



Public Accounts and Estimates Committee

Vaping and tobacco controls

Inquiry

August 2024

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Committee membership



CHAIR
Sarah Connolly
Laverton



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Nicholas McGowan
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Point Cook



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Yan Yean



Bev McArthur
Western Victoria



Danny O'Brien
Gippsland South



Aiv Puglielli
North-Eastern Metropolitan



Meng Heang Tak
Clarinda

About the Committee

Functions

The Public Accounts and Estimates Committee is a Joint Parliamentary Committee constituted under the *Parliamentary Committees Act 2003* (Vic).

The Committee comprises of nine Members of Parliament drawn from both Houses of Parliament.

The Committee scrutinises matters associated with the administration and financial management of the State to improve outcomes for the Victorian community. Its functions under the Act are to inquire into, consider and report to Parliament on:

- any proposal, matter or thing concerned with public administration or public sector finances
- the annual estimates or receipts and payments and other budget papers and any supplementary estimates of receipts or payments presented to the Assembly and the Council
- audit priorities for the purposes of the *Audit Act 1994* (Vic).

The Committee also has several statutory responsibilities in relation to the Victorian Auditor-General's Office and Parliamentary Budget Office.

Secretariat

Dr Caroline Williams, Executive Officer

Dr Krystle Gatt Rapa, Lead Analyst

Dr Kathleen Hurley, Financial Analyst

Mathias Richter, Analyst

Caitlin Wu, Analyst (until 24 May 2024)

Rowen Germain, Research Assistant

Erin O'Neill, Research Assistant

Jacqueline Coleman, Administrative Officer

Contact details

Address Public Accounts and Estimates Committee
Parliament of Victoria
Parliament House, Spring Street
East Melbourne Victoria 3002

Phone +61 3 8682 2867

Email paec@parliament.vic.gov.au

Web parliament.vic.gov.au/paec

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Terms of reference

Inquiry into vaping and tobacco controls

At its meeting on 5 February 2024, the Committee adopted the following terms of reference:

Under section 33(3) of the *Parliamentary Committees Act 2003* (Vic) the Committee inquire into, consider and report by no later than 30 November 2024 on the 2022–23 Annual Reports of the Department of Health and VicHealth regarding tobacco and e-cigarette controls including:

1. Trends in vaping and tobacco use and the associated, financial, health, social and environmental impacts on the Victorian community.
2. The causes and repercussions of the illicit tobacco and e-cigarette industry in Victoria including impacts on the Victorian justice system, and effective control options.
3. The adequacy of the State and Commonwealth legislation, regulatory and administrative frameworks to minimise tobacco and e-cigarette harm experienced in the community and control illicit trade compared to other Australian and international jurisdictions.
4. The effectiveness of current public health measures to prevent and reduce the harm of tobacco use and vaping in Victoria and potential reforms.
5. Any other related matters.

On 15 July 2024, the Committee amended its tabling date to no later than 29 August 2024.

Chair's foreword

Smoking remains the leading cause of premature death and disease in Victoria. Tragically we lose 4,000 people every year to smoking. Vaping, a different way of ingesting nicotine, has become increasingly common in this state but amongst a different group—younger Victorians, including children.

The Committee initiated its Inquiry in February 2024 not only because of its health concerns and the economic impacts of such products, but also due to the flourishing illicit trade in both cigarettes and vapes. This trade has delivered cheap, readily accessible products to existing and new consumers. It has to date been largely unregulated and is now infiltrated by serious and organised crime figures, creating fear and turmoil in local shopping strips across the state.

The Victorian Government subsequently announced on 28 March 2024 that it will introduce a tobacco licensing scheme. The Commonwealth has also introduced new legislation and committed new resources to address the illicit tobacco and vaping trade nationally.

The Committee recommends, at its centrepiece, the establishment of a Victorian nicotine licensing scheme and active regulatory authority, sitting within the Department of Justice and Community Safety.

Tobacco companies have deliberately moved away from combustible products like cigarettes to new nicotine products, generating new markets and any regulation and enforcement needs to be a step ahead of this. We know that nicotine is one of the most addictive substances in our community. It is a drug that binds to receptors in the central nervous system, affecting the regulation of bodily functions. Accordingly, any licencing scheme in Victoria must extend beyond tobacco and smoking to regulate all nicotine (including synthetic) products.

Likewise public health measures to prevent the uptake of nicotine products and minimise harm need to rapidly advance to be effective. Such measures will need to reach new consumers, via new co designed services and in novel formats if they are to be successful. I am heartened that some of this important work, including in regional Victoria, has recently begun in local communities.

The Committee trusts its Inquiry including 27 recommendations, will inform the new Victorian licensing scheme and its enforcement. This report is based on the evidence it gathered through 115 written submissions, a site visit to Victoria Police and Australian Border Force storage facilities of seized goods and three public hearings.

I warmly thank those who made submissions and gave evidence at the public hearings for generously sharing their knowledge with the Committee. I would also like to acknowledge Victoria Police and the Australian Border Force for the difficult work they

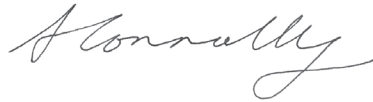
Chair's foreword

undertake in addressing the illicit trade and sharing their experience with the Committee at the site visits held on 24 June 2024.

I would like to thank my fellow Committee colleagues for their hard work on this Inquiry and deep engagement and interest in the subject.

Finally, I would also like to warmly thank the PAEC Secretariat led by Dr Caroline Williams for supporting the Committee's work and delivering this report well ahead of its original due date.

I commend the report to you.

A handwritten signature in black ink, appearing to read 'S Connolly', written in a cursive style.

Sarah Connolly
Chair

Executive summary

Chapter 1

The Committee recommends, at its centrepiece, the establishment of a Victorian nicotine licensing scheme and active regulatory authority, sitting within the Department of Justice and Community Safety.

This report builds on the experience of local stakeholders and other jurisdictions and makes 27 recommendations.

Chapter 2

Chapter 2 examines key smoking and vaping trends in Victoria, including rates of consumption across age, socio-economic and geographical demographics. The Committee sought to understand current data limitations and their likely effect on the development of regulations and public health measures. Where comprehensive data exists, it must be fully utilised to address the specific challenges faced by Victorians. This information will allow a more effective assessment of whether government actions meet the needs of the community.

The Committee found that:

- While tobacco use has declined in Victoria over the last 20 years there has been a rapid growth in vaping, particularly in younger age groups.
- Socio-economic factors and geographic location influence tobacco and vaping rates but these are not consistent across use of the two products. For example, tobacco users are more likely to be regional and have a lower socio-economic status than those who use vapes.
- Considerable data gaps exist for tobacco and vaping use in people under 14, and for emerging nicotine products like pouches.

The Committee believes these data gaps can be addressed by Victoria's new licensing scheme and the associated data collection of the volume and location of nicotine product sales. This in turn will facilitate regulatory enforcement. However, further evidence of nicotine product use by children will be necessary to deliver effective public health measures to those age groups.

Chapter 3

Chapter 3 explores the financial, health, social and environmental impacts of smoking and vaping on the Victorian community, taking both legal and illicit markets into account. The Committee aimed to understand the impact of tobacco and e-cigarette

use, to identify factors influencing their use and determine which harm prevention measures are the most effective. By establishing a baseline of impact, and reviewing the outcomes of current Victorian Government initiatives, the Committee identified areas for improvement in the regulatory and public health spheres.

The Committee found that:

- The illicit tobacco market has grown as higher tax excises have made legal tobacco prohibitively expensive for some sections of the community, especially when coupled with inflation and the resulting cost-of-living pressures.
- Nicotine dependence among children is becoming a serious health and behavioural issue for schools and many lack the resources for effective diversion and cessation management. School resources should be examined to ensure they are fit for purpose.
- Community awareness of the environmental impacts of e-cigarette products is limited. Developing awareness campaigns on the environmental harm posed by disposable e-cigarettes is critical for greater community understanding of environmental impact of e-cigarette disposal.
- There are no national guidelines for the safe disposal of vaping products. State-level guidelines on e-cigarette disposal and existing e-waste recycling initiatives should be established and expanded.

State-level actions must align with existing Commonwealth regulations and initiatives to be effective. The Committee recommends the Victorian Government continue to advocate for action where challenges remain on a national level.

Chapter 4

Chapter 4 examines the drivers of the illicit vape and tobacco trade in Victoria and its impact on law enforcement, the justice system and small and medium businesses. The illicit market in Victoria overshadows those in any other Australian jurisdiction. By gaining a comprehensive understanding of the causes and repercussions of the illicit supply and sale of nicotine products the Committee can make effective recommendations to improve regulatory and enforcement frameworks.

The Committee found that:

- Department of Health and local council enforcement is hindered by legislative deficiencies, safety concerns, lack of clarity regarding authority and inadequate resources. As a result local councils are not enforcing the supply and sale of illicit vapes and tobacco.
- The absence of strong enforcement and licensing, as well as weak penalties, are key drivers of the illicit market, attracting serious and organised crime which funnel profits into other illegal activities.
- Victoria Police and the Australian Border Force resources are strained by increased seizures, training needs and the high costs of storing and disposing of illicit

products. Global crime syndicates complicate enforcement efforts, and despite extensive actions, the illicit trade remains robust.

- The growth in the illicit trade directly affects the collection of excises payable on tobacco and e-cigarettes, resulting in lost revenue to the Australian Tax Office.
- The justice system faces increased court and corrections demands and tax revenue losses have impacted funding for public services.
- Legitimate businesses suffer from steep drops in tobacco sales, heightened violence risks and added security costs. Retailers report revenue losses and constant criminal threats, creating a climate of fear and financial hardship.

The Committee emphasises the need for strong regulations and enforcement to combat the illicit vape and tobacco trade, sustainable solutions for storing seized products and support for affected businesses through financial aid and enhanced security measures.

Chapter 5

Chapter 5 evaluates the legislative, regulatory and administrative frameworks for tobacco and e-cigarettes at local, state and Commonwealth levels. The Committee endorses the recommendations of Better Regulation Victoria (BRV)—to establish a licensing scheme, enhance regulatory oversight, expand investigative and enforcement powers and introduce stronger penalties—while highlighting the need for their coordinated and comprehensive implementation. The Committee also explored opportunities to build on BRV’s recommendations to ensure the implementation of the most effective system of controls in Victoria.

