

**Submission
No 60**

INQUIRY INTO ILLEGAL TOBACCO TRADE

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Submission to the NSW Illicit Tobacco Inquiry
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1. We thank the Committee for the opportunity to provide comment and evidence in relation to the issue of illicit tobacco in NSW. We write as a group of academics across disciplines and institutions. Dr Edward Jegasothy is an expert in public health from the University of Sydney School of Public Health. Dr James Martin is a criminologist and expert in illicit markets from the Deakin University School of Humanities and Social Sciences. Dr Francis Markham teaches and researches public policy at the Australian National University, where his work includes the regulation of addictive commodities.
2. Our submission includes evidence and comment across multiple terms of reference, in particular a), d), e), g) and h)
3. The illicit market for tobacco and other nicotine products is a growing issue of national, state and local significance, with impacts across public health, crime and public safety, government revenue and public amenity.
4. It is critical to note that while the implications of the illicit trade are distributed all across levels of government and sectors of society, many of the key policy levers are held by the Commonwealth Government and lie outside the direct control of the NSW Government and its agencies.

The illicit nicotine market is a massive and growing problem:

5. The black market for tobacco, vapes and other nicotine products has grown, and continues to grow, substantially over the past decade. While limited independent estimates are publicly available, there are a number of indicators which lead us to estimate that the current size of the market is 40-50% of total tobacco consumption.
6. First, a recent Roy Morgan report estimated that 4.8% of all Australians over 18 years used illicit tobacco in the period July 2024 to June 2025.¹ The same report estimated tobacco use at 12.1% for adults in the same period. As such 40% of those who smoke purchase illicit products. This report shows a rapid acceleration in the uptake of illicit tobacco from 1.2% (9% of smokers) of adults in 2021 to this current estimate.
7. Second, the most recent Australian Tax Office (ATO) findings are for the 2022-2023 period which estimate that the illicit tobacco market was 14.3% of total tobacco sales² which is comparable to the Roy Morgan estimate of use in that period. The ATO estimates that this figure has grown progressively from 4.9% in 2014-15.

¹ Roy Morgan (2025) The full picture: a decade of smoking in Australia.

<https://www.roymorgan.com/findings/9937-cigarette-smoking-in-australia-press-release>

² Australian Tax Office, Tobacco Tax Gap: Methodology, <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/q-z-tax-gaps/tobacco-tax-gap/methodology>

8. Third, while more recent ATO figures are not publicly available, the Commonwealth Treasury, in its Budget Paper no. 1 2025-2026, estimated that \$7.4 billion will be collected as tobacco tax revenue for the 2024-25 financial year. This is a figure approximately half of the projected estimate for the 2024-25 financial year published in the 2021-2022 Budget Outlook (\$15.3 billion). The 2021-2022 based estimate took into account expected declines in smoking rates and tobacco consumption. As such, it is probable that this 50% shortfall in legal consumption of tobacco largely comprises illicit consumption of tobacco and other nicotine products.
9. Lastly, concerning vaping, Roy Morgan reports that prevalence of vaping among adults in Australia is currently stable at 7.5% (~1.5 million people). These figures are consistent with those provided in the National Drug Strategy Household Survey.³ There is little publicly available evidence regarding the volume of legal sales of vapes. However, recent data from the Therapeutic Goods Administration (TGA) showed that only 57,000 notifications for the issue of vaping products from pharmacies were collected over the October 2024 to June 2025 period.⁴ This very small number (6,300 notifications per month out of a national population of 1.5 million vape consumers), along with data from the National Drug Strategy Household Survey,⁵ indicates that illicit sale of vapes is likely to make up the vast majority of total consumption, perhaps around 95%.

Crime implications:

9. Illicit markets emerge when strong demand occurs within a context of restricted legal supply.⁶
10. In terms of demand, nicotine is the third most popular recreational drug in the country, after caffeine and alcohol.⁷ Demand for nicotine is also persistent, with wastewater analysis from the Australian Criminal Intelligence Commission (ACIC) showing that per capita nicotine consumption has slowly trended upwards since monitoring began in 2016.⁸
11. In terms of supply, both tobacco and vapes have been subject to increasing restrictions that have contributed directly to the growth of the black market:
 - For tobacco, Commonwealth tax increases have pushed legal tobacco out of the range of affordability for growing numbers of consumers. For example, someone who consumes a

³ Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

⁴ Therapeutic Goods Administration. FOI 26-1861 — Document released under Freedom of Information Act 1982 (July 2025) <https://www.tga.gov.au/sites/default/files/2025-07/FOI%2026-1861%20Document.PDF>.

