

**Submission
No 40**

INQUIRY INTO ILLEGAL TOBACCO TRADE

Organisation: Philip Morris Limited

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AUSTRALIA

Submission to the New South Wales
Parliament Justice and Communities
Committee – Inquiry into the illegal
tobacco trade



PHILIP MORRIS

AUSTRALIA

Philip Morris Australia (PML) thanks the New South Wales (NSW) Parliament Justice and Communities Committee (the Committee) for the opportunity to provide a written submission to this Inquiry (the Inquiry).

We make this submission in the context of NSW's rapidly escalating illicit tobacco and illicit nicotine products crime and public health crisis.

Illicit tobacco accounts for 40%¹ of overall tobacco consumption in Australia and costs the community approximately \$6.7 billion in excise tax evasion².

Significant GST receipts are also lost due to illicit tobacco – a portion of which would have otherwise flowed to New South Wales to fund much needed community programs.

Other nicotine products such as vapes and nicotine pouches are almost exclusively illicit. There would be no other legal product category which would have illicit consumption at such levels.

Excessive taxation towards tobacco and near-prohibitionism towards other nicotine products have precipitously created multi-billion-dollar illicit markets run by sophisticated, serious and organised criminal syndicates.

Consequently, New South Wales and other states and territories are left to tackle an increasingly unmanageable enforcement burden and divert already overstretched resources from other public services.

Bans on products such as mentholated cigarettes, introduced under the Public Health (Tobacco and Other Products) Act 2023, came into full effect as of 1 July 2025³. The additional impact of consumer migration for these products to the illicit market and growth in organised criminal activity is yet to be fully realised.

Maintaining the status quo is likely to result in tobacco and nicotine products being supplied exclusively by organised crime, via illicit markets, in the not-too-distant future.

Under current fiscal and policy arrangements, Australia risks failing the achievement of its smoke-free vision by 2030. Other comparable countries, with alternative approaches to regulating nicotine products, have already achieved or are close to achieving smoke-free status.

To prevent this, a balanced discourse on national tobacco and nicotine products policy, an analysis of the impacts of prohibitionism and a recalibration of policy settings and legislation at federal and state levels, are all required.

This Inquiry presents a time-critical opportunity for the New South Wales Government to holistically review the broader illicit tobacco and nicotine products market and recommend impactful solutions.

Through our submission, we have addressed several of the Terms of Reference to this Inquiry and in doing so, we have provided clear, actionable recommendations for the Committee's consideration.

If PML can provide any further information in support of its submission, please do not hesitate to contact us.

Yours sincerely,

Philip Morris Limited

¹ [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

² Ibid

³ [Public Health \(Tobacco and Other Products\) Act 2023](#)

PHILIP MORRIS LIMITED

About Philip Morris Limited

PML is one of the largest wholesalers of legal, taxed, and regulated tobacco products in New South Wales and supply approximately 30% of the state's legal tobacco products market. PML contributed almost \$3 billion towards federal excise collection for the 2024 calendar year.

We remain steadfastly committed to arresting the illicit tobacco and nicotine products trade across Australia.

We undertake our own national retailer monitoring and intelligence gathering program, under which we investigate retailers suspected of supplying illicit tobacco and other illicit nicotine products. We routinely share this information with federal and state agencies to support increased enforcement outcomes.

In addition, we share information on illicit nicotine products suspected to be arriving in Australia, via sea freight, with international customs agencies, which can then be shared with the Australian Border Force.

We are also a trusted participant of the federal government's therapeutic regulatory framework for vaping products and have participated under the model since its commencement in October 2021.

In furtherance of this commitment, we routinely provide the Therapeutic Goods Administration (TGA) with information on businesses and websites suspected of advertising or supplying vaping products in breach of the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024.

We respect the primacy of federal and state governments to make laws as they relate to tobacco and other nicotine products in recognition of the fact that these products are not risk-free and should be regulated accordingly.

Our submission does not call into question the intended public health and harm minimisation objectives underpinning any policy decisions at either a federal or state level.

We are seeking to highlight the unintended consequences of policy decisions, which have exacerbated the growth of Australia's illicit nicotine products market to the point where unacceptable levels of public revenue are being lost and the associated criminal activity is making the community less safe.

Under our commitment to support the New South Wales Government in arresting the growth of the illicit market, we are making several recommendations for the Committee's consideration as set out below.

We have structured our recommendations and supporting commentary into two parts.

In the first part, we provide an overview of the federal fiscal and regulatory policy and market environment, which has contributed to the growth of the illicit tobacco and nicotine products market. We recommend the New South Wales Government, and other state and territory governments to make the following representations:

- **Recommendation 1A: A federal review of fiscal and policy settings is urgently required, and a fixed funding mechanism must be legislated to support state government enforcement.**
- **Recommendation 1B: Stronger laws for private ATM providers to prevent money-laundering activities.**

In the second part, we provide several recommendations for the Committee's consideration to strengthen New South Wales tobacco legislation. These recommendations are already being implemented in other states and can have an immediate and meaningful impact in supporting law enforcement efforts against the illicit trade. These are:

- **Recommendation 2A: Broadening illicit tobacco offences to capture all nicotine products**
- **Recommendation 2B: Broader illegal business activities to be captured under penalties**
- **Recommendation 2C: Legislated powers for mandatory-minimum closures and injunctions**
- **Recommendation 2D: Illicit product cost-recovery mechanisms to be legislated**
- **Recommendation 2E: Standalone NSW tobacco regulator must be established**
- **Recommendation 2F: Legislated mechanism for automatic referrals of suspected illicit activity**

1.1 Tobacco excise has accelerated the growth of the illicit tobacco trade

Illicit tobacco now accounts for almost 40% of overall tobacco consumption in Australia⁴. In 2019, it represented approximately 14% of tobacco consumption, a figure which has nearly tripled in the past five years⁵. This growth is primarily driven by surging consumer demand for cheaper, affordable, tax-evading tobacco product alternatives.

Illicit tobacco consumption in Australia – 2015 - 2024⁶



The price differential between legal and illegal tobacco products is the biggest driver of illicit tobacco demand.

The Victorian Parliament’s 2024 Public Accounts and Estimates Committee (PAEC) Inquiry into Illicit Tobacco and Vaping (PAEC Report) found that 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)*”⁷.