The Committee found that:

- Tobacco and e-cigarettes are regulated under two separate legislative frameworks in Australia. The Pharmacy Guild opposes the recently introduced classification of e-cigarettes as a pharmaceutical product due to concerns over unproven efficacy and pharmacist liability.
- Victoria is the only Australian jurisdiction that does not have a tobacco licensing scheme. In line with national and international best practice, Victoria’s new nicotine licensing scheme should include high annual fees, density limits and requirements for robust wholesale and retail data collection.
- Enforcement responsibilities across Victorian agencies are unclear. A well-resourced, independent state agency within the Department of Justice and Community Safety should be established to lead enforcement, working closely with Victoria Police and Commonwealth agencies.
- Victoria Police should be empowered as authorised officers to obtain search warrants and conduct enforcement activities.
- Given the high profitability of illicit trade, penalties which outweigh profits are essential.

The Committee underscores the importance of consistent national regulation, including collaboration with the Commonwealth Government for cohesive enforcement actions across jurisdictions. The Committee recommends the Victorian Government should advocate for the allocation of Commonwealth tobacco excise revenue to support state enforcement activities.

Chapter 6

Chapter 6 reviews the effectiveness of current tobacco and e-cigarette public health measures in Victoria. The Committee reviewed the coordination of state and Commonwealth agencies and the implementation of public health strategies, clarified resource distribution and identified effective interventions and opportunities for increased efficacy. To ensure harm reduction measures are the most effective, the Committee is of the view that prevention and cessation programs must be tailored to accommodate the available resources and meet the diverse needs of those who wish to access them.

The Committee found that:

- The Victorian Government could set more ambitious targets for reducing tobacco and e-cigarette use, supported by transparent reporting on these targets.
- Effective cessation support services such as Quitline should be maintained and expanded to provide targeted care for specific groups with unique support needs.
- Greater investment in prevention is needed, including developing new public education programs that emphasise co-design and segmented approaches.
- Adequate funding for the public health sector and local councils is essential to meet the demand for cessation services and ensure health practitioners have up-to-date knowledge on effective treatments for patients with complex needs.

The Committee identified several opportunities for the Victorian Government to engage with the Commonwealth on national improvements. These include changes to the Pharmaceutical Benefits Scheme and the establishment of national guidelines on nicotine cessation treatment for health professionals.

Findings and recommendations

2 Smoking and vaping trends in Victoria

FINDING 1: Smoking rates have fallen in Victoria, from 22.1% of the population in 2001 to 9.2% by 2022, reflecting the national pattern. However, the benefits from the decline in tobacco use are under pressure from the increase in vaping, with estimates of over 500,000 regular and non-regular users aged over 14 years in Victoria (as of March 2023).

9

FINDING 2: The highest proportion of Victorian tobacco users are aged between 45 and 64 years old. While survey results on vaping use can vary, children and young people are the highest proportion of e-cigarette users.

10

FINDING 3: National data indicates that 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.

13

FINDING 4: Victorian surveys have found socio-economic status and holding a healthcare card has no bearing on whether someone vapes. However, people are less likely to vape if they are heterosexual than if they identify as LGBTIQ+; are not receiving mental health treatment than those who are and be non-Indigenous compared to Aboriginal and Torres Strait Islander respondents.

13

FINDING 5: North-Western Melbourne has both the highest rates of vaping in the state and amongst the highest percentage of metropolitan smokers.

16

FINDING 6: The highest proportions of smokers in metropolitan Melbourne are in the City of Frankston in Melbourne's south, the cities of Hobsons Bay and Brimbank in the west, and the city of Whittlesea in the north.

17

FINDING 7: Central Goldfields Shire had the highest proportion of daily smokers in the state. Moira Shire and municipalities in the Mallee Wimmera region of western Victoria also had above average proportions of daily smokers.

17

RECOMMENDATION 1: The authority responsible for Victoria’s incoming tobacco licensing scheme, collect and publish data six monthly or more frequently as appropriate on the number and location of tobacco and e-cigarette retail outlets, the brand and type of tobacco and e-cigarette products sold and sales (in terms of both volume and customers).

18

RECOMMENDATION 2: The Victorian Government consider strategies to address the gaps in empirical data on the prevalence and use of tobacco, e-cigarette and other nicotine products amongst Victorians aged under 14, including primary school aged children.

18

3 The financial, health, social and environmental impacts of smoking and vaping

FINDING 8: While the overall value of the tobacco market in Victoria for 2023 is estimated at \$6.0 billion, the value and proportion of the illicit tobacco market is contested. Estimates range between 6.1% and 40.0%. The vape market is estimated to be worth between \$332 million and \$545.8 million.

21

FINDING 9: The Commonwealth Government’s estimates for tobacco excise revenue have been revised downwards recently. In the 2023–24 Budget it was estimated to increase to \$14.7 billion by 2026–27, but in the latest 2024–25 Budget, the forward estimates have tobacco excise revenue falling to \$10.7 billion by 2027–28.

21

FINDING 10: The demand for cheaper nicotine products comes at a time when the price of smoking legal cigarettes has increased considerably due to the increase in tobacco excise and accessibility of illicit cigarettes—coupled with a recent period of high inflation, placing pressure on household income and spending.

23

FINDING 11: Smoking is the leading cause of avoidable disease and death in Australia. Tobacco use is responsible for the increased and fatal incidence of a number of serious diseases, including cancer, heart conditions, respiratory conditions, oral health related conditions and asthma.

24

FINDING 12: Both tobacco and e-cigarettes contain nicotine, which is highly addictive and detrimental to people’s health. It has negative impacts on the developing brain of young people.

25

FINDING 13: A wide range of substances and heavy chemicals have been found in e-cigarettes, that are poisonous if inhaled including chemicals found in car batteries, disinfectants, fuel products and poisons. **26**

FINDING 14: E-cigarette users are three times more likely to take up tobacco smoking than non-users. **26**

FINDING 15: There is no scientific evidence to show that e-cigarette use is healthier than smoking tobacco. **27**

FINDING 16: Some of the ways the vaping industry has targeted children and young people to take up e-cigarette use include:

- promoting products positively across social media
- packaging the products to look appealing, eye catching and healthier than tobacco
- locating vape stores and other e-cigarette retailers near schools. **29**

FINDING 17: The increase in students vaping while at school has increased to such an extent that schools now spend resources on addiction education and counselling, as well as other infrastructure upgrades such as vape detection equipment. **30**

RECOMMENDATION 3: The Department of Education, in collaboration with the Department of Health, examine the barriers school children face in accessing support for nicotine use and addiction, including whether current programs are sufficient to determine if a dedicated counselling and support program for primary and secondary school children in relation to nicotine use and addiction needs to be set up and rolled out across Victoria. **31**

FINDING 18: Safe disposal options for used and discarded vapes in Victoria are limited. The percentage of Sustainability Victoria recycling centres that accept vapes is unknown. **33**

FINDING 19: There are currently no national mandated e-cigarette disposal or recycling programs or guidelines. **33**

RECOMMENDATION 4: The Victorian Government, through agencies such as Sustainability Victoria, the Environment Protection Authority and Local Government Victoria provide further funding to expand the current e-waste disposal program in place across Victoria’s councils to include e-cigarettes.

33

RECOMMENDATION 5: The Victorian Government establish e-cigarette waste disposal guidelines and regulations and advocate for the introduction of nationally consistent e-cigarette waste disposal guidelines and regulations.

33

FINDING 20: The presence of lithium-ion batteries in discarded disposable vape products has increased the fire risk across recycling supply chains and other waste management systems.

34

RECOMMENDATION 6: The Victorian Government advocate to the Commonwealth Government for the development of a dedicated e-cigarette product stewardship scheme, including placing e-cigarettes on the next Commonwealth Minister for Environment’s annual priority product stewardship list.

35

RECOMMENDATION 7: The Victorian Government, through the Environment Protection Authority, develop and deliver a sustained community education campaign on the environmental risks posed by e-cigarettes and vaping, including information on how best to dispose of these products.

36

4 The impacts of illicit vapes and tobacco on law enforcement and the Victorian justice system

FINDING 21: Several drivers have contributed to the extensive black market in illicit vapes and cigarettes in Victoria including the price differential between legal and illicit cigarettes, absence of a licensing scheme, lack of enforcement activity and minor penalties for illegal activity, with products readily available and accessible in local shopping strips. The ‘low-risk high-reward’ nature of these commodities have attracted overseas crime syndicates to the lucrative market.

39

FINDING 22: There are several agencies responsible for the administration and enforcement of vaping and tobacco regulation across the three tiers of government in Australia. In Victoria, the Department of Health is the lead agency.

41

FINDING 23: The Department of Health and local councils in Victoria are not currently taking enforcement action against the sale of illicit vapes and tobacco for several reasons. These include deficiencies in the current legislation, safety concerns and lack of resources.

42

FINDING 24: Victoria Police is involved in enforcement when there are links between the illicit tobacco and vape trade and serious and organised crime. It is a costly, resource intensive exercise, that diverts public funding away from community safety initiatives and other public order matters. The trade also incurs costs for other parts of the justice system including the courts and prisons.

47

FINDING 25: Victoria Police works closely with partner agencies such as the Australian Border Force and Australian Taxation Office to disrupt the illicit vaping and tobacco trade.

47

FINDING 26: The criminal activity associated with the illicit vaping and tobacco trade is affecting small and medium business owners. Impacts include the loss of tobacco sales, increased risk and incidence of violence, and additional costs of responding to such violence.

50

5 Legislative, regulatory and administrative frameworks

FINDING 27: The *Public Health (Tobacco and Other Products) Act 2023* (Cth) substantially reformed the Australian tobacco and e-cigarette regulatory landscape through the provision of enhanced powers and new offences and penalties. It closes the loopholes that have previously hampered government agencies trying to combat the illicit trade.

54

FINDING 28: The Commonwealth Government has enacted reforms to implement a pharmaceutical model for the regulation of e-cigarettes, led by the Therapeutic Goods Administration. However, 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.

54

FINDING 29: There are demand and supply-side approaches to managing the harm caused by tobacco and e-cigarettes. The Committee received evidence on the benefits and limitations of both control approaches.

56

FINDING 30: The Commonwealth Government’s approach to tobacco and e-cigarette control aims to reduce consumer demand by increasing taxes and restricting access to vaping products through a pharmaceutical model. It is too early to detect the impact of this new approach to nicotine products including vapes on the community.

56

RECOMMENDATION 8: The Victorian Government report to the Commonwealth Government on the outcomes of the new federal approach to e-cigarette regulation by 1 July 2026 and if necessary, advocate for any necessary reforms to national legislative, regulatory and administrative frameworks.

