

Parliament of Victoria

Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024

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Bill Brief

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Table of Contents

Executive Summary	1
Introduction	2
1 Background	3
<i>What is illicit tobacco and what are its impacts?</i>	4
<i>Current regulation</i>	5
<i>What isn't working?</i>	7
<i>Calls for change</i>	8
2 Second reading speech	8
3 The Bill	9
4 Stakeholder responses to the Bill	15
5 Other jurisdictions	17
<i>Types of licensing schemes</i>	17
<i>Jurisdictional comparison</i>	18
<i>Recent legislative changes</i>	19
6 Key issues	20
<i>The tobacco tax gap</i>	20
<i>'Tobacco wars'</i>	23
<i>Smoking trends</i>	24
Reference List	28
<i>Legislation</i>	28
<i>References</i>	28

Bill information

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Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library's Infolink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

Figures

Figure 1	Cooperation between state and federal enforcement agencies, prepared by the Public Accounts and Estimates Committee	Page 6
Figure 2	Timeline of federal tobacco excise increases per cigarette stick, 2006 to 2024	Page 21
Figure 3	Tobacco tax gap, Australia, 2016-17 to 2022-23	Page 22
Figure 4	Net and gross tobacco tax gap, Australia, 2016-17 to 2022-23, as a percentage of total domestic tobacco market	Page 22
Figure 5	Percentages of people in Victoria aged 18 and over who smoke daily, by age group, 2007 to 2022-2023	Page 26
Figure 6	Percentages of people in Australia over the age of 14, smoking and/or vaping behaviours, February 2018 to March 2023	Page 26
Figure 7	Percentages of people in Australia aged 14 to 17, smoking and/or vaping behaviours, February 2018 to March 2023	Page 27

Tables

Table 1	Seizures and convictions resulting from the Illicit Tobacco Taskforce, 1 July 2018 to 31 October 2024	Page 5
Table 2	New definitions to be inserted into the <i>Tobacco Act 1987</i>	Page 10
Table 3	Illicit tobacco offences—clause 17 substitutes section 11A in the <i>Tobacco Act 1987</i> to establish four new ‘illicit tobacco offences’	Page 13
Table 4	Types of licensing scheme	Page 17
Table 5	Jurisdictional comparison of tobacco licensing schemes	Pages 18-19
Table 6	Percentages of people aged 18 and over who smoke daily, by state/territory, 2001 to 2022-23	Page 25

Executive Summary

Victoria's tobacco regulation scheme has been the subject of recent scrutiny on a number of fronts, from legislation to health promotion to law enforcement. An increase in illicit tobacco within the tobacco market and an extended spate of arson attacks on tobacconists have highlighted both organised crime's involvement and the need for reform. Some fear that an uptick in criminal activity and the availability of illicit tobacco at discounted prices are undermining public health efforts.

In 2022 Better Regulation Victoria (BRV) recommended that Victoria introduce a licensing scheme for tobacco retailers and wholesalers, which would bring the state into line with other Australian jurisdictions. The Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024 seeks to establish such a scheme as well as a new regulator to administer the scheme. Among other provisions, the Bill would also grant new powers for Victoria Police to assist in combatting illicit tobacco activity and heavier penalties for non-compliance.

This Bill Brief details the background to the Bill's introduction, including the current regulatory settings for tobacco products and vaping products. It also provides a summary of the second reading speech, key provisions of the Bill, stakeholder responses and current or proposed schemes in other jurisdictions. The final section explores some of the key issues, including the tobacco tax gap and the so-called 'tobacco wars', along with recent data on trends in smoking behaviours.

Introduction

Victoria's tobacco regulation scheme has been the subject of recent scrutiny on a number of fronts, from legislation to health promotion to law enforcement. An increase in illicit tobacco sales and an ongoing spate of arson attacks on tobacconists throughout the state has highlighted the need for better data on where tobacco is being sold, as well as the size of the illicit tobacco market. The arson attacks are touted as a symptom of organised crime's involvement in fuelling the illicit tobacco market through illegal imports and the appeal of substantially discounted retail prices. In addition to the safety concerns around collateral damage from arson, some health experts fear, following decades of declining smoking rates, that this is undermining previously successful public health efforts.

Tobacco licensing schemes are suggested as useful tools for countering illicit tobacco. Every Australian state and territory other than Victoria either operates a licensing scheme or is in the process of legislating one, either for tobacco retailers alone or including wholesalers as well. In 2022, Better Regulation Victoria (BRV) completed a report titled *Addressing Illicit Tobacco*, in which the Commissioner for Better Regulation, Anna Cronin, recommended that Victoria introduce its own licensing scheme. Following this report (which was only publicly tabled in February 2024), the Victorian Government stated in March 2024 that it would legislate a licensing scheme before the end of the calendar year. A subsequent parliamentary inquiry into tobacco and vaping controls, which reiterated many of BRV's recommendations, provided further impetus for reform.

In keeping with recommendations from each of those reviews, the Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024 seeks to create a licensing scheme for wholesalers and retailers of tobacco products. It would also install a 'fit and proper person' test to ensure only responsible people are afforded licences to operate. A new regulator would be established to administer the scheme and ensure compliance, supported by newly appointed licensing inspectors. Victoria Police would have more powers to assist licensing inspectors in combatting illicit tobacco activity. New penalties for breaches will also be introduced.¹

There has been a considerable lead-in time to the Bill's introduction, following calls from all sides of the political spectrum for a licensing scheme to be introduced. This year has also seen considerable activity on this issue in other states and at the federal level. Federal legislation around vaping controls means several vaping and e-cigarette provisions in Victorian legislation have been made redundant and would be repealed from state legislation, while 2024 has also seen new legislation alter tobacco licensing schemes in Queensland, New South Wales and South Australia.

This Bill Brief details the background to the Bill's introduction, including the current regulatory settings for tobacco products and vaping products, as well as the BRV review commissioned by the Victorian Government. The paper then provides a summary of the second reading speech and details key provisions within the Bill. A summary of stakeholder responses to the Bill is also included, as is a brief summary of schemes operating or proposed in other jurisdictions. The final section explores some of the key issues, including the tobacco tax gap, the so-called 'tobacco wars' and recent trends in smoking behaviours.

¹ J. Allan, Premier of Victoria (2024) [Tough new laws to smoke out tobacco crime lords](#), media release, 12 November.

1 | Background

Under Victoria's current tobacco regulation regime, no licence is required for the wholesaling or retailing of tobacco products. This contrasts with every other state and territory, where licensing schemes either are legislated or proposed in legislation still before parliament. This has been a point of recent discussion, due to a persistent string of attacks on tobacconists in Victoria and other jurisdictions. Media estimates indicate that, since March 2023, there have been 120 tobacco stores targeted in arson attacks as part of an ongoing turf war between organised crime networks trafficking illicit tobacco products.²

Several reviews and ongoing media reporting have highlighted the reality of policing a rising proliferation of illicit tobacco within the community, including state and federal parliamentary inquiries. Issues often debated include:

- a large price gap between illicit and lawful tobacco products, meaning a lucrative business for organised crime trafficking illicit tobacco products;
- a large number of individually operated pop-up tobacconists selling black market tobacco, creating a large tobacco tax gap;
- a lack of data on where tobacco is being sold, by whom, in what form and in what quantities; and
- a regulatory system that relies on local government officers administering the *Tobacco Act 1987* on delegation of the Department of Health, with limited ability for police to intervene.

The proposed legislation follows a 2022 review of illicit tobacco regulation by Better Regulation Victoria (BRV), commissioned by then Minister for Regulatory Reform Danny Pearson in 2021. Focusing specifically on how the framework applied to illicit tobacco, the review compared Victoria's approach with those of other jurisdictions and made recommendations for improvement.³ The review chiefly recommended a number of actions for the government:

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

More recently, the Victorian Public Accounts and Estimates Committee (PAEC) undertook an inquiry into vaping and tobacco controls, tabling its final report in August 2024. The inquiry reiterated many of BRV's findings and recommendations, pointing to the need for a licensing scheme that addresses the impact of organised crime and illicit tobacco on the industry and community.⁵ The committee specifically called for a 'positive licensing scheme' that would include high annual licence fees, restrictions on the number and location of licences granted, adequate data collection from licensed retailers and a public database (see 'Other jurisdictions' section for more details on licensing scheme types).⁶

² N. Bucci (2024) 'Burning out: how Australia's bid to cut smoking rates exploded into suburban tobacco wars', *The Guardian Australia*, 2 November.

³ D. Pearson, Minister for Regulatory Reform, to A. Cronin, Commissioner for Better Regulation (2021) 'Request for advice on Victoria's approach to illicit tobacco regulation', correspondence, 4 October.

⁴ Better Regulation Victoria (2022) *Addressing Illicit Tobacco: Review into Victoria's approach to illicit tobacco regulation*, Melbourne, BRV, p. 17.

⁵ Public Accounts and Estimates Committee (2024) *Vaping and tobacco controls*, final report, Melbourne, The Committee, August, p. 62.

⁶ *ibid.*, p. 62.

What is illicit tobacco and what are its impacts?

Illicit tobacco comes in many forms, including cigarettes, cigars, loose-leaf tobacco ('chop-chop') and other tobacco leaf and plant matter. The Australian Taxation Office (ATO) defines tobacco as illicit if it is:

- grown, manufactured and/or produced in Australia without an appropriate excise licence, even if the tobacco is intended for personal use; or
- imported into the domestic market without customs duty being paid.⁷

The BRV report explains that there are two forms of illicit tobacco: unbranded tobacco, either as loose-leaf tobacco or tubes pre-filled with illicit loose-leaf tobacco; and manufactured tobacco products, which includes counterfeit tobacco products (produced illegally, and sold as imitations of known brands but not by the trademark owner), contraband tobacco products (produced legitimately but diverted from the legal market) or 'illicit whites' (produced with the purpose of being sold illegally).⁸

BRV attributes a number of harms to the illicit market. These include undermining public health efforts to reduce smoking rates by undercutting legal suppliers and creating more demand through substantially discounted prices.⁹ Prices vary between brands and types of tobacco sold, but PAEC estimates place the daily cost for smokers of illicit cigarettes at about 41 per cent (\$8.76 per day) of the average daily cost of legal cigarettes (\$21.76 per day).

The health impacts of smoking are well documented. Smoking-related illness had caused 20,482 deaths across Australia in 2018,¹⁰ with the Victorian share of those estimated to be approximately 4,400 deaths per year.¹¹ The PAEC inquiry also found that the effects of smoking are felt disproportionately across the community, stating 'smokers are more likely to live in disadvantaged areas, in regional or remote areas rather than major cities, have a disability, experience unemployment and have less formal education than non-smokers'.¹² In particular, the report also noted that Aboriginal and Torres Strait Islander communities, having a younger average population and higher smoking rates, were especially at risk of smoking-related illness.¹³ According to the Cancer Council Victoria's submission to the inquiry:

Illicit tobacco reduces the power of tax increases to encourage disadvantaged Victorians to reduce consumption or quit altogether. Higher tobacco consumption among disadvantaged Victorians makes them disproportionately more prone to developing tobacco-related illnesses. In this way, illicit trade in tobacco exacerbates social inequity and contributes to the intergenerational transfer of poverty.¹⁴

Tackling the illicit tobacco market

Combatting illicit tobacco is a shared responsibility between the Australian Government and state and territory governments.¹⁵ At the national level, these efforts are led by Australian Border Force, in collaboration with the Department of Home Affairs and a number of agencies including the Australian Criminal Intelligence Commission and the ATO.¹⁶ Federally

⁷ Australian Taxation Office (2024) 'Illicit tobacco', ATO website, 14 November.

