illicit tobacco reports. One submission noted that investigating tobacco related compliance equates to *“approximately 10% of the work Environmental Health Officers complete on a day to day basis”*. It is not clear from submissions how representative this estimate is across local councils. Other stakeholders pointed to the Rural City of Wangaratta’s submission to the Australian Parliamentary inquiry, in which the council explained that despite successfully prosecuting an illicit tobacco trader, the defendant was fined only \$7,500 and ordered to pay \$7,200 of legal costs, (within an 18-month period), but the council’s expenses were over \$19,000, not including council officers’ time⁵⁰. This confirms the views of other councils that even when councils do try to enforce the Tobacco Act, their efforts are often ineffective and unduly costly.

Analysis

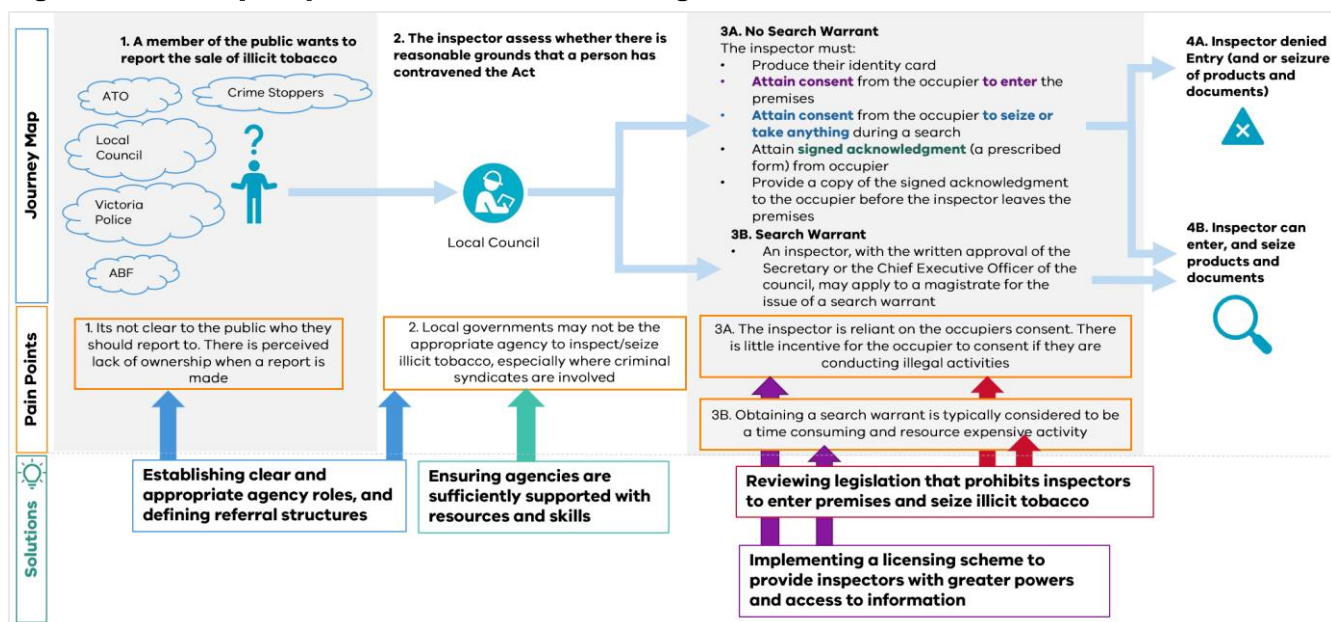
Many of the views put forward during consultations related to roles and responsibilities of different agencies and reflected similar tensions and questions identified in the Australian Parliamentary Inquiry, of whether illicit tobacco is primarily a health issue or a criminal issue. The majority of stakeholders viewed illicit tobacco as primarily a criminal issue ahead of being a health issue, which seems to reflect the Australian Government’s approach⁵¹.

Figure 2 outlines the existing process journey for Victorians when reporting incidents of illicit tobacco trading and for inspectors when investigating these complaints.

⁵⁰ Rural City of Wangaratta. Inquiry into illicit tobacco Submission 1. In Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia Retrieved from [file:///C:/Users/vicy9fe/Downloads/Sub%201_Rural%20City%20of%20Wangaratta_Redacted%20\(2\).pdf](file:///C:/Users/vicy9fe/Downloads/Sub%201_Rural%20City%20of%20Wangaratta_Redacted%20(2).pdf)

⁵¹ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

Figure 2: Journey Map of Illicit Tobacco Investigations



The establishment of a new licensing scheme for tobacco retailers and wholesalers provides an opportune time to reconsider the regulatory oversight mechanisms for tobacco control in Victoria. At present, the Department of Health administers the Tobacco Act, although much of the enforcement is done by EHOs at councils who are appointed as inspectors under the Act. As noted above, stakeholders consistently pointed to the challenges which council EHOs face in regulating the sale of illicit tobacco.

In all other jurisdictions, Health Departments are involved in tobacco regulation but in some cases enforcement is undertaken by another agency or in collaboration with police. No other jurisdiction has local government officers undertaking tobacco control enforcement (other than in relation to no smoking areas).

Given the challenges faced by local council EHOs in enforcing sanctions against those selling illicit tobacco, BRV considers that a state government body should be the lead regulator for tobacco control in Victoria. And, as noted above, coordination with Commonwealth agencies, other state agencies and local councils is vital if Victoria is to introduce an effective regime. Ultimately a national approach is the most effective way of making a real difference to tackling the sales of illicit tobacco.

If it were decided that a state government agency should administer the proposed licensing scheme, existing knowledge and systems could be leveraged to establish a new tobacco regulation scheme. A state government body could also develop a holistic strategy across the state, whereas local governments would have limited access to information and data to attain this oversight.

Possible state government bodies that could administer and enforce the licensing scheme are the Department of Health, the Department of Justice and Community Safety or the Business Licensing Authority (BLA), which works closely with Consumer

Affairs Victoria. A brief analysis of the current regulatory roles of these three bodies is set out in Table 4.

Table 4: Analysis of regulatory roles and capabilities to administer a tobacco licensing scheme for three Victorian government agencies

State Government Agencies	Description of existing role	Benefits of Agency as the Lead Regulator	Disadvantages of Agency as the Lead Regulator
The Department of Health	<ul style="list-style-type: none"> Administers the Tobacco Act, which prohibits the possession of illicit tobacco. The Department does not, and is not obligated to, undertake enforcement in relation to illicit tobacco. If illicit tobacco is reported to the Department, common practice would typically involve advising the relevant council, Victoria Police and/or the Commonwealth's Illicit Tobacco Taskforce. Also administers regulation of medicines and poisons including pharmacy registrations. 	<ul style="list-style-type: none"> The Department has existing expertise of the Tobacco Act and tobacco control policies The Department has existing relationships with Victorian businesses that sell tobacco, in terms of providing information about the Tobacco Act 	<ul style="list-style-type: none"> The Department lacks experience dealing with organised crime and enforcement around criminal activities The Department lacks existing inter-agency arrangements with Victoria Police
The Department of Justice and Community Safety	<ul style="list-style-type: none"> Will become directly responsible for liquor control from 1 July 2022 and therefore will administer the existing liquor licensing scheme. 	<ul style="list-style-type: none"> Tobacco and liquor are both legal drugs which are heavily regulated to mitigate against safety and health impacts associated with their use. The liquor licensing regulator has established relationships with Victoria Police for information sharing and joint investigations. Agencies within the portfolio of the Department (for example police and gambling agencies) have experience with organised crime and enforcement relevant to criminal activities Infrastructure and skills from managing the existing liquor licensing scheme could be leveraged A reasonable proportion of liquor licensees are expected to also sell tobacco 	<ul style="list-style-type: none"> The Department may lack knowledge regarding the Tobacco Act and tobacco control policies The Department lacks existing relationships with tobacco businesses
The Business Licensing Authority	<ul style="list-style-type: none"> Administers licensing schemes for real estate agents, motor car traders, conveyancers, professional engineers, second-hand dealers and pawnbrokers, rooming houses, owners corporations and brothels. While these schemes cover a range of different business activities, the BLA is experienced in administering licencing schemes and working with CAV inspectors and police for enforcement. 	<ul style="list-style-type: none"> The BLA and CAV has existing relationships with Victoria Police. The BLA is experienced in administering licencing schemes 	<ul style="list-style-type: none"> The BLA approach is, in many cases, a notification process. It is expected to have little experience with the necessary enforcement approaches needed when organised crime is involved

Given the association of illicit tobacco sales with organised crime, tobacco enforcement needs to be supported by Victoria Police. Its role should be focused on investigation of the sale of illicit tobacco or sale by unlicensed operators.