Successive increases to the base rate of tobacco excise tax, compounded by the added cost of the indexation method, have placed extreme pressures on the prices of legal tobacco products. Excise tax on factory-made cigarettes is calculated on a per-stick basis (for cigarette sticks not exceeding in weight 0.8 grams per stick actual tobacco content) and in addition, taxation is indexed to Average Weekly Ordinary Time Earnings (AWOTE), not CPI.

Over the past 15 years, tobacco excise taxes have risen by a cumulative 500% for cigarette sticks and over 650% for roll-your-own tobacco products (levied per kilogram)⁸. No other category of taxation has risen by such levels over a comparable period. The original Henry Tax Review recommendation of a ‘one-off 25% increase’⁹ has been ignored.

As per the OECD Consumption Tax Trends 2024 report, Australia had the highest specific excise rate per 1000 cigarettes of any OECD country with the U.S. dollar as a common denominator currency.¹⁰ As such, Australia has the most expensive pack of 20 legal cigarettes in the world¹¹.

We acknowledge the public health objective underpinning tobacco excise increases - higher prices are intended to make legal tobacco products unappealing because of the cost.

However, the federal government has progressively continued to increase taxes in relative perpetuity under the misconception that higher prices will commensurately drive down smoking rates and the public health objectives of excise tax policy will continue to be met.

⁴ [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

⁵ Ibid.

⁶ Ibid.

⁷ [Parliament of Victoria Public Accounts and Estimates Committee, Vaping and Tobacco Controls, August 2024](#)

⁸ [Historical excise duty rates, Australian Taxation Office, 15 August 2024](#)

⁹ [Australia’s Future Tax System, Report to the Treasurer, December 2009](#)

¹⁰ [OECD, Consumption Tax Trends 2024](#)

¹¹ [OECD, Cigarette prices](#)

Instead, extreme pressures on the prices of legal tobacco products have ‘broken the back’ of consumer affordability and accelerated demand for cheaper alternatives. The gap between what consumers are willing to pay for legal tobacco products is no longer a motivation to quit – it is now profit for organised crime.

The consequences of punitive federal tobacco excise tax policy have now entrenched a ‘worst of both worlds’ outcome – precipitous increases in tax rates are directly contributing to falling rates of excise collection, while undermining the intended public health objectives due to the growing prevalence of illicit tobacco.

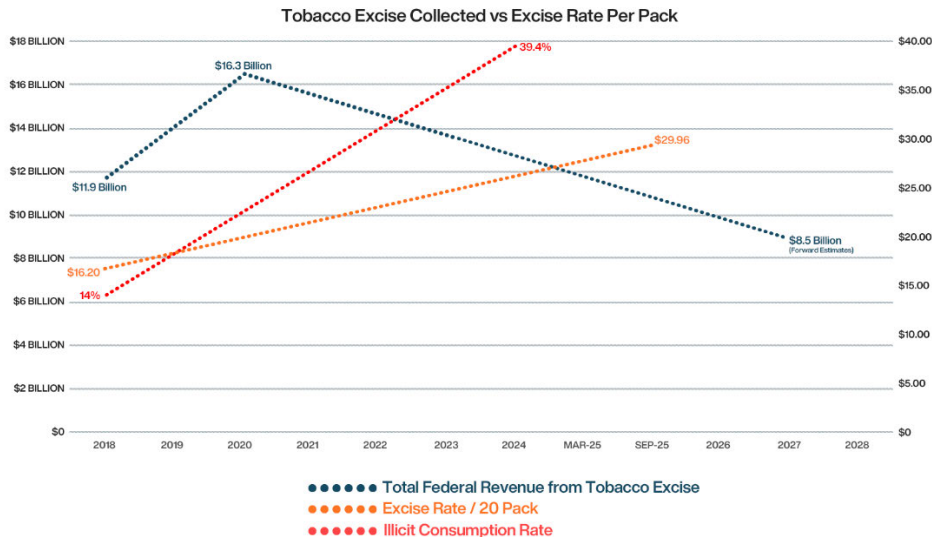
1.2 Higher tobacco excise taxes have caused drastic shortfalls in excise collection

In 2024, \$6.7 billion of tobacco excise was evaded due to illicit tobacco consumption¹². This does not include lost GST receipts, a portion of which would otherwise flow through to New South Wales.

The 2025-26 federal budget estimated tobacco excise collection for 2024-25 at \$7.4 billion – a 51% write-down from the \$15.3 billion originally estimated.¹³ Despite a prediction that the three above-AWOTE excise increases, legislated to take effect from 2023 to 2025, would generate an additional \$3 billion in collection¹⁴, tobacco excise collection has been written-down by over \$20 billion across the three years from FY 2023-24 to 2025-26¹⁵.

Over the four-year forward estimates, the federal government is expected to lose \$28 billion in tobacco excise collection from the highest forecasted amount across those financial years to the most recent forecast.¹⁶ The Commonwealth Treasury and independent economists acknowledge that excise shortfalls are largely a consequence of rapid migration to illicit tobacco products, not reduced smoking prevalence¹⁷.

The graphic below demonstrates the inverse relationship between tobacco excise tax rates (in orange) and excise tax collection (in blue) – while illicit tobacco consumption has nearly tripled (in red).^{18 19}



¹² [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

¹³ [Treasury, Budget 2025-26, March 2025](#)

¹⁴ [Sydney Morning Herald, Tobacco tax increase to raise \\$3b, more health spending in budget, 2 May 2023](#)

¹⁵ [Treasury, Budget Archives](#)

¹⁶ [Treasury, Budget 2025-26, March 2025](#)

¹⁷ [ABC News, Should the tobacco tax be reduced? MPs speak out as cigarette prices soar and illegal black-market spirals 'out of control, 26 October 2024](#)

¹⁸ [Federal Budget Papers](#)

¹⁹ [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

1.3 Higher taxes make smoking more affordable, risking Australia’s smoke-free vision

Tobacco excise taxes have been raised to such a point that they may no longer serve their purpose in disincentivising smoking. Instead, they have invited the proliferation of tax-evading illicit tobacco products, which because of their attractively lower prices, may make smoking more appealing.

Recent national research on smoking prevalence conducted by Roy Morgan will be of concern to the community. It shows that smoking prevalence, particularly in the 18–24-year-old cohort, has been increasing since the Government’s vaping bans came into effect in mid-2024²⁰.