⁸ Better Regulation Victoria (2022) op. cit., p. 4.

⁹ Better Regulation Victoria (2022) op. cit., p. 6; C. Puljevic et al. (2024) 'Smoking out Australia's growing illicit tobacco market: current trends and future challenges', *International Journal of Drug Policy*, 127, May, pp. 3–4.

¹⁰ Better Health Channel (Unknown) 'Smoking statistics', BHC website.

¹¹ Sutton, B., Chief Health Officer (2018) 'Tobacco-free living', in *Your health: report of the Chief Health Officer, Victoria, 2018*, DoH website.

¹² Public Accounts and Estimates Committee (2024) op. cit., p. 13.

¹³ *ibid.*, p. 84–85.

¹⁴ Cancer Council Victoria (2024) 'A submission from Cancer Council Victoria to the Public Accounts and Estimates Committee inquiry into vaping and tobacco controls', Inquiry into vaping and tobacco controls, Melbourne, Public Accounts and Estimates Committee, April, p. 29.

¹⁵ Department of Health and Aged Care (2023) 'Smoking and tobacco laws in Australia', DHAC website.

¹⁶ Australian Border Force (2024) 'Illicit Tobacco Taskforce', ABF website, 22 September.

the Illicit Tobacco Taskforce (ITTF) was established in July 2018 to coordinate a national approach to combatting organised crime syndicates dealing in illicit tobacco. Table 1 details the total seizures and convictions resulting from the ITTF's work over six years. During that period the ITTF also located, seized and destroyed 627 acres of illicit tobacco crops.¹⁷

The ITTF works with state agencies such as Victoria Police, which has spearheaded Victorian efforts through Taskforce Lunar.¹⁸ In evidence to the PAEC inquiry, Victoria Police revealed that in the six months between November 2023 and April 2024 its operations had resulted in 52 individuals arrested for arson, extortion and associated criminal offending and 71 people charged with unlawful possession offences, as well as recovering 600,000 vapes, 3.25 million cigarettes and 1 tonne of loose tobacco.¹⁹

Table 1: Seizures and convictions resulting from the Illicit Tobacco Taskforce, 1 July 2018 to 31 October 2024²⁰

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24	2024–25 (up to 31 Oct 2024)	Total
Number of seizures	8	22	23	21	16	81	5	176
Amount seized and destroyed (kilograms)	41,400	130,656	109,186	110,349	66,711	16,687	4,131	479,120
Cigarettes seized (sticks)	Nil	11,480	5.50 million	1.66 million	1.21 million	13.38 million	37,480	21.80 million
Estimated excise duty (\$million)	42	171	178	176	111	45	8	731
Number of convictions	4	4	1	1	6	11	0	27

The ATO estimates that the tobacco market (both lawful and illicit) contracted 37 per cent between 2015–16 and 2022–23.²¹ However, the volume of illicit tobacco that people are attempting to import has grown, as has the share of the retail market made up by successful illicit imports. See 'Tobacco tax gap' in the 'Key issues' section for more detail on estimates of the size of the illicit tobacco market.

Current regulation

Victoria

The principal Act for tobacco regulation in Victoria is the **Tobacco Act 1987**. Currently, the Act is administered by the Minister for Health, and its functions fall under the purview of the Department of Health. It provides for controls relating to tobacco and e-cigarette products, including restricting where and when smoking is allowed, as well as establishing the Victorian Health Promotion Foundation (VicHealth).²²

¹⁷ Australian Taxation Office (2024) 'ATO action to combat illicit tobacco', ATO website, 31 October.

¹⁸ Australian Taxation Office (2024) 'VIPER Taskforce execute 27 warrants and lay Commonwealth charge of directing a criminal organisation', media release, 22 October.

¹⁹ Public Accounts and Estimates Committee (2024) op. cit., p. 45

²⁰ Australian Taxation Office (2024) 'Tobacco tax gap: latest estimates and findings', ATO website, 31 October.

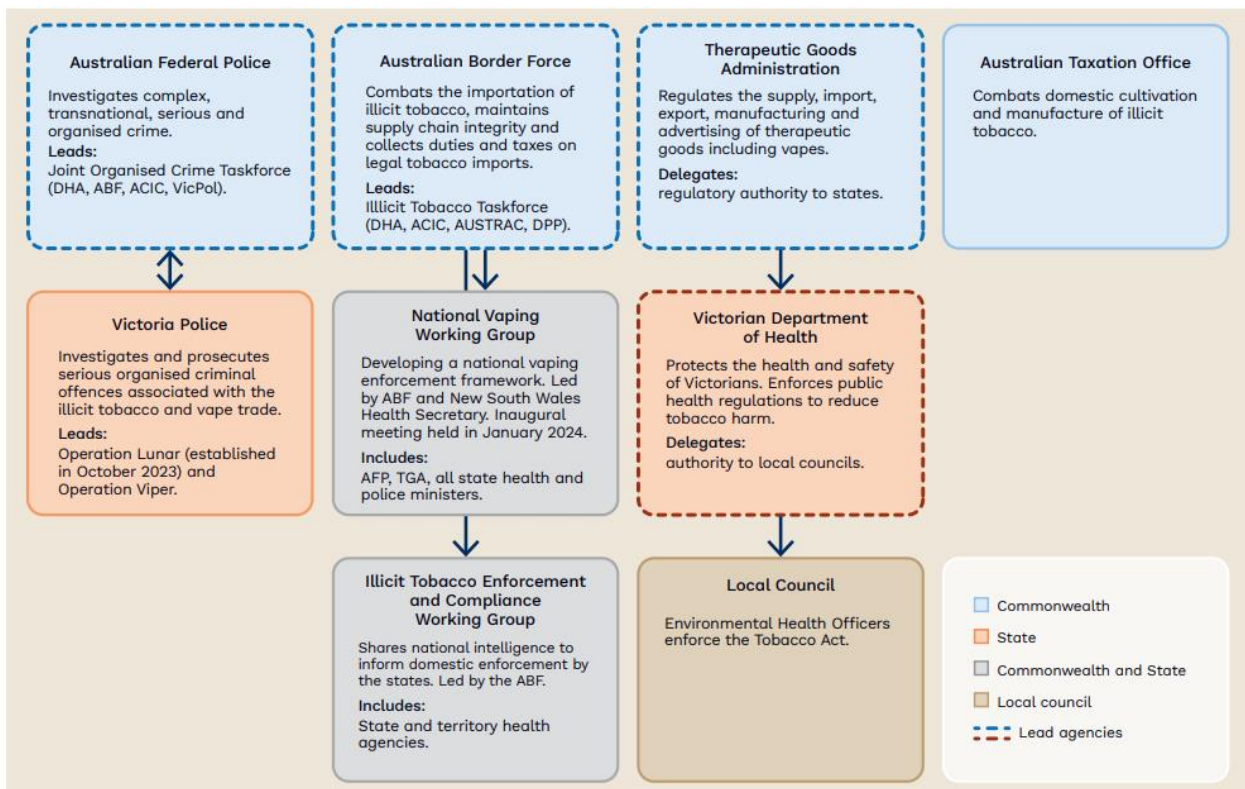
²¹ Australian Taxation Office (2024) op. cit.

²² *Tobacco Act 1987* (Vic)

The Act also provides for the appointment of inspectors to enforce the Act’s provisions; this function is delegated by the department to local councils, usually environmental health officers.²³ The Municipal Association of Victoria (MAV) administers service agreements between the Victorian Government and local councils to deliver state-funded tobacco and e-cigarette control activities.²⁴ This partnership between state and local governments allows council inspectors to ‘undertake education and enforcement activities with thousands of tobacco retailers, eating establishments and licensed premises’.²⁵ According to the MAV, ‘While there are no specific actions required by councils under the Tobacco Act, council environmental health officers are automatically authorised to enforce its provisions’.²⁶ Victoria Police undertakes enforcement of illicit tobacco offences where it concerns organised crime, and this is done in cooperation with federal agencies, such as Australian Border Force (see Figure 1).

Health strategies are also in place, with Victoria aiming to curb smoking and e-cigarette dependence through the *Public Health and Wellbeing Plan 2023–27*. Many of these strategies are intended to align with the Federal Government’s *National Tobacco Strategy 2023–2030* goals.

Figure 1: Cooperation between state and federal enforcement agencies, prepared by the Public Accounts and Estimates Committee²⁷



Source: Public Accounts and Estimates Committee.

Federal settings

Victorian tobacco regulation is also informed by overarching federal policy and legislation. Excise and duties are employed at a national level to make tobacco products less

²³ Better Regulation Victoria (2022) op. cit., p. 12

²⁴ Municipal Association of Victoria (date unknown) ‘Tobacco and e-cigarettes’, MAV website.

²⁵ ibid.

²⁶ Municipal Association of Victoria (2023) *Local Government Tobacco and E-cigarette Control Activities—1 July 2022 to 30 June 2023: final report*, MAV, December, p. 6.

²⁷ Public Accounts and Estimates Committee (2024) op. cit., p. 40.

affordable, with excise rates based on average weekly ordinary-time earnings (see ‘The Tobacco tax gap’ in the ‘Key issues’ section for more information).²⁸

In 2018, the *Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018* (Cth), created a new tobacco offence regime with increased penalties under the *Taxation Administration Act 1953* (Cth) in order to combat illicit tobacco.²⁹

Until recently, the *Tobacco Advertising Prohibition Act 1992* (Cth) banned advertising encouraging people to smoke tobacco, and the *Tobacco Plain Packaging Act 2011* (Cth) required all tobacco products to be displayed in plain packaging. In 2023, this regulatory framework was consolidated into the *Public Health (Tobacco and Other Products) Act 2023* (Cth).³⁰ Tobacco falls under one scheme due to its classification as a consumer good, while e-cigarettes are regulated separately as they are classified as a pharmaceutical product.³¹

What isn’t working?

Enforcement

In 2022–23, the MAV reported that, from 2,628 inspections of tobacco retailers, e-cigarette retailers and specialist retailers, there had been only six fines issued in that year and no prosecutions, while 479 breaches of the Tobacco Act had been substantiated and 362 verbal or written warnings given.³² The PAEC inquiry into vaping and tobacco controls found that the lack of enforcement actions from the department and local councils was due to a range of measures, including ‘deficiencies in the current legislation, safety concerns and lack of resources’.³³

BRV noted that a disadvantage of the Department of Health being the lead regulator was that it lacks ‘experience dealing with organised crime and enforcement around criminal activities’ and ‘existing inter-agency arrangements with Victoria Police’.³⁴ At present, ‘The Department does not, and is not obligated to, undertake enforcement in relation to illicit tobacco’.³⁵ BRV also found that restrictive powers of entry and seizure were hampering enforcement.³⁶

While Victoria Police assists in the enforcement of tobacco regulation through tackling organised criminal activity through the *Drugs, Poisons and Controlled Substances Act 1981*, according to PAEC, ‘There is currently no single agency with clear accountability for the enforcement of [laws concerning] illicit tobacco and e-cigarettes in Victorian wholesale, retail and commercial settings’.³⁷ The committee also found that the police force’s status quo for enforcing illicit tobacco legislation is ‘a costly, resource intensive exercise, that diverts public funding away from community safety initiatives and other public order matters’.³⁸

Lack of data

Without a licensing scheme providing data on retailers and wholesaler activity, BRV also noted ‘the need for further data collection about tobacco supply and consumption’ as, without it, ‘it is difficult to get an accurate assessment of the tobacco market and consumption in Australia’, which ‘limits the ability of Governments to effectively respond to

²⁸ Department of Health and Aged Care (2023) ‘Smoking and tobacco laws in Australia’, op. cit.