56

FINDING 31: Since 2003 the World Health Organisation has recommended the establishment of tobacco licensing scheme as have local public health experts. The Victorian Government announced that it will establish a wholesale and retail tobacco licensing scheme in late 2024.

58

RECOMMENDATION 9: The Victorian Government implement the suggested elements for an effective tobacco licensing system recommended by Better Regulation Victoria.

62

RECOMMENDATION 10: The Victorian Government’s licensing scheme include:

- a. High annual licence fees akin to the fees charged in Tasmania to cover the cost of administering and enforcing the scheme.
- b. Restrictions on the number of licences granted, density limits for each local government area, and prohibition of licenses within 150 metres of a school.
- c. Requirements for licensed retailers and wholesalers to collect data on the product type, brand name, product description and quantity sold, and keep records for at least two years.
- d. A public database on where nicotine retailers are located, a public register of licencees and quantities sold by location.

62

RECOMMENDATION 11: An evaluation framework be embedded in Victoria’s new tobacco and e-cigarette licensing scheme. The framework should include targets and timeframes to facilitate transparent reporting on its effectiveness in controlling the harm caused by nicotine products – legal and illicit.

62

RECOMMENDATION 12: The Victorian Government amend the relevant legislation to limit the enforcement powers of local government to smoke-free areas and, where necessary, information gathering on retailers and wholesalers involved in the illicit trade of tobacco, vapes and other nicotine products.

64

RECOMMENDATION 13: The Victorian Government consider establishing an independent, well-resourced, standalone regulatory agency within the Department of Justice and Community Safety to work in close partnership with Victoria Police and Commonwealth agencies to undertake compliance and enforcement activities regarding legal and illicit nicotine products.

65

RECOMMENDATION 14: The Victorian Government encourage the Commonwealth Government to allocate a fixed percentage of revenue from the tobacco excise to state and territory governments to support increased regulatory and enforcement activities regarding illicit nicotine products.

66

RECOMMENDATION 15: The Victorian Government amend the relevant legislation to incorporate the full suite of additional investigative and enforcement powers identified by Better Regulation Victoria for authorised officers employed by the new independent regulatory agency established under Recommendation 13.

67

RECOMMENDATION 16: The Victorian Government amend the legislation to define police officers as authorised officers with the power to obtain search warrants and carry out enforcement and investigation activities regarding nicotine products.

68

FINDING 32: Current penalties for illicit tobacco and e-cigarette trade are too low to deter offenders. Witnesses suggested that Victoria increase these penalties and ensure they are enforceable by the appropriate authorities.

70

RECOMMENDATION 17: The Victorian Government amend the relevant legislation to strengthen retail and wholesale licence revocation capability and prohibit the sale of tobacco and other nicotine products by people under the age of 18 in Victoria.

71

FINDING 33: Recent Commonwealth legislative reforms have increased penalties for the unlawful importation, domestic manufacture, supply and commercial possession of illicit tobacco and e-cigarettes and allows states and territories to enforce them in some cases. However, the effectiveness of the new legislation acting as a significant deterrent is unclear.

71

FINDING 34: Victoria’s primary legislation for regulating tobacco and e-cigarettes is the *Tobacco Act 1987* (Vic). Under the Act, modest penalties may be incurred for possessing or selling illicit tobacco products. However, enforcement by local councils is rare.

72

FINDING 35: A variety of penalties are imposed overseas for the illicit tobacco and cigarette trade, including large fines, jail time and retail licence revocation.

73

RECOMMENDATION 18: The Victorian Government review current penalties contained in State legislation regarding the illicit tobacco and cigarette trade with a view to increasing them.

73

6 Public health measures

FINDING 36: In Victoria, 9.2% of the population are smokers. This meets the target set in the *National Tobacco Strategy 2023–2030* of less than 10% by 2025.

79

FINDING 37: In the 2023–24 Budget, the Commonwealth Government allocated \$234 million to public health intervention to prevent and reduce vaping and smoking harms. Increases to the tobacco excise in the same budget are forecast to raise an additional \$3.3 billion over five years.

79

FINDING 38: The *Victorian Public Health and Wellbeing Plan 2023–2027* contains targets to reduce the rate of smoking by adults and adolescents by 30% by 2025. The latest progress report found the target for adults will be met but not the target for adolescents. The plan does not contain targets for reducing the rate of e-cigarette or other nicotine product usage.

80

FINDING 39: Aboriginal Victorians are disproportionately impacted by the risk of vaping harms, with higher existing smoking rates, and over 50% of the population being under the age of 25.

85

RECOMMENDATION 19: The Victorian Government continue to support Aboriginal Community Controlled Organisations to develop and deliver vaping and tobacco control initiatives relevant to their local communities.

85

RECOMMENDATION 20: The Victorian Government consider whether current targets are sufficient and where they are not, set more ambitious, comprehensive and segmented targets on the proportion of Victorians that smoke, vape and consume other nicotine products daily for the state public health and wellbeing plan. Outcomes should be reported in the Department of Health’s annual report. **85**

FINDING 40: Limited funding and capacity are constraining the ability of councils, local health services and state health promotion agencies from meeting growing demand for awareness raising and nicotine cessation treatment services. **86**

RECOMMENDATION 21: The State Government review the funding allocated to preventative health care in light of the health costs borne by individuals and the community from nicotine dependence. **86**

FINDING 41: There is a gap in services for people seeking nicotine cessation treatment services, particularly those under 18. **87**

FINDING 42: Demand for nicotine cessation services is likely to continue to grow, as the accessibility of these vape products decreases and some vape users transition to smoking tobacco and other nicotine products. **88**

FINDING 43: Quitline is highly cost effective and successful in reducing harm from tobacco usage however it has been designed to meet the needs of adults. **89**

FINDING 44: Some young people may not consider Quitline to be relevant to their demographic or an avenue for cessation support. **89**

RECOMMENDATION 22: The Victorian Government review the impact of Quitline Victoria services for priority high-risk cohorts—especially those under the age of 18—and ability to meet any growing demand for nicotine cessation following the Commonwealth’s vaping reform legislation. **89**

RECOMMENDATION 23: The Victorian Government review the funding for existing anti-smoking campaigns to pivot to address all nicotine products, including e-cigarettes and nicotine pouches. **89**

FINDING 45: Young people are engaged by evidence and data and need relatable interventions and education programs. **92**

RECOMMENDATION 24: The Victorian Government work to ensure co-design is prioritised in all government funded public health education nicotine campaigns targeting young people and other high-risk cohorts. **92**

RECOMMENDATION 25: The Victorian Government review current funding for the development of peer-to-peer vaping cessation support services. **92**

FINDING 46: Introducing vaping education in the primary school years provides young people with the knowledge to make better informed decisions as they age. **93**

FINDING 47: The majority of parents see preventing children from vaping as a high public health priority. **93**

RECOMMENDATION 26: The Department of Education commit to making tobacco and vaping education programs compulsory curriculum at the primary school level and supply schools with resources to implement them, aligned with current drug and alcohol education curriculum commitments. **93**

RECOMMENDATION 27: Local government be represented on the advisory board to the new state regulatory authority responsible for the state nicotine licensing system. **93**

Acronyms

ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ACCO	Aboriginal Community Controlled Organisation
ACOR	Australian Council of Recycling
ADA	Australian Dental Association
AFP	Australian Federal Police
AMA	Australian Medical Association
ATO	Australian Taxation Office
BCH	Ballarat Community Health
BLA	Business Licensing Authority
BRV	Better Regulation Victoria
CCTV	Closed-Circuit Television
CPI	Consumer Price Index
DE	Department of Education (Victoria)
DH	Department of Health (Victoria)
DJCS	Department of Justice and Community Safety (Victoria)
EHO	Environmental Health Officer
EPA	Environment Protection Authority
EVALI	E-cigarette or Vaping-Associated Lung Injury
GLCH	Gippsland Lakes Complete Health
GP	General Practitioner
JOCT	Joint Organised Crime Taskforce
LGA	Local Government Area
LPHU	Local Public Health Unit
MAV	Municipal Association of Victoria
MRF	Material Recovery Facility
NRT	Nicotine Replacement Therapy
NZ	New Zealand
PAEC	Public Accounts and Estimates Committee
PBO	Parliamentary Budget Office (Victoria)
PBS	Pharmaceutical Benefits Scheme
PNH	Public Health Network
SES	Socio-Economic Status
SOC	Serious and Organised Crime

Acronyms

TGA	Therapeutic Goods Administration
UK	United Kingdom
USA	United States of America
VAADA	Victorian Alcohol and Drug Association
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
VicHealth	Victorian Health Promotion Foundation
VicSRC	Victorian Student Representative Council
WHO	World Health Organisation
WPHU	Western Public Health Unit

Chapter 1

Background to the Inquiry

1.1 Introduction

Tobacco smoking is the leading preventable cause of death and disease in Victoria, and a key driver of social inequalities in health.¹ Every year smoking costs the Victorian community 4,000 lives and \$5 billion.² Unlike other Australian jurisdictions, Victoria does not have a licensing system for the sale of tobacco and e-cigarettes. The Secretary of the Department of Health (DH) explained to the Public Accounts and Estimates Committee that

Currently, we do not have a licensing scheme in Victoria, so we do not have a register of vendors. We do have, as you know, a program of visits by authorised officers to those who do sell. As you will be aware, the Commonwealth is working very closely with states and territories around changes to e-cigarette regulation. E-cigarettes, again, were introduced as a potential therapy to have smokers come off cigarettes, with rather flimsy evidence that they are effective. Big tobacco knew exactly what it was doing when it introduced e-cigarettes. They are vendors of death, and the Commonwealth has taken appropriate action in collaboration with states and territories to really address what is one of the most significant public health risks to our population.³

Victoria's *Public Health and Wellbeing Act 2008* is designed to protect and promote the health and wellbeing of Victorians. Despite this legislative objective, and the magnitude of the human and financial costs associated with the consumption of tobacco and e-cigarette products, there is minimal reporting required under the Act to the Parliament on the progress being made in achieving this objective. The legislation requires DH to develop a public health and wellbeing plan at least every four years. These plans, and related progress reports, do provide useful information about tobacco-related harm-reduction targets and also address the rising uptake of e-cigarettes. However, these reports are not required to be tabled in Parliament. Many of the targets are also not reported against in the progress reports.

VicHealth was established in 1987 with a mandate to promote health in Victoria including the prevention and reduction of tobacco use. It is funded from government-collected tobacco taxes.⁴ Despite notable success in tobacco control since

1 Department of Health, *Victorian Public Health and Wellbeing Plan 2023–27*, 2023, <<https://www.health.vic.gov.au/victorian-public-health-and-wellbeing-plan-2023-27#our-priorities>> accessed 2 August 2024.