Local government inspectors could continue to play a useful role in tobacco regulation but given the concerns about resourcing and capability at the local government level, BRV has concluded that this should be limited to enforcement of no smoking areas and, where requested by the state regulator, assisting with information and co-ordination in relation to licensed retailers and wholesalers.

To ensure role clarity and collaborative enforcement across the state agencies, Police and local government, a statutory advisory body should be established to consider regulatory practice matters including information sharing protocols, referral practices and establishing and reporting on enforcement strategies and to advise the Minister and Department accordingly. An example of a statutory body with a similar objective is the Building Regulations Advisory Committee (BRAC), that is made up of a spectrum of building industry representatives and advises the Minister on the operation of building regulations⁵².

Further, the Government could consider including information sharing provisions in legislation between the relevant state departments and agencies and, encourage agencies to leverage data sharing agreements such as the model Victorian Centre for Data Insights' Data Sharing Heads of Agreement.

Recommendation 2 – Provide for clear and effective regulatory oversight

The licensing scheme should be administered by a state government body, such as the Department of Justice and Community Safety (possibly with enforcement undertaken by that department or organisation within that department, in collaboration with Victoria Police and Commonwealth agencies).

BRV also recommends the establishment of a statutory advisory committee comprising representatives from other relevant state agencies, as well as representatives from health advisory bodies and industry. This committee could be established based on similar arrangements to those for the statutory committee in the building system, the Building Regulations Advisory Committee.

Further details to support recommendation

State government departments or agencies that could be considered as the lead regulator of the licensing scheme include:

⁵² *Building Act 1993* (Vic) ss.209-211 (Austral.). Retrieved from <https://content.legislation.vic.gov.au/sites/default/files/2021-10/93-126aa133%20authorised.pdf>

- The Business Licensing Authority (which works closely with Consumer Affairs Victoria)
- Department of Health;
- Department of Justice and Community Safety (which is also responsible for liquor control laws);

The BLA administers licensing schemes across a number of different industries, and the regulator's systems and processes may be able to be applied to administer the proposed tobacco licensing scheme. However, many of the schemes require limited assessment of applicants. The enforcement activities that flow from the schemes administered by the BLA are undertaken by CAV and are not likely to involve investigation of organised criminal gangs. Given this, BRV believes that the DOH and DJCS are the two most suitable agencies to administer and enforce the proposed licensing scheme.

As the DOH administers the Tobacco Act, the Department has extensive knowledge of the current regulations and health impacts of tobacco, and has experience communicating with tobacco retailers. The Department also administers the regulation of medicines and poisons which includes managing permits and licenses for the possession and supply of scheduled substances (such as prescription and pharmacy-only medicines). However, it is understood by BRV that the authorised medicines and poisons officers only inspect licenced holders or applicants seeking a licence, and that the regulator relies on Victoria Police if illicit products or unauthorised persons are involved. The regulator of the proposed tobacco licensing scheme would need to have the skills and resources to be capable of inspecting all premises selling (or suspected of selling) tobacco, and to take enforcement action against those selling illicit tobacco. Given this, BRV believes that the existing skill set of the medicines and poisons regulator may not effectively transfer to the proposed tobacco licensing scheme.

The DJCS is responsible for administering Victoria's justice and community safety systems, and plays a leading role in driving and coordinating crime prevention activities in Victoria. BRV believes a number of parallels can be drawn between the proposed tobacco licensing scheme and liquor licensing which DJCS has recently been made directly responsible for. Both schemes would regulate the sale and supply of legal drugs to mitigate against safety and health impacts associated with their use, and would require effective coordination with Victoria Police for enforcement. As the liquor licensing regulator has existing relationships with Victoria Police and their joint enforcement strategy support the agencies to have a unified approach, BRV believes this relationship could be leverage for enforcement of the proposed tobacco licensing scheme. It should be noted however, that the Department is expected to be significantly less familiar with the Tobacco Act compared to the DOH, and the Department would need sufficient time to build knowledge in this regulatory area.

Whichever department or agency is given responsibility, there should be:

- sufficient enforcement powers given to the regulator and investigators (as described in the following section 'Improve Enforcement Powers');
- provision for information sharing for the purposes of enforcement with Victoria Police and Commonwealth agencies including the Illicit Tobacco Taskforce, the Australian Federal Police, Australian Border Force, the Department of Home Affairs and the Australian Taxation Office and tobacco control authorities in other jurisdictions; and
- a statutory advisory body established with membership from the state regulator, health representatives, local government and Victoria Police. That body would collaborate to achieve effective enforcement, establish referral processes, data collection and sharing protocols and report to the Minister periodically on the administration and effectiveness of the scheme, enforcement strategy and enforcement and compliance outcomes.

The role of Victoria Police is vital to ensure that enforcement is effective and coordinated with other relevant Commonwealth, state and local authorities. Victoria Police's collaboration with the state regulator on investigations into unlicensed sales of tobacco products and sales of illicit tobacco with a focus on links with organised crime is a necessary foundation of an effective regulatory framework.

The role of council officers should be limited to:

- partnering with the state regulator and police to share intelligence;
- assisting with enforcement related to no smoking areas; and
- if requested by the state government regulator, supporting compliance with the Tobacco Act by licensed tobacco retailers and wholesalers.

Improve Enforcement Powers

What stakeholders told us

Throughout the review, stakeholders called for strengthened powers for inspectors to reduce illicit tobacco in Victoria. As stated in Quit Victoria's submission

"If retailers knew there was a high probability that any illicit sales would be detected and that loss of licence would be a consequence, then sales of illicit tobacco would be likely to substantially decline".

Stakeholders suggested that current limitations of enforcement powers included requirements for inspectors to obtain consent to enter and search stores, and limited power to seize illicit tobacco products. A submission from the Greater City of Bendigo noted that

"The ability to investigate and act on tip-offs or suspicion of illegal activity is hindered by the very restricted powers of entry into premises for officers authorised under the Act".

The AACS, ALNA and MGA also highlighted that the requirement to attain consent

"significantly limits an inspector's ability to search behind the counter or in back storerooms where illicit tobacco is typically stored.... and it is unlikely that those selling illicit tobacco would consent to such a search".

Both retailers and local governments said that obtaining a search warrant can be costly and take a long time. One local government representative referred to the Rural City of Wangaratta submission to the Australian Parliamentary Inquiry, where it was noted that it took the inspector eight months to build sufficient evidence to substantiate that illegal tobacco products were being sold⁵³. Stakeholders noted the agility of many illicit tobacco sellers and said that by the time search warrants are approved many illegal traders are able to close up for a short period of time and/or move to another location.

Analysis

Powers of entry and to seize products given to authorised officers in some other jurisdictions are less restrictive than those available under the Victorian Act. Further, other Victorian Acts provide stronger enforcement powers than the Tobacco Act, for example the *Liquor Control Reform Act 1998*, the *Food Act 1984* and the *Environment Protection Act 2017*. Powers under these Acts include powers to enter and search businesses without prior notification, to search and seize products and documents without the need for occupier consent, to issue infringements notices and to suspend licences.

Recommendation 3 - Enhance investigation and enforcement powers

A full suite of investigative powers should be provided to officers/inspectors authorised by the state regulator and to Victoria Police.

Further details to support recommendation

In terms of reducing access to illicit tobacco, the following powers should be included (subject to the required human rights charter assessment process):

- power to enter a premises for compliance monitoring without consent from the owner or occupier;
- power to seize tobacco products, equipment and documents involved in the alleged commission of offences by unlicensed and licensed sellers;
- power to inspect and make copies or take extracts of documents;
- power to immediately cancel a licence if a licensee, nominee or an associate is suspected to have sold illicit tobacco ('associates' should be defined to include family members, business partners and close associates);

⁵³ Rural City of Wangaratta. Inquiry into illicit tobacco Submission 1. In Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia Retrieved from [file:///C:/Users/vicy9fe/Downloads/Sub%201_Rural%20City%20of%20Wangaratta_Redacted%20\(2\).pdf](file:///C:/Users/vicy9fe/Downloads/Sub%201_Rural%20City%20of%20Wangaratta_Redacted%20(2).pdf)

- power to issue 'on the spot' fines (infringement notices);
- coercive powers to require businesses to produce documents and information and require staff to answer questions;
- power to prescribe that if there is more tobacco on premises than is reasonably required for the use of persons residing on those premises, this will be deemed to be evidence of the sale of tobacco by the occupier; and
- search warrant powers.