²⁹ Australian Taxation Office (2024) ‘ATO action to combat illicit tobacco’, ATO website, 31 October 2024.

³⁰ *Public Health (Tobacco and Other Products) Act 2023* (Cth)

³¹ Public Accounts and Estimates Committee (2024) op. cit., p. 51.

³² Municipal Association of Victoria (2023) op. cit., p. 10.

³³ Public Accounts and Estimates Committee (2024) op. cit., p. 42.

³⁴ Better Regulation Victoria (2022) op. cit., p. 28.

³⁵ *ibid.*, p. 28.

³⁶ *ibid.*, p. 33.

³⁷ Public Accounts and Estimates Committee (2024) op. cit., p. 55.

³⁸ *ibid.*, p. 47.

illicit tobacco concerns'.³⁹ Licensing schemes, such as those proposed in Victoria and New South Wales, are seen as a prerequisite for a more complete dataset from which to plan further regulatory actions, given the ability to quantify the problem of illicit tobacco more readily.⁴⁰ Comprehensive data collection in a public database was a key recommendation (10) of the PAEC inquiry in vaping and tobacco controls.⁴¹ See the 'Tobacco tax gap' in the 'Key issues' section for more detail.

Calls for change

A licensing scheme has been on the cards for quite some time. PAEC's inquiry report notes that the World Health Organization recommended licensing schemes for tobacco as far back as 2003, while the Cancer Council Victoria has also been advocating for one since that time.⁴²

Since a draft version of BRV's report was released through a report by *The Age* in October 2023, there have been many calls for the introduction of a licensing scheme.⁴³ The aim of a scheme would be to stifle the influence and profits of organised crime acquired through illicit tobacco. The Liberal-National coalition sought to introduce a Bill for that purpose on 29 October 2024, but leave was not granted to introduce the Bill.⁴⁴ Calls for a licensing scheme have also come from Nationals and Greens Members through adjournment matters.⁴⁵ The most recent adjournment question about a tobacco licensing scheme, raised in the Legislative Council on 16 October 2024 by Nationals Member Gaele Broad, was answered by the Premier on 28 October, confirming that legislation for a licensing scheme would be introduced before the end of 2024.⁴⁶

2 | Second reading speech

The Minister for Casino, Gaming and Liquor Regulation, Melissa Horne, introduced the Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024 on Tuesday, 12 November 2024, before immediately incorporating the statement of compatibility and second reading speech into Hansard. In her speech, the minister said that the 'reforms will better protect businesses who are operating legitimately and will ensure greater oversight of the tobacco retail and wholesale industries in Victoria'.⁴⁷

The Bill, said Horne, responds 'to significant community concerns regarding illicit tobacco and the prevalence of tobacco businesses suspected of involvement in its distribution across the state'.⁴⁸ She said the regulatory settings would be strengthened and that the new laws would limit the availability of illicit tobacco, allow for strict punishments for those caught in breach, deter unsuitable people from participation in the sector and 'support Victoria Police and other law enforcement efforts to combat serious and organised crime'.⁴⁹

³⁹ Better Regulation Victoria (2022) op. cit., p. 9.

⁴⁰ J. Norman (2024) 'Should the tobacco tax be reduced? MPs speak out as cigarette prices soar and illegal black market spirals 'out of control'', *ABC News*, 26 October.

⁴¹ Public Accounts and Estimates Committee (2024) op. cit., p. xx

⁴² *ibid.*, p. 58.

⁴³ L. Abbott et al. (2023) 'Chop chop boom sends state tobacco plans up in smoke', *The Age*, 27 October.

⁴⁴ Liberal Victoria (2024) *Tobacco crackdown: licensing scheme, fines up to \$1 million*, media release, 29 October.

⁴⁵ T. Read (2024) 'Adjournment: Tobacco licensing scheme', *Debates*, Victoria, Legislative Assembly, 22 February, p. 591.

⁴⁶ J. Allan, Premier of Victoria (2024) 'Adjournment matter 1196: Tobacco licensing', answer to Gaele Broad question from 16 October 2024 in Legislative Council, Parliament of Victoria Questions Database, 28 October.

⁴⁷ M. Horne, Minister for Casino, Gaming and Liquor Regulation (2024) 'Second reading speech: Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024', *Debates*, Victoria, Legislative Assembly, 12 November, p. 4372.

⁴⁸ *ibid.*, p. 4372.

⁴⁹ *ibid.*, p. 4372.

The minister indicated that, together with BRV's recommendations, the Bill has taken into account findings of the recent PAEC inquiry into tobacco and vaping controls. The legislation has factored in priorities of the National Tobacco Strategy, which is designed for the years 2023 to 2030 and which prioritises a reduction in smoking and vaping prevalence within the community. It also builds upon recent reforms to vaping product accessibility through the federal *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (Cth).

The second reading placed an emphasis on streamlining the enforcement and compliance aspects of the sector through the administration of the licensing scheme by a new regulator within the Department of Justice and Community Safety, which will take over those responsibilities from the Department of Health. The Department of Health will remain responsible for the Tobacco Act and its function of 'health promotion, smoking cessation, enforcement of smoke free area offences and preventing broader tobacco and smoking harms'.⁵⁰

Strong sanctions was another key point, with the minister noting that the Bill contains 'the strongest illicit tobacco offences in the country'.⁵¹ She added that the enforcement of the offences will be 'supported by cooperation between the regulator, Victoria Police and other authorities', as well as supporting further efforts by federal agencies.⁵² In addressing the lack of information currently available to around the tobacco retailing and wholesaling market, the second reading speech emphasised the role of the proposed 'Register of Licensed Tobacco Suppliers' in providing reliable data on each licence, the businesses trading under the licences, their addresses and other prescribed information.

The second reading speech indicated that the Bill brings 'Victoria into line with other states and territories'. The minister said the Bill is aimed at stifling the illicit tobacco industry to 'address the harms caused' but also at negating the 'significant health impacts of smoking on Victorians'.⁵³

3 | The Bill

The Bill principally amends the Tobacco Act to introduce a licensing scheme for the wholesaling and retailing of tobacco products. This involves a number of provisions that necessitate consequential amendments to several further Acts including the *Confiscation Act 1997*, the *Drugs, Poisons and Controlled Substances Act 1981* and the *Spent Convictions Act 2021*. This section is not intended to provide an exhaustive summary of the Bill's provisions but is meant as a guide to the main provisions.

The Bill is separated into two main parts introducing new provisions, with part 2 establishing the licensing scheme and part 3 introducing reforms around offences and enforcement. Part 5 seeks to repeal outdated provisions around e-cigarette retailers and specialist tobacconists that are no longer required due to the new licensing scheme and federal vaping legislation.

Establishment of a licensing scheme for tobacco retailers and wholesalers

Clause 4 seeks to replace the Tobacco Act's purposes section to account for the new licensing scheme and associated amendments. The new purposes include establishing a licensing scheme to regulate the lawful supply of tobacco products; and creating offences in relation to licensing.

⁵⁰ *ibid.*, p. 4372.

⁵¹ *ibid.*, p. 4372.

⁵² *ibid.*, p. 4373.

⁵³ *ibid.*, p. 4374.

Definitions

A number of new definitions are introduced into the Tobacco Act, including but not limited to the definitions listed in Table 2.⁵⁴

Table 2: New definitions to be inserted into the *Tobacco Act 1987*

Illicit tobacco	A tobacco product that does not comply with product or packaging requirements in parts 3.3 and 3.4 of the <i>Public Health (Tobacco and Other Products) Act 2023</i> (Cth); or a tobacco product that does not comply with a requirement of a federal law prescribed by the regulations.
Licence	A licence to sell tobacco products in Victoria. Related definitions include ‘licence application’, ‘licensed tobacco premises’, ‘licensee’, ‘disqualified person’ and ‘licensing inspector’.
Regulator	The regulator will administer a new licensing scheme for tobacco wholesalers and retailers. The new definition indicates it will be the head of the department, administered by the minister who has responsibility for new part 3AA (the new licensing scheme provisions) of the <i>Tobacco Act 1987</i> , which will be determined in the general orders.
Suitability offence	An offence that may result in a determination by the regulator that a person is not a suitable person to hold or continue to hold a licence.
Tobacco supply business	A tobacco retailing or wholesaling business, or any other business that involves the sale of tobacco.

The regulator and licensing inspectors

The **regulator** will have a number of functions, powers and delegations, including the following:

- licensing functions under new part 3AA (see below in ‘The licensing scheme and the application process’);
- investigatory and enforcement functions;
- promotion, monitoring and enforcement of compliance by tobacco supply businesses with the Tobacco Act and the regulations;
- detecting and responding to contraventions of the Act and regulations;
- advising the minister (currently the Minister for Health in the general orders) on the operation of the Act and regulations; and
- any other functions conferred on the regulator.⁵⁵

The Bill provides for the regulator’s information-gathering requirements in administering the new licensing scheme, together with its ability to receive necessary information from the Chief Commissioner of Police to help in its duties.⁵⁶

The regulator would be able to appoint ‘**licensing inspectors**’, a new role introduced to support the work of the regulator in managing the licensing scheme. Clause 10 makes a distinction between a ‘licensing inspector’ and the existing role of ‘inspector’. This is in order ‘to differentiate between licensing inspectors appointed under new section 35D, and existing

⁵⁴ *Tobacco Act 1987*, cl 5

⁵⁵ *ibid.*, cl 12, new section 35.

⁵⁶ *ibid.*, cl 12, new section 35C.

inspectors appointed under section 36 of the [Tobacco Act] or section 29 of the *Public Health and Wellbeing Act 2008*.⁵⁷

The licensing inspectors will ‘promote, monitor and enforce compliance by tobacco supply businesses with this Act and the regulations’, will have ‘all the powers necessary to perform the licensing inspector’s functions’ and will be able to bring proceedings (on approval of the regulator) for offences against the Act.⁵⁸

Victoria Police will also have more powers to assist the regulator and licensing inspectors, with clause 20 allowing police officers, as well as licensing inspectors, to apply for and be granted search warrants in relation to contraventions of the Act. Clause 28, which substitutes a new section 38, will allow police officers, in addition to licensing inspectors, to issue infringement notices relating to a range of offences in the Act, including ‘licensing offences’ such as illicit tobacco offences (outlined in a new definition of ‘licensing offence’ in clause 32).⁵⁹

The licensing scheme and the application process

New part 3AA, as introduced by clause 8, provides for a new licensing scheme for tobacco retailers and wholesalers. The objectives of the licensing scheme will be:

- the safeguarding of the suitability of licensed retailers and wholesalers of tobacco products;
- the promotion and enforcement of compliance with controls on the lawful sale and promotion of tobacco products; and
- the upholding of the integrity of the licensing scheme by deterring unlawful conduct.⁶⁰

The Bill stipulates that anyone over the age of 18—either for themselves or on behalf of a partnership—or a body corporate can apply for a licence, unless they are disqualified (for reasons outlined below). Applicants seeking to sell tobacco will be required to apply to the regulator and provide the following:

- names and addresses of the applicant (and associates)
- the proposed premises for their business
- any prescribed information (to be determined); and
- a prescribed fee.⁶¹

The regulator will be tasked with determining if an applicant is suitable to hold a licence, with the ability to draw upon Victoria Police resources and information, such as a criminal history check, to do so. Along with issuing licences, the regulator will be tasked with maintaining a ‘Register of Licensed Tobacco Suppliers’, which will be published on the regulator’s website.⁶²

The Bill also includes provisions for the regulator to:

- vary a licence—such as any category or condition of the licence—where appropriate;
- relocate a licence to a new premises; and
- transfer an existing licence to another person or corporation (‘a transferee’).