2 VicHealth, *Preventing tobacco use*, 2019, <<https://www.vichealth.vic.gov.au/our-health/preventing-tobacco-use>> accessed 2 August 2024.

3 Professor Euan Wallace, Secretary, Department of Health, public hearing, Melbourne, 24 November 2023, *Transcript of evidence*, p. 40.

4 VicHealth, *The Story of VicHealth: A world first in health promotion*, (n.d.), <<https://www.vichealth.vic.gov.au/sites/default/files/2023-05/the-story-of-VicHealth.pdf>> accessed 2 August 2024.

its foundation, e-cigarette usage has increased in Victoria, with an estimated 500,000 users (regular and irregular) over the age of 14.⁵ This is approximately the same number as smokers in Victoria.⁶

As noted above, tobacco and e-cigarette use pose significant risks and challenges to Victoria in terms of lives lost and cost to the community. However the supporting data is not current and despite recent reporting on the prevalence of e-cigarette use, its impact on Victorians and the State is less understood.⁷ Through this Inquiry the Committee aimed to better understand the impact of tobacco and e-cigarette use on public sector finances and examine the effectiveness of regulatory and public health approaches to harm reduction.

The Committee has broad powers under the *Parliamentary Committees Act 2003* (Vic) to initiate its own inquiries.⁸ Accordingly, on 5 February 2024 the Committee adopted the following terms of reference:

Under section 33(3) of the *Parliamentary Committees Act 2003* (Vic) the Committee inquire into, consider and report by no later than 30 November 2024 on the 2022–23 Annual Reports of the Department of Health and VicHealth regarding tobacco and e-cigarette controls including:

1. Trends in vaping and tobacco use and the associated, financial, health, social and environmental impacts on the Victorian community.
2. The causes and repercussions of the illicit tobacco and e-cigarette industry in Victoria including impacts on the Victorian justice system, and effective control options.
3. The adequacy of the State and Commonwealth legislation, regulatory and administrative frameworks to minimise tobacco and e-cigarette harm experienced in the community and control illicit trade compared to other Australian and international jurisdictions.
4. The effectiveness of current public health measures to prevent and reduce the harm of tobacco use and vaping in Victoria and potential reforms.
5. Any other related matters.

On 15 July 2024, the Committee amended its tabling date to no later than 29 August 2024.

⁵ Parliamentary Budget Office, *Submission 71*, p. 17.

⁶ Ibid.

⁷ Department of Health, *Victorian Public Health and Wellbeing Plan 2023–27*, p. 30.

⁸ Refer to sections 14(1)(a)(i) and 33(3) of the *Parliamentary Committees Act 2003* (Vic). Section 33(3) states: 'A Joint Investigatory Committee may inquire into, consider and report to the Parliament on any annual report or other document relevant to the functions of the Committee that is laid before either House of the Parliament in accordance with an Act'. Accordingly the reference to two annual reports in the Committee's vaping and tobacco controls terms of reference.

1.1.1 Key terms used in this report

The terms ‘e-cigarette’ and ‘vape’ are used interchangeably in this report. Devices accessible in pharmaceutical settings are referred to as therapeutic e-cigarettes. The legal status of vapes and therapeutic e-cigarettes have changed over time.

This report also discusses tobacco and nicotine pouches. A tobacco pouch contains tobacco that is placed between the gum and lip, allowing the nicotine and flavours to be absorbed through the mouth. A nicotine pouch contains synthetic nicotine and other ingredients like flavourings and fillers, but without any tobacco leaf.

1.2 Context – established international frameworks and previous work

In preparing this report the Committee was mindful of international frameworks Australia is signatory to including the 2003 World Health Organisation (WHO) *Framework Convention on Tobacco Control*. The Committee also utilised some significant pieces of work that have been undertaken on this topic. This includes the 2020 Commonwealth Parliamentary Joint Committee on Law Enforcement’s *Inquiry into Illicit tobacco*⁹ and work undertaken interstate and overseas.

The Committee noted the 2022 Better Regulation Victoria (BRV) *Addressing illicit tobacco* report.¹⁰ BRV briefed the Committee on its findings and recommendations at a public hearing.

1.3 Key issues, findings and recommendations

DH stated that Victoria’s regulatory environment for controlling tobacco and e-cigarettes has evolved but more work is required to significantly strengthen legislative and regulatory frameworks.¹¹

Likewise, the Committee discovered that current regulatory frameworks are no longer fit for purpose and lag behind:

- consumer trends with the uptake of e-cigarettes and products such as nicotine pouches as well as environmentally safe disposal of them
- global developments including WHO expectations

9 Parliament of Australia, Parliamentary Joint Committee on Law Enforcement, *Illicit Tobacco*, November 2020, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/IllicitTobacco46th/Report> accessed 2 August 2024.

10 Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria’s approach to illicit tobacco regulation*, Victorian Government, Melbourne, 2022, <<https://www.parliament.vic.gov.au/49d14a/contentassets/518e279146dc496393a39c6e55684b88/addressing-illicit-tobacco---final-report.-20-may-2022-1.pdf>> accessed 2 August 2024.

11 Department of Health and Department of Education, *Submission 103*, pp. 6, 8.

- release of new nicotine products heavily promoted by the tobacco industry
- the illicit market and activities of serious and organised crime, often based off-shore.

This framework has been heavily reliant on DH's delegation of powers to Environmental Health Officers employed by local councils. However, the Committee was advised that local councils do not have the funding, expertise nor the legislative support to successfully regulate the supply and sale of nicotine products and therefore enforce penalties.

The Committee recommends, at its centrepiece, the establishment of a Victorian nicotine licensing scheme and active regulatory authority, sitting within the Department of Justice and Community Safety. This report makes 27 recommendations that build on the experience of local stakeholders and other jurisdictions.

1.4 Inquiry undertaken by the Committee

The Committee called for written submissions on 5 February 2024 with the due date of 29 March 2024. One hundred and fifteen submissions were received from a range of stakeholders including vapers and smokers, health officials, tobacco companies, Victoria Police, local councils, academics, state government departments and agencies, health professionals, retailers, schools, Commonwealth authorities and concerned parents. These submissions can be accessed on the Committee's website. The full list is set out in Appendix A.

The Committee held three public hearings—two in Melbourne (29 April and 15 July) and one in Shepparton (15 April 2024). Details of the witnesses that appeared at the hearings are contained in Appendix A and transcripts of the hearings are published on the Committee's website. Shepparton was selected for a hearing because the Committee wanted to explore the unique challenges of vaping and tobacco use in regional Victoria and examine the ways smaller communities are addressing them. Shepparton's agricultural environment is also conducive for the growth of illicit tobacco crops.

At the public hearings the Committee heard from witnesses with diverse perspectives on vaping and tobacco controls.

The Committee undertook a site visit to two locations on 24 June 2024. This site visit demonstrated to Members the challenges faced by Victoria Police and Australian Border Force in the safe transport, storage and disposal of substantial volumes of seized illicit vape and tobacco products.

The Committee thanks every individual that invested a significant amount of their time, generously sharing their lived experiences, expert opinions and views with the Inquiry. An Inquiry such as this relies heavily on the sum of these individual contributions.

1.5 Report structure

Chapter 2 of this report discusses the recent trends in vaping and tobacco use including dual consumption in Victoria. The socio-economic characteristics of smokers and vapers and their geographic location across the state was also examined.

Chapter 3 discusses the financial, health, social and environmental impacts on the Victorian community—the first term of reference.

The causes and repercussions of the illicit tobacco and e-cigarette industry in Victoria, including the impacts on the justice system are examined in Chapter 4. This addresses the second term of reference in part.

Chapter 5 of this report examines the adequacy, compared to other Australian and international jurisdictions, of State and Commonwealth legislation, regulatory and administrative frameworks to:

- minimise tobacco and e-cigarette harms in the community
- control the illicit trade.

Recommended changes to the current frameworks are also set out in Chapter 5 (second and third terms of reference).

The effectiveness of current public health measures to prevent and reduce the harm of tobacco use and vaping are explored in Chapter 6, along with potential reforms. This addresses the fourth term of reference.

Chapter 2

Smoking and vaping trends in Victoria

2.1 Overview

The trends in vaping and tobacco use are the focus of this chapter (first term of reference). The key findings are:

- The decline in tobacco use in Victoria over the last 20 years has been undermined by a rapid growth in vaping since 2018, particularly by young people including children.
- Socio-economic characteristics of smokers and vapers are different: for example, while smokers are more likely to be of lower socio-economic status (SES), e-cigarette users are not.
- In Victoria, vaping is most prevalent in north-western metropolitan Melbourne. Regional Victoria, specifically Central Goldfields Shire, has the highest rates of smoking.
- There are considerable data gaps relating to smoking and e-cigarette use. This includes a lack of data on vaping by children under 14, and the consumption of newer products such as tobacco pouches.

2.2 Rates of consumption

The data¹ analysed by the Committee shows that in Victoria:

- Smoking rates have declined over the last twenty years, following national trends and driven by a combination of public health campaigning, increased regulation—such as no smoking areas and plain packaging legislation—and growing costs of cigarettes through increases in the tobacco excise.
- There is the lowest proportion of daily smokers (9.2%) of all the Australian states.
- Vaping rates have increased dramatically between 2018 and 2022, escalating considerably during the COVID-19 pandemic years, driven by young people vaping.

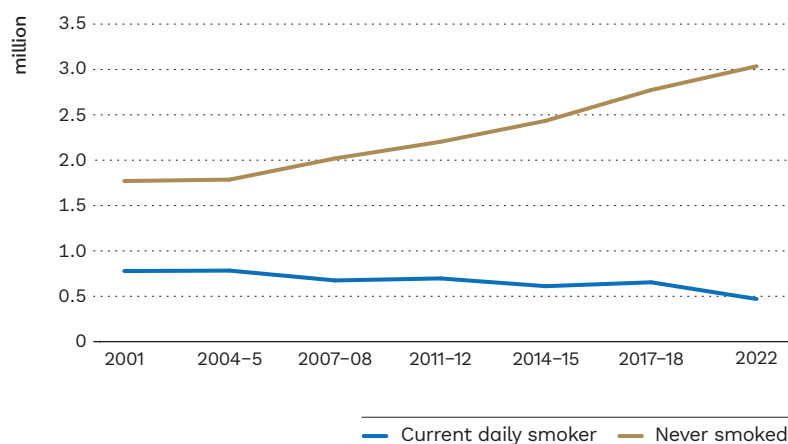
1 Data on tobacco and e-cigarette use is mainly based on surveys by national agencies such as the Australian Bureau of Statistics (ABS), the Australian Institute of Health and Welfare (AIHW), and Australian Criminal Intelligence Commission. Health promotion agencies such as the Cancer Council Victoria and VicHealth also collect data. While these surveys occur regularly, the Committee encountered several issues when analysing these data sources. For example:

- Some surveys are based on small sample sizes, leading to large error margins in the results, as well as possible inconsistencies when the results of one survey are compared with another.
- Some health surveys are only conducted at a national level.
- Units of measurement and definitions can vary across surveys (e.g., 'current' and 'daily' rates of vaping and smoking).
- The ability to identify and extrapolate trends in survey data is challenging when sudden changes occur (e.g. rapid influx of illicit tobacco and vaping products or the adoption of new nicotine products such as pouches).