For this cohort, the incidence of smoking cigarettes or vaping was at 25.1% in the year to September 2024. Since then, to May 2025, the incidence of 18–24-year-olds smoking or vaping has increased to nearly 28% - which represents an additional 80 000 consumers of these products²¹.

The ACIC National Wastewater Drug Monitoring Program report of November 2024 shows that “average consumption of nicotine has increased in the capital cities and regional areas”²².

The trajectory of smoking prevalence has either flatlined or is increasing due to the availability of cheaper, illegal tobacco products. Consequently, Australia risks the failure of its 5% daily smoking prevalence target under its National Tobacco Strategy 2023-2030²³ and the failure of its ‘smoke-free’ vision.

1.4 Serious and organised crime involvement in the illicit nicotine products trade

Growing consumer demand for cheaper, tax-evading and more easily accessible tobacco and nicotine products has entrenched a thriving, multi-billion dollar illicit trade, which governments widely acknowledge is controlled by serious and organised crime²⁴.

Organised crime groups are reportedly making \$13 million a day from the illicit tobacco trade²⁵. The PAEC Inquiry Report found that criminal gangs only need 1 in 30 illicit tobacco shipping containers to infiltrate the border for their operations to remain profitable²⁶.

Where a shipping container does infiltrate the border, it can reap up to \$10 million in profits from a supply cost of \$250,000 – representing a 40-1 profit margin²⁷.

The Victorian Parliamentary Budget Office estimates that the vaping black market could be worth as much as \$500 million in Victoria alone²⁸. Extrapolating these figures country-wide equates to a national illegal vaping market of approximately \$2 billion. This is in addition to illegal tobacco or any other illegal nicotine products.

Illicit tobacco products are now easier to access than ever before. The ability to offer lower prices than legal tobacco products and maintain handsome profits has invited new criminal entrants into an already saturated illicit market.

This, combined with inconsistent enforcement and licensing schemes nationally, have meant that illicit tobacco is ubiquitously available and there is growing community acceptance that it is a low-risk, high-reward criminal activity.

²⁰ [Roy Morgan, The full picture: a decade of smoking in Australia, 8 July 2025](#)

²¹ Ibid

²² [Australian Criminal Intelligence Commission, Report 23 of the National Wastewater Drug Monitoring Program, 2024](#)

²³ [Department of Health, Disability and Ageing, National Tobacco Strategy 2023-2030](#)

²⁴ [Sydney Morning Herald, Tobacco and toe-cutting: The black market driving gang violence, 23 June 2025](#)

²⁵ [Herald Sun, \\$13m a day: Organised criminals; tobacco wars exposed, 8 February 2025](#)

²⁶ [Parliament of Victoria Public Accounts and Estimates Committee, Vaping and Tobacco Controls, August 2024](#)

²⁷ [ABC News, VIDEO: Illicit tobacco war escalating in Melbourne, 24 October 2023](#)

²⁸ [Parliamentary Budget Office, E-cigarette use in Victoria: size of the market, 7 February 2024](#)

According to independent research, in 2014, approximately 53% of survey respondents were aware of the availability of loose-leaf illicit unbranded tobacco products. By 2024, this figure had risen to 77%²⁹.

Approximately 50% of all tobacco products are purchased through tobacconists, local milk bars, delis and local grocery stores. These types of retailers are far more likely to be selling illicit products. Organised crime groups typically operate the illicit tobacco trade through smaller, unlicensed, independent operators³⁰.

Criminal syndicates, in efforts to control market share and grow profit, are now openly embroiled in dangerous and retaliatory warfare, which comes at the expense of community safety³¹. Enforcement activity, particularly where it does not permanently disrupt illicit trading, is simply seen as part of the 'cost of doing business'³².

Over the past 18 months, criminals have perpetrated almost 200 separate arson attacks on tobacco shops³³ nationally. Arson is now the preferred method for organised crime to intimidate, coerce and threaten law-abiding retailers or to retaliate against rival gangs. Crime syndicates now charge up to \$5000 in extortion taxes to tobacco retailers and if they refuse to cooperate, their businesses are destroyed³⁴.

The trend of violence has progressively graduated from arson and criminal intimidation to assassinations of crime figures in highly public settings³⁵ to the inadvertent death of an innocent member of the community³⁶, which state police forces predicted would happen over 12 months ago³⁷.

Crime gangs have been found to be targeting and recruiting young offenders to carry out arson attacks on their behalf. As a senior member of Victoria Police identified, "children are committing offences that they don't have a concept of the seriousness of in some instances (with respect to arson)"³⁸.

It is well-established amongst the law enforcement community that illicit tobacco and other illicit nicotine profits provide a low-risk, high-reward funding source for other more serious criminal activity. This includes drugs and firearms smuggling, human trafficking and forced prostitution³⁹.

On this issue, ABF Commander Ken McKern has previously commented that "*The trade in illicit tobacco globally diverts billions of dollars of vital tax revenue from governments - which could have been used to fund health, education and other essential community services - to criminals, funding transnational crime, corruption, and terrorism*"⁴⁰.

The Minister for Health and Aged Care has also acknowledged, "*it's also a really lucrative source of revenue for some very bad people, for organised crime gangs, who are using the money they get from vapes, they get from illicit tobacco, to fund their other criminal activities like drug trafficking and sex trafficking*"⁴¹.

1.5 Impact of prohibition and overregulation on adult consumers and organised crime

There is an emerging body of evidence, which suggests that Australia's near-prohibitionism approach to nicotine products, such as vapes and nicotine pouches, may be failing.