⁵ Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

⁶ Beckert J, Wehinger F. *In the shadow: illegal markets and economic sociology*. Socio-Econ Rev. 2013 Jan 1;11(1):5–30.

⁷ Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

⁸ Australian Criminal Intelligence Commission (2025) *National Wastewater Drug Monitoring Program. Report 24*. ACIC, Canberra.

legal pack of low-cost cigarettes per day would be required to spend approximately \$15,000 per year in 2025.⁹

- For vapes, bans on retail sales (outside of pharmacies), onerous requirements to access legal vapes within a limited number of pharmacies, and restrictions on the legal sale of flavours that are popular amongst adults¹⁰ have pushed consumers towards black market suppliers.

12. Illicit nicotine (comprising both illicit tobacco and other products, such as vapes) represents one of the largest and most profitable criminal commodities in the country. It now constitutes the 2nd largest illicit drug market in terms of expenditure (after methamphetamine),¹¹ and the 2nd largest illicit drug market by number of consumers (after cannabis).¹² Illicit nicotine is likely to be resulting in revenue flows to criminal organisations of billions of dollars per year — perhaps around \$4 billion, if the shortfall in Treasury excise collections discussed above is used as a benchmark.¹³
13. Strong, consistent demand for nicotine products creates opportunities for organised crime that specialise in the trafficking and distribution of illicit goods. The substantial profits to be made inevitably incentivise conflict amongst rival organised crime groups for control of the market.¹⁴
14. This conflict has manifested in significant levels of systemic violence known colloquially as the ‘tobacco wars’. This has included over 230 firebombings nationwide of premises linked to nicotine supply since the beginning of 2023.¹⁵ An increasing number of homicides, attempted homicides, kidnapping, robbery, and extortion of both black market and legitimate retailers have also been reported both in news media and public inquiries.
15. According to the CEO of the ACIC, profits made by organised crime groups involved in illicit nicotine supply have been used to fund other serious criminal activity in addition to widespread systemic violence, including terrorism, sex trafficking and illicit drug trafficking.

⁹ Bayly, M and Scollo, MM. 13.3 How much do tobacco products cost in Australia?. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne : Cancer Council Victoria; 2025. Available from <https://www.tobaccoinaustralia.org.au/chapter-13-taxation/13-3-how-much-do-tobacco-products-cost-in-australia>

¹⁰ Gendall, P., & Hoek, J. (2021). Role of flavours in vaping uptake and cessation among New Zealand smokers and non-smokers: a cross-sectional study. *Tobacco Control*, 30(1), 108-110.

¹¹ Smith R 2024. *Estimating the costs of serious and organised crime in Australia, 2022–23*. Statistical Report no. 50. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/sr77796>

¹² Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

¹³ We are currently undertaking work to assist the Commonwealth Government to estimate the size of the illicit nicotine market in Australia. However, the results of this research are not yet publicly available.

¹⁴ Jacobs B, editor. *Robbing Drug Dealers: Violence beyond the Law*. New York: Routledge; 2017.

¹⁵ ALIVE Advocacy (2025) Firebombings. <https://www.aliveadvocacymovement.com/firebombings>

Health implications:

16. The primary purpose of regulations relating to tobacco and nicotine is to reduce the health risk caused by the use of these products. Nicotine is highly addictive and smoking tobacco is known to cause lung cancer among a range of other health effects.
17. The widespread availability of illicit tobacco undermines regulations and laws which aim to protect population health. These include the availability of cheap cigarettes and tobacco, the absence of plain packaging and graphic warnings, the lack of consumer protections on all products sold through the black market.
18. Illicit vapes pose much more serious health risks than those available in legal markets. Nicotine concentrations are significantly higher than in regulated products and a minority (~5%) also contain dangerous adulterants.¹⁶
19. The health risks to children are an important concern, despite making up a small proportion of total consumers of tobacco and nicotine products (<1% of people who smoke and 6.7% of people who vape are under 18). The dominance of the supply of these products by the illicit markets increases the risk to this vulnerable population due to the lack of compliance with age restrictions and the consumer protections mentioned above.
20. Currently, inspectors appointed within the NSW Ministry of Health and Public Health Units in NSW Health's Local Health Districts are responsible for the enforcement of tobacco and vape regulations with respect to the packaging and sale of products. While NSW legislation gives authority for inspectors to be appointed and carry out enforcement activities, these agencies and civilian staff members are ill equipped to combat issues relating to organised crime and these duties impose potentially unacceptable risks for these officers.