Copies of licence applications and transfer applications received by the regulator must be given to the Chief Commissioner of Police.⁶³ The Chief Commissioner may object to those applications on various grounds as they see fit, including whether they judge the applicant to be a suitable person to hold a licence.⁶⁴ The Chief Commissioner can also ‘make

⁵⁷ ‘Explanatory Memorandum’, Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024, p. 31.

⁵⁸ *Tobacco Act 1987*, cl 12, new section 35F.

⁵⁹ *ibid.*, cls 20, 28.

⁶⁰ *ibid.*, cl 7.

⁶¹ *ibid.*, cl 8, new section 34A.

⁶² *ibid.*, cl 8, new section 34ZV.

⁶³ *ibid.*, cl 8, new section 34T.

⁶⁴ *ibid.*, cl 8, new section 34U.

representations' to the regulator regarding suspension, relocation and variation applications.⁶⁵

Cancellation or suspension of a licence

Cancellation or suspension of a licence can be requested by a licensee, the Chief Commissioner of Police, an owner of a licensed tobacco premises or a mortgagee of a licensed tobacco premises.⁶⁶ Applications must be made to the regulator. If the regulator seeks to cancel a licence, it may also seek to disqualify that licensee from holding a licence for a period of up to five years.⁶⁷

Inspection and enforcement powers

The Bill proposes new powers for licensing inspectors to enforce the licensing scheme. A licensing inspector may request a person to provide their name and address if they believe a licensing offence has occurred, will occur or is occurring.⁶⁸ Licensing inspectors may enter licensed tobacco premises (or a vehicle associated with the business) for the purposes of performing licensing inspector functions under certain conditions, including hours of entry and consent of the owner or occupier.

New section 35K outlines the powers of the licensing inspectors in the course of monitoring compliance and if they believe a licensing offence has taken or is taking place. A licensing inspector can:

- require the production of goods, documents, products, equipment or other things;
- inspect any document, equipment, product, good or other thing;
- take copies of, extracts from, or notes relating to any document;
- seize any document, equipment, tobacco product, vaping goods or other thing for the purpose of obtaining evidence of the commission of a licensing offence; and
- require by written notice the attendance of a person before the licensing inspector at a specified time or place to answer questions and provide information with respect to any regulated activity.⁶⁹

Licensing inspectors may be assisted by any person in undertaking these duties, with the explanatory memorandum using the examples of a police officer or a locksmith.⁷⁰

New section 35L also provides for licensing inspectors and police officers to be able to apply to a Magistrate for a search warrant. A search warrant would authorise:

... the licensing inspector or police officer to enter the premises named in the warrant, if necessary, by force; and search for, seize, secure against interference, or inspect and make copies of, or take extracts from any document, equipment, tobacco product, vaping good or other thing which the licensing inspector or police officer believes, on reasonable grounds, to be connected with the alleged licensing offence.⁷¹

Several conditions apply in the exercising of these powers as well as the treatment of items searched for and seized, which are detailed in the Bill.

Offences

The Bill will insert several new 'licensing offences' relating to licensing into the Tobacco Act. These are joined by a number of new 'illicit tobacco offences', which are detailed in clause 17 and carry greater severity.

⁶⁵ *ibid.*, cl 8, new section 34V.

⁶⁶ *ibid.*, cl 8, new section 34L.

⁶⁷ *ibid.*, cl 8, new section 34ZT.

⁶⁸ *ibid.*, cl 37, new section 35H.

⁶⁹ 'Explanatory Memorandum', Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024, p. 43.

⁷⁰ *ibid.*, p. 43.

⁷¹ *ibid.*, p. 43.

Licensing offences

New licensing offences include:

- New section 33A—Selling tobacco without a licence
- New section 33B—Selling tobacco except in accordance with licence
- New section 33C—Failing to display a licence
- New section 33D—False or misleading statements in connection with licensing
- New section 33E—Holding out that unlicensed tobacco premises are licensed
- New section 33F—Holding out that unlicensed person is licensed⁷²

All of these offences carry fines. Only the offence of selling tobacco without a licence is an indictable offence. Of the licensing offences, it carries the most severe maximum penalty: 840 penalty units (approximately \$166,000) or five years imprisonment for an individual; or 4200 penalty units (approximately \$830,000) for a body corporate.⁷³

Illicit tobacco offences

More severe offences have been added regarding illicit tobacco. There are four new illicit tobacco offences replacing the existing offence of possession of illicit tobacco goods, outlined in Table 3.

Table 3: Illicit tobacco offences—clause 17 substitutes section 11A in the *Tobacco Act 1987* to establish four new ‘illicit tobacco offences’

Offence	Legislation	Maximum penalties
11A(1) Possession of illicit tobacco	A person who carries on a tobacco supply business must not have any illicit tobacco in the person's possession or under the person's control.	Individual: 120 penalty units (PU) Body corporate: 600 PU
11A(2) Possession of a commercial quantity of illicit tobacco	Indictable offence: A person who carries on a tobacco supply business must not, intentionally or recklessly, have a commercial quantity of illicit tobacco in the person's possession or under the person's control.	Individual: 840 PU or 2 years' imprisonment Body corporate: 4200 PU
11A(3) Sale or supply of illicit tobacco	A person must not sell or otherwise supply any illicit tobacco.	Individual: 120 PU Body corporate: 600 PU
11A(4) Intentionally or recklessly selling a commercial quantity of illicit tobacco	Indictable offence: A person must not, intentionally or recklessly, sell or otherwise supply a commercial quantity of illicit tobacco.	Individual: 1800 PU or 15 years' imprisonment Body corporate: 9000 PU

A licence can be suspended immediately for a period of up to 90 days if the regulator believes, on reasonable grounds, that the licensee has committed an ‘illicit tobacco offence’ under new sections 11A(2) and (4) (see Table 3) and continues to ‘possess or supply illicit tobacco in or from the licensed tobacco premises’.⁷⁴ This immediate suspension can be

⁷² *Tobacco Act 1987*, cl 35.

⁷³ Note that, as at 1 July 2024, a penalty unit is worth \$197.59; see Department of Justice and Community Safety (DJCS) (2024) ‘Penalties and values’, DJCS website.

⁷⁴ *Tobacco Act 1987*, cl 8, New section 34R(1)

administered regardless of whether the licensee has been charged with, had proceedings brought against them for or been convicted of an ‘illicit tobacco offence’.⁷⁵

Determination of applications

The regulator will be responsible for determining a range of applications, including for issuing new licences, as well as the relocation, transfer, variation and renewal of existing licences. An application can be refused if the regulator deems a licence or transfer applicant to be not a suitable person, or if an associate of the applicant is disqualified.⁷⁶ Additionally, the regulator could refuse an application if they consider ‘that the granting of the application would be conducive to, or encourage, contraventions of this Act or the regulations’ or ‘the application has not been made in accordance with this Act or the regulations’.⁷⁷

A person is not suitable to operate or be associated with a tobacco supply business if they have been found guilty of a ‘suitability offence’ or ‘an indictable offence (other than an indictable offence that is a suitability offence) that in the Regulator’s opinion is linked to or tends to be linked to unlawful tobacco activity or organised crime activity’.⁷⁸ The Bill provides that ‘the Regulator may impose a condition requiring the licensee to report to the Regulator any activity conducted under the licence’.⁷⁹

Review of regulator decisions

The Bill also would allow a person ‘whose interests are affected by a reviewable decision’ to request that the regulator issue them a ‘statement of reasons’ for a decision, as can the Chief Commissioner of Police. There are protections for disclosure of information where reasoning involves protected information received from the Chief Commissioner of Police.⁸⁰ There are also options for review of decisions, both internally by the regulator and externally through the Victorian Civil and Administrative Tribunal.⁸¹ The regulator can also review a licence at any time.⁸²

Repeal of e-cigarette and specialist tobacconist provisions

The Bill also repeals much of the e-cigarette provisions within the Tobacco Act ‘to avoid duplication with the *Therapeutic Goods Act 1989* of the Commonwealth’.⁸³ That Act provides a framework for regulating the importation, manufacture, supply and advertising of vaping goods in Australia and has been applied in Victoria by the *Therapeutic Goods (Victoria) Act 2010*.⁸⁴

Commencement

The Act’s provisions, if the Bill is passed, would come into operation on a day or days to be proclaimed, either before or on 1 July 2026. This timeframe is intended to allow for a two-stage implementation of the Bill’s reforms:

- The first stage will allow for the establishment of the licensing scheme, the regulator and licensing inspectors, and time for applications to be made. Amendments to

⁷⁵ *ibid.*, cl 8, new section 34R(2).

⁷⁶ *ibid.*, cl 8, new section 34X(1).

⁷⁷ *ibid.*, cl 8, new section 34X(2).

⁷⁸ *ibid.*, cl 8, new section 34Z(1).

⁷⁹ *ibid.*, cl 8, new section 34ZD.

⁸⁰ *ibid.*, cl 8, new section 34ZI.

⁸¹ *ibid.*, cl 8, new part 3AA, divisions 8 and 9.

⁸² *ibid.*, cl 8, new section 34ZZ.

⁸³ ‘[Explanatory Memorandum](#)’, Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024, p. 56.

⁸⁴ *ibid.*

existing powers and offences, as well as the part 5 repeal provisions, would also come into effect.

- The second stage would include the commencement of new licensing offences, the enforcement powers of licensing inspectors and penalties for unlicensed tobacco suppliers.⁸⁵

4 | Stakeholder responses to the Bill

Tobacco regulation reform has been highly anticipated by most stakeholders, not just across the Victorian Parliament but also not-for-profits, health promotion agencies, industry participants and law enforcement agencies.

Liberal-National coalition

The Liberal-National coalition has indicated during debate in parliament that it is not opposing the legislation. However, it argued that the legislation should commence sooner to reduce the amount of potential criminal activity between royal assent and the Bill's commencement.⁸⁶ The opposition sought to delay the Bill's passage through a reasoned amendment, moved by Member for Ovens Valley Tim McCurdy, that would allow for 'further consultation with affected stakeholders on when the licensing scheme should come into effect',⁸⁷ but ultimately sought to have 'boots on the ground [by the] middle of next year'.⁸⁸

Prior to the Government introducing the Bill, the coalition attempted to introduce similar legislation into the Legislative Assembly but were not granted leave to do so. While the private member's Bill was not made public, the coalition said it included the introduction of a licensing scheme, a 'fit and proper person' test for those seeking to hold a license, new search and seizure laws for Victoria Police relating to tobacco products and penalties for first-time and repeat offenders.⁸⁹

Victorian Greens

The Victorian Greens welcomed the Bill's introduction but with some reservations. Like the coalition, the Greens also questioned the Bill's 2026 commencement date and whether it could be sooner.⁹⁰ In his contribution to the second reading debate, Greens Member for Brunswick Dr Tim Read described Victoria as having become a 'wild west' in relation to tobacco in the two years since Better Regulation Victoria finalised its report.⁹¹ He also argued that the Bill contained some 'obvious omissions', including that the Bill 'does not appear to prohibit licensed wholesalers from supplying tobacco to unlicensed retailers'.⁹² Dr Read also suggested that the Greens would oppose McCurdy's reasoned amendment but would consider amendments in the Legislative Council that would prohibit sales of tobacco products both online and in vending machines.⁹³

Libertarian Victoria

David Limbrick, Member for South-Eastern Metropolitan Region for Libertarian Victoria, has previously requested documents relating to BRV's review to be made public. In response to

⁸⁵ *ibid.*, pp. 1–2.