²⁹ [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

³⁰ [Ibid](#)

³¹ [The Guardian, Firebombings of Victorian tobacco shops surpass 100 as police detail meeting that sparked war, 9 October 2024](#)

³² [Parliament of Victoria Public Accounts and Estimates Committee, Vaping and Tobacco Controls, August 2024](#)

³³ [ABC News, Tobacco store fire in Fawkner being investigated by police, 30 September 2024](#)

³⁴ [The Age, Illicit tobacco 'cartel' created by exiled kingpin to monopolise black market, 14 April 2025](#)

³⁵ [ABC News, Inside the decade-long feud that ended with the execution of Sam 'The Punisher' Abdulrahim, 1 Feb 2025](#)

³⁶ [The Guardian, Tobacco war-linked arsonists killed 'completely innocent' woman in attack on wrong home, 18 Feb 2025](#)

³⁷ [Herald Sun, Crime syndicates turn up heat to force tobacco shops to shut, 2 October 2023](#)

³⁸ [The Guardian, Young children paid \\$500 to set shop alight in Victoria's tobacco and vape wars, 29 April 2024](#)

³⁹ [Australian Federal Police, Parliamentary Submission – Drivers and impacts of illicit tobacco](#)

⁴⁰ [Australian Border Force, Asia-Pacific nations unite to stamp out illicit tobacco, 3 September 2024](#)

⁴¹ [Department of Health and Aged Care, Radio interview with Minister Butler on ABC Melbourne Drive, 11 December 2024](#)

Nicotine was first ‘scheduled’ as a ‘therapeutic good’ in October 2021 with limited exceptions for packaged tobacco products and nicotine replacement therapies registered on the Australian Register for Therapeutic Goods⁴².

The current Minister for Health and Aged Care’s rationale for maintaining this policy approach was that vaping products were presented to Governments to support ‘hardened smokers’ to quit smoking⁴³. Therefore, access to legal vaping products should be restricted to these consumers only and remain prohibitively difficult for everyone else.

We recognise the public health objectives in supporting long-term smokers with legal access to better alternatives. However, near-prohibitionism ignores the choices of adults who want access to reduced-risk nicotine products as an alternative to smoking, as opposed to for the purpose of quitting smoking.

PML acknowledges that nicotine, while not the primary cause of smoking-related diseases, is addictive and that products, such as nicotine vapes and pouches, are not risk-free. However, prohibitionism and misinformation only serve to create an unwarranted moral panic towards these products, which simply drives adult consumers underground, giving rise to unintended consequences, which risk the health and safety of those very consumers.

1.6 International evidence on reduced-risk nicotine products should not be ignored

There are approximately 1.7 million adult vapers in Australia⁴⁴, who almost exclusively consume illicit vaping products. These products, and by extension, their consumers, are stigmatised for their choices without a balanced public discourse as to the harm differential between cigarettes and reduced-risk nicotine products.

This is not the approach taken by other, comparable countries.

In both the UK and the US, leading health authorities—including the Royal College of Physicians⁴⁵, the National Health Service (NHS)⁴⁶, the FDA^{47 48}, and the Surgeon General⁴⁹—agree that the primary cause of harm from tobacco-containing nicotine products is in the ‘combustion’ – the burning of tobacco, which releases carcinogenic chemicals in cigarette smoke.

The NHS has said, “*UK experts reviewed international evidence and found that in the short and medium-term, vaping poses a small fraction of the risks of smoking*”. *Most of the harmful chemicals in cigarette smoke, including tar and carbon monoxide, are not contained in vape aerosol*”.⁵⁰

New Zealand’s *Smokefree Environments and Regulated Products Act 1990*, recognises that regulated vaping products are “*significantly less harmful than smoking*”.⁵¹ Daily smoking prevalence in New Zealand has reduced from 16.4% in 2011/12 to 6.9% in 2023/24.⁵²

Sweden has actively sought to reduce smoking prevalence by making less harmful nicotine products such as nicotine pouches more ‘accessible, affordable and acceptable’⁵³. Daily smoking prevalence in Sweden, as of 2022, was 5.6% - the lowest in Europe. Sweden now leads the global race to becoming the first country in the world to achieve ‘smoke-free’ status (5% daily smoking prevalence or less) by 2025⁵⁴.

The FDA has recently provided ZYN, a nicotine pouch product, with a ‘*Pre-Market Tobacco Authorisation*’ (PMTA) on the basis that “*the data shows that these nicotine pouch products meet the bar by benefitting adults who use*

⁴² [TGA, Therapeutic Goods \(Poisons Standard – June 2025\) Instrument 2025](#)

⁴³ [Mark Butler, Minister for Health and Aged Care, World Leading Vaping Legislation Introduced to Parliament, 21 March 2024](#)

⁴⁴ [Royal College of General Practitioners, Vaping numbers surge despite crackdown, 31 January 2024](#)

⁴⁵ https://rcp.ac.uk/media/xcfa4ed/nicotine-without-smoke_0.pdf

⁴⁶ [Using e-cigarettes to stop smoking - NHS](#)

⁴⁷ [The Relative Risks of Tobacco Products | FDA](#)

⁴⁸ [Keep Your Air Clear: How Tobacco Can Harm Your Lungs | FDA](#)

⁴⁹ https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf

⁵⁰ [National Health Service UK, Vaping myths and facts](#)

⁵¹ [New Zealand Smokefree Environments and Regulated Products Act 1990](#)

⁵² [Smokefree NZ, Smoking rates and figures](#)

⁵³ [Smoke Free Sweden, The Swedish Story](#)

⁵⁴ *Ibid*

*cigarettes and/or smokeless tobacco products and completely switch to these products*⁵⁵. “Among several key considerations, the agency’s evaluation showed that, due to substantially lower amounts of harmful constituents than cigarettes and most smokeless tobacco products, such as moist snuff and snus, the authorized products pose lower risk of cancer and other serious health conditions than such products”⁵⁶.

In providing this comparison, Philip Morris acknowledges that it owns the ZYN brand.

These examples demonstrate that other comparable nations recognise the harm differential between tobacco smoking products and other nicotine products and have approached policy development accordingly.

This is not to say that these countries provide open and unrestricted access to alternative nicotine products. Appropriate regulatory parameters exist, especially as they relate to product availability, safety and quality, marketing and youth access prevention.

In contrast, Australia’s strict ‘therapeutic-only’ policy approach to alternative nicotine products invites three critical risks, which we urge the Committee to consider.

One - it tacitly encourages the uptake of unknown, unregulated and unsafe nicotine products. Two – data is now emerging that consumers are overwhelmingly rejecting the therapeutic access pathway for vapes and pouches. Three – prohibitionism has created highly profitable, thriving illicit markets which bring organised crime into the community.

These issues and alternative approaches taken by other countries invite consideration as to the appropriateness of Australia’s near-prohibitionism approach to nicotine products.