Business implications:

18. Legitimate tobacco retailers and the industry broadly face risk of collapse in coming years. Between 2023-24, there was a 25% decrease in the sale of legal tobacco in Australia.¹⁷ This is a clearly unsustainable trajectory that is driven primarily by black market substitution rather than reductions in smoking.
19. Further pressures on legal industry include increased risk of violence, extortion, theft, property damage, and increased insurance premiums (which also affect proximate, non-tobacco businesses).¹⁸ Licensing adds a further regulatory and financial burden.

¹⁶ Jenkins, C., Powrie, F., Morgan, J., & Kelso, C. (2024). Labelling and composition of contraband electronic cigarettes: analysis of products from Australia. *International Journal of Drug Policy*, 128, 104466.

¹⁷ FTI Consulting (2025) Illicit Tobacco in Australia 2024.

<https://www.pmi.com/content/dam/pmicom/markets/australia/docs/fti-consulting-illicit-tobacco-in-australia-2024-full-report.pdf>

¹⁸ Public Accounts and Estimates Committee (2024) Vaping and Tobacco Controls. Parliament of Victoria.

Problems with enforcement heavy policy:

20. Rather than improving access to the legal supply of popular nicotine products, existing government policies remain oriented around increasing law enforcement and regulation to suppress black market activity. Research shows that efforts to suppress well entrenched black markets through law enforcement are very rarely successful.^{19, 20, 21, 22}
21. There is no evidence that Commonwealth efforts to restrict the supply of illicit nicotine products at the national border will produce a meaningful impact on the black market. Record seizures of other illicit drugs²³ have not reduced their availability for consumers, and street prices for illicit drugs have declined substantially in real terms over the last decade.²⁴ This suggests that organised crime groups involved with illicit supply are not deterred by border seizures but rather adapt by sending more products to compensate for inevitable losses.
22. The substantial profits to be made from each successful shipment mean that the cost of losing goods that are intercepted at the border can be readily absorbed by organised crime groups. A single shipping container of illicit tobacco can generate over \$8 million in profit.²⁵ This means that even if 15 out of 16 containers were to be intercepted, organised crime groups would still make a profit. This is a seizure rate that is far beyond the capacity of the ABF to achieve (despite a six-fold increase in funding allocated for border control between 2009-10 and 2020-21).²⁶
23. The inherent porousness of the border means that the primary burden of enforcement falls to domestic law enforcement and regulatory agencies. It is possible that a large-scale crackdown on illicit retailers by state authorities could produce an impact. However, there are several problems with this approach that make it unlikely to succeed in the long term:
 - The first is cost. Street-level policing is resource intensive, constituting the single largest component of Australia's national drug enforcement budget.²⁷ Given the enormous scale of the illicit nicotine market, substantial increases in State and/or Commonwealth funding would need to be allocated towards enforcement to produce a meaningful impact. This investment would need to be sustained over the long term to prevent illicit retailers reemerging once a crackdown has ended.

¹⁹ Miron, J. A. (2017). The economics of drug prohibition and drug legalization. In *Drug Abuse: Prevention and Treatment* (pp. 403-423). Routledge.

²⁰ Gray, J. (2001). *Why our drug laws have failed: a judicial indictment of war on drugs*. Temple University Press.

²¹ Buchanan, J. (2015). Ending drug prohibition with a hangover. *British Journal of Community Justice*, 13(1), 55.

²² Boettke, P. J., Coyne, C. J., & Hall, A. R. (2012). Keep off the grass: The economics of prohibition and US drug policy. *Or. L. Rev.*, 91, 1069.

²³ Australian Criminal Intelligence Commission (2023) *Illicit drug data report 2020-21*. ACIC, Canberra.

²⁴ National Drug & Alcohol Research Centre (2021) *Australian Drug Trends 2024: Key findings from the National Ecstasy and Related Drugs Reporting System (EDRS) interviews*. UNSW. Sydney.

²⁵ Preece, R. (2024). Just How Profitable Is Illicit Tobacco in Australia?. *World Customs Journal*, 18(2), 116-121.

²⁶ Ritter, A., Grealy, M., Kelaita, P., & Kowalski, M. (2024). *The Australian 'drug budget': Government drug policy expenditure 2021/22*. Social Policy Research Centre, UNSW. <https://doi.org/10.26190/unsworks/30075>.