⁸⁶ T. McCurdy (2024) 'Second reading: Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024', *Debates* [Proof], Victoria, Legislative Council, 13 November, p. 68.

⁸⁷ *ibid.*

⁸⁸ C. Jaeger et al. (2024) '[Chop chop crackdown: Illegal tobacco sellers to face up to 15 years in prison](#)', *The Age*, 12 November.

⁸⁹ Liberal Victoria (2024) *op. cit.*

⁹⁰ T. Read (2024) 'Second reading: Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Bill 2024', *Debates* [Proof], Victoria, Legislative Council, 14 November, p. 34.

⁹¹ *ibid.*, p. 33.

⁹² *ibid.*, p. 34.

⁹³ *ibid.*, p. 35.

the Bill, he stated that he doesn't believe the licensing scheme will have much effect in stopping the arson attacks on tobacconists, saying, 'It'll increase the violence—we saw the same thing in the prohibition era in the United States when they increased enforcement'.⁹⁴ He said higher penalties would be counter-productive, working only to 'encourage violence and extortion', and said the federal government should reduce tobacco excise.⁹⁵

VicHealth

The Victorian Health Promotion Foundation (VicHealth), a statutory authority established under the Tobacco Act and funded through the Department of Health, welcomed the Bill's introduction. VicHealth CEO Dr Sandro Demaio said the introduction of a licensing scheme 'will remove dishonest sellers from the market, ensuring they aren't peddling poison to school children, or selling illicit tobacco'.⁹⁶ Michelle Murray, VicHealth Executive Manager, Health Promotion Systems, said the legislation has been introduced amid an increase in teenage smoking.⁹⁷

Cancer Council Victoria and Quit Victoria

Cancer Council Victoria, and its anti-smoking not-for-profit program, Quit Victoria, have not commented on the Bill itself but have previously supported plans to introduce a licensing scheme. In May 2024, Quit and Cancer Council Victoria (along with VicHealth) issued a press release wherein Quit director, Rachael Andersen, welcomed the Victorian Government announcement that legislation for a licensing scheme would be introduced.⁹⁸ Cancer Council Victoria CEO Todd Harper said at the time that licensing schemes 'enable government to enact and enforce laws that prevent retailers from promoting products in the community, particularly in ways which make it more difficult for people to quit'.⁹⁹

Victoria Police

On the day the Bill was introduced, Chief Commissioner of Police Shane Patton told ABC Radio that legislation around licensing and increased enforcement powers for police was a 'great step forward', particularly the use of a 'fit and proper person' test, increased penalties and the ability to use police intelligence to help determine suitability of licence holders.¹⁰⁰ He said, 'Whilst it by itself won't stop what we have in terms of the conflict at the moment ... this will add to our ability to really make a difference'.¹⁰¹

Australian Association of Convenience Stores

Australian Association of Convenience Stores CEO Theo Foukkare supported the Bill, but said more could be done. In particular, Foukkare said the government should consider 'introducing powers to seize the property for any stores that are found to be breaking the law, for a maximum of up to six months', a similar provision found in Queensland and South Australia's laws.¹⁰²

⁹⁴ B. Kolovos (2024) 'Victoria seeks to snuff out tobacco wars with nation's 'toughest' cigarette sales rules and 'fit and proper persons' test', *The Guardian Australia*, 12 November.

⁹⁵ Jaeger et al. (2024) op. cit.

⁹⁶ Victorian Health Promotion Foundation (VicHealth) (2024) *New Victorian tobacco licencing scheme will save lives*, media release, 12 November.

⁹⁷ *ibid.*

⁹⁸ Quit Victoria (2024) *Quit, VicHealth and Cancer Council Victoria welcome announcement of Victorian tobacco retail licensing scheme*, media release, 9 May.

⁹⁹ *ibid.*

¹⁰⁰ R. Epstein (2024) 'Interview with Shane Patton', *ABC Melbourne: Melbourne Mornings*, ABC Radio, 12 November.

¹⁰¹ Kolovos (2024) op. cit.

¹⁰² (2024) 'Victoria promises the toughest penalties in the country and a new licensing scheme for tobacco retailers', *ABC News*, 12 November.

Heart Foundation

The Heart Foundation welcomed the government’s announcement of a tobacco licensing scheme in March 2024. At the time, the Heart Foundation described the introduction of a licensing scheme as a ‘significant stride towards protecting public health and reducing the impact of heart health harm from tobacco use’.¹⁰³ The Heart Foundation also claimed that similar legislation in other jurisdictions had the positive effects of reducing tobacco smoking and making tobacco less available to children.¹⁰⁴

5 | Other jurisdictions

Types of licensing schemes

There are three types of licensing scheme that have been used in Australian jurisdictions in recent history: a positive licensing scheme, a negative licensing scheme and a notification scheme. Table 4 outlines the general attributes of each scheme type.

Table 4: Types of licensing scheme¹⁰⁵

Positive	A positive licensing scheme requires an application and fee to a relevant authority to hold a tobacco licence. The licence holder may be banned from selling tobacco products if they do not meet certain standards.
Negative	A negative scheme does not require a licence holder to notify a relevant authority of intent to supply tobacco products, nor does it require an application or fee in order to obtain a licence. A licence holder may be banned from selling tobacco products if they do not meet minimum standards.
Notification	A notification scheme requires a person to notify the relevant authority of their intent to sell tobacco without an application or fees, but a person may be banned from selling tobacco. Minimum standards are optional.

Soon every state and territory will have a positive licensing scheme if—in addition to this Victorian Bill—legislation currently before the Parliament of New South Wales is passed. Only a positive licensing scheme possesses all of the following licensing scheme attributes:

- Information is provided to a regulatory authority.
- Approval from a regulatory authority is required prior to sale of tobacco.
- Minimum standards must be met to obtain and/or retain a licence.
- Standards are enforceable, and their contravention may lead to suspension or revocation of permission to sell.¹⁰⁶

The Victorian Law Reform Commission (VLRC) states that ‘only positive licensing should be considered as a tool for the restriction of entry to prevent organised crime infiltration’, as

¹⁰³ Heart Foundation (2024) *Heart Foundation welcomes Victorian Government announcement on tobacco licensing scheme*, media release, 28 March.

¹⁰⁴ *ibid.*

¹⁰⁵ Public Accounts and Estimates Committee (2024) *op. cit.*, pp. 56–57; D. Montoya & L. Roth (2024) *Tobacco licensing schemes*, Parliamentary Library Service, Sydney, Parliament of New South Wales, November, p. 8.

¹⁰⁶ Montoya & Roth (2024) *op. cit.*, p. 8.

the other scheme types are ‘unlikely to be adequate’.¹⁰⁷ Further, the VLRC notes that ‘occupations/industries with negative licensing schemes may be highly susceptible to organised crime infiltration as the regulator has no opportunity to scrutinise would-be entrants prior to their entry into the occupation/industry’.¹⁰⁸

Jurisdictional comparison

While there are widespread similarities in each state or territory’s approach to regulating tobacco, each is unique. Table 5 compiles the principal tobacco legislation, the scheme types, the responsible entities and licence fees in each jurisdiction.

Table 5: Jurisdictional comparison of tobacco licensing schemes¹⁰⁹

Jurisdiction	Tobacco legislation	Scheme type	Responsible entity	Annual licence fees (as of November 2024)
Victoria (proposed)	<i>Tobacco Act 1987</i>	Positive (retail and wholesale)	The regulator (within the Department of Justice and Community Safety)	Retail and wholesale: to be prescribed.
New South Wales	<i>Public Health (Tobacco) Act 2008</i>	Notification scheme (A positive scheme (retail and wholesale) is currently being debated in parliament)	NSW Health	Retail and wholesale: to be prescribed
Queensland	<i>Tobacco and Other Smoking Products Act 1998</i>	Positive (retail and wholesale)	Queensland Health	Retail: \$478.88 Wholesale: \$674.16
South Australia	<i>Tobacco and E-Cigarette Products Act 1997</i>	Positive (retail and wholesale)	Consumer and Business Services (Attorney-General’s Department)	Retail: \$340 Wholesale: to be prescribed in regulations

¹⁰⁷ Victorian Law Reform Commission (2016) ‘6. Restricting entry into an occupation or industry’, *Regulatory regimes and organised crime: report*, Melbourne, VLRC, May, para 6.2.

¹⁰⁸ *ibid.*, para 6.5.

¹⁰⁹ Montoya & Roth (2024) *op. cit.*, p. 10; Public Accounts and Estimates Committee (2024) *op. cit.*, p. 57; *Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Bill 2024* (SA); C. Grace (2018) ‘11.4 State and territory legislation’. in E.M. Greenhalgh, M.M. Scollo & M.H. Winstanley (eds) *Tobacco in Australia: Facts and issues*, Melbourne, Cancer Council Victoria; South Australian Government (2024) ‘Apply for a retail tobacco licence’, SA.gov.au website, 14 November; Business Queensland (2024) ‘Smoking product supplier licensing scheme’, Business Queensland (Queensland Government) website, 12 November; Department of Health (WA) (2023) ‘Tobacco sellers licensing’, DoH (WA) website, 31 October; Australian Business Licence and Information Service (2024) ‘Smoking Product Licence - Tasmania’, ABLIS website; Australian Business Licence and Information Service (2024) ‘Tobacco Retail Licence - Northern Territory’, ABLIS website; Australian Business Licence and Information Service (2024) ‘Tobacco Licence - Retail - Australian Capital Territory’, ABLIS website; Access Canberra (ACT) (2024) ‘Tobacco licences and smoking areas’, Access Canberra (ACT) website.

Western Australia	<i>Tobacco Products Control Act 2006</i>	Positive (retail and wholesale)	Department of Health	Retail: \$327 (new); \$278 (renewal) Wholesale: \$797 (new); \$658 (renewal)
Tasmania	<i>Public Health Act 1997</i>	Positive (retail and wholesale)	Department of Health	Retail and wholesale: \$1,340.79
Northern Territory	<i>Tobacco Control Act 2002</i>	Positive (retail only)	NT Health	Retail: \$282 (1 year) \$846 (3 years) \$1,410 (5 years)
Australian Capital Territory	<i>Tobacco and Other Smoking Products Act 1927</i>	Positive (retail and wholesale)	Access Canberra (Chief Minister, Treasury and Economic Development Directorate)	Retail and wholesale: Application fees vary according to time of year; \$617.30 (renewal)

Recent legislative changes

Commonwealth

The Australian Government has introduced several vaping reforms in the past year in recognition of the industry's rapid growth. Recent federal reforms were introduced through the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024*, amending the *Public Health (Tobacco and Other Products) Act 2023*. This change confined the sale of vapes to Australian pharmacies, banning their sale from retailers like tobacconists and convenience stores.¹¹⁰

PAEC's inquiry found that the federal *Public Health (Tobacco and Other Products) Act 2023* 'substantially reformed the Australian tobacco and e-cigarette regulatory landscape'.¹¹¹ However, the committee also found that 'there is a lack of clarity regarding which Commonwealth and State agencies are responsible for enforcing legislation regarding e-cigarettes in wholesale, retail and commercial settings'.¹¹² The report notes that a federal parliamentary inquiry into illicit tobacco did recommend investigations into 'a nationally consistent licensing regime for tobacco products', but that the Australian Government did not support this, saying 'jurisdictional boundaries' were at play.¹¹³

State changes

Several state Bills have been passed or are currently being debated:

- Queensland as recently as August 2024 had a negative licensing scheme, but switched to a positive licensing scheme through the *Tobacco and Other Smoking Products Amendment Act 2023*, which commenced on 1 September 2024.¹¹⁴
- South Australia recently enacted the *Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Act 2024* to increase a range of penalties, as well as

¹¹⁰ Therapeutic Goods Administration (2024) *Joint enforcement activity with TGA and partner authorities sees Victoria Police arrest eight individuals*, media release, 23 October.