1.7 Enforcement burden on state governments

The impact of federal tobacco excise tax policy and near-prohibitionism towards nicotine products introduces a significant and additional enforcement challenge, which largely falls to the states and territories to manage.

Federal enforcement agencies including the ABF, AFP and the ATO are responsible for intercepting illicit tobacco and nicotine products at the border. However, given the vastness of the Australian maritime border and the fact that most illicit products arrive via sea freight (due to its cost effectiveness), it is simply not possible for federal agencies to stop all illicit products from infiltrating the border.

Organic consumer demand for illicit products continues to surge with offshoots of secondary illicit markets for products such as nicotine pouches, becoming an additional revenue source for organised crime syndicates. Any federal enforcement activity, such as product seizures at the border, is blanketed or even negated by the vast volume of products that do enter the country.

Concerningly, overall seizures by the Australian Border Force (ABF) and the Australian Taxation Office (ATO) fell by almost one-fifth from 2022-23 to 2023-24⁵⁷ – indicating an even higher volume of illicit tobacco is entering the country undetected, which state and territory governments are expected to enforce.

Federal and state enforcement agencies can only enforce the supply of illicit tobacco and nicotine products. However, these efforts will not be effective if the demand for illicit products remains stable or continues to grow.

In consideration of the above issues, we make the following recommendations to the Committee.

Recommendation 1A: A federal review of fiscal and policy settings is urgently required

A root-and-branch review is required across the entire federal framework of fiscal and policy settings for tobacco and nicotine products. A federal government-led review, supported by state governments, law enforcement agencies and

⁵⁵ [FDA, FDA Authorises Marketing of 20 ZYN Nicotine Pouch Products after Extensive Scientific Review, 16 Jan 2025](#)

⁵⁶ Ibid

⁵⁷ [FTI Consulting, Illicit Tobacco in Australia in 2024, June 2025](#)

a balanced cross-section of subject matter experts, must urgently evaluate and report on the core drivers of demand for illicit products, societal impacts and consequences of the illicit trade and appropriateness of policy, funding and enforcement arrangements.

A federal review must at least consider the following elements.

i. The effectiveness of current tobacco excise tax settings and how state enforcement should be better funded

At present, there is little clarity as to how much of the cumulative \$41 billion of tobacco excise revenue already written-down or expected to be lost from FY 2020-21 to 2027-28 is apportionable to reduced smoking prevalence and how much has flowed directly into the hands of organised crime⁵⁸.

The federal Treasury should evaluate, or make public, the results of an existing evaluation, which shows the point in time tobacco excise rates became inversely proportional to excise collection. Such an evaluation should also identify scenarios of excise tax settings, which would result in a lesser price differential between legal and illegal tobacco products, stabilised or reduced consumer demand for illicit products and pathways towards excise collection recovery.

While the Commonwealth is responsible for enforcing against the importation of illicit tobacco and nicotine products and intercepting these products at Australian borders, most of the enforcement burden falls upon state governments. Given the volume of illicit products which do penetrate the border, ad-hoc funding arrangements are no longer appropriate, nor is it appropriate to require state governments to independently fund enforcement.

A review must also consider a dedicated and fixed funding mechanism for state governments to support enforcement against the illicit nicotine trade.

ii. The effectiveness of Australia's therapeutic regulatory approach to nicotine products and its consequences

Australia's therapeutic regulatory framework for vaping products was introduced in October 2021. In October 2024, the federal Government 'down-scheduled' certain 'lower-nicotine' therapeutic vaping products from Schedule 4 to Schedule 3 (Pharmacist-Only medicines) - subject to state and territory adoption of the Poisons Standard amendment and legislated supply conditions⁵⁹. The objective of this was to improve and simplify access to legal vaping products.

It has been ten months since this amendment was introduced. However, the federal Government has not produced any data, which shows that legal vaping products are preferred to, or accessed more than illegal vaping products, or at the very least, statistics are trending towards that direction.

Recent reporting, under a Freedom of Information (FOI) request, showed that the therapeutic pathway remains vastly underutilised by consumers, compared to the relative ease of access to nicotine products through the illicit market.⁶⁰

An average of 5932 Special Access Scheme C lodgments were submitted by pharmacists each month from October 2024 to April 2025 for the supply of therapeutic vaping goods⁶¹. Even if an additional small cohort of patients still access vapes via a doctor's prescription, conservatively, legal access remains at or below 1% of the total market.

This raises the pertinent question, that despite the federal Government's efforts to improve access, whether the therapeutic framework for vaping products remains appropriate and fit-for-purpose. This should be considered in the context of a 99% illicit market for vaping products, which is a profitable secondary market for organised crime.

In 2023, the federal Government estimated that over 90% of consumers do not access vapes via prescription and likely via the illicit market⁶². A review must evaluate whether these figures have improved, are likely to improve, and if this is not the case, whether the current pathway for legal access remains appropriate.

⁵⁸ [Federal Budget Papers](#)

⁵⁹ [Department of Health and Aged Care, Changes to vaping in Australia from 1 October 2024](#)

⁶⁰ [Daily Telegraph, Black market surges as Albanese Labor government's vape scheme goes up in smoke, 16 June 2025](#)

⁶¹ [Ibid](#)

⁶² [Department of Health and Aged Care, Proposed reforms to the regulation of vapes Impact Analysis, October 2023](#)

iii. Product safety and quality implications of illicit tobacco and illicit nicotine products for consumers are unknown

Illegal tobacco products are harmful to consumers beyond the known risks of compliant tobacco products.

Legal tobacco products are required to comply with strict ingredients, packaging, labelling and reporting laws under the Public Health (Tobacco and Other Products) Act 2023⁶³. These laws are ignored by the illicit market.

The community has no awareness as to what is in products such as ‘chop chop’ and no ability to make an informed decision about what they are consuming⁶⁴. This is concerning given the Australian Border Force has previously “detected poisons such as formaldehyde and found rat faeces inside illicit tobacco”⁶⁵.

Similarly, illicit nicotine products are unknown and not subject to quality controls or product safety and transparency standards. Plainly speaking, most of the 1.7 million adult vapers do not know what is in their vaping products⁶⁶.

