



Police Federation of Australia

The National Voice of Policing

SUBMISSION to the

Senate Standing Committees on Community Affairs

Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600

Via - [APH portal link - Senate | Community Affairs | Vaping Reforms Bill 2024](#)

THERAPEUTIC GOODS AND OTHER LEGISLATION AMENDMENT (VAPING REFORMS) BILL 2024

The Police Federation of Australia (PFA) is the national body representing the professional and industrial interests of Australia's more than 65,000 police officers, across all state, territory, and the federal police jurisdictions.

Membership as at: 31 December 2023	
Police Association of South Australia	4,702
Western Australia Police Union of Workers	6,817
Queensland Police Union of Employees	12,335
The Police Association of Victoria	17,623
Police Association of New South Wales	16,372
Police Association of Tasmania	1,478
Northern Territory Police Association	1,656
Australian Federal Police Association	4,037
Police Federation of Australia	65,020

I thank the Committee for the opportunity to make this submission.

The PFA believes that the intent of the Bill, to “prohibit the importation, domestic manufacture, supply, commercial possession and advertisement of non-therapeutic and disposable vaping goods”, is a matter for the Parliament and we therefore restrict our comments to a focus on the impact of serious and organised crime’s involvement in the illicit nicotine market in Australia, the flow on effects of that involvement to the wider community and our view on the necessity of a ‘whole of government’, law enforcement strategy which we believe needs to be adopted to combat the problem.

We respectfully suggest that the intent of the Bill will not be achieved without such a strategy.

The Parliamentary Joint Committee on Law Enforcement’s 2020 Report into its Inquiry into Illicit Tobacco opened with -

1.1 The illicit tobacco market has been a cause for growing concern for law enforcement agencies over the past decade, both in Australia and globally. Illicit tobacco is an issue of key concern to law enforcement and health agencies in Australia as it undermines tobacco control policies designed to reduce rates of smoking, and involves organised criminal gangs in the importation, manufacturing and distribution of illicit tobacco products.

That comment, contained in the Final Report tabled in Parliament just over three years ago, now appears to be a significant understatement based on the proliferation of illicit nicotine products since that time.

Over the past five years I have made a number of submissions and appeared before Inquiries into illicit tobacco and more recently vapes.

In 2019 I was invited to make a submission to and appeared before the above mentioned Parliamentary Joint Committee on Law Enforcement’s (PJCLE) Inquiry into Illicit Tobacco (Submission No. 179).

In November 2022 I was again invited to appear before the PJCLE to give further evidence, particularly in relation to the increasing role of serious and organised crime in the illicit tobacco and vapes trade. Following that appearance, I provided a further written submission to the Committee.

And in October 2023, I was invited to make a submission to and appear before the Senate Standing Committee on Community Affairs Inquiry into the Public Health (Tobacco and Other Products) Bill 2023 (Submission No. 16).

On each occasion I have made a submission or given evidence to an inquiry, I have highlighted the role of serious and organised crime in the sale and distribution of illicit nicotine products. In the ensuing almost five years since my 2019 submission to the PJCLE, that trade has grown exponentially and in at least two states, reports of serious arson attacks and also murders have now been linked to the illicit trade of such products.

In my follow up written submission to the November 2022 PJCLE I indicated that anecdotal evidence at the time, suggested that there were some 500 illicit retail outlets in Victoria, in excess of 230 in NSW and almost 200 in Queensland. More recent estimates, contained in various new reports, particularly as vapes have grown in popularity, suggest that those numbers of outlets are now in excess of 900 in Victoria, 800 in NSW and 600 in QLD. That alone is a frightening statistic.

Included in my 2023 submission into the Public Health (Tobacco and Other Products) Bill, I also provided links to 290 articles that I had sourced from a simple on-line search of only Herald Sun articles on Illicit Tobacco from 1 January 2023 – 6 October 2023. There have subsequently been numerous other in-depth stories on the illicit nicotine trade, including the involvement of serious organised crime, in all other media outlets.