VicHealth told the Committee the historical progress Victoria has made in driving down rates of smoking is ‘under pressure’ due to the uptake in vaping, primarily among young people.²

According to the Australian Bureau of Statistics (ABS), the number of daily smokers aged over 18 in Victoria fell from 22.1% in 2001 to 9.2% in 2022, while adults who had never smoked increased from 50.2% in 2001 to 60.6%.³

Figure 2.1 Smoking status of Victorians aged 18 years and over, 2001 to 2022



Source: Australian Bureau of Statistics, Table 29 (1.1, 1.3), *National Health Survey 2022*, June 2024, <<https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey/2022>> accessed 18 July 2024.

The Parliamentary Budget Office (PBO) estimates that in March 2023 there were 595,000 regular tobacco users in Victoria, and 70,000 non-regular users aged over 14 years.⁴

In contrast, the use of e-cigarettes has more than doubled over the past four years. At the national level it is estimated by the Australian Institute of Health and Welfare that 7.0% of Australians aged 14 and over were using e-cigarettes in 2022–23, increasing from 2.5% in 2019.⁵ The results of a national survey by Cancer Council Victoria were similar.⁶

The PBO estimates there were 373,000 regular e-cigarette users in Victoria, aged over 14 years, in March 2023 and 128,000 non-regular users.⁷ Putting tobacco and/or e-cigarette use together, this equates to 957,000 users aged over 14 years.⁸ The PBO

² VicHealth, *Submission 106*, p. 4.

³ Australian Bureau of Statistics, Table 29 (1.1, 1.3), *National Health Survey 2022*, June 2024, <<https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey/2022>> accessed 18 July 2024.

⁴ Parliamentary Budget Office, *Submission 71*, p. 17.

⁵ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022–23: Electronic cigarettes and vapes*, Tables 3.3 and 3.4, February 2024, <<https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/data>> accessed 18 July 2024.

⁶ Melanie Wakefield et al., *Current vaping and current smoking in the Australian population aged 14+ years: February 2018–March 2023*, report for Centre for Behavioural Research in Cancer, Cancer Council Victoria, May 2023, p. 5.

⁷ Parliamentary Budget Office, *Submission 71*, p. 17.

⁸ Ibid.

noted while it is illegal to sell tobacco and e-cigarette products to people aged under 18, users aged between 14 and 17 form ‘a material share of the market’.⁹ Further anecdotal information provided to the Committee noted that children of primary school age are vaping, suggesting the total number of the Victorian population either smoking or vaping is more than the PBO’s estimate.¹⁰

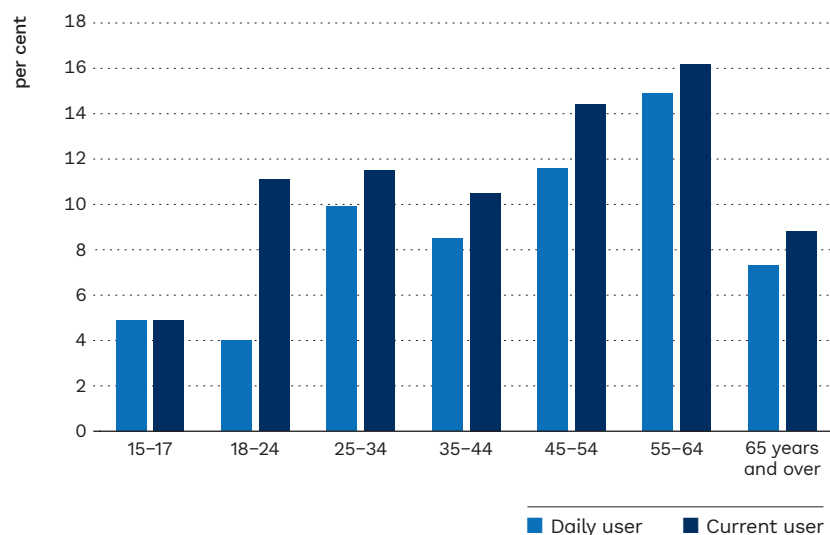
FINDING 1: Smoking rates have fallen in Victoria, from 22.1% of the population in 2001 to 9.2% by 2022, reflecting the national pattern. However, the benefits from the decline in tobacco use are under pressure from the increase in vaping, with estimates of over 500,000 regular and non-regular users aged over 14 years in Victoria (as of March 2023).

2.3 Consumption by age group

There are distinct differences between the most common age groups that smoke and vape.

People aged 55–64 years old make up the greatest proportion of smokers, followed by people aged 45–54 years old (Figure 2.2).¹¹ While a small proportion (4.9%) of people aged between 15–17 years are daily and current smokers, the proportion of current (e.g., at least once a week, but not daily) smokers increases for 18–24 year olds (11.1%) and 25–34 year olds (11.5%).¹²

Figure 2.2 Proportion of current and daily smokers^a by age, Victoria, 2022



a. A ‘current’ smoker is defined as someone who smokes tobacco at least once a week, or less than weekly, but not daily.

Source: Australian Bureau of Statistics, Table 29 (14.1, 14.3), *National Health Survey 2022*, June 2024, <<https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey/2022>> accessed 18 July 2024.

⁹ Parliamentary Budget Office, *Submission 71*, p. 17.

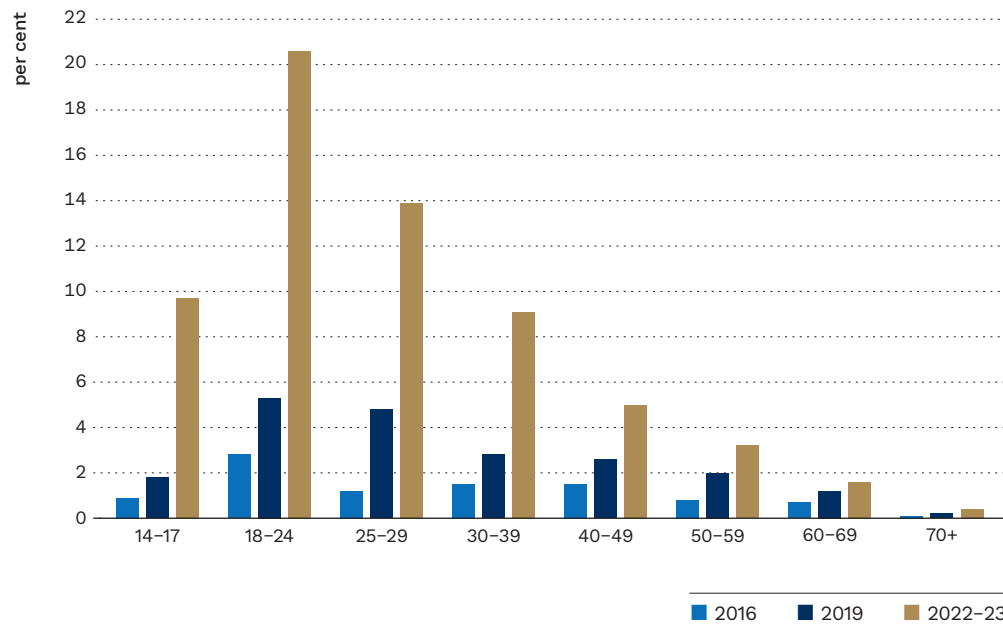
¹⁰ Barbara O’Brien, Executive Principal, Greater Shepparton Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, pp. 9–11.

¹¹ Australian Bureau of Statistics, Table 29(14.1, 14.3), *National Health Survey 2022*.

¹² *Ibid.*

In contrast, the increase in e-cigarette use in recent years has been driven by young people. While 5.3% of e-cigarette users were aged 18–24 years in 2019, this grew to 20.6% by 2022–23 (Figure 2.3).¹³

Figure 2.3 Proportion of e-cigarette users by age, Australia, 2022–23



Source: Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022–23: Electronic cigarettes and vapes*, Table 3.3, February 2024, <<https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/data>> accessed 18 July 2024.

The ABS state-level data shows the largest proportion of e-cigarette users in Victoria in 2022 were the younger group of children aged between 15–17 years. According to that data, 10.9% of e-cigarette users (24,700 children) are currently vaping, followed by 8.3% (48,900) of 18–24 year olds.

FINDING 2: The highest proportion of Victorian tobacco users are aged between 45 and 64 years old. While survey results on vaping use can vary, children and young people are the highest proportion of e-cigarette users.

¹³ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022–23: Electronic cigarettes and vapes*, Table 3.3. The results were similar to the Cancer Council Victoria survey: Wakefield et al., *Current vaping and current smoking in the Australian population aged 14+ years: February 2018–March 2023*, p. 6.