²⁷ Ritter, A., Grealy, M., Kelaita, P., & Kowalski, M. (2024). *The Australian 'drug budget': Government drug policy expenditure 2021/22*. Social Policy Research Centre, UNSW. <https://doi.org/10.26190/unsworks/30075>.

- The second is opportunity cost. Even with additional funding, state resources remain constrained by limited personnel. This means that a large-scale crackdown on illicit nicotine retailers would necessarily result in the de-prioritisation of other key tasks. For example, police would need to forgo the investigation of other, arguably more pressing, crime problems. For health agencies, this might result in deprioritising the provision of other health services.

24. Increased enforcement in illicit markets typically results in increased systemic violence.^{28, 29, 30, 31}

Increased violence occurs for several reasons, including removal of key players, which creates instability in the market and new opportunities for other crime groups to compete for market share. Increased enforcement also raises the risks for organised crime groups, who use higher levels of violence against victims and potential informers to deter cooperation with authorities.

25. The substantial profits to be made from illicit nicotine are facilitating corruption of ‘malicious insiders’ who assist in importation and distribution.³² Given the substantial value of the national illicit nicotine market, we are concerned that corruption may spread to public agencies as it has historically done with other high value criminal commodities, such as illicit drugs.³³

Tobacco taxation needs to be reviewed

26. The Commonwealth Government has implemented high rates of taxation on tobacco products. The current excise rate is \$1.40 per cigarette or \$2397 per kg of tobacco, with GST added on top of this. The rate of taxation is indexed to increase with wages twice a year in addition to substantial increases over the past 15 years as public health policies. As a result of these policies the price of a 25 pack of cigarettes increased from \$13 in 2010 to \$50 in 2024.

27. The high rate of taxation is the key driver of the growth in the illicit market for tobacco. The ability for illicit trade to undercut the price of legal products and circumvent taxation is the principal point of differentiation and motivation for the illicit trade. Without such a large disparity, such a growth in the black market would not have been possible.

28. High taxation of tobacco serves a dual purpose: a) to raise revenue for the Commonwealth Government, and b) to deter smoking in the population to improve health outcomes.

²⁸ Werb D, Rowell G, Guyatt G, Kerr T, Montaner J, Wood E. *Effect of drug law enforcement on drug market violence: A systematic review*. Int J Drug Policy. 2011 Mar 1;22(2):87–94.

²⁹ Maher L, Dixon D. *The Cost of Crackdowns: Policing Cabramatta’s Heroin Market*. Curr Issues Crim Justice. 2001 Jul 1;13(1):5–22.

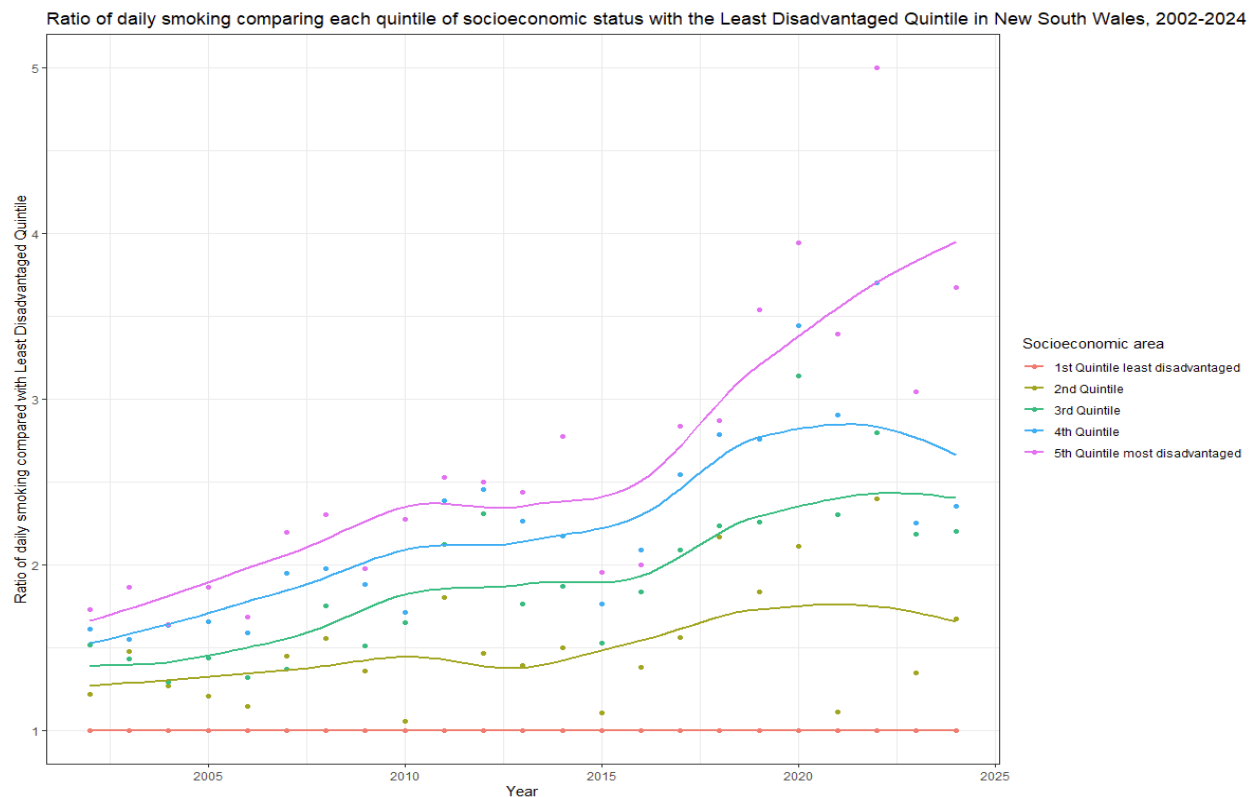
³⁰ Maher L, Dixon D. *Policing and public health: Law enforcement and harm minimization in a street-level drug market*. Br J Criminol. 1999 Sep 1;39(4):488–512.