¹¹¹ Public Accounts and Estimates Committee (2024) op. cit., p. 54.

¹¹² *ibid.*, p. 54.

¹¹³ *ibid.*, pp. 57–58.

¹¹⁴ *Tobacco and Other Smoking Products Amendment Bill 2023* (Qld)

include wholesalers in their licensing scheme. Notice of royal assent was reported on 12 November 2024.¹¹⁵

- New South Wales Parliament is currently debating the introduction of a positive licensing scheme for tobacco retailers and wholesalers, with the introduction of the Public Health (Tobacco) Amendment Bill (No 2) 2024 on 24 October 2024. It has passed the Legislative Assembly and is now in the Legislative Council.¹¹⁶

6 | Key issues

Tobacco regulation is a multifaceted issue that encompasses a range of participants and regulatory tools, including border control, tax settings, law enforcement, local council compliance measures, departmental oversight, legislation, health promotion and education. Australia's aim, according to its National Tobacco Strategy, is to lower the percentage of the population over 18 years of age who smoke daily to below 10 per cent by 2025 and 5 per cent by 2030.¹¹⁷ The first goal has been achieved in Victoria (8.1 per cent as of 2022–23), but other issues have arisen (see also Table 6).¹¹⁸

The tobacco tax gap

Australia's decline in smoking rates in recent decades have been in part attributed to repeated increases in federal excise on tobacco products. The aim of driving up the cost of cigarettes is to provide a financial deterrent to people smoking. Since 2007 there has been a steady increase of people over 18 years of age who have never smoked, from 52.1 per cent of the population in 1991 to 63.8 per cent in 2023.¹¹⁹ In the same period, the percentage of the population aged over 18 who are daily smokers has dropped from 17.5 per cent to 8.8 per cent.¹²⁰ Recently, in the 2023–24 budget, the Federal Government committed to continuing tobacco excise hikes by 5 per cent annually between 1 September 2023 and 1 September 2025.¹²¹ Figure 2 details the increases in tax excise per cigarette stick since 2006.

However, amid these excise increases, the ATO has estimated that illicit tobacco to the value of about \$6.3 billion in excise revenue attempted to enter the market in 2022–23; this is called the 'gross tax gap'. About \$2.7 billion worth made it to market undetected, meaning this duty evaded collection;¹²² this is called the net tobacco tax gap. Most of this tobacco was imported (\$2.3 billion in duties), while a small portion was produced domestically (\$0.4 billion in duties). The illicit tobacco tax gap has been growing, as duties collected have begun to stagnate and duties evaded through illicit tobacco have increased (see Figure 3).

¹¹⁵ Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Bill 2024 (SA); (2024) 'Assent: Tobacco and E-Cigarette Products (E-Cigarette and Other Reforms) Amendment Bill', *Debates*, South Australia, House of Assembly, 12 November, p. 10141.

¹¹⁶ Public Health (Tobacco) Amendment Bill (No 2) 2024 (NSW)

¹¹⁷ Australian Institute of Health and Welfare (2024a) 'National Drug Strategy Household Survey 2022–2023: Tobacco smoking in the NDSHS', AIHW website, 29 February.

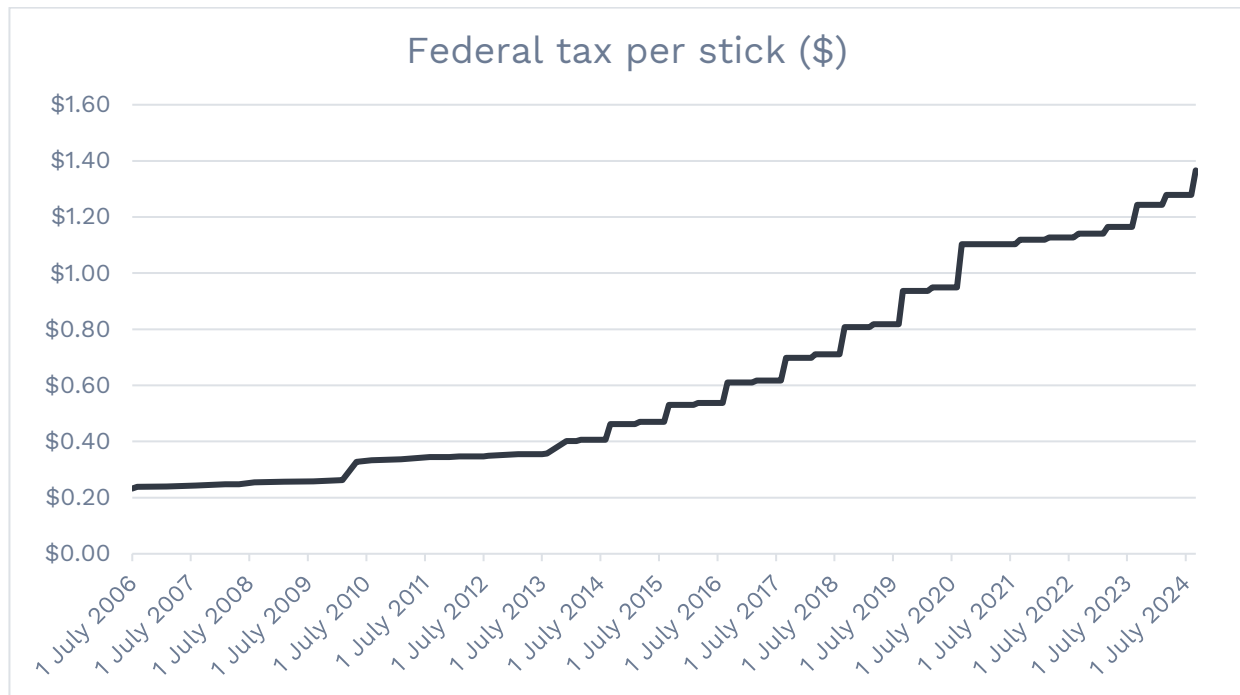
¹¹⁸ Australian Institute of Health and Welfare (2024b) 'Table 9b.1: Daily tobacco smoking, people aged 18 and over, by state/territory, 2001 to 2022–2023 (per cent)', *National Drug Strategy Household Survey 2022–2023: States and Territories—Supplementary data tables*, Canberra, AIHW, February.

¹¹⁹ Australian Institute of Health and Welfare (2024c) 'Table 9b.2: Tobacco smoking status, people aged 18 and over, by gender and state/territory, 2007 to 2022–2023 (col per cent)', *National Drug Strategy Household Survey 2022–2023: States and Territories—Supplementary data tables*, Canberra, AIHW, February.

¹²⁰ *ibid.*

¹²¹ M. Bayly & M.M. Scollo (2024) '13.6 What tobacco taxes apply in Australia?', in E.M. Greenhalgh, M.M. Scollo and M.H. Winstanley (eds) *Tobacco in Australia: Facts and issues*. Melbourne, Cancer Council Victoria.

¹²² Norman (2024) *op. cit.*

Figure 2: Timeline of federal tobacco excise per cigarette stick, 2006 to 2024¹²³

Source: ATO, NSW Traders Association via ABC News.

Through this net tax gap, the ATO estimates that, as of 2022–23, illicit tobacco made up a 14.3 per cent share of the market (see Figure 4). This growing gap between the value between the duties that would be expected to be paid on tobacco and the duties actually paid has prompted calls for alternate measures to curtail illicit tobacco's growing share of the tobacco market.¹²⁴ Victoria Police suggested to the PAEC inquiry that despite the public health benefits to reducing smoking rates through increasing prices, 'reducing the affordability of legal tobacco (by increasing the excise) has likely contributed to the growth of the illicit tobacco market in Victoria'.¹²⁵

The federal government has responded to the tax gap issue by establishing an Illicit Tobacco Commissioner, vowing to continue hiking tobacco excise following a steady decline in smoking over the years.¹²⁶ States and territories are also providing a more united front, with a range of legislation introduced in the last year around licensing and data collection (see 'Other jurisdictions' section).

¹²³ Bucci (2024) 'Burning out: how Australia's bid to cut smoking rates exploded into suburban tobacco wars', op. cit.

¹²⁴ *ibid.*

¹²⁵ Public Accounts and Estimates Committee (2024) op. cit., p. 21

¹²⁶ Norman (2024) op. cit.