2.3.1 Dual use of e-cigarettes and tobacco

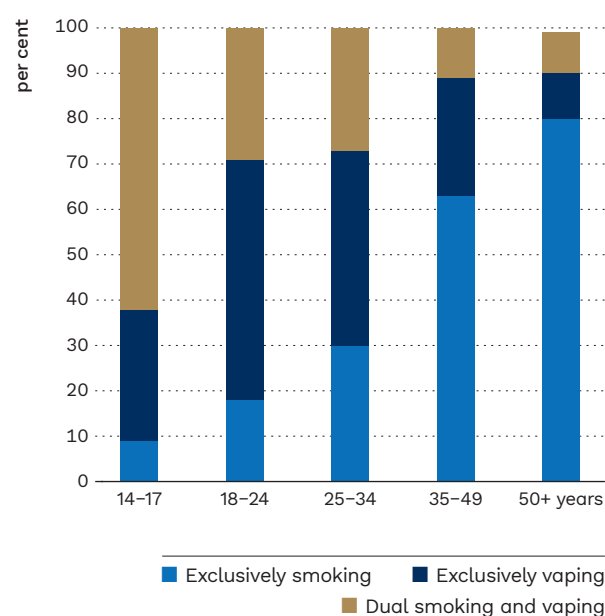
A key concern of health experts regarding young people and vaping is that vape users are three times more likely to take up tobacco smoking than non-vape users.¹⁴

Cancer Council Victoria research found across the population of smokers and vapers in Australia aged 14 years and over:

- 49% exclusively smoked
- 31% exclusively vaped
- 20% were dual users of smoking and vaping.¹⁵

Further data shows for all users who smoke and/or vape, exclusively vaping was more prevalent than exclusively smoking for the three youngest age cohorts while exclusively smoking is more prevalent for cohorts aged 35 years and over. Younger age cohorts (14 to 17 years) were more likely to use both cigarettes and vaping products.¹⁶

Figure 2.4 Proportion of users who are exclusively smokers, exclusively vapers and dual users



Source: Melanie Wakefield et al., *Current vaping and current smoking in the Australian population aged 14+ years: February 2018–March 2023*, Centre for Behavioural Research in Cancer, Cancer Council Victoria, May 2023, p. 14.

¹⁴ Dr Sandro Demajo, Chief Executive Officer, VicHealth, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

¹⁵ Wakefield et al., *Current vaping and current smoking in the Australian population aged 14+ years: February 2018–March 2023*, p. 13.

¹⁶ *Ibid.*, p. 14.

2.4 Socio-economic characteristics of smokers and vapers

The data the Committee examined shows smokers and vapers have different characteristics.

National ABS data shows an increased prevalence of daily smoking amongst the community's most disadvantaged population cohorts. The ABS found that:

- 18.1% of adults living in geographic areas of most disadvantage were likely to be current daily smokers, compared to 5.4% of adults living in areas of least disadvantage
- 16.7% of people living in outer regional or remote areas were current daily smokers compared to 9.4% of people living in major cities
- 14.1% of people living with a disability were currently daily smokers compared to 8.6% people living without a disability
- daily smokers were more likely to be unemployed (24.3%) than employed (11%)
- daily smokers were less likely to have a bachelor's degree, with only 3.8% of people with that qualification or higher being current daily smokers. This compares, for example, to 22.9% of people with Year 11 qualifications as their highest-level of education.¹⁷

There is also a high rate of tobacco use amongst Indigenous Australians, although in line with the national pattern this too has fallen, dropping from 34.8% in 2010 to 20.1% by 2022–23.¹⁸

In terms of vaping in Victoria, Cancer Council Victoria surveys found:

- current users¹⁹ were less likely to be healthcare card holders and there was little difference in terms of high or low socio-economic status
- current users were more likely to be receiving mental health treatment than not receiving treatment
- 12.2% of LGBTIQ+ respondents were identified as current vape users in 2022, compared to 5.8% of heterosexual respondents
- 9.5% of Aboriginal and Torres Strait Islander respondents were current users (compared to 6.1% of non-Indigenous current users), although this did not increase across the three-year time frame (2018/2019 and 2022).²⁰

¹⁷ Australian Bureau of Statistics, Table 6.3, *National Health Survey 2022*.

¹⁸ Australian Institute of Health and Welfare, *First Nations people's use of alcohol, tobacco, e-cigarettes and other drugs*, 29 February 2024, <<https://www.aihw.gov.au/reports/first-nations-people/first-nations-use-alcohol-drugs>> accessed 11 July 2024.

¹⁹ 'Current' e-cigarette use in these surveys is defined as daily, weekly, monthly or less than monthly usage.

²⁰ Megan Bayly et al., *Prevalence of e-cigarette use among priority groups and by region of Victoria: Findings of the 2018+2019 and 2022 Victorian Smoking and Health Surveys*, report for Centre for Behavioural Research in Cancer, Cancer Council Victoria, Melbourne, 2023, p. 9.

FINDING 3: National data indicates that 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.

FINDING 4: Victorian surveys have found socio-economic status and holding a healthcare card has no bearing on whether someone vapes. However, people are less likely to vape if they are heterosexual than if they identify as LGBTIQ+; are not receiving mental health treatment than those who are and be non-Indigenous compared to Aboriginal and Torres Strait Islander respondents.

2.5 Geographic differences

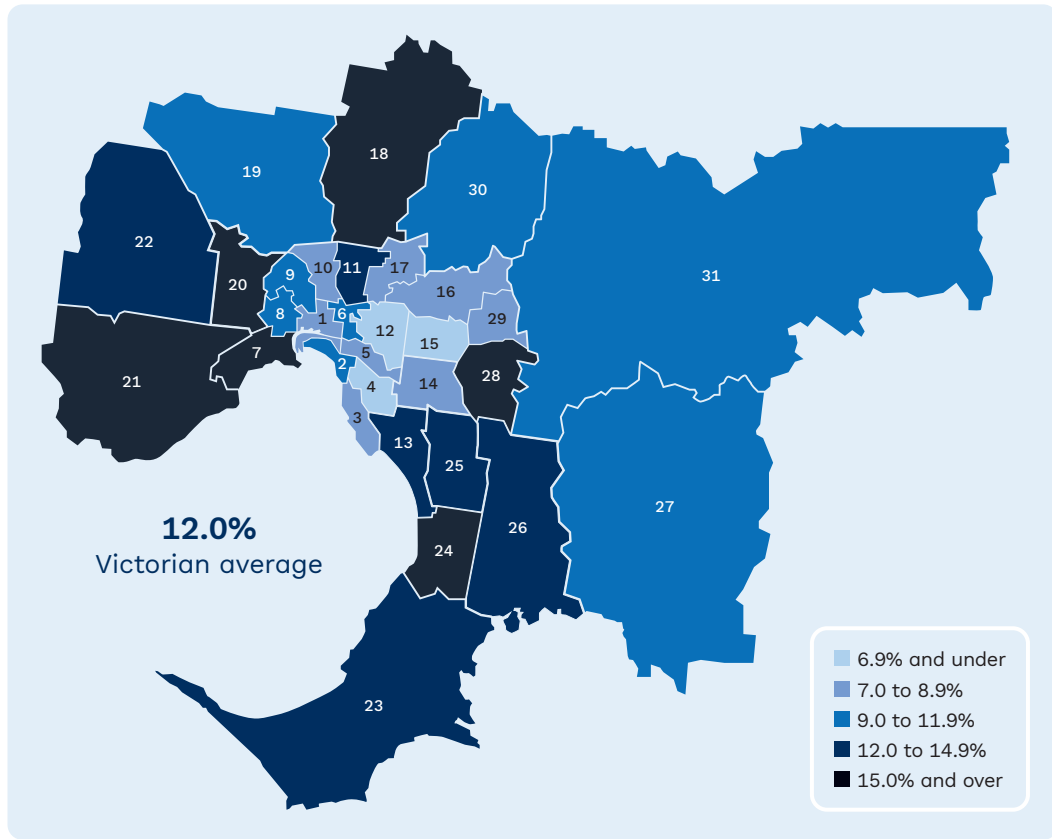
2.5.1 Smoking

The most recent and publicly available information relating to smoking by local government area (LGA) was released in 2020 from data compiled in 2018 (Figure 2.5). This showed that in metropolitan Melbourne:

- the City of Frankston had the highest proportion of daily smokers (18.6%)
- the western metropolitan LGAs of Brimbank (17.2%), Hobsons Bay (16.1%) Wyndham (15.9%) also had much higher proportions of daily smokers compared to the state average of 12.0%
- Whittlesea (16.6%) in the outer north and the City of Knox (16.2%) in the east also had a relatively high proportion of daily smokers.²¹

²¹ Victorian Agency for Health Information, *Victorian Population Health Survey 2020: Dashboard*, 16 February 2022, <<https://vahi.vic.gov.au/reports/population-health/victorian-population-health-survey-2020-dashboards>> accessed 18 July 2024.

Figure 2.5 Proportion of adult local government area residents that are daily smokers, 2020, metropolitan Melbourne



1 Melbourne	9 Moonee Valley	17 Banyule	25 Casey
2 Port Phillip	10 Moreland	18 Whittlesea	26 Greater Dandenong
3 Bayside	11 Darebin	19 Hume	27 Cardinia
4 Glen Eira	12 Boroondara	20 Brimbank	28 Knox
5 Stonnington	13 Kingston	21 Wyndham	29 Maroondah
6 Yarra	14 Monash	22 Melton	30 Nillumbik
7 Hobsons Bay	15 Whitehorse	23 Mornington Peninsula	31 Yarra Ranges
8 Maribyrnong	16 Manningham	24 Frankston	