Other countries, such as the UK⁶⁷ and New Zealand⁶⁸, have introduced strict product safety requirements, including restrictions on harmful ingredients. While Australia, via the Therapeutic Goods Administration, also has a comparable framework in place⁶⁹, most consumers do not benefit from these safeguards as they are consuming mostly illicit vaping products because legal access remains prohibitively difficult.

iv. The true cost of the illicit nicotine trade to the community and for law enforcement remains unknown

The full gambit of costs associated with the enforcement burden, befallen to states and territories, has never been properly quantified. There is no clarity as to how illicit nicotine profits have helped fund more serious criminal activity such as drug trafficking, money-laundering and firearms offences and the broader impact of this on the community.

The direct costs associated with licensing enforcement, policing, serious and organised crime enforcement, emergency services response from police, ambulance and fire brigade, are in totality, significant, yet unknown.

Additionally, indirect costs and opportunity costs of redirecting resources to enforcement illicit tobacco and nicotine offences from other policing requirements on issues such as youth crime and domestic violence are unknown.

This is consistent with recent comments from Premier Chris Minns in New South Wales, who has recently commented that NSW Police to “confront what is absolutely illegal behaviour ... would mean allocating police officers that are currently working on domestic violence cases and youth crime cases, on major organised crime networks”⁷⁰.

v. Federal and state coordination and enforcement outcomes must be formalised

Chapter 6A of the Public Health (Tobacco and Other Products) Act 2023⁷¹ legislated the statutory function of the Illicit Tobacco and E-Cigarette Commissioner (ITEC) under the Department of Home Affairs. This establishes a standalone federal office with a core responsibility for multi-agency and cross-jurisdictional coordination, in collaboration with industry stakeholders, to arrest the illicit tobacco and e-cigarette products trade.

Despite the Act being passed in December 2023, a permanent ITEC Commissioner appointment was not made until 18 months later, in July 2025. It remains unclear how the ITEC Commissioner will coordinate with state and territory governments, industry and law enforcement agencies or what enforcement outcomes it will be held accountable for.

⁶³ [Public Health \(Tobacco and Other Products Act\) 2023](#)

⁶⁴ [Metro UK, Fake cigarettes contain insects, faeces, dangerous toxins, tobacco boss warns, 27 August 2018](#)

⁶⁵ [House of Representatives, Customs Amendment: immediate destruction of illicit tobacco Bill, 2019](#)

⁶⁶ [Queensland Government, Vaping exposed](#)

⁶⁷ [UK Government, Guidance – advice on ingredients in nicotine-containing liquids in electronic cigarettes and refill containers, 16 August 2024](#)

⁶⁸ [Ministry of Health, restrictions on colours and flavours of vaping products](#)

⁶⁹ [Therapeutic Goods \(Standard for Therapeutic Vaping Goods\) \(TGO 110\) Order 2021](#)

⁷⁰ [Australian Financial Review, Minns wants tobacco tax cut to fight crime gangs, 2 June 2025](#)

⁷¹ [Public Health \(Tobacco and Other Products\) Act 2023 - Federal Register of Legislation](#)

As part of a national review, the role and charter of the ITEC Commissioner must be reviewed and intelligence sharing and enforcement mechanisms and outcomes to be formally enshrined.

Recommendation 1B: Stronger laws to prevent the use of private-ATM and payment aggregators in money-laundering

In AUSTRAC's most recent national risk assessment for money laundering in Australia, illicit tobacco was identified as an 'increasing' threat⁷². A recent national media investigation has found a concerning link between private providers of Automatic Teller Machines (ATM) and illicit tobacco retailers and their controlling criminal syndicates⁷³.

Several tobacco retailers have found to be injecting vast volumes of cash, derived from illicit nicotine profits into privately-owned ATMs to avoid tax and launder money. In several instances, private ATMs are supplied to tobacco retailers, who have been found guilty of the possession and supply of illicit tobacco products⁷⁴.

In one instance, private ATM services were supplied to a business which was subject to a 'proceeds of crime' court action by the New South Wales Crime Commission⁷⁵.

The onsite ATMs provide a vital source of instant cash for the businesses as customers are usually asked to purchase illegal tobacco products for cash. Cash-based transactions allow illegal tobacco retailers to avoid scrutiny by the taxation office for undeclared income and launder illegitimate profits as legitimate sources of income.

Money laundering through private ATMs exploits a regulatory loophole where there is no oversight, transparency or information as to who an ATM facility is being provided to and whether it is provided to an individual or company with prior criminal history.

We recommend the Committee to urge the federal government to introduce a regulatory framework, similar to what was recently adopted in Canada.⁷⁶ This framework, governed by Canada's Financial Transactions and Reports Analysis Centre (FINTRAC) legislates similar disclosure and reporting requirements on private ATM providers as those placed on banks to prevent money-laundering operations⁷⁷.

Section 2: New South Wales state legislation

2.1 Illicit tobacco and nicotine products spread in New South Wales and regional areas

The illicit tobacco and nicotine products trade is now pervasive throughout all of New South Wales.⁷⁸ Our own monitoring program has identified over 1100 retailers in to be suspected of supplying illicit tobacco and/or other illicit nicotine products in the state. Approximately 332 of these retailers are located across regional New South Wales⁷⁹.

NSW Health data shows that the number of tobacconists operating in the state has risen from approximately 14 500 to 19 500 in the past four years – an increase of over 30%.⁸⁰ There is no logical basis for such a steep rise, other than the lure of a highly profitable illicit market and even more criminal entrants vying for their share of the opportunity.

Historically, New South Wales has not had in place a positive tobacco products licensing scheme, requiring prospective tobacconists to 'notify' NSW Health and obtain a Tobacco Retailer Notification number (TRN).

⁷² [AUSTRAC, Money Laundering in Australia – National Risk Assessment](#)

⁷³ [ABC News, ATM suppliers atm2go and Next Payments in battle for tobacco crime figure's business, court filings reveal, 13 July 2025](#)

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ [Government of Canada, Money-services legislative amendments](#)

⁷⁷ Ibid

⁷⁸ [Herald Sun, It started in Melbourne, now the tobacco war is Australia's problem, 4 October 2024](#)

⁷⁹ PML retailer monitoring program - ongoing

⁸⁰ [Parliament of NSW, Legislative Assembly Hansard Tobacco and E-Cigarette Retail 18 October 2024](#)

The absence of any character or fitness test as a step to determining the suitability of a tobacco licensee has resulted in market saturation by organised crime gangs and their associates. While the introduction of a licensing scheme in New South Wales is positive, there remain significant inadequacies in the state's tobacco control legislation.