³¹ Miron JA. *Violence, Guns, and Drugs: A Cross-Country Analysis*. J Law Econ. 2001;44(S2):615–33.

³² Cook, H. cited in Drill, S. and Dowsley, A. \$13m a day: organised criminals' tobacco wars exposed. *Herald Sun*.

³³ Royal Commission into the New South Wales Police Service (Wood Royal Commission). (1997). Final report: Volume I: Corruption (J. R. T. Wood, Commissioner). New South Wales Government.

29. While smoking rates have declined over the past 20 years, there is little evidence to suggest that the high price of tobacco has contributed meaningfully to the decline.³⁴
30. As a regressive tax, i.e. one for which people on low incomes pay a higher percentage of their income, the tobacco tax is inherently inequitable. This is further amplified by the higher rates of smoking observed in populations with low incomes.³⁵
31. The inequity of the tobacco tax policy has been dismissed by policymakers and advocates based on the assumption that those with low incomes would be more price sensitive and thus would experience greater health benefits from price rises.³⁶
32. The figure below, based on data from NSW Health³⁷, shows how much more likely people in each quintile of socioeconomic status were to smoke daily compared with those in the *least* disadvantaged areas. In 2010, the year of the first major tax increases, those in the most disadvantaged quintile were 2.3 times as likely to smoke as those in the least disadvantaged areas. By 2020, they were nearly 4 times as likely to smoke.



³⁴ Jegasothy, E., & Markham, F. (2024). Smoking prevalence following tobacco tax increases in Australia. *The Lancet Public Health*, 9(7), e418.

³⁵ Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

³⁶ VicHealth Centre for Tobacco Control, *Tobacco Control: A Blue Chip Investment in Public Health*, The Cancer Council of Victoria, Melbourne 2001.

³⁷ NSW Health, HealthStats NSW, Centre for Epidemiology and Evidence, <https://www.healthstats.nsw.gov.au>.

33. The widening of the gap in smoking prevalence, between low and high socioeconomic status groups, during the period of large tax increases, prior to the growth of the black market, suggest that this assumption was untrue. The disparity in smoking rates between low- and high-income groups increased during this period of rapid price rises. As such the tobacco tax created inequitable impacts in terms of both health and financial burden.
34. As the proportion of the population who use illicit tobacco increases, the ability of the tobacco tax to achieve either of its aims continues to decrease.
35. The Commonwealth Treasurer and Health Minister have ruled out cutting or even pausing increases to the tobacco tax, despite recently pausing the beer excise rate as a cost-of-living measure. While this position is supported by many tobacco control advocates, it is not necessarily supported by the evidence.
36. It is not fully known what the impact will be of reducing the tobacco tax at this point in time. However, as the key driver of demand and supply in the illicit market for tobacco, and with diminishing economic and health returns, there must be a review of the short- and long-term impacts of reducing or removing the tax.
37. The Commonwealth's insistence on maintaining the main driver of the illicit market implicitly puts the burden of the impacts and efforts to curb its growth on state and territory governments and the Australian population.