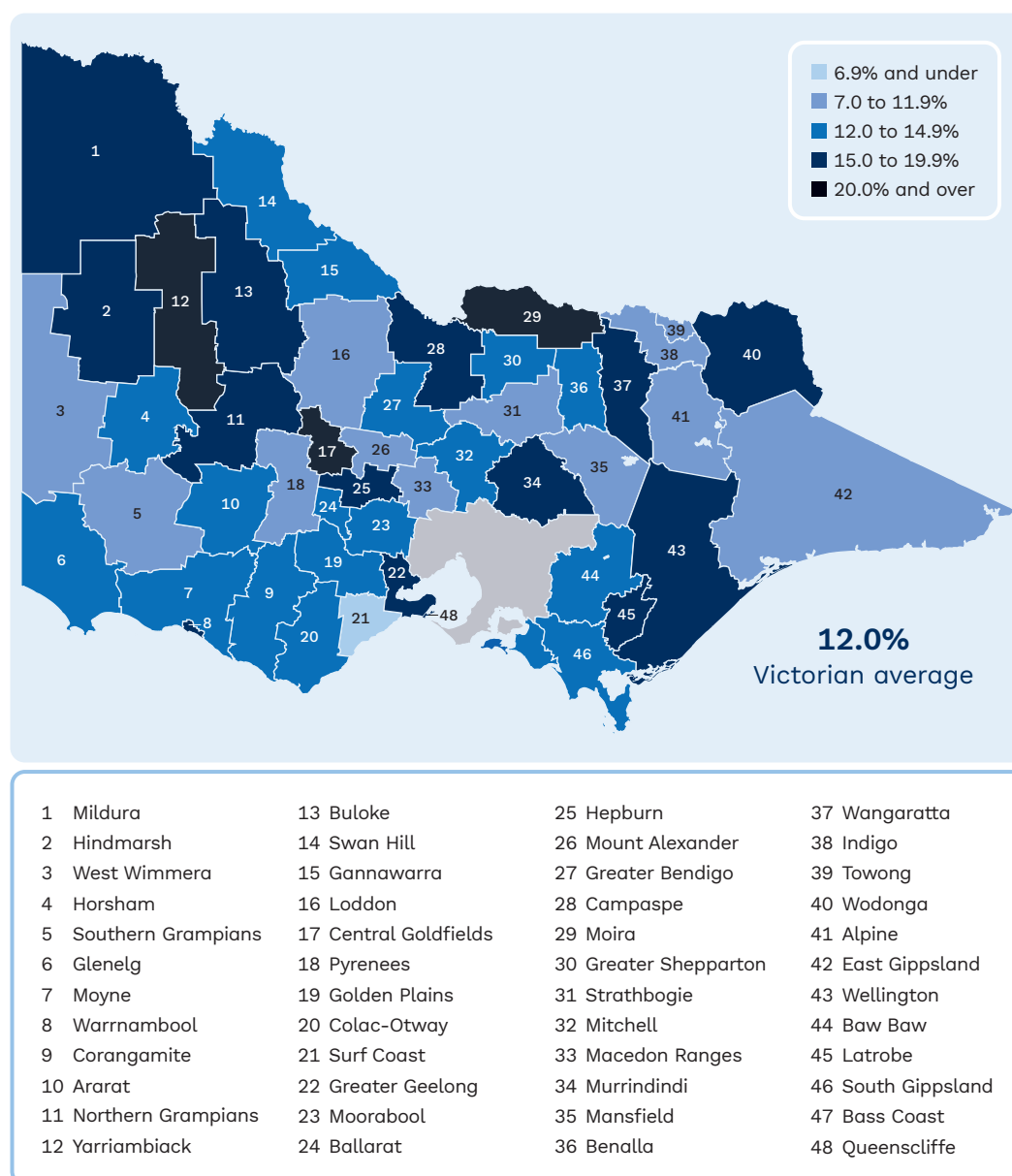
Source: Victorian Agency for Health Information, *Victorian Population Health Survey 2020: Dashboard*, 16 February 2022, <<https://vahi.vic.gov.au/reports/population-health/victorian-population-health-survey-2020-dashboards>> accessed 18 July 2024.

In regional Victoria:

- Central Goldfields Shire had the highest proportion of daily smokers, at 22.1% of the population. This was the highest statewide.
- Moira Shire on the NSW–Victoria border also had a high rate of daily smokers (21.4%).
- The Shires of Yarriambiack (20.8%), Hindmarsh (18.8%) and Buloke (17.4%) in the Mallee Wimmera region of western Victoria also had particularly high proportions of daily smokers.²²

²² Victorian Agency for Health Information, *Victorian Population Health Survey 2020: Dashboard*.

Figure 2.6 Proportion of adult local government area residents that are daily smokers, 2020, regional Victoria



Source: Victorian Agency for Health Information, *Victorian Population Health Survey 2020: Dashboard*, 16 February 2022, <<https://vahi.vic.gov.au/reports/population-health/victorian-population-health-survey-2020-dashboards>> accessed 18 July 2024.

2.5.2 Vaping

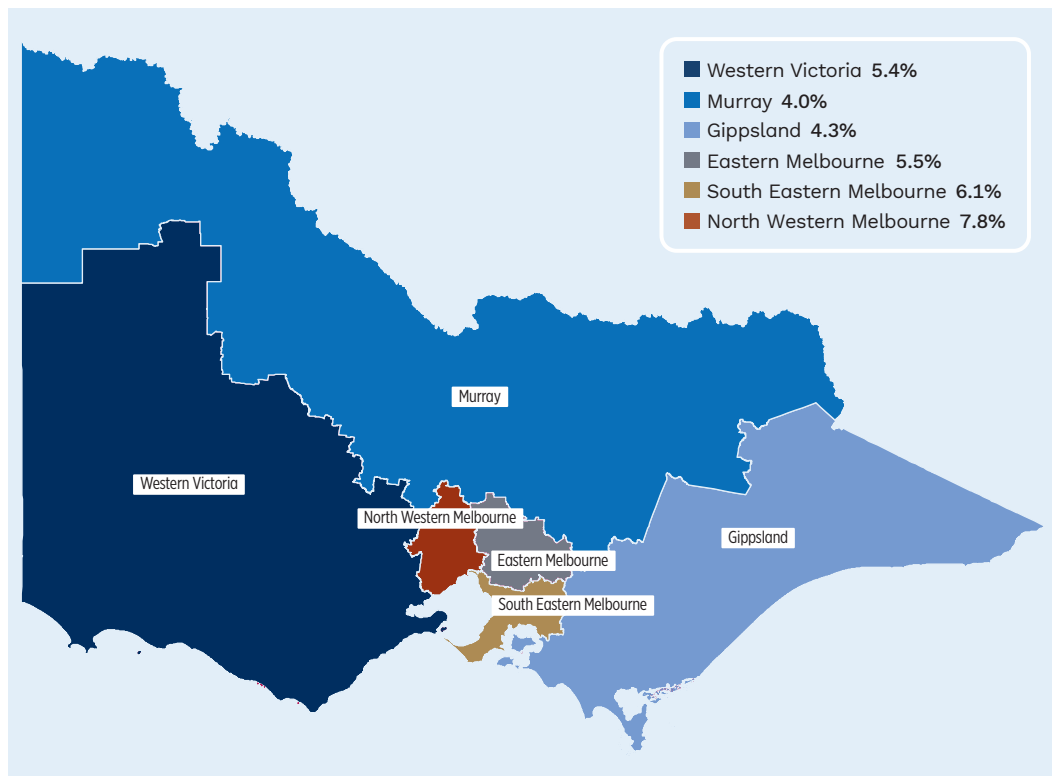
Detailed geographic data on vaping and e-cigarette use is not available. However, Cancer Council Victoria has gathered data on current and daily e-cigarette adult use by the six largest Victorian primary health network (PHN) regions.²³

²³ Bayly et al., *Prevalence of e-cigarette use among priority groups and by region of Victoria: Findings of the 2018+2019 and 2022 Victorian Smoking and Health Surveys*, p. 13.

The highest daily (3.0%) and current (7.8%) e-cigarette use occurs in the North-Western PHN Melbourne region (Figure 2.7). This region includes the cities of Wyndham, Hobsons Bay, Whittlesea and Brimbank. As noted above, these LGAs also have relatively high percentages of daily smokers.

South-eastern Melbourne (6.1%), Eastern Melbourne (5.4%) and the regional Western Victoria (5.4%) PHNs followed in terms of prevalence of current e-cigarette use.²⁴

Figure 2.7 Prevalence of current e-cigarette use by Primary Health Network region, 2022 (as a percentage of the total adult population)



Source: Megan Bayly, Eve Mitsopoulos, Sarah Durkin and Michelle Scollo, *Prevalence of e cigarette use among priority groups and by region of Victoria: Findings from the 2018+19 and 2022 Victorian Smoking and Health Surveys*, Centre for Behavioural Research in Cancer, Cancer Council Victoria, September 2023, Melbourne p. 19.

Although the Cancer Council Victoria survey shows that most e-cigarette use is based in metropolitan Melbourne, the latest *National Wastewater Drug Monitoring Program* report found nicotine consumption from tobacco products, including e-cigarettes and vapes, has been increasing across regional areas since August 2022 to reach a 'record' high as of December 2023.²⁵

FINDING 5: North-Western Melbourne has both the highest rates of vaping in the state and amongst the highest percentage of metropolitan smokers.

²⁴ Bayly et al., *Prevalence of e-cigarette use among priority groups and by region of Victoria: Findings of the 2018+2019 and 2022 Victorian Smoking and Health Surveys*, p. 13.

²⁵ Australian Criminal Intelligence Commission, *Report 22: National Wastewater Drug Monitoring Program*, Canberra, 2024, p. 52.

FINDING 6: The highest proportions of smokers in metropolitan Melbourne are in the City of Frankston in Melbourne’s south, the cities of Hobsons Bay and Brimbank in the west, and the city of Whittlesea in the north.

FINDING 7: Central Goldfields Shire had the highest proportion of daily smokers in the state. Moira Shire and municipalities in the Mallee Wimmera region of western Victoria also had above average proportions of daily smokers.

2.6 Addressing data gaps relating to nicotine consumption

There is clearly a need for more timely, granular and accurate data on both smoking and vaping as well as newer forms of nicotine consumption such as tobacco pouches. This information is needed to develop effective public health programs aimed at preventing people from taking up smoking or vaping, supporting users who wish to quit, and targeting geographic areas where tobacco and e-cigarette use is most prevalent. Dr William Cross of the Goulburn Valley Public Health Unit told the Committee that ‘population-level data on the distribution and the impacts of vaping is sorely lacking at this time’ as data is ‘a really important tool within tobacco control regulation.’²⁶ There is also hope amongst public health professionals that the tobacco licensing scheme the Victorian Government plans to introduce will mean ‘... we finally understand who we are selling to, where we are selling it and how much is being sold.’²⁷

In undertaking this review into the prevalence of e-cigarette and tobacco use, the Committee has found various shortfalls and discrepancies. But perhaps the most significant is the uneven nature of official health-related data on smoking and vaping by children. Official data on vaping and smoking amongst children aged under 14 does not exist. This is particularly concerning given the increase in vaping and e-cigarette use amongst young people. Future public health campaigns targeting teenagers and school children against nicotine consumption will only be effective if they are based on sound evidence.

The Tasmanian Government’s *Tasmanian Tobacco Action Plan* recognises the limitations of data regarding the prevalence of smoking, with a dedicated action area in their plan to ‘strengthen and use the evidence base’.²⁸ As part of this, the Tasmanian Government collects volume sales and location data from licenced tobacco retailers to inform targeted anti-tobacco campaigns. The data collected includes the tobacco product and brand type, in addition to the number of products sold.²⁹ The Tasmanian

26 Dr William Cross, Acting Clinical Director, Goulburn Valley Public Health Unit, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 1.

27 Dr Sandro Demaio, *Transcript of evidence*, p. 3.

28 Government of Tasmania, Department of Health, *2022–26 Tasmanian Tobacco Action Plan: Reducing the use of tobacco and related products*, Hobart, 2022, p. 26.

29 Government of Tasmania, Department of Health, *Tasmanian Tobacco Control Action Plan: Progress Report 2021*, Hobart, 2021, p. 46.

Department of Health Tobacco Control Officers assist retailers with data collection methods and requirements.³⁰

The Committee believes it would be worthwhile for the Victorian Government to introduce a similar data collection system as part of a future retail tobacco licencing scheme in Victoria.