2.2 Adequacy of existing legislation and appropriate allocation of departmental responsibility

PML congratulates the New South Wales Government on the introduction of a tobacco products licensing scheme, effective as of 1 July 2025. We also congratulate the New South Wales Government on introducing, and the Opposition's support⁸¹ towards a suite of legislative reforms against the illicit tobacco trade.

Stronger financial penalties, imprisonment terms and powers to issue closure orders against illicit retailers are proven, effective deterrents against the illicit nicotine trade. Powers for landlords to terminate leases of tenants subject to closure orders and offences against leasing to illicit suppliers will ensure broader accountability and protections for third-parties connected with the illicit trade⁸².

This legislation is a positive step in the right direction. However, as Premier Chris Minns rightly pointed out, national consistency in state legislation is of paramount importance. Criminals should not be able to set up operations in a state which offers more lenient penalties as compared to another state⁸³.

Organised crime gangs have continued to evolve their supply chains into interstate logistical operations, an activity which has the potential to escape scrutiny because of inconsistencies in state legislation.

As an example, in June last year, the NSW Riverina's Highway Patrol team made 15 major seizures of cash, illegal tobacco, vapes and cigarettes with a value close to \$9 million⁸⁴. Such is the volume of illicit activity between Victoria and New South Wales that the Hume Highway is being dubbed as Australia's "*Tobacco Highway*"⁸⁵.

State legislature and penalties should not invite an opportunity for 'jurisdiction shopping', whereby criminals can segment parts of their operation across multiple states with different legislative frameworks.

Considering the above, PML recommends the following critical amendments to NSW state tobacco legislation.

Recommendation 2A: Broadening illicit tobacco offences to capture all nicotine products

Illegal tobacco and other illegal nicotine markets, such as vapes and pouches, are not separate from one another. Criminal gangs, which largely control these categories, operate them concurrently, as this is more efficient for importation and distribution purposes, and both product types are typically sold in the same retail outlet.

This is certainly consistent with the recent experience of both federal and state law enforcement agencies⁸⁶. Law enforcement officers should not be forced to limit the actions they can take against suppliers of illicit tobacco and other illicit nicotine products due to loopholes in legislation and any ensuing confusion over actionable conduct.

While all state and territory jurisdictions have in place tobacco control legislation, which penalises the sale of illicit tobacco products, it is often unclear which laws or penalties apply to other illicit nicotine products, such as vapes.

Queensland's *Tobacco and Other Smoking Products Act 1998* dealt with this issue in 2024. Under the objectives of its amendment legislation, Queensland has stipulated that the Act will "restrict the supply and possession of illicit

⁸¹ [New South Wales Liberals, Dodgy smoke dens to be shut down under Coalition crackdown, 30 June 2025](#)

⁸² [New South Wales Health, Suite of tough new illegal tobacco measures unveiled, 27 July 2025](#)

⁸³ [AFR, More vape penalties on the way, but will they be harder to buy, 22 July 2025](#)

⁸⁴ [7 News, Australia's tobacco highway, 19 June 2024](#)

⁸⁵ [7 News, Australia's tobacco highway, 19 June 2024](#)

⁸⁶ [Crime and Corruption Commission Queensland, Multi-million dollar laundering investigation smashes illicit tobacco and vape supply, 31 August 2023](#)

tobacco and illicit nicotine products⁸⁷. This provision explicitly captures all illicit nicotine products and applies all penalties and breaches across all associated product categories.

We recommend that New South Wales legislation introduce a similar head of power explicitly ensuring that all offences, breaches and penalties apply equally to all illicit nicotine products.

Recommendation 2B: Broader illegal business activities to be captured under penalties

The illicit nicotine ecosystem extends far beyond the final supply of products to a consumer. The illicit trade is sophisticated - involving multiple locations, multiple criminal associates and multiple types of illegal activity ranging from importation, distribution, wholesale possession and retail supply – both online and traditional.

New South Wales, in a similar vein to amendments introduced in Queensland in 2024⁸⁸, should consider the following:

- Prohibitions on commercial possession extending to off-site premises, such as a storage shed or vehicle, where the premises are used for the purpose of storing or possessing illicit tobacco or nicotine products
- New offences for an employee or a person acting on behalf of another person (for example, a family member or friend of the business owner working in the business) to supply illicit tobacco or illicit nicotine products in retail or wholesale outlets.
- New specific offences relating to adults who supply illicit nicotine products to children.⁸⁹

The expansion of the term ‘premises’ targets suppliers who attempt to evade law enforcement by orchestrating a supply chain whereby they keep small quantities of stock in retail but larger quantities at off-site premises.

Offences capturing persons acting on behalf of another would penalise a broader group of participants in the illicit supply chain, which is particularly relevant where organised crime groups and syndicates are involved. The law should not operate to absolve parties involved in illicit trading activities, especially where their actions are more covert.

Importantly, capturing a broader range of criminal activity would also support the effectiveness of the New South Wales tobacco product licensing scheme. Responsible bodies would have the ability to enforce licence suspensions and cancellations against a wider range of criminal activity within the illicit supply chain. Prospective licensees would be subject to greater scrutiny over prior criminal activity, which supports their ‘fitness’ to obtain a licence.

Recommendation 2C: Legislated powers for mandatory-minimum closures and injunctions

One of the major frustrations state law enforcement bodies have expressed is the rate of recidivism and how often, even after being penalised, the same offenders re-enter the illicit market⁹⁰. This is the result of a combination of multiple factors, which includes the lack of a licensing scheme with appropriate character assessment and licence cancellation arrangements, lenient penalties but also structural inefficiencies within the judicial framework.

We welcome legislation to be introduced in New South Wales, which will provide magistrates with the power to issue closure orders for businesses selling illicit tobacco and vapes for up to 12 months. We encourage the Committee, under this Inquiry, to recommend that this amendment be strengthened to legislate the mandatory closure of a recidivist illicit nicotine products operator for a minimum period of at least six months.