Alternative policy approaches

38. There are alternative policy approaches that have been more successful in reducing tobacco smoking in recent years than those implemented in Australia. These come with the additional benefit of not creating large illicit markets and associated problems with organised crime. These alternative policies have centred around increasing legal access to less harmful forms of nicotine as a harm reduction strategy.
39. Sweden has the lowest daily smoking rate (5.3%) of any Western country and has already achieved 'smoke-free' status (less than 5% daily smoking) amongst its native born population with a daily smoking rate of 4.5%.³⁸ As a result, Sweden has the lowest tobacco-related mortality rate of all European countries.³⁹ This decline is not due to tobacco taxation, with tobacco products less than a third of the price than those in the legal Australian market.⁴⁰ Rather Sweden's success is largely due to steady declines in smoking attributable to the use of less harmful nicotine

³⁸ Public Health Agency Sweden (2025) Tobacco and nicotine use (self-reported) by age, sex and year. Available at: <https://www.folkhalsomyndigheten.se/>

³⁹ Ramström, L. (2018). Sweden's pathway to Europe's lowest level of tobacco-related mortality. *Tobacco Induced Diseases*, 16(1).

⁴⁰ World Health Organisation (2024) Retail price for tobacco and nicotine products. Available at: <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/gho-tobacco-control-raise-taxes-retail-price-for-a-pack-of-20-cigarettes>

products. Historically, this has been snus, a moist tobacco product consumed orally. This has been replaced in recent years by nicotine pouches which do not contain tobacco.

40. New Zealand presents another policy success that also contrasts with Australia. While tobacco taxes are high in international terms (though lower than those in Australia), New Zealand implemented a legal, regulated consumer market for vapes in 2020. Since then, smoking rates have declined at roughly twice the rate as witnessed in Australia, with the steepest declines occurring amongst priority populations (e.g., low socioeconomic groups, Māori people).⁴¹

Policy recommendations:

29. That National Cabinet establish an independent and broad ranging inquiry into tobacco pricing and vape regulation that seeks to develop an evidence-based approach for nicotine regulation, balancing potential health benefits from taxation and access restrictions against the negative consequences of crime (including organised crime), poor product safety, and distributional impacts for disadvantaged populations. This inquiry should canvas a wide breadth of experts and disciplines to ensure all perspectives are considered including but not limited to economists, criminologists, public health experts, and addiction specialists. Nicotine consumers should also be represented as they are most affected by these policies.
30. That terms of reference should include independent analysis of issues of particular contention, such as the known and projected health risks of vaping vis a vis tobacco smoking, and whether vaping acts as a gateway towards smoking or as a tobacco substitute at the population level. Australian vaping policy has been strongly influenced by a review⁴² which has been subject to critique by several of Australia's leading tobacco control experts.⁴³ The findings of this review also contrast significantly from other reviews conducted by Cochrane⁴⁴ and the UK Royal College of Physicians.⁴⁵
31. Development of regular, transparent reporting across jurisdictions regarding legal and illicit sales of nicotine products. Given the prominence of nicotine in Australia's illicit drug landscape, this reporting should be extended to the Illicit Drug Data Reports conducted by the ACIC.

⁴¹ Mendelsohn, C. P., Beaglehole, R., Borland, R., Hall, W., Wodak, A., Youdan, B., & Chan, G. C. K. (2025). Do the differing vaping and smoking trends in Australia and New Zealand reflect different regulatory policies?. *Addiction*, 120(7), 1379-1389.

⁴² Banks, E., Yazidjoglou, A., Brown, S., Nguyen, M., Martin, M., Beckwith, K., ... & Joshy, G. (2023). Electronic cigarettes and health outcomes: umbrella and systematic review of the global evidence. *Medical Journal of Australia*, 218(6), 267-275.

⁴³ Mendelsohn, C. P., Wodak, A., Hall, W., & Borland, R. (2022). A critical analysis of 'Electronic cigarettes and health outcomes: Systematic review of global evidence'. *Drug and Alcohol Review*, 41(7), 1493-1498.

⁴⁴ Lindson N, Butler AR, McRobbie H, Bullen C, Hajek P, Wu AD, Begh R, Theodoulou A, Notley C, Rigotti NA, Turner T, Livingstone-Banks J, Morris T, Hartmann-Boyce J. (2025) *Electronic cigarettes for smoking cessation*. Cochrane Database of Systematic Reviews, Issue 1.

⁴⁵ Royal College of Physicians. E-cigarettes and harm reduction: An evidence review. RCP, 2024.