Provide for effective deterrence through penalties

What stakeholders told us

A number of stakeholders commented on the low risk, high profit nature of illicit tobacco and were in support of stronger penalties being prescribed. This point was also reflected in submissions made to the Australian Parliamentary Inquiry⁵⁴. A council submission stated that:

"it has been suggested that the sale of illicit tobacco is more profitable than heroin, with significantly reduced penalties (particularly under the Victorian Tobacco Act)"

Many stakeholders expressed a view that, historically, penalties given by magistrates courts in Victoria often did not deter traders from continuing to sell illicit tobacco. Ritchies IGA noted that:

"in the rare instances where an illegal shop is raided, it is almost guaranteed that you will see the store reopen and return to selling illicit tobacco the very next day, because they know that any fines handed out can be quickly paid off with the profits from just a few days' worth of illicit tobacco sales."

This issue was also reflected in submissions from local government and inspectors, with one local government officer stating that:

"There are many examples of a local response to an illicit tobacco trader whereby local government and local police have worked together to firstly obtain evidence required to apply for a search warrant, then to execute the search warrant, seize illicit tobacco product and proceed to prosecution of that retailer. Only to find the retailer back trading again within a few days, having suffered little to no consequence to trade other than a few days of interruption..... traders have been back up and trading within 1-2 days following a long and arduous prosecution process."

⁵⁴ Parliamentary Joint Committee on Law Enforcement. (2020). *Illicit tobacco*. Canberra: Parliament of Australia. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024342/toc_pdf/IllicitTobacco.pdf;fileType=application%2Fpdf

There was general consensus among stakeholders that higher maximum penalties need to apply for serious offences and repeat offenders, as well as the provision of powers to issue 'on the spot fines' and that penalties should apply to both the individual who sold illicit tobacco, including the proprietor of the premises. Retailers and supermarkets reported cases where the public or landlords knowingly enabled or engaged in illicit tobacco trading. It was also reported by small, local retailers that it was common for consumers to enquire whether their business sold illicit tobacco. Stakeholders recommended including offences for the owners of retail premises who leased to businesses that conducted illicit tobacco trading, and to consumers who purchased illicit tobacco.

Analysis

With the Illicit tobacco market generally viewed as 'low risk, high profit', involving organised criminal groups and undermining tobacco health controls, BRV considers that offences and penalties should be set to address the serious criminal elements involved in this trade.

While some stakeholders felt that the current maximum penalties for illicit tobacco possession or trading are sufficient, suggesting that the main challenges were around their lack of enforcement, others pointed to the large profits made in the illicit tobacco market and wanted to see jail terms included as penalties.

Victoria is one of only two states in Australia to have enacted specific offences for the sale of illicit tobacco (as well as Western Australia). The maximum penalties for these offences are 240 penalty units for individuals (\$43,617.60), and 1,200 penalty units for a body corporate (\$218,088.00). These maximum penalties are high in comparison to maximum penalties imposed by most other jurisdictions for any offences under their tobacco control schemes.

BRV has considered whether the current maximum penalties should include imprisonment. Penalties within any Act should be in proportion to the severity of the offence⁵⁵. According to the Sentencing Advisory Council, a penalty of imprisonment should reflect the seriousness of the offence and is typically associated with certain behaviours or conduct, for example violence, and trafficking of drugs (particularly in large commercial quantities)⁵⁵. Those who operate in the illicit tobacco market typically engage these behaviours, therefore the introduction of imprisonment as part of the maximum penalties seems warranted. Further, maximum penalties for unlicensed sale of liquor products are 240 penalty units (\$43,617) or imprisonment of 2 years.

⁵⁵ Sentencing Advisory Council. (2021, December). *Maximum Penalties*. Retrieved from: [https://www.sentencingcouncil.vic.gov.au/about-sentencing/maximum-penalties#:~:text=This%20is%20outlined%20in%20section,2%20\(3%2C000%20penalty%20units\)](https://www.sentencingcouncil.vic.gov.au/about-sentencing/maximum-penalties#:~:text=This%20is%20outlined%20in%20section,2%20(3%2C000%20penalty%20units))

If imprisonment is to be introduced, this would need to be subject to the ratios provided for in Victorian Sentencing Act 1991. The ratio for maximum penalty units to imprisonment terms is 60 penalty units per 6 months imprisonment.

In regard to introducing penalties for landlords of premises where illicit tobacco is sold or for purchasers of illicit tobacco products, no other Australian jurisdiction provides for these offences. Further, Victoria's liquor control laws do not have an offence for owners of premises where liquor is sold illegally, although penalties exist for people who purchase or consume liquor from an unlicensed premises.⁵⁶ We note that the Crimes Act provides for persons who assist, encourage or direct the commission of an offence to also be guilty of an offence.⁵⁷ In theory, therefore landlords or purchasers of illicit tobacco could be found guilty of offences under the Act if they can be shown to have had knowledge that they are participating in the offence by the seller, even if there are not specific offences for these participants. On this point, it appears that there could be an argument for introducing specific offences for these parties to make it clear to them that they can be liable for the offences. Alternatively, the Crimes Act provisions could be used and specific offences would not be required in the Tobacco Act.

On balance, BRV recommends that there be penalties for owners of premises who are knowingly involved in the sale of illicit tobacco from their premises.

Another issue is how to deal with those who purchase illicit tobacco products. As part of BRV's considerations, we have weighed the importance of making it clear to consumers of illicit tobacco that they are buying illegal products, with the necessary policing and enforcement effort which would be required to make a penalty system applying to consumers effective. While a system of fines for those caught purchasing illicit tobacco is worthy of attention, in our view more intensive enforcement effort and severe penalties need to be imposed on those involved in the supply and sale of illicit tobacco.

Overall, BRV considers that State Government effort is better placed to provide support and education to encourage smokers to quit rather than punish them for continuing to buy illicit tobacco.

Recommendation 4 - Provide for increased deterrence via stronger penalties

That the *Tobacco Act 1987* and other relevant legislation be amended to provide for a significantly stronger penalty regime for unlicensed sale of tobacco products and for illicit sale of tobacco.

⁵⁶ *Liquor Control Reform Act 1998* (Vic) ss.111-114 (Austral.). Retrieved from <https://content.legislation.vic.gov.au/sites/default/files/2022-03/98-94aa099%20authorised.pdf>

⁵⁷ *Crimes Act 1958* (Vic) ss.323-339 (Austral.). Retrieved from <https://content.legislation.vic.gov.au/sites/default/files/2020-06/58-6231aa292%20authorised.pdf>

Further details to support recommendation:

Based on the above analysis, we suggest the following:

- a review of current offences and new offences to ensure that there are strong penalties for:
 - selling tobacco without a license;
 - selling illicit tobacco;
 - the owner of any premises from which illicit tobacco is sold that was directly or indirectly knowingly involved in the sale of illicit tobacco; and
 - providing false or misleading information to inspectors or in an application for a licence.
- the maximum penalties for selling illicit tobacco should be higher than those for selling tobacco without a licence;
- the penalties should be structured to ensure that those found guilty of a second or subsequent offence of selling illicit tobacco receive higher penalties, including the ability to impose a term of imprisonment; and
- in addition to fines or imprisonment, the court should be able to order that a person found guilty of selling illicit tobacco be disqualified from the ability to obtain a licence to sell tobacco for a specified period, for example up to 5 years.

Invest in Strengthen Education and Support Programs

What stakeholders told us

Quit Victoria raised the disproportionate impacts which illicit tobacco has for disadvantaged Victorians, inflicting the greatest harm to the most vulnerable population groups. Quit said:

"higher tobacco consumption makes low-income Victorians disproportionately more prone to developing debilitating chronic diseases which result in poorer job prospects and reduced income. Low-income smokers are also much more likely to die prematurely. In these ways, illicit trade in tobacco products both exacerbates current social inequity and contributes to the intergenerational transfer of poverty."

Some stakeholders said that more could be done to address illicit tobacco demand in terms of educating consumers. It was also suggested that there was a very limited understanding in the general public and among illicit tobacco consumers that these products have direct links with organised crime and nefarious activities.

It was suggested that the introduction of a licensing scheme would provide the Victorian Government with a good opportunity to not only inform the affected communities of the scheme's implementation and how it will improve public health

outcomes, but also raise awareness on how illicit tobacco often funds organised crime and negatively impacts society.

It was also highlighted by a number of government agencies that continuing to provide support to Victorians to quit or reduce smoking would assist to reduce the demand for and the profitability of illicit tobacco.

However, concerns were raised that education and improved health initiatives alone may not be sufficient to deter consumers, and that the price incentives for illicit tobacco were strong. Some law enforcement agencies and retailers suggested that there needs to be more action taken to reduce customer demand and that without the real threat of state government action against the purchasing of illicit tobacco, the issue is likely to continue. Commonwealth agencies raised that while their aim was to put criminal syndicates out of action, there is an opportunity for state governments to disincentivise the customer base.

We considered the arguments for and against introducing penalties against purchasers of illicit tobacco and concluded that this should not be pursued at this time. The points raised by stakeholders do however highlight the importance of an unified national approach to reduce opportunities of illicit tobacco trading across the entire supply chain (please refer to the section 'Develop a Coordinated, National Approach that Focuses on Long-term Elimination of Illicit Tobacco' on page 38).

Recommendation 5 - Education and support

The Government should invest in education about the new licensing scheme and other reforms and explain how illicit tobacco often funds organised crime and undermines public health measures.

The Government should also continue to support programs to reduce the use of tobacco products by vulnerable persons and communities including persons under 18, Aboriginal and Torres Strait Islanders, ethnic communities (where smoking is common) and other socially disadvantaged groups which have high levels of tobacco use.

Develop a Coordinated, National Approach that Focuses on Long-term Elimination of Illicit Tobacco

What stakeholders told us

The majority of stakeholders also raised the importance of effective communication, information sharing and clear referral structures between government agencies across governments. With improved communication and information sharing protocols, state agencies would be able to support the Commonwealth in identifying criminal operations by sharing locations and persons involved in illicit tobacco trading.

Stakeholders also highlighted that the introduction of a licensing scheme will require funding, and some suggested that the federal duties collected from tobacco should be used to support states and territories to implement licensing schemes. They suggested that Commonwealth support would lead to a win-win outcome for Federal and State Governments as the reduction of illicit tobacco trading across Australian states and territories could reduce the Commonwealth's foregone GST revenue associated with excise and excise-equivalent customs duty evaded on tobacco products, which Quit Victoria notes that in

"2019-20 could be estimated to have totalled approximately \$72.5m".

In summary, illicit tobacco is a complex issue that will require coordinated national efforts to address. With priority given to a national approach, legislation and approaches can be harmonised across the country to reduce opportunities for illicit tobacco operations. Health experts and government agencies noted that without a coordinated national approach, criminal organisations could simply be incentivised to move across Australian borders to locations with the least risk of penalties and enforcement action.

Recommendation 6 - Continue to support campaigns discouraging smoking and collaborate with relevant Commonwealth agencies and other jurisdictions

That the Victorian Government continues to collaborate with the Commonwealth to finalise the National Tobacco Strategy which should provide nationally coordinated approaches to illicit tobacco trading. This should include:

- national laws (enacted by all States and Territories) for the licensing of tobacco retailers and wholesalers;
- the establishment of a Commonwealth body to assist with information sharing, data collection, and collaboration across Australia, including with state and territory regulators;
- funding for States and Territories from customs and excise revenue to support education programs, and to administer and enforce nationally consistent licencing schemes so that licensing fees for legitimate sellers can be kept to a minimum; and
- continued participation in cross jurisdictional engagement on tobacco control enforcement and compliance including advocating for the establishment of formal governance arrangements to support regular and ongoing commitment to improve the effectiveness of detection and prevention of the sale of illicit tobacco. Such collaboration should be part of the role of the statutory authority that has been recommended under recommendation 2 above.

Appendix 1: Key Stakeholder Meetings

The meetings held to inform this review are noted in table 5 below.

Table 5: Key Stakeholder Meetings

Date	Stakeholder
21 February	Australian Border Force
21 February	Municipal Association of Victoria
22 February	Ritchies IGA
22 February	Woolworths
22 February	Australian Association of Convenience Stores
22 February	Master Grocers Australia
22 February	The Australian Lotteries and Newsagents Association
22 February	Australian Taxation Office
22 February	The Victorian Department of Health, Public Health Division, Office of Medicinal Cannabis and Tobacco Control,
22 February	South Australia Health, Drug and Alcohol Services, Tobacco Control Unit
22 February	Norther Territory Health ,Mental Health Alcohol and Other Drugs Branch
22 February	The Tasmanian Department of Health, Public Health Services, Tobacco
22 February	Queensland Health, Prevention Division
22 February	New South Wales Health, Centre for Population Health, Tobacco Control
22 February	Australian Capital Territory Health
22 February	Local retailer – Greater Shepparton Area
22 February	Local retailer – Shire of Yarra Ranges
22 February	Local retailer – Metropolitan
22 February	Local retailer – Rural City of Wangaratta
22 February	Local retailer – Moira Shire
22 February	Quit Victoria
22 February	VicHealth
22 February	Veronica Martin-Gall (PhD Candidate) from Menzies Institute of Medical Research, University of Tasmania
2 March	Local Government Victoria
2 March	Local Council CEOs (from over 30 regions)
2 March	Local Government and Suburban Development (DJPR)
9 March	Australian Government Department of Health
11 March	The Victorian Department of Health, Medicines and Poisons
25 March	The Victorian Gambling and Casino Control Commission*
5 April	Service Victoria
6 April	Australian Border Force
8 April	Victoria Police
21 April	The Department of Justice and Community Safety

Note: In addition to this list, BRV has engaged more closely with staff at the Office of Medicinal Cannabis and Tobacco Control, Public Health Division at the Department of Health.

* During the review, the VGCCC has retained all the powers and responsibilities of liquor regulation that the former VCGLR held.

Appendix 2: Written Submissions

Written submissions were received via the Victorian Government's engagement platform 'Engage Victoria' and email. Submissions via Engage Victoria provided responses to BRV's key questions. Letters and other written materials received via email typically provided broad feedback on a range of issues relevant to illicit tobacco. The submissions received via Engage Victoria are noted in table 6, and written documents submitted via email are noted in table 7 below.

Table 6: Submission Via Engage Victoria

Stakeholder Type	Number of responses
Academics	1
Consumers	1
Environmental Health Officers/ Inspectors	6
Local Government (excluding EHOs)	4
Retailers	12
Retailer and Wholesalers	2
Retail Association	1
Unknown	3
Total	30

Table 7: Written Submissions

Stakeholder(s)	Submission Type
Australian Association of Convenience Stores, Master Grocers Australia and the Australian Lotteries and Newsagents Association (joint submission)	Letter
British American Tobacco Australia Limited	Letter
City of Greater Bendigo	Letter
Hobsons Bay City Council	Letter
Imperial Brands Australasia	Letter
Izama Australia	Letter
Local Government and Municipal Association of Victoria	Reponses to BRV's Key Questions
Local regional retailer (de – identified)	Letter
Local metropolitan retailer (de-identified)	Letter
Maroondah City Council	Letter
Municipal Association of Victoria	Letter
Peregrine Corporation	Letter
Philip Morris Limited (Australia, New Zealand, Pacific Islands)	Letter
Ritchies IGA	Letter
Rohan Pike	Letter

Stakeholder(s)	Submission Type
Quit Victoria	Reponses to BRV's Key Questions
Quit Victoria	Modelling - Tobacco regulatory Framework
Veronica Martin-Gall (PhD candidate), Associate Professor Seana Gall and Associate Professor Amanda Neil Menzies from the Institute of Medical Research, University of Tasmania	Letter
VicHealth	Letter

Appendix 3: Terms of Reference



The Hon. Danny Pearson MP

Assistant Treasurer
Minister for Regulatory Reform
Minister for Government Services
Minister for Creative Industries

Level 5, 1 Macarthur Street
East Melbourne Victoria 3002
Telephone: +61 3 7005 8911
DX210759

D21/191925

Ms Anna Cronin
Commissioner for Better Regulation
Level 5, 1 Macarthur St
EAST MELBOURNE VIC 3002

Dear Commissioner

REQUEST FOR ADVICE ON VICTORIA'S APPROACH TO ILLICIT TOBACCO REGULATION

As you are aware, smoking rates in Victoria have declined over time, demonstrating the success of robust anti-smoking laws and policies to reduce the widespread harm caused by tobacco.

However, illicit tobacco is increasingly becoming a concern. Illicit tobacco works against collective efforts to reduce smoking and tobacco-related harm because it undermines tobacco control measures such as tobacco price increases and plain packaging. Illicit tobacco also targets the most disadvantaged communities, which already have higher smoking rates, because it is sold significantly more cheaply than regulated tobacco. Victorian businesses that do the right thing and comply with laws are impacted by illicit tobacco sales through lost profits.

While there has been considerable effort made by all levels of government to tackle the problem of illicit tobacco, a recent report by the Australian Parliamentary Joint Committee on Law and Enforcement found that more could be done.

Your role as Commissioner for Better Regulation provides an opportunity to undertake an independent review of Victoria's approach to illicit tobacco regulation. I am therefore requesting you to prepare a report on:

1. the current regulatory framework for tobacco in Victoria, with a focus on regulation of illicit tobacco;
 - this includes the licensing, compliance and regulatory powers relevant to sales of all tobacco
2. the regulatory frameworks applying in other relevant jurisdictions;
3. recommendations for improvement, having regard to the nature of illicit tobacco sales and the parties involved;
4. possible pathways to implement these recommendations, including whether new legislation and/or regulation is required;
5. the costs and benefits of the preferred approach; and



6. funding considerations including possible sources of funds that may be available to assist regulation of tobacco production and sales.

The review is to focus on the regulatory system relating to illicit tobacco, rather than enforcement matters.

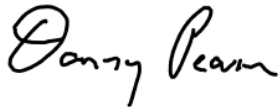
In preparing this report, you are encouraged to use any relevant publicly available information and are also authorised to access confidential information held by Victorian Government agencies where this would provide useful context.

I also encourage you to hold consultations with relevant parties including the Department of Health, Local Government Victoria, Municipal Association of Victoria, Victorian Police, Department of Justice and Community Safety, retailers and the tobacco industry.

Please provide a report to me and the Minister for Health within six months of receipt of this letter. Publication of the report will be at the discretion of myself and the Minister for Health.

If you have any questions please contact Chris Archer, Director, Department of Treasury and Finance on chris.archer@dtf.vic.gov.au.

Yours sincerely



The Hon. Danny Pearson MP
Minister for Regulatory Reform
04/10/2021

cc. Hon Martin Foley MP, Minister for Health

Appendix 4: Comparison of Tobacco Regulation Across Australian States and Territories

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Legislation	Tobacco Act 1987 Tobacco Regulations 2017	Public Health (Tobacco) Act 2008 Public Health (Tobacco) Regulation 2016	Tobacco and Other Smoking Products Act 1998 Tobacco and Other Smoking Products Regulation 2010	Tobacco and E-Cigarette Products Act 1997 Tobacco and E-cigarettes Products Regulations 2019	Tobacco Products Control Act 2006 Tobacco Products Control Regulations 2006	Public Health Act 1997 Public Health (Smoking Product Licence) Regulations 2019 Guidelines for the sale of smoking products	Tobacco and Other Smoking Products Act 1927	Tobacco Control Act 2002 Tobacco Control Regulations 2002
Legislation Common to All Schemes	Prohibition on sales to persons under 18; Requirements for signage at point of sale; Compliance with packaging requirements; Smoke free areas; Smoking ban in cars where children under 16 are present; No smoking signage in specified locations; Bans on loyalty schemes for smoking products; Bans on imitation smoking foods or toys; Bans on selling less than 20 cigarettes; Limits on the number of points of sale in a single premises.							

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Specific Provisions Referring to the Sale of Illicit Tobacco	<p>It is an offence for retailers or wholesalers to possess tobacco products on which duty or excise has not been paid or which have been illegally smuggled into Australia – Maximum penalties include 240 penalty units (equivalent to \$43,617.60) for a natural person and 1200 penalty units (equivalent to \$218,088) for a body corporate.</p> <p>Retailers can be prohibited from selling at premises where offences are committed if they or an associate is found guilty of ‘relevant offences’ (including breaches of above prohibition or of Commonwealth customs and excise laws.</p>	None	None	None	<p>Holder of a licence must not be in possession or control of tobacco products that they know or ought to know are prohibited good under Customs Act or excisable goods upon which duty has not been paid - penalty of \$10K for first offence (body corporates \$40K), \$20K subsequent offence (body corporates \$80K).</p>	None	None	None
<p>Note: on plain packing and warning requirements, offences would apply where illicit products do not meet these requirements. Also, jurisdictions that licence sellers may prohibit the sale of products on which excise/duties have not been paid as conditions on the licence</p>								

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Department or Agency responsible for Tobacco Control	The Victorian Department of Health	NSW Ministry of Health	QLD Health	Health Protection and Licensing Services, SA Health	Environmental Health Directorate, Public and Aboriginal Health Division, Department of Health (WA)	Public Health Services, Department of Health (TAS)	Commissioner for Fair Trading ACT Health Health Protection Service	NT Health NT Licensing NT Police Director of Tobacco Control
Tobacco Control Plans and Strategies	Victorian Public Health and Wellbeing Plan	NSW Tobacco Strategy	Prevention Strategic Framework 2017-2026	SA Tobacco Control Strategy 2017-2020	Draft WA Health Promotion Strategic Framework 2022-2026 Act provides for review every 4 years (s127)	Tobacco Control Plan 2017-2021	ACT Drug Strategy Action Plan 2018-2021	NT Tobacco Action Plan 2019-2023
Year of Tobacco Licensing Introduction	N/A	2008 (Notification scheme)	N/A	1986	2007 ⁵⁸	The licensing system was introduced in the 1970's, with formal commencement in 2000. In 2019 the system was digitised	-	2002
Who is Required to be Licensed	N/A	Notification scheme – Retail Identification Number required to sell tobacco ⁵⁹ . Applies to all tobacco retailers including pharmacists	N/A	Tobacco retailers. A separate license is required for each premises	Tobacco retailers, wholesalers and indirect sellers. A separate license is required for each premises	Any seller of smoking products. A separate license is required for each premises	Tobacco retailers and wholesalers, including those who sell personalised vaporisers	Tobacco retailers, including pharmacists selling vaping products

⁵⁸ Established scheme following the Allen Consulting Group Report to the Commonwealth Department of Health and Ageing (2002), *Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements*. Retrieved from [https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/\\$File/license.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/$File/license.pdf)

⁵⁹ A single RIN can be used for multiple retail premises. Wholesalers don't need a RIN but they must only sell to retailers with a RIN

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Licence Fees	N/A	No fees to notify	N/A	\$309/year	Retailers & Indirect sellers - \$305/year Wholesalers - \$735/year	Fees increase in 2018 (resulting in a reduced number of license holders) \$1185/ year \$595 for a licence to sell vaporiser products only	\$565/year	\$248/ 1 year \$744/ 2 year \$1240/ 5 year
Display of License Requirements	N/A	N/A	N/A	Must display license at point of sale. penalty \$1250 (expiation ⁶⁰ \$160)	Must display license at point of sale	License display at point of sale not required but a copy of the license must be kept on premises	Retailers must display license details at point of sale and wholesalers at their business address (max penalty \$908)	Must display retail licence at point of sale (penalty \$3,140)
Reporting obligations	None	None	None	None	Must provide the regulatory agency with a list of those licensed wholesalers or retailers to whom they have supplied tobacco (either at request or on a periodic basis). Facilitates tracking of tobacco from production to the retail store	Must provide annual sales data to the online portal as condition of license renewal. Includes type and quantities of all smoking products sold each month	None	Director may require wholesalers to provide information about retailers to whom they supply products. The Chief Health Officer may require wholesalers to provide information about the quantity of tobacco products sold or supplied to retailers

⁶⁰ In SA an expiation fee is equivalent to an infringement notice fine

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Responsible Sale of Tobacco Training	Not required	Not required in Act, but government online training is provided http://www.tobacco-retailers.heti.nsw.gov.au/Registration.php	Mandatory requirements for employees of tobacco retailers to have training about not supplying products to persons under 18	As a condition of their license, retailers must ensure their employees who sell tobacco undertake training about not supplying products to persons under 18	conditions require licence holders to provide staff training about the requirements of the Act.	The Responsible Service of Tobacco course must be completed (duration of 20 minutes) Smoking Products Retailers Guide	Not required but the commissioner may, instead of refusing to grant a tobacco licence, issue the licence subject to the condition that the applicant must undertake, a specified training program in relation to the obligations under the Act	Not required
Maximum Penalties for Selling Tobacco Unlicensed	N/A	\$11,000 ⁶¹ to engage in retail sales of tobacco unless the regulator has been notified	N/A	\$20K (\$1,000 expiation fee)	Retailers - \$50K Wholesalers and indirect sellers - \$10K for first offence (\$40K for body corporates), and \$20K for subsequent offence (\$80K for body corporates)	\$8,650 ⁶² for first offence \$17,300 for subsequent offence	Retailer - \$9087 ⁶³ Wholesaler \$18,174	\$78,500 ⁶⁴
Enforcement Costs	-	-	-	Enforcement funded from licensing fees	Enforcement funded from licensing fees	Enforcement funded from licensing fees. New online system cost approximately \$1.5 million in 2019/2020	Enforcement undertaken by a body that regulates many Acts	-

⁶¹ The Public Health (Tobacco) Act 2008 provides for 100 penalty units. The current value of a penalty unit in NSW is \$110.00

⁶² The Public Health Act 1997 prescribes 50 penalty units for first offence and 100 penalty units for subsequent offence. The current value of a penalty unit in TAS is \$173.00

⁶³ The Tobacco and Other Smoking Products Act 1927 prescribes 50 penalty units. Current value of a penalty unit in the ACT is \$181.74

⁶⁴ The Tobacco Control Act 2002 prescribes 500 penalty units. The current value of a penalty unit in the NT is \$157

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Powers of Entry (for Inspectors)	<p>Must have consent to enter premises and seize documents or items</p> <p>May obtain a search warrant</p>	<p>May enter and inspect any premises excluding residential premises (to enter residential premises occupier consent or a search warrant must be attained). May take samples of any thing to determine whether the provisions of this Act and the regulations are being complied with.</p> <p>May obtain a search warrant</p>	<p>Must have consent to enter premises</p> <p>May obtain a search warrant</p>	<p>May enter premises as reasonably required in connection with the administration or enforcement of this Act</p> <p>Can seize and retain tobacco products, e-cigarette products or records if the authorised officer reasonably suspects that an offence against this Act has been committed</p> <p>May obtain a search warrant</p>	<p>May enter premises to exercise the investigator's powers of investigation excluding residential premises (to enter residential premises occupier consent or a search warrant must be attained).</p> <p>Can take possession of, and remove from the premises, documents, tobacco products or products mentioned in section 106 of the Act, samples of such products, vending machines, advertisements or anything else relevant to the investigation, found in the course of exercising the investigator's powers under this Act</p>	<p>May at any reasonable time enter any area, premises, body of water or vehicle.</p> <p>Must give reasonable notice unless notice would defeat the purpose of the intended exercise of power.</p> <p>Must not use force to enter</p> <p>May seize any thing or record found in or on any area, premises, body of water or vehicle (range of obligations with regard to records of seizure)</p>	<p>May enter the premises of any retail outlet or wholesale outlet at any time at which smoking products are available for sale at the outlet</p> <p>May enter any other premises with consent or a search warrant</p> <p>May seize anything on the premises connected with an offence</p>	<p>May, at all reasonable times, enter premises where the authorised officer believes tobacco products are being packaged, sold, supplied, or displayed for the purpose of sale or supply.</p> <p>If the authorised officer believes on reasonable grounds that an offence against this Act or the Regulations has been or is being committed they may seize goods, samples of goods, or other things for use as evidence in a prosecution for the offence</p>

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Roles of Local Government	The Secretary appoints EHOs/ inspectors. It is common for councils to be appointed. Council officers are primarily responsible for enforcement	None	None – The Act provides for both local and state government to administer specified provisions relating to smoke free areas	None	None – local government may be appointed as ‘restricted investigators’ to enforce ‘smoke free’ provisions only	None – local government technically have some powers as EHOs, but BRV understands that in practice they are not involved in tobacco control	N/A	Refers complaints to NT Government
E-Cigarettes	<p>Since October 2021, e-cigarettes are prohibited across Australia if they contain nicotine, unless prescribed by a medical practitioner</p> <p>Tobacco controls (for example, requirements such as not selling to minors, prohibitions on advertising, no smoking areas) also apply to the use of e-cigarettes (without nicotine)</p> <p>Those states and territories that require a licence or notification to sell tobacco, also require a licence or notification to sell e-cigarettes (without nicotine) and other smoking products.</p>							
Indirect Sales	Not prohibited in the Act	Not prohibited in the Act	Not prohibited in the Act	Prohibited	Must hold indirect sales licence	Not prohibited in Act Note - all sellers of smoking products in Tasmania require a license.	Not prohibited in Act	Not prohibited in Act
Vending Machines	Only allowed in liquor licensed premises, approved venues or casinos, bottle shops. Machines must be adjacent to service counters	Only allowed in liquor licensed premise restricted to over 18s	Only in liquor licensed premises, at casinos or gaming areas	Only in liquor licensed premises	Only in liquor licensed premises or staff hospitality area at a mining site (max 2)	Only allowed in liquor licensed premises	Prohibits sale through vending machines (penalty \$9,087)	Only allowed in liquor licensed premises in child free areas

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Mobile Sales and Sales at Events and Festivals	Offence to sell tobacco or e-cigarette products from temporary display stands or booths, or at sporting events or arts functions (penalty 60 penalty units for individuals and 300 penalty units for body corporates)	-	Prohibits sale of tobacco products from a temporary retail store (penalty \$19,299 ⁶⁵)	Temporary sales (less than 2 weeks) prohibited Mobile sales banned	Prohibits sales at sporting cultural events, markets and festivals since 2019	Prohibited	-	-
Are Sales by Employees Under 18 Allowed?	Yes	Yes	Yes	Yes 'A person under 18 years of age can sell tobacco and e-cigarette products, however it is not recommended.'	No	Yes	Yes	No

⁶⁵ The Tobacco and Other Smoking Products Act 1998 prescribes 140 penalty units. Current value of a penalty unit in QLD is \$137.85

	VIC	NSW	QLD	SA	WA	TAS	ACT	NT
Other	<p>Victorian Health Promotion Foundation established</p> <p>Previous scheme of certification of specialist tobacconist and e cigarette sellers ceased. Those with existing certification are exempt from product display bans</p>	<p>Can prohibit tobacco retailing when the retailer is found guilty of offences under the Act or Regulations (penalty \$55K for offence \$110K for subsequent offence (body corporate \$110K first offence \$220K subsequent offences)</p>				<p>License holders commonly notify enforcement officers about illicit activity. 3 visits to licence holders per year permitted. 95% compliance rate.</p>	<p>Guide to the Sale of Smoking Products in the ACT</p>	<p>Tobacco Control Action Committee produces annual reports</p>

Appendix 5: MAV Submission – Local Council Officers’ Responses to Key Questions

Responses to Illicit Tobacco Review: Key Questions to Local Government

The MAV met with Better Regulation Victoria in late February 2022 to discuss local government’s role in illicit tobacco trading. The Commission identified some areas where further input from councils would be beneficial. At the request of the Commission the MAV sent the questions outlined below to key council contacts in 78 of the 79 councils in Victoria. Thirty-four responses were received (44% of councils participating in the Tobacco Education and Enforcement Program).

Please note that the responses provided represent the views of council officers, rather than formal positions of individual councils. This information provided builds on the MAV submission and individual council submissions.

Table 1: Responses Broken Down by Council Type

Council Type	# Responses
Interface	8
Metropolitan	4
Regional City	7
Rural	15

Table 2: Responses Broken Down by Department of Health Regions

DH Regions	# Responses	DH Regions	# Responses
Barwon	3	North Eastern Melbourne	3
Brimbank Melton	1	Outer Eastern Melbourne	1
Central Highlands	2	Outer Gippsland	1
Inner Eastern Melbourne	3	Ovens Murray	4
Inner Gippsland	1	Southern Melbourne	1
Loddon	1	Western District	7
Mallee	3	Wester Melbourne	3

1. Is there a role for council inspectors to be involved in investigating illicit tobacco trading? If so, what should their role be? If not, why not? What agencies are best placed to investigate reports, undertake enforcement, and prosecute?

Illicit tobacco trading is an issue of concern for just over half (52%) of responding councils.

Over two thirds of responding councils (70%) consider there is a small role for councils in investigating illicit tobacco trading, with the vast majority of respondents indicating this would be a minor role related to referring complaints to other enforcement agencies (83%) and providing local intelligence to enforcement agencies (75%). Only two councils indicated that their council could have a larger role in conducting investigations.

The councils which do not see a role for local government in investigating illicit tobacco trading noted risks to the safety of their officers and a lack of skills and expertise as the reason why they were reluctant to be involved.

It was also noted that councils' role in tobacco education and enforcement comes from a public health perspective and illicit tobacco investigations are concerned more with law and order and tax revenue.

The vast majority of responding councils (97%) consider Victoria Police best placed to investigate, enforce and prosecute illicit tobacco trading, followed by the ATO (79%) and Border Force (68%). Councils noted these agencies have the skills and resources to undertake investigations and access to cross border/international intelligence, unlike local government.

Some comments from councils:

Council will not investigate directly and informs ATO or the local police station for further enforcement. Council will retain all complaint information in case any enforcement authority requests information for further information.

Local government often has knowledge of tobacco retailers - but this usually consists of businesses which comply with sales standards under the Tobacco Act. We may be able to assist with investigations, however, I don't believe we are equipped to take quick action or the collective resources within an LGA, compared to Vic or Federal Police.

Most premises that sell illicit tobacco are affiliated with criminal gangs and Local Government officers do not have the skills and expertise to deal with these matters.

We are comfortable collecting and forwarding contact details of premises, business operator and products including photos. We would not want full investigation and enforcement responsibilities due to criminal nature of people likely to be involved.

The sale of illicit tobacco is primarily a tax issue and a customs issue as it has to be brought into the country somehow...These businesses are usually linked with organized crime that span a variety of jurisdictions and municipal areas and require an enforcement agency that spans across those areas, ie VicPol, Federal Police etc. I think the best thing for Council to do is become aware of where the illicit tobacco is being sold, do a compliance check under the Tobacco Act and then notify the relevant authority.

Local activities can be identified through complaints to Council etc and these can be sent across to enforcement agency such as Border Force to address the matters which are very often linked with organised crime; for Council officers there is then a level of risk that would be better managed by those that have more substantial scope and experience to undertake enforcement.

Council is a valuable tool in terms of local knowledge and information sharing. I believe Council would be best placed to refer complaints to the relevant enforcement agency and then provide local insight where necessary.

Matters are complex involving tax evasion and other criminal activities. Councils would not be aware of any ongoing investigations involving Vic Pol or the tax department which could impede or jeopardise any planned enforcement.

Illicit tobacco trading does not fall under the heading of "public health".

Local government officers do not have the same protections about their identities like the Victoria Police and Border Force officers would have. When dealing with organised crime and potentially impacting on their business, we believe it will expose local government officers to unnecessary risk.

Local government does not have the time, resources and skills in this area to be of meaningful assistance. Neither do we want to gain these skills or resources. Local Government has a role to play in the 'health' of communities and we do this via our Environmental Health Officers through education when undertaking regular premises inspections. In this way we are able to build a relationship with our local businesses who sell tobacco as well as (often) other goods and services. This works well and Council has and indeed is, participating in the MAV 'local government tobacco control program'. A good example of local government and businesses working together is the introduction of the smoke free outdoor dining regulations. This was seamless and saw business comply with the regulations as it allowed discussion and information including signage to be given out. Local government's role is not about getting involved in matters that are of a criminal nature.

2. Do councils have decision criteria for an Environmental Health Officer/council inspector to investigate a report of illicit tobacco trading? When must they look into a report?

Half (50%) of the responding councils refer any illicit tobacco trading complaints straight to an enforcement agency.

Twenty-nine per cent of responding councils undertake some form of an investigation if a complaint were received. This is often in the form of a preliminary investigation to assess the nature of the illicit tobacco being traded, risks to officers and then the complaint is referred to an enforcement agency where necessary.

Some comments from councils:

We would assess the risk to EHOs and if the scenario is suitable to attend. That being said, we would always contact Vic Police and may do a joint inspection if it was not affiliated with a known tobacco retailer.

We have a risk assessment process on all inspections undertaken. This involves using 2 officers to do an inspection and if deemed unsafe, police would be called to assist. We have never had this situation occur to date.

With any of our complaint investigations we assess whether 2 people should attend or whether police assistance should be requested. This is based on previous interactions, location of premises, information or evidence provided / collected and allegations.

We conduct preliminary investigations and take further action depending on situation. Different types of illicit products are viewed with differing risks (to the EHO) - e-cigarettes with nicotine on display in a shop are seen as less risk (to discuss with business owner) than a complaint of chop chop or unpackaged cigarettes.

The work involved in undertaking an investigation into illicit tobacco is considered to be of high risk in nature, due to the business' potential involvement in organised crime. This creates a risk to EHO's safety, who are not equipped or trained as Victoria Police Officers are to warn off any potential threat. Council takes this matter into consideration and does a risk assessment to determine the safest way to investigate these complaints.

Council does not respond to illicit tobacco matters as illicit tobacco is linked to organised crime. Council staff and their family would be at risk of harm due to staff living and work in the same community as the illicit tobacco operators and do not receive appropriate protection

There is a wider risk for council not only officer safety but environmental health officers who normally deal with the tobacco legislation are getting harder to recruit. It is a shrinking industry. There are other public health matters that need to be dealt with and local government and its environmental health officers can't afford scarce resources to be spent on criminal matters that should not be within their remit.

3. What are the limits to powers of entry, search and seizure under the Tobacco Act? What are agencies currently allowed to do? Do you think these powers need to be enhanced and if so, how?

Almost one third of responding councils (30%) indicated the powers of entry, search and seizure under the Tobacco Act were ineffective. Other respondents were unable to comment as they had limited, if any, experience with these powers.

Councils familiar with the powers of entry, search and seizure noted these powers could be strengthened, highlighting issues around consent which often hinders obtaining evidence.

The vast majority of responding councils (81%) indicated other agencies, notably Victoria Police, should be clearly authorised to enforce illicit tobacco trading under the Tobacco Act.

Some comments from councils:

Where Council is notified of an alleged sale of illicit tobacco, they have powers to investigate and with consent of the proprietor, inspect the premises. However, it is often unlikely that his consent is granted, upon which, Council can seek a warrant to undertake a search and possible seizure or they determine the risk to be too great and refer the matter to either Victoria Police or Australian Border Force, alternatively by this stage, the product may have been removed.

The legislation requires the local government officer to seek consent from the operator to gain entry, search or seizure. Without this consent no action can be done this is too inhibiting.

Following an incident many years ago we no longer participate in search and seizure activities. It is too high risk for officers and we do not have the resources for this. If we hear about any selling of illicit tobacco we report it to the police.

Power of entry should allow an authorised officer to enter all 'reasonable' areas where tobacco may be stored rather than the need to obtain consent. 'Seizure' powers are archaic.

4. Do councils have concerns about OHS for their officers investigating allegations given the known relationship to organised crime and illegal drugs? If so, how do you suggest this be overcome? Should council officers have training or support to perform this role, or should it be shifted to another enforcement agency?

Almost all councils (97%) had OH&S concerns for their officers in investigating illicit tobacco trading complaints. The major concerns were that council staff can be easily identified, and they or their family, may be in danger of reprisals if their residence becomes known.

Most councils (88%) noted the only way to manage this was for the role of enforcement to be the responsibility of other better skilled and resourced agencies.

Where councils were to be involved in investigations, better support from other agencies, training for officers and increased funding for local government to perform the role safely (e.g. multiple officers present) were seen as some of the ways to reduce risks (reported by 30%, 24% and 22% respectively).

Some comments from councils:

Enforcement and investigation should be the responsibility of those more suited and experienced in dealing with investigations involving organised crime.

Illicit tobacco is usually associated with organised crime and other criminal activity. Council officers who generally live within the municipality should not be exposed to such dangers as they are not authorised nor trained to deal with such matters (compared to) the police.

Illicit tobacco is linked to organised crime. Council staff and their family would be at risk of harm due to staff living and work in the same community as the illicit tobacco operators and do not receive appropriate protection.

It is high risk for local government officers to get involved in these matters and exposes them not only at the time of involvement but potentially on an on-going basis. Local government officers are not trained to be involved in this high risk area.

Any OHS assessment would first ask if this is a duty under the legislation, which apart from one section of the Act the rest deals with legal tobacco, and the increase in risk when working through the assessment due to connections with organised crime and illegal drugs puts Council officer as Considerable risk, especially in a space that we are not accustomed to working in.

Ultimately, if Council has initially investigated the complaint and has found that illegal activity is being carried out, this should then be referred to VicPol to take over the investigation. To ensure EHO confidence in these matters, some additional training would be necessary to ensure EHO's are adequately equipped to initially investigate these matters, before referring on to other agencies.

Would be good to have a standard process for all councils for when a referral to police or other agency should be made.

5. What resources are required to effectively investigate an illicit tobacco report?

Respondents noted the role of councils in the tobacco space should be centred on public health and that illicit tobacco enforcement should be the responsibility of other agencies.

However, if councils were to play a role in investigating illicit tobacco they considered the following resources would be necessary:

- Clear roles and responsibilities
- Effective training
- Better support from enforcement agencies
- Additional funding
- Education materials for retailers

Some comments from councils:

Council officers will not directly investigate the illicit tobacco and refer to local police and ATO. If any educational material is available for illicit tobacco we can provide or post them for business owners' information, so they know the consequences of illicit tobacco trading. Council will support other enforcement agencies by providing further information.

Council does not have the resource and such matter - illicit tobacco trading is not related to "public health".

Role clarity between agencies needs to be considered.

Council's role would be to educate businesses and refer illicit tobacco trading.

It would be good to have a clearer understanding of when council should call in the police and for the police to have officers who understand the legislation and their powers, so they are more willing to assist.

This is a criminal matter for those trained in this area. While I understand the obligations currently on local government under the Tobacco Act these are not appropriate for safety reasons for local government to be involved in. Local government's role is that related to the health of our communities. If we are asked to do too many things then the very thing we can do, and have been doing, may not get done.

6. Is information regarding illicit tobacco often shared between councils and other relevant agencies (e.g. Vic Police, ATO, ABF)?

The majority of responding councils (83%) share information with Victoria Police. Forty-four per cent share information with the ATO and slightly less (42%) share information with Border Force. Most councils (91%) share information with other councils.

It was noted that information sharing back to councils is uncommon. Less than half of responding councils (47%) sometimes receive information from Victoria Police. Eleven per cent of respondents sometimes receive information from Border Force. No councils said they received information from the ATO. Sixty-four per cent of councils received information about illicit tobacco trading from other councils.

Some comments from councils:

We have not received information from Border Force or the ATO. These are higher level activities.

In our limited experience with illicit tobacco complaints, we have shared information with other agencies, including VicPol, ATO and Border Force. Although we provide these agencies the information we have gathered, we have had difficulties receiving an update on the investigation to reassure our community it is being actioned.

We continue to report illicit tobacco to the ITTF via the Australian Tax Office (ATO) but have never been contacted by these agencies for further information or clarification. Nicotine containing e-cigarette products are reported to Crimestoppers but we have never had Vic Pol contact us regarding this. Previously in the past we've had contact from Vic Pol about premises selling nicotine containing e-cigarette products, when we explained that this was their jurisdiction they were unaware of this.

Council has a good relationship with the local police and we use this mechanism in the first instance.

7. How can a more coordinated approach between agencies be developed?

The majority of responding councils (71%) indicated a need for a more coordinated approach between agencies involved in illicit tobacco enforcement. This primarily involved improved communication between council and agencies rather than a major role for local government in investigations. Other respondents noted illicit tobacco trading is a matter for Victoria Police, Border Force and the ATO so no coordinated approach with local government was necessary.

Councils noted the following would assist in developing a more coordinated response between agencies:

- Having key contact points within agencies for the sharing of information (85%)
- Information sharing protocols (including providing feedback to councils on actions relating to referrals, where possible) (64%)
- Improved resourcing of enforcement agencies such as Victoria Police and Border Force (61%) and
- Organisational commitments to enforce illicit tobacco regulations (58%)

Some comments from councils:

Appropriate channels for council to feed illicit tobacco complaints to an appropriate enforcement agency.

Clear protocols and Information sharing would be very beneficial as well as a lead authority to oversee the illicit tobacco activity investigation.

Coordinated approach with regular (monthly/quarterly) meetings to discuss and be kept informed of what action is being taken/ was taken at subject properties.

Key contact points for reporting is the way for local government to participate. Changes to the legislation are required to reduce any burden on local government to participate in this matter. The other tick boxes are for those 'other' agencies to comment on.

Council would comply in supply information, anything beyond that is a Police matter

8. Do you support the creation of a licensing scheme? What are your views on the pros and cons of a licensing scheme? Do you think it should apply to wholesalers/retailers? Do you think local councils to administer this scheme or should it be a state government administered scheme, if so which agency to you suggest?

Almost two thirds (65%) of responding councils supported a licensing scheme for tobacco trading. Around three quarters of responding councils indicated a licensing scheme should apply to tobacco retailers (78%), e-cigarette retailers (75%) and wholesalers (74%). A quarter of responding councils wanted further information before they could make a decision on the benefits of a licensing scheme. Some councils noted that a licensing scheme would not necessarily assist in addressing illicit tobacco.

Councils indicated local government should be consulted in the development of any licensing scheme for tobacco retailers in Victoria.

Councils noted a licensing scheme would have a range of benefits, including:

- A list of retailers would assist with Tobacco Education and Enforcement Program activities (81%)
- Would make it easier for the state to provide education materials and updates on regulation to retailers (77%)
- Improved understanding of tobacco retailers across the state (77%)
- Would bring Victoria in line with other states (68%)
- Councils noted if a licensing scheme includes e-cigarette retailers it will assist in education and enforcement of a growing public health concern (81%)

The negatives associated with a licensing scheme could include:

- May be seen as a regulatory burden on retailers (69%)
- May not capture online traders (59%)
- Unlikely to reduce the trade of illicit tobacco (56%)
- Will be ineffective if not kept up to date (53%)
- If it doesn't capture e-cigarette retailers it will be missing a major public health concern (56%)

On the issue of online traders and e-cigarettes one council noted:

It is critical that e-cigarette retailers and online traders are included in any licensing scheme. The COVID pandemic has been a boon for online traders. Anecdotally the uptake in the consumption/use of e-cigarette products has seen a massive surge amongst teenagers. If we don't attempt to deal with this issue through a licensing scheme, we will be facing a growing public health concern in the future.

Most councils (81%) indicated a licensing scheme should be administered by the State Government, with information shared with councils to undertake tobacco education and enforcement activities.

Agencies suggested to manage the scheme included:

- Department of Justice (due to criminal nature of illicit tobacco)
- Consumer Affairs
- Small Business Victoria
- Department of Health

Some comments from councils:

It is hoped that by introducing a license tobacco traders would become more accountable and not risk the chance of losing it. This would also improve the record keeping and knowledge of who is trading tobacco. Local government officers can also check with tobacco traders that they have a license.

It may give proper identification of a person, plus they are 'educated' prior to gaining a licence.

This would help reinforce legal responsibilities and assist in accurate information on retailers.

Perhaps there needs to be a Notification to Local Government - similar to Class 4 Food Premises and low risk hairdressing premises - and as suggested more recently for low risk prescribed accommodation.

no license presented on request, is an absolute offence. Would also need direct access to Govt department to confirm licence details. This would need to be a live access, not a 7 day email response. Access to ASIC by councils should be free.

A licensing scheme for all businesses selling tobacco and e-cigarette products - including online would be beneficial in identifying sale points and to provide education materials.

If a licensing system was introduced, legislation requiring the tobacco retailer to be a "fit and proper person" and hold an operator license similar to the Consumer Affairs Victoria (CAV) requirements for registering a rooming house operator, could assist in ensuring those that do meet the fit and proper person test are not permitted to sell tobacco products.

The state government formed a centralised system/ Authority to licensing the tobacco retailers, wholesalers, suppliers then share the information with the relevant council for their information. Councils also ability to directly contact them and provide more information. Mutual sharing of information is mandatory. The better approach is for Victorian police to control and monitor the system under the DHS.

Given illicit tobacco sales are often affiliated with organised crime, a State managed licencing system would appear more suitable, particularly enforcing unlicensed premises.

It would need to be assessed whether this would help the problem or create another level or bureaucracy which may cause further issues with illicit tobacco being sold.

The organisations that will get licensed are those selling legally. You won't catch the illicit dealers by having a registration scheme.

A licensing system is unlikely to reduce the sale of illicit (illegal) tobacco and potentially places an additional regulatory burden on new and existing business and potential cost. It may place an additional responsibility for the regulator to maintain an accurate database and potentially enforce licensing requirement.

I don't think a licensing scheme will work and the industry is already heavily regulated. It won't catch the illicit dealers

Additional Comments

The recent increase in e-cigarette sales with flavour ranges is a real concern for attracting minors to use nicotine. We saw a large increase in availability 12- 18 months ago although this seems to have reduced over the last 6 months (or it could have been moved out of sight) A ... licensing system would be encouraged to help maintain accurate details of product availability and provide an efficient way to distribute information. Clear process flows and contact people for referrals to other agencies would be beneficial.

Just to reiterate, I believe this issue is bigger than individual Councils. Remembering that we are Local Government designed to deal with our local issues. The issue of illicit tobacco which is imported from outside of Australia is a Federal matter with tax implications and should be dealt with at that level. Association with organized crime and drugs creates a risk to Council officers who are not trained or accustomed to working in this space.

Figure 1: Map DH Regions by Local Government Areas