Figure 3: Tobacco tax gap, Australia, 2016-17 to 2022-23 (\$million)¹²⁷

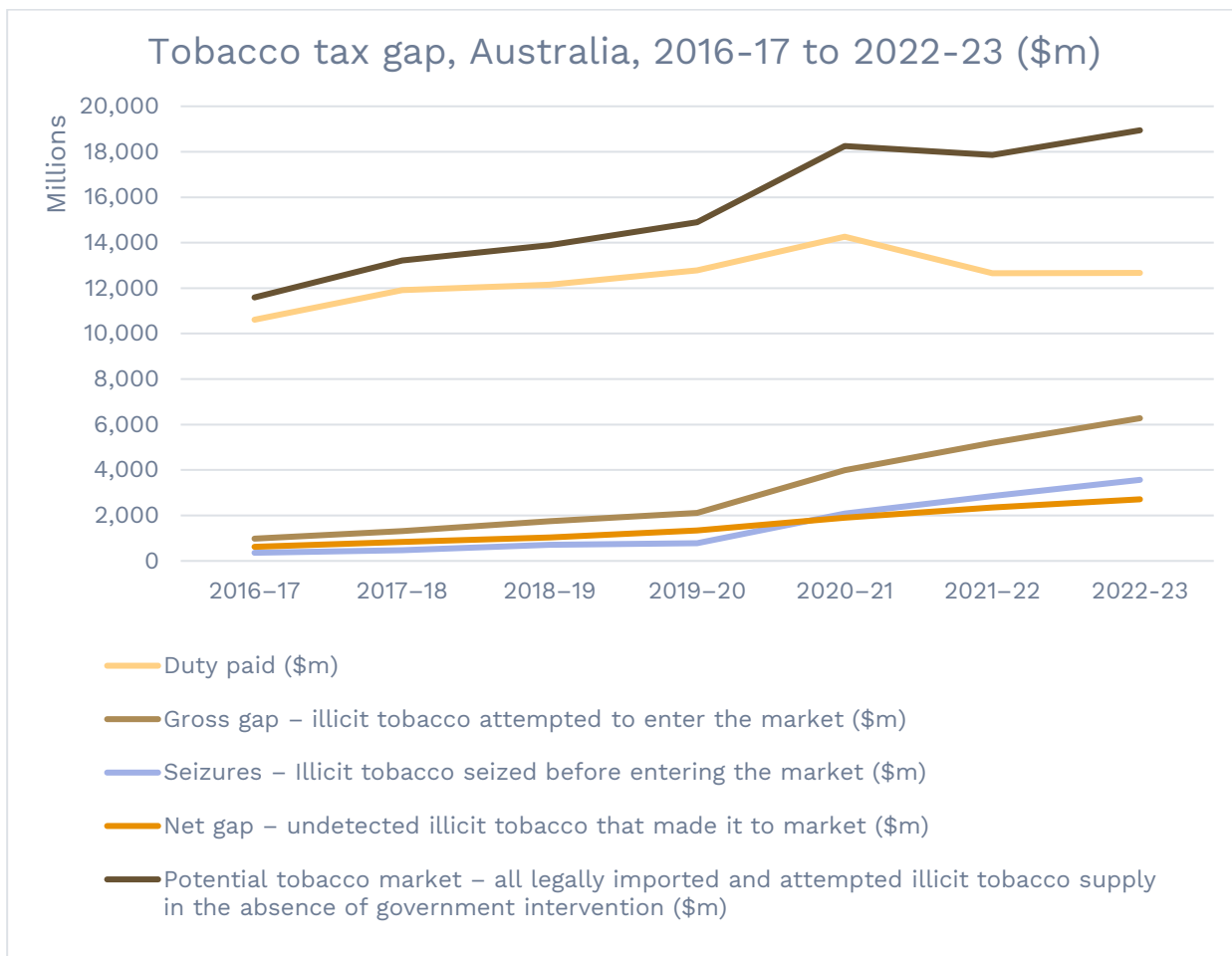
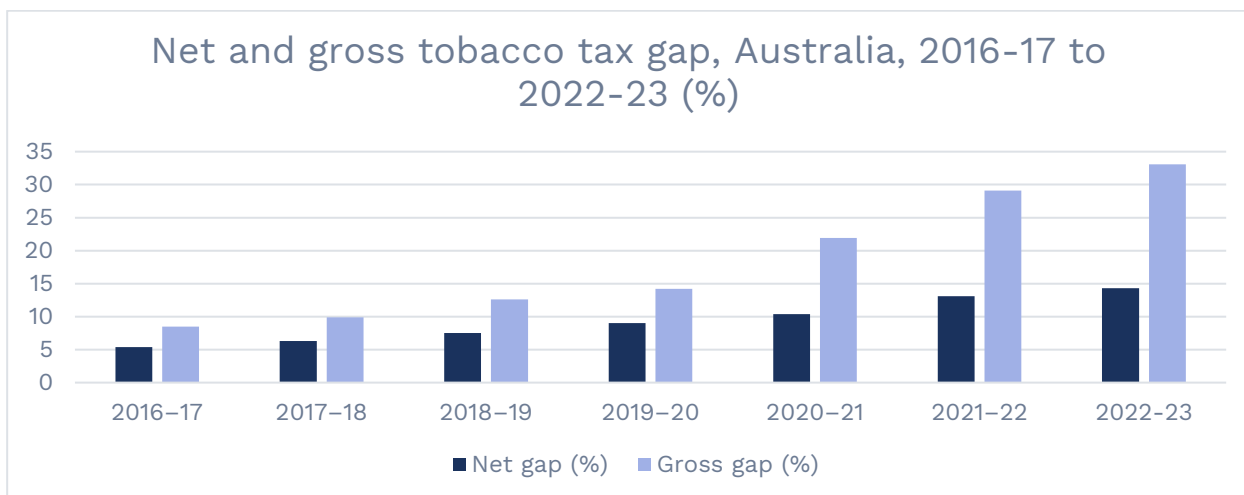


Figure 4: Net and gross tobacco tax gap, Australia, 2016-17 to 2022-23, as a percentage of total domestic tobacco market¹²⁸



¹²⁷ Australian Taxation Office (2024) ‘Tobacco tax gap: latest estimates and findings’, op. cit.

¹²⁸ *ibid.*

However, the ATO statistics on the market share of illicit tobacco incorporate a range of assumptions, and the ATO assesses the illicit tobacco datasets' reliability as only 'medium'.¹²⁹ Part of this comes down to limited data available to quantify the size of the industry and therefore track where tobacco is being sold, in what form (lawful and illicit) and in what quantities. This was noted by BRV (see 'Lack of data' in 'Background' section). A NSW Parliamentary Library Service publication, *Tobacco licensing schemes*, also found in November 2024 that there was no 'authoritative data on the number of tobacco retailers in Australia'.¹³⁰

The lack of reliable datasets opens the door for conflicting estimates of how big the illicit tobacco problem is. An estimate from FTI Consulting was commissioned by Imperial Tobacco Australia Limited (ITA), Philip Morris Limited (PML), and British American Tobacco Australia (BATA)—some of the biggest tobacco distributors in Australia. In the resulting 2023 report *Illicit tobacco in Australia: 2022 Full Year Report*, the company found that 23.5 per cent of 2022 tobacco consumption in Australia was illicit. From these estimates, federal coalition MPs Warren Entsch and Llew O'Brien have deduced that increasing taxes have become ineffective, stating that they are pushing smokers towards cheaper tobacco and therefore fuelling the black market.¹³¹ They say the right thing to do now would be to reduce excise and reduce the discount appeal of illicit tobacco.¹³²

Some advocates for tobacco reform state that these are exaggerated estimates touted by tobacco companies in order to "talk up" the problem of illicit trade in general and counterfeit cigarettes in particular', in the hope of 'discourag[ing] governments from adopting effective tobacco control policy'.¹³³

'Tobacco wars'

The term 'tobacco wars' has become a colloquial term referring to an ongoing spate of arson attacks on tobacconists both within Victoria and in other states. An anonymous submission to PAEC's inquiry described arson as a standover extortion tactic used by organised crime, called a 'pay or burn' scheme, where retailers selling illicit tobacco products procured by organised criminal networks may receive an ultimatum from criminal syndicates: either pay a 'tax' to the syndicate or risk their shop being burnt down.¹³⁴ According to a report in *The Age*, there have been about 120 arson attacks in Victoria between March 2023 and November 2024 as part of 'a turf war over control of the illicit tobacco trade'.¹³⁵

While this phenomenon is largely contained within Victoria, police in New South Wales and South Australia have also expressed concern at arson activity in their own jurisdictions.¹³⁶ The arson attacks come amid an increase in trafficking and retail consumption of illicit tobacco in some legitimate businesses, but mostly through individual operators.

Organised crime has a large vested interest in illicit tobacco due to easy profits and the demand for cheaper tobacco products. According to PAEC's report, expert submissions indicated that 'illicit tobacco and vapes are low-risk high-reward commodities for serious and organised crime', with Australian Border Force (ABF) stating that 'importing illicit tobacco attracts a relatively small fine in comparison to the profits being made'.¹³⁷ These profits are not small. A committee site visit to the ABF Container Examination Facility in

¹²⁹ Australian Taxation Office (2024) 'Tobacco tax gap: reliability', ATO website, 31 October.

¹³⁰ Montoya, D. & L. Roth (2024) op. cit., p. 6.

¹³¹ Norman (2024) op. cit.

¹³² *ibid.*

¹³³ A. Cho et al. (2024) '13A.3 The role of the tobacco industry in estimating the extent of illicit trade in tobacco', in E.M. Greenhalgh, M.M. Scollo & M.H. Winstanley (eds) *Tobacco in Australia: Facts and issues*, Melbourne, Cancer Council Victoria.

¹³⁴ Public Accounts and Estimates Committee (2024) op. cit., p. 48

¹³⁵ [Tobacco arson attacks: Victoria to introduce licensing scheme, jail terms for people selling illegal tobacco](#)

¹³⁶ N. Bucci (2024) 'Firebombings of Victorian tobacco shops surpass 100 as police detail meeting that sparked war', *The Guardian Australia*, 9 October; Smith, L. (2024) 'Adelaide businesses burning as illicit tobacco trade heating up in South Australia', *The Advertiser* (Adelaide), 30 September.

¹³⁷ Public Accounts and Estimates Committee (2024) op. cit., p. 38.

Melbourne found only about one in 30 containers imported by serious and organised crime groups containing illicit products needs to be successfully smuggled across the border for serious organised crime's business model to make a profit.¹³⁸

The involvement of organised crime in illicit tobacco is not a new development. Victoria Police's Martin O'Brien told PAEC that while illicit operations have been disrupted through arrests, seizures and court actions, 'it is not realistic, even with the introduction of the new Commonwealth legislation and a possible Victorian licensing scheme, to have zero organised crime'.¹³⁹ The National Tobacco Strategy describes this as one of the key challenges going forward:

Serious and organised crime groups take advantage of the rising cost of legal tobacco products to make more illicit profits ... The ongoing presence of the illicit tobacco market not only fuels other illicit activities but also undermines public health efforts to reduce demand for tobacco.¹⁴⁰

With Victoria not having a licensing scheme, tobacconists have proliferated amid the influx of illicit tobacco. While data is scarce, Victoria Police told PAEC that estimates from its Taskforce Lunar investigation, which commenced in October 2023, found that about 1,100 'pop up' tobacconists were operating in Victoria, with the 'vast majority' offering illicit products and run by individuals.¹⁴¹ An estimate in *The Age* put the number of tobacconists across Victoria at more than 1,300.¹⁴² Detective Superintendent Jason Kelly from the Anti-Gangs Division explained the appeal of illicit tobacco as an income stream to the Committee:

A pack of illicit cigarettes probably sells for about \$15 in a shop, and they are probably purchasing that somewhere around the \$5 mark. So they are making a significant profit on what they are selling. Some shops we have raided are metropolitan and suburban shops where we are seeing a million dollars turned over [annually]—just a little shop out in the suburbs.¹⁴³

Victoria Police stated in October 2024 that over 80 people had been arrested in connection with the illicit tobacco trade in the previous 12 months of Taskforce Lunar. Charges included 'extortion, arson, firearms offences and aggravated burglary'.¹⁴⁴

Smoking trends

While tobacco regulation may currently be concerned primarily with curbing organised crime, the end goal remains the public health outcome of reducing smoking rates across all demographics. Table 6 shows the percentage of the population over 18 who smoke daily, showing that, across all states and territories, smoking rates have declined markedly, even from 2019.

¹³⁸ *ibid.*, p. 38.

¹³⁹ *ibid.*, p. 45.

¹⁴⁰ Department of Health and Aged Care (Cth) (2023) *National Tobacco Strategy 2023–2030*, Canberra, DHAC, p. 8.

¹⁴¹ Public Accounts and Estimates Committee (2024) *op. cit.*, p. 43.

¹⁴² Jaeger et al. (2024) *op. cit.*

¹⁴³ Public Accounts and Estimates Committee (2024) *op. cit.*, p. 43.

¹⁴⁴ (2024) 'More than 80 arrested in first year of Taskforce Lunar', *Star Weekly*, 9 October.