RECOMMENDATION 1: The authority responsible for Victoria's incoming tobacco licensing scheme, collect and publish data six monthly or more frequently as appropriate on the number and location of tobacco and e-cigarette retail outlets, the brand and type of tobacco and e-cigarette products sold and sales (in terms of both volume and customers).

RECOMMENDATION 2: The Victorian Government consider strategies to address the gaps in empirical data on the prevalence and use of tobacco, e-cigarette and other nicotine products amongst Victorians aged under 14, including primary school aged children.

³⁰ Government of Tasmania, Department of Health, *Tasmanian Tobacco Control Action Plan: Progress Report 2021*, p. 46.

Chapter 3

The financial, health, social and environmental impacts of smoking and vaping

3.1 Overview

The financial, health, social and environmental impacts of smoking and vaping on the Victorian community is the focus of this chapter (first term of reference). The Committee found the following:

- The illicit tobacco market in Victoria has grown as the price of legal tobacco has increased, at the same time as higher rates of tobacco levy excise have been applied. The price of legal tobacco has been compounded in recent years due to inflation which has placed cost of living pressures on households and users of tobacco.
- While illicit e-cigarette products are marketed to young people as less harmful, as with cigarettes, they contain nicotine which is highly addictive. E-cigarette use can increase the risk of serious health conditions.
- Rising e-cigarette usage rates among Victorian school children is becoming a serious health risk as well as a behavioural issue that requires careful management by schools.
- There are no national environmental guidelines or regulations on the disposal of e-cigarette waste.
- There is currently little community awareness of the environmental impact of vaping products. Consumers have limited options for their safe disposal, and the presence of batteries in many single-use vape products has increased fire risks, particularly at recycling and waste management centres.

3.2 Financial impacts

3.2.1 The value of the legal and illicit tobacco and vaping markets in Victoria

The Parliamentary Budget Office (PBO) estimates the total value of the Victorian tobacco market in 2023 was \$6.0 billion, including the \$367.7 million (or 6.1%) illicit tobacco market.¹ However, the PBO's estimate of the size of the illicit market was

¹ Parliamentary Budget Office, *Submission 71*, p. 3.

disputed by other witnesses to the Inquiry. The Committee heard estimates that illicit tobacco comprises 40.0% of the current overall Victorian tobacco market, and the tobacco company Phillip Morris Limited told the Committee it was 28.6% nationally.²

The PBO estimated the e-cigarette market in 2023 to be worth \$332.0–545.8 million.³

3.2.2 Value of tobacco excise to Australia

Tobacco products in various forms (manufactured cigarette ‘sticks’ or loose-leaf tobacco) are subject to an excise levied by the Commonwealth Government, calculated by weight.⁴ The Australian Taxation Office (ATO) collects the excise on manufactured tobacco products, while the Australian Border Force (ABF) collects customs duty on tobacco products imported into Australia.⁵ No tobacco is grown legally or manufactured in Australia.⁶

The costs of smoking to governments and the wider community include healthcare costs, border security and justice system costs and reduced workplace productivity.⁷ The amount of revenue generated by the tobacco excise only partially covers these costs. However, the tobacco excise also serves as a public health measure, as it provides a financial disincentive to take up and continue smoking. Signatories to the 2003 World Health Organisation’s (WHO) *Framework Convention on Tobacco Control* are required to introduce pricing and tax policies that disincentivise smoking. Australia is a signatory to this convention.⁸

Between 1999 and 2010 the tobacco excise increased in line with the consumer price index (CPI), followed by a one off 25.0% increase in 2010 and 12.5% annual increases between 2013 to 2020.⁹

Some criminology experts told the Committee that the increase in the excise has acted as a driver for the illicit tobacco market. For example, Dr James Martin from Deakin University advised the Committee that ‘Australian cigarette prices are now the highest in the world’ and for ‘many smokers—legal tobacco is simply no longer affordable.’¹⁰

2 Rohan Pike, Rohan Pike Consulting, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 2; Phillip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 1.

3 Parliamentary Budget Office, *Submission 71*, p. 3. The range is due to the uncertainty in information on consumer consumption patterns relating to e-cigarette products and pricing.

4 Australian Taxation Office, *Excise duty rates for tobacco*, 22 February 2024, <<https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/tobacco-and-excise/excise-duty-rates-for-tobacco>> accessed 18 July 2024.

5 Assistant Commissioner Erin Dale, Tobacco and E-Cigarette Whole of Government Taskforce, Australian Border Force, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

6 Australian Taxation Office, *Excise duty rates for tobacco*, 22 February 2024, <<https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/tobacco-and-excise/excise-duty-rates-for-tobacco>> accessed 18 July 2024.

7 Parliamentary Budget Office, *Submission 71*, p. 25.

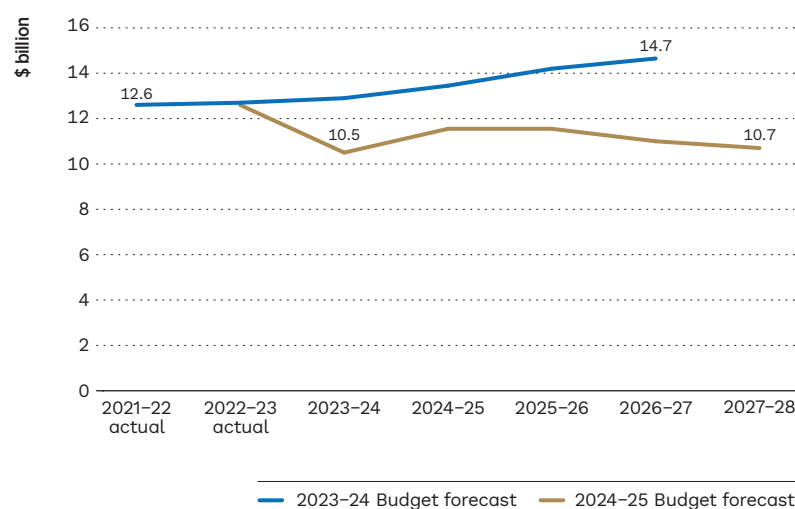
8 World Health Organisation, *WHO Framework Convention on Tobacco Control*, Geneva, 2003, p. 16.

9 Parliamentary Budget Office, *Submission 71*, p. 9.

10 Dr James Martin, Senior Lecturer, Criminology, School of Humanities and Social Sciences, Deakin University, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 1.

Both the actual and forecast value of the excise levied on tobacco products is illustrated in Figure 3.1. This shows that the forecasts for tobacco excise revenue have been subject to downward revisions in recent years. The 2024–25 Commonwealth Budget states the decline is due to weakening tobacco consumption, but it does not reference the impact of illicit tobacco consumption on excise revenue.¹¹

Figure 3.1 Tobacco excise revenue (actual and forecast) 2021–2028



Source: Commonwealth Government, *Budget 2024–25: Budget Paper No. 1: Strategy and Outlook*, Canberra, May 2024, p. 182; Commonwealth Government, *Budget 2023–24: Budget Paper No. 1: Strategy and Outlook*, Canberra, May 2023, p. 185.

FINDING 8: While the overall value of the tobacco market in Victoria for 2023 is estimated at \$6.0 billion, the value and proportion of the illicit tobacco market is contested. Estimates range between 6.1% and 40.0%. The vape market is estimated to be worth between \$332 million and \$545.8 million.

FINDING 9: The Commonwealth Government’s estimates for tobacco excise revenue have been revised downwards recently. In the 2023–24 Budget it was estimated to increase to \$14.7 billion by 2026–27, but in the latest 2024–25 Budget, the forward estimates have tobacco excise revenue falling to \$10.7 billion by 2027–28.

Impact of increases in excise on Victoria’s illicit tobacco market

There is wide acceptance that the illicit tobacco market has been growing in Victoria and this has a direct impact on the collection of the tobacco excise. This is discussed further in Chapter 4. Victoria Police told the Committee that while there are public health benefits in increasing the price on cigarettes to reduce smoking rates, ‘reducing the affordability of legal tobacco (by increasing the excise) has likely contributed to the growth of the illicit tobacco market in Victoria.’¹² Rohan Pike told the Committee

¹¹ Commonwealth Government, *Budget 2024–25: Budget Paper No. 1: Strategy and Outlook*, Canberra, May 2024, p. 168.

¹² Victoria Police, *Submission 113*, p. 9.

the current environment ha[s] fuelled a massive black market industry run by organised crime, thereby defeating the original health and revenue objectives of getting smokers to quit or pay the higher excise.¹³

ATO ‘tax gap’ of lost tobacco excise revenue

The ATO estimates revenue lost as a result of illicit tobacco—which evades the tobacco excise—has risen sharply from \$520 million in 2015–16 to \$1.9 billion in 2020–21.¹⁴

The Committee notes that the latest ATO data in this series (2020–21) is dated. To address this ‘tax gap’ one of the recommendations made by the Commonwealth Parliamentary Joint Committee on Law Enforcement’s *Inquiry into Illicit Tobacco* was for the ATO to continue the ‘tobacco tax gap project on a permanent basis’, using ‘all available external information to assist in developing its understanding of the scale of the illicit tobacco market in Australia.’¹⁵ This recommendation was supported by the Commonwealth Government.¹⁶

3.2.3 The cost of smoking and vaping

The price of a packet of cigarettes in Australia has risen considerably over the last forty years, primarily driven by increases in tobacco excise. For example, a packet of 25 Winfield Blue cigarettes cost \$1.07 in 1980 but in 2023 costs \$46.95,¹⁷ with \$31.00 of the total price comprised of excise and duty.¹⁸

In contrast the price of illicit tobacco, based on the estimates presented to the Committee, have varied. Consultancy firm KPMG estimate a packet of illicit cigarettes cost 47.0% of the price of a legitimate major brand. Using the Winfield 25s example, this would equate to \$22.07.¹⁹ However, the Committee was advised that illicit cigarettes sell for as little as \$15.00.²⁰

13 Rohan Pike, *Transcript of evidence*, p. 2.

14 Australian Taxation Office, *Tax gap program summary findings*, 30 October 2023, <<https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/tax-gap-program-summary-findings>> accessed 28 June 2024.

15 Parliament of Australia, Parliamentary Joint Committee on Law Enforcement, *Inquiry into Illicit Tobacco*, 2020, p. 19.

16 Commonwealth Government, *Australian Government response to the Parliamentary Joint Committee on Law Enforcement report: Inquiry into Illicit Tobacco*, November 2021, p. 3.

17 Parliamentary Budget