Without clear and unambiguous legislated provisions mandating the closure of premises for a minimum six-month period, there remains the risk that recidivist operators will absorb a short-term closure as part of the cost of doing business. Similar provisions have been adopted in Queensland⁹¹ and South Australia.⁹²

⁸⁷ [Queensland legislation, Tobacco and Other Smoking Products Act 1998 \(QLD\), 19 September 2024](#)

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ [Cairns Post, Illicit tobacco shops shut in Cairns to open 72 hours later, 27 March 2025](#)

⁹¹ [Queensland legislation, Tobacco and Other Smoking Products Act 1998 \(QLD\), 19 September 2024](#)

⁹² [SA House Assembly, Tobacco & E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024, 24 September 2024](#)

These penalty mechanisms are important in that they provide judicial bodies with an effective ‘middle-ground’ enforcement option to bridge the gap between the perceived leniency of a fine and the often-convoluted, time-consuming process of a full criminal prosecution.

We also encourage the ability for a court to grant an injunction against persons supplying illicit nicotine products.

Mandatory-minimum long-term closure orders and injunctions are more effective deterrents against recidivist operators as they are more likely to be both financially and operationally disruptive to their illicit trading activities.

Recommendation 2D: Illicit product cost-recovery mechanisms to be legislated

There are significant costs associated with illicit nicotine enforcement activities, which are ultimately paid for by the New South Wales taxpayer. These costs relate to the forfeiture, transportation, storage, disposal and destruction of illicit products, and continue to rise, not just because of the growing scale of illicit but also due to the increasingly hazardous composition of illicit vaping products in particular.

Victoria Police, in evidence given under the PAEC Inquiry noted that *“police stations do not have the capacity to store evidentiary seizures of a commercial size”*⁹³ and the *“the cost and logistical complexities of safely storing and disposing of seized illicit tobacco and vapes is a significant impost to Victoria Police”*⁹⁴.

The Queensland Government, under its Health Legislation Amendment Bill⁹⁵, which is currently before the Queensland Parliament, has introduced a legislated mechanism to recover these costs from illicit tobacco retailers. The objective of this amendment is to *“prevent the State from bearing the full burden of costs associated with criminal activity. This will ensure that those responsible for the offences contribute to the costs incurred”*⁹⁶.

PML urges the Committee to consider a similar cost-recovery mechanism in New South Wales. Imposing cost-recovery upon organised crime for the public expenditure incurred from enforcing illicit tobacco and vaping products adds further weight to the overall quantum of penalties.

Recommendation 2E: Standalone NSW tobacco regulator must be established

The scale and complexion of the illicit tobacco market has evolved and is now almost exclusively operated by serious and organised crime. Whereas previously it may have been appropriate for NSW Health to manage multiple roles in tobacco harm reduction, education, and enforcement - this is no longer appropriate.

Evidence was given during Victoria’s PAEC Inquiry, *“While DH [in Victoria] has proficiency in regulating tobacco control policies and implementing public health measures, it lacks experience and expertise in dealing with SOC (serious and organised crime).”*

Dr James Martin, Senior Lecturer in Criminology at Deakin University, has commented that *“while the trade is being dominated by black market actors, it is not feasible to have health inspectors who are outside law enforcement, policing these premises”*. Enforcement should be carried out by agencies and officers with appropriate training in disrupting criminal activity due to the infiltration of SOC into this market”.⁹⁷

Activities associated with enforcement such as the execution of warrants, search, entry onto premises, confiscation of illicit goods and detainment of suspects, carry a heightened risk and require specialised training. Health departmental officers have not been trained in either criminal enforcement or criminal procedure to be able to carry out this suite of activities safely or effectively.

⁹³ [Parliament of Victoria Public Accounts and Estimates Committee, Vaping and Tobacco Controls, August 2024](#)

⁹⁴ Ibid

⁹⁵ [Queensland Parliament, Health Legislation Amendment Bill 2025, March 2025](#)

⁹⁶ [Queensland Parliament, Health Legislation Amendment Bill 2025, Explanatory Notes, March 2025](#)

⁹⁷ Ibid

The South Australian Government, in 2024, announced the transfer of tobacco products licensing enforcement to its Consumer and Business Services division.⁹⁸

We strongly recommend New South Wales adopt a similar approach. A dedicated, standalone regulatory body must be urgently established, charged with tobacco licensing enforcement. This will also support New South Wales police to focus on disrupting serious and organised crime involvement in the illicit nicotine trade.

Recommendation 2F: Legislated mechanism for automatic referrals of suspected illicit activity

The enforcement of illicit tobacco and nicotine products requires a multi-agency collaborative effort across Commonwealth and state jurisdictions. As enforcement activity often finds, retailers and wholesalers of illicit products are found to be committing multiple offences and breaching several laws across different jurisdictions.

As often is the case, where a retailer is suspected of trading in illicit tobacco and vaping products in Victoria, they are likely to be in breach of state tobacco legislation as well as tobacco product laws under the Public Health (Tobacco and Other Products) Act 2023⁹⁹. As vaping products are only legally available under the Commonwealth therapeutic vaping framework, the commercial possession, advertising and sale of vaping and/or other illicit nicotine products is likely to be in breach of the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024.¹⁰⁰

While all enforcement agencies make the best endeavours, it will not always be practicable for officers across all federal and state agencies to comprehensively investigate suspected illicit activity covering the entire suite of breaches and offences of multiple acts and regulations.

This has given rise to an unfortunate situation where enforcement agents, during their investigative activities, inadvertently neglect certain breaches, because jurisdictionally, they are not directly responsible for that breach. For instance, a state tobacco product licensing officer may not be able to confiscate illicit vaping products or investigate the suspected involvement of serious and organised crime.

To mitigate this, PML recommends a legislated mechanism for an automatic referral process between different agencies within the state government architecture and between New South Wales state agencies and relevant Commonwealth agencies.

The legislated automatic referral process should provide that where an investigating officer from any New South Wales agency suspects a breach of any illicit tobacco, vaping or illicit nicotine products laws, they are compulsorily required to refer that breach to the relevant agency for further investigation and enforcement.

[End]

⁹⁸ [Government of South Australia, Major Enforcement Clampdown on illegal tobacco and vapes in SA, 29 May 2024](#)

⁹⁹ [Public Health \(Tobacco and Other Products\) Act 2023](#)

¹⁰⁰ [Therapeutic Goods and Other Legislation Amendment \(Vaping Reforms\) Act 2024](#)