Our long-term concerns about serious and organised crime have been confirmed by their now undisputed leading role in the importation, distribution and retail sale of illicit nicotine products. And as a growing concern, are the other forms of illegal activity, such as drug importation and distribution, that the revenue from illicit nicotine products has allowed these groups to engage in. This has also led to the inevitable power struggles between crime groups, resulting in personal violence and fire-bombings of tobacconist stores, particularly in Melbourne and Brisbane.

More recently, the legislative restriction of vapes has meant that these same groups have rapidly extended their interest to vape products, using their existing illicit supply chains and very recent reports suggest they have also branched into the importation of other illicit nicotine products. The consequence is an undermining of Australia's health policy, increased workload for border agencies and state authorities and further wealth generation by criminal entities.

Various agencies, both Commonwealth and State, have committed significant resources towards dealing with the issue with some success, but little to no impact on the illicit trade. The PFA continues to advocate for a more nationally coordinated strategy to disrupt the entire supply chain.

Such a strategy requires a “whole of government” approach that is intelligence informed and enabled by intense collaboration at all levels to ensure the maximum effect is achieved.

In practice it requires a range of agencies, including the Australian Federal Police (AFP), Australian Border Force (ABF) (including the Illicit tobacco Task Force (ITTF)), Australian Taxation Office (ATO), Home Affairs Intelligence, Australian Communications and Media Authority (ACMA) (including the Department of Communications & the Arts), AUSTRAC and the Australian Criminal Intelligence Commission (ACIC) at the Commonwealth level working hand in hand with State Police forces to enable the best effect on the ground. While illicit tobacco is available in every state and territory, the three key states, where it is agreed the illicit market has a significant hold, are Queensland, New South Wales and Victoria.

The above strategy is consistent with:

Recommendation 7 of the 2020 PJCLE Report:

The committee recommends the development of a National Illicit Tobacco strategy, in conjunction with state and territory police forces, as a co-ordinated, national law enforcement-led response that will:

- *outline the roles and responsibilities of all relevant stakeholders and agencies;*
- *clearly articulate the actions and stratagems to be implemented;*
- *include strategies for improved information and data collection and sharing; and*
- *be published as a subset of the National Drug Strategy, while retaining confidentiality for operational material.*

Action 8.9 of the Department of Health and Ageing’s, National Tobacco Strategy 2023-2030:

Continue to monitor the supply and use of illicit tobacco in Australia; continue enforcement efforts to prevent the illegal importation, supply and cultivation of tobacco; and enhance technology and staff capability to identify and respond to illicit trade in tobacco

Responsibility: *Australian Government, state and territory governments, NGO’s*

Action 9.8 from the National Tobacco Strategy:

Continue to monitor the supply and use of illicit e-cigarettes and other novel and emerging products in Australia; continue enforcement efforts to prevent illegal importation and supply; and enhance technology and staff capability to identify and respond to illicit trade

Responsibility: Australian Government, state and territory governments, NGO's

However, our concern is that such a national strategy has not been appropriately adopted.

Proposal to establish retail focussed illicit nicotine 'Strike Teams'

The PFA is cognisant of the current resourcing issues at the state, territory and federal police levels, but the involvement and cooperation of state and territory police is paramount to a successful national strategy. The only way that the Commonwealth can guarantee the involvement of police at the retail level, is by negotiating with and paying for the use of state police with at least the three (3) police jurisdictions earlier mentioned. Such an arrangement would allow those respective police forces to recruit against the officers' positions that are seconded to the national strategy as opposed to just expecting state police to provide officers to a national operation.

The PFA's view is that strike teams consisting of the following should initially be established in the three (3) jurisdictions.