Table 6: Percentages of people aged 18 and over who smoke daily, by state/territory, 2001 to 2022–23¹⁴⁵

State/territory	2001	2004	2007	2010	2013	2016	2019	2022–2023
Victoria	19.9	18.2	17.4	15.5	12.6	12.3	10.6	8.1
New South Wales	18.6	17.2	17.2	15.0	12.2	12.0	10.1	7.8
Queensland	21.6	20.6	17.9	17.6	15.7	15.2	14.1	11.1
Western Australia	20.8	16.4	15.6	16.5	12.5	12.2	12.5	8.2
South Australia	20.5	17.2	17.6	15.7	13.6	11.4	12.6	9.6
Tasmania	21.4	22.3	24.0	16.8	16.7	16.9	13.5	11.9
Australian Capital Territory	18.5	16.1	15.2	11.7	9.9	9.9	8.7	5.1
Northern Territory ^(a)	28.7	28.5	27.0	23.8	22.2	18.5	15.7	14.0
Australia	20.0	18.2	17.5	15.9	13.3	12.8	11.6	8.8

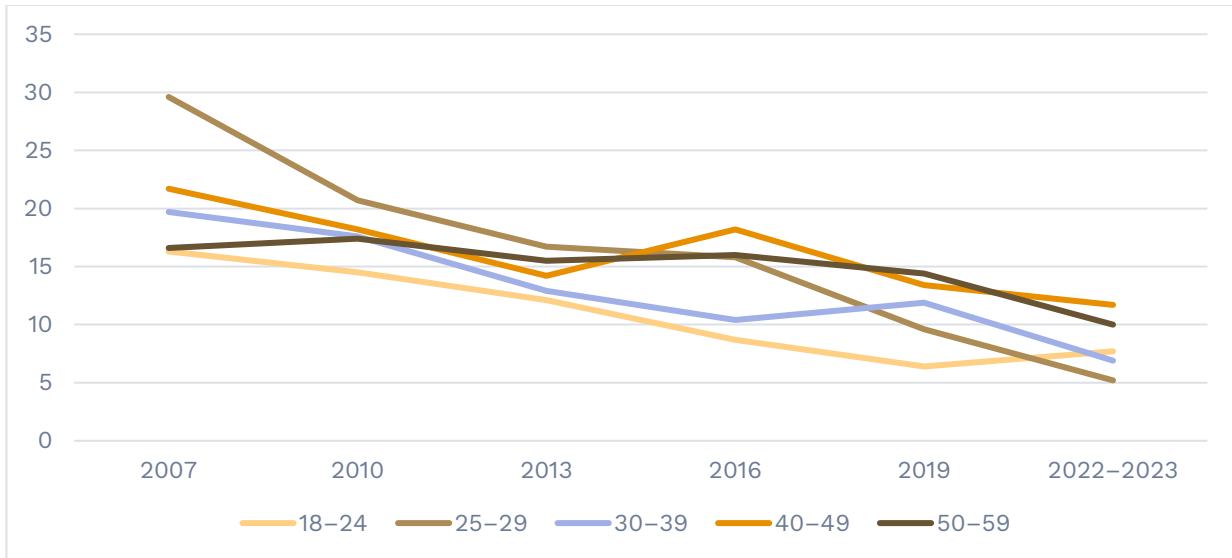
(a) NT figures do not include data from the 8 remote communities interviewed in the NT in 2019. These data are included in national estimates. Source: AIHW

In recent months, federal Minister for Health Mark Butler has conceded that, while smoking rates had decreased significantly following government intervention, the government had received advice that the ‘steady reduction that we’d seen over the course of 30 years had started to stagnate, and that was in part a product of the lack of any real change in tobacco control’.¹⁴⁶ Statistics from the Australian Institute of Health and Welfare show that the age bracket of 18–24 in particular has shown a recent uptick in daily smoking behaviour, as shown in Figure 5.

¹⁴⁵ Australian Institute of Health and Welfare (2024) *National Drug Strategy Household Survey 2022–2023: States and Territories—Supplementary data tables*, Canberra, AIHW, February, Table 9b.1.

¹⁴⁶ M. Lorigan & A. Thomas-Sam (2024) ‘Black market cigarettes openly purchased in Melbourne as legal tobacco trade plummets’, *ABC News*, 10 September.

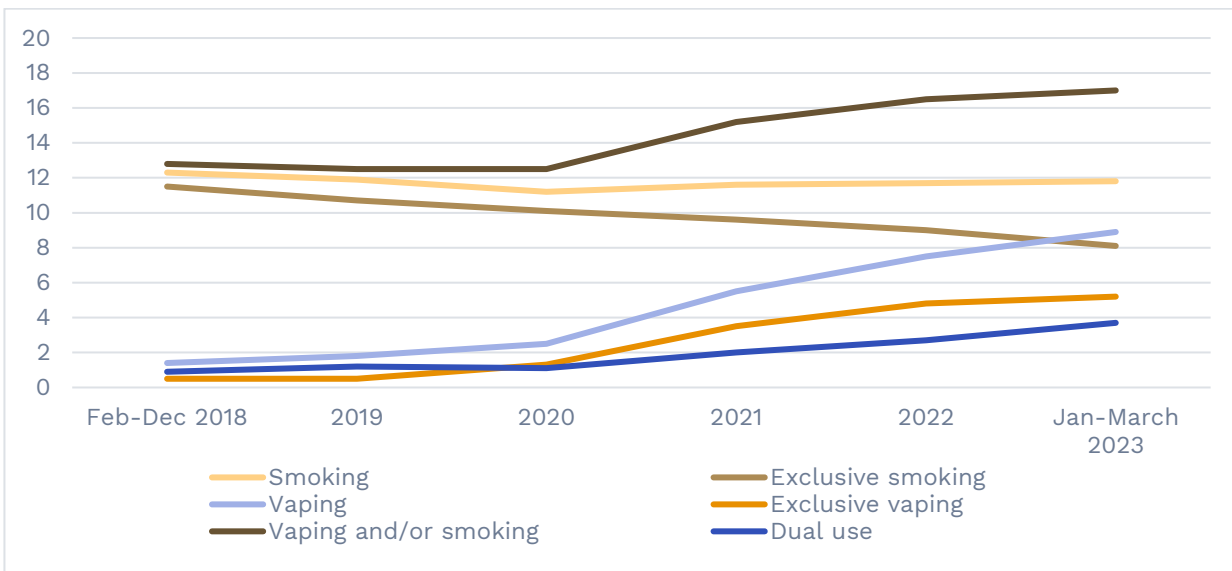
Figure 5: Percentages of people in Victoria aged 18 and over who smoke daily, by age group, 2007 to 2022–2023 (y axis: per cent)¹⁴⁷



Note: the 2022–23 data point of 5.2 per cent for the 25–29 age bracket is an estimate only, with a relative standard error of between 25 per cent to 50 per cent and should be used with caution. Source: AIHW

Minister Butler’s observation can be seen in tandem with a rise in vaping and dual usage (smoking and vaping) among the population over 14 years of age, as seen in Figure 6.

Figure 6: Percentages of people in Australia over the age of 14 who exhibit smoking and/or vaping behaviours, February 2018 to March 2023 (y axis: per cent)¹⁴⁸



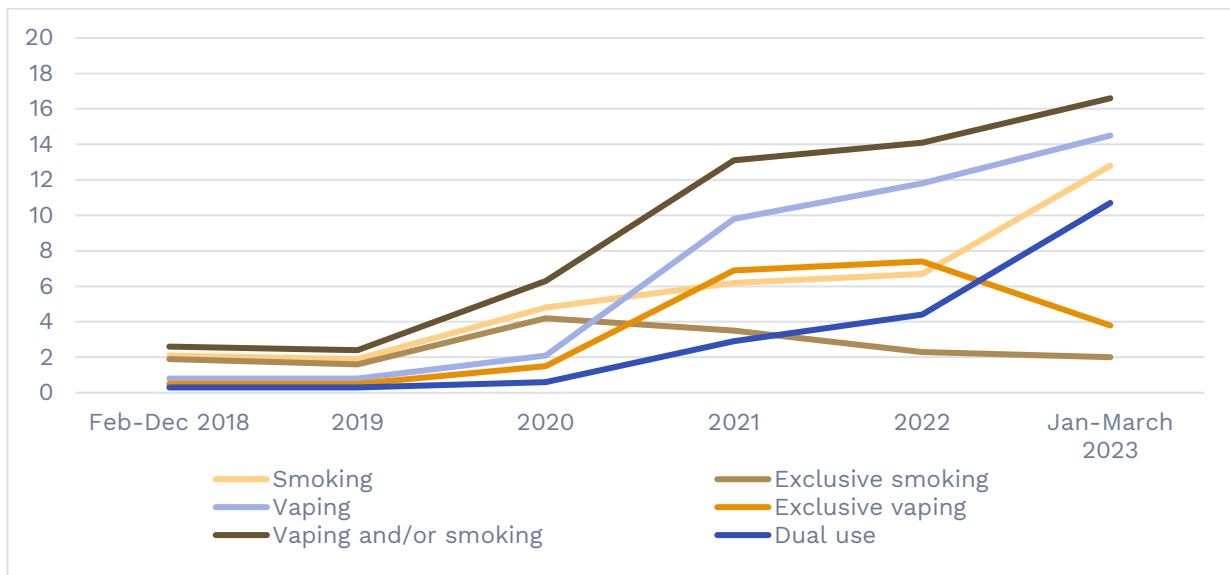
Note: There was a methodology change from household to telephone surveys in the April 2020 period due to COVID-19. The data have a 95 per cent confidence interval. Source: Roy Morgan Research, Cancer Council Victoria

¹⁴⁷ Australian Institute of Health and Welfare (2024) *National Drug Strategy Household Survey 2022–2023: States and Territories—Supplementary data tables*, Canberra, AIHW, February, Table 9b.7.

¹⁴⁸ M. Wakefield et al. (2023) *Current vaping and current smoking in the Australian population aged 14+ years: February 2018–March 2023*, prepared on behalf of Cancer Council Victoria for the Department of Health and Aged Care (Cth), Canberra, DHAC website, May.

Minister Butler’s observation can be seen in tandem with a rise in vaping and dual usage (smoking and vaping) among the population over 14 years of age, as seen in Figure 6. Recent statistics from Roy Morgan Research commissioned by Cancer Council Victoria indicate that, while exclusive smoking has declined among young people, there has been an uptick in smoking and/or vaping behaviour among young people across Australia. Vaping is the majority preference for young people, but dual users is a growing cohort (see Figure 7).

Figure 7: Percentages of people in Australia aged 14 to 17 who exhibit smoking and/or vaping behaviours, February 2018 to March 2023 (y axis: per cent)¹⁴⁹



Note: There was a methodology change from household to telephone surveys in the April 2020 period due to COVID-19. The data have a 95 per cent confidence interval. Source: Roy Morgan Research, Cancer Council Victoria

Reducing harm from tobacco and e-cigarette use is a key aim of the Victorian Government’s *Public health and wellbeing plan 2023–27*, particularly addressing the emergence of e-cigarette use among young people and the risks of a new generation of nicotine addiction. In order to achieve this, the government seeks to ‘strengthen the regulatory framework in relation to the availability of tobacco and e-cigarette products in Victoria’.¹⁵⁰ This is aligned with the *National Tobacco Strategy 2023–2030*.¹⁵¹

¹⁴⁹ *ibid.*

¹⁵⁰ Department of Health (Vic) (2023) *Victorian public health and wellbeing plan 2023–2027*, September, Melbourne, DoH (Vic).

¹⁵¹ Department of Health and Aged Care (Cth) (2023) *National Tobacco Strategy 2023–2030*, Canberra, DHAC (Cth).

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