- **State Police** - numbers to be negotiated by the Federal Government and respective State Governments;
- **Australian Federal Police** - for confiscation of criminal assets and offshore efforts in source countries;
- **Australian Border Force (ABF)/Illicit Tobacco Task Force (ITTF);**
- **ATO** - who also have responsibility for tobacco crops;
- **Australian Criminal Intelligence Commission (ACIC)** - for surveillance, intelligence and technical support including hearings where empowered;
- **ACMA/Department of Communications & the Arts** - disruption of websites and other social media platforms;
- **AUSTRAC** - tracking of funds; and
- **Commonwealth Director of Public Prosecutions (Federal Prosecution Service).**

The above agencies cover all the relevant areas of expertise to disrupt illicit nicotine operations but there is a need for a fully integrated and coordinated approach to activities. The Strike Teams'

deployment should be based on intelligence led disruption of retail outlets, targeting the outlets operating on behalf of key identified serious and organised crime groups as well as their distribution hubs.

The PFA believes we should not expect groups such as the Therapeutic Goods Administration, state &/or federal health officials and/or local council inspectors to be entering and policing premises that are operated and controlled by serious and organised crime groups.

The proposed Strike Teams should be established for a pre-determined period, but we suggest three (3) years.

As previously indicated, the above proposal is consistent with the Department of Health and Aging's National Tobacco Strategy 2023-2030 - Priority Area 8 '*Strengthen regulation to reduce the supply, availability and accessibility of tobacco products*'.

Licensing Framework –

In conjunction with the recommended strike teams' approach, a nationally consistent harmonised licensing framework should be developed for the sale of nicotine products.

In 2019 I suggested that targeting the 'point of sale' transactions of illicit products, would significantly disrupt illicit tobacco sales and by using a licensing regime, if a retailer could not prove the provenance of the product they are selling, then that would constitute an offence under the respective state or territory legislation. I also suggested this could be enhanced by complimentary national legislation.

Such a framework is consistent with Recommendation 5 of PJCLE Report:

5.65 The committee recommends the Australian Government explore options to develop a nationally consistent licensing regime for tobacco products, including tobacco product manufacturing supplies and equipment.

and Priority Area 8.5 of the Department of Health and Aging's National Tobacco Strategy 2023-2030:

8.5 Explore mechanisms to have a consistent licensing scheme in place covering all aspects of the tobacco supply chain in Australia, such as establishing a national framework for licensing schemes

Responsibility: Australian Government, state and territory governments

In 2019 I further recommended the use of infringement notices, with significant monetary penalties for offending retailers, suggesting it would act as an efficient method of local police intervention and as a real deterrent for anyone thinking of undertaking such sales. Such a strategy would provide a number of positive outcomes, including –

- Disrupting the retail ‘point of sale’ of such illicit products, including tobacco and vapes, by the introduction of significant monetary penalties for those selling the product;
- Becoming a major deterrent for others contemplating getting into the market of illicit sales;
- Because the fines could be via state-based legislation, any monetary penalties would go to the respective state, thus encouraging them to be more proactive in the enforcement of such illicit activity, particularly post the cessation of any federal funding to state police;
- It would make local police intervention an easier and less time-consuming task; and
- Would be an excellent intelligence gathering tool about the ‘point of sale’ of such illicit products and identifying who is involved and their potential links to serious and organised crime.

Such a proposed framework could leverage off similar liquor licensing regimes. Any premises that sells nicotine products should have to be licensed and legislation should contain the necessity for a nominated licensee for each respective premises, who has to undergo a Fit & Proper Person test, and anyone who works in such a premises selling nicotine products should have to undergo a responsible service of nicotine course. Such a course and subsequent penalties would lessen the likelihood of sales of nicotine products to under-age users, unlike the current illicit market which takes no such responsibility and is one of the key reasons why there has been a proliferation of vapes amongst young people.

We have also suggested that Crime Stoppers should be engaged as partners used in such a strategy as many of the public who are currently buying illicit nicotine products are doing so either unaware that they are breaking the law or running the risk of being caught due to the cheaper availability of illicit product.

By not appropriately policing the illicit market we are almost normalising criminal activity in the black market.

I would be happy to appear before the Committee to expand on any aspects of this submission.

Sincerely yours

Scott Weber APM
Chief Executive Officer

11 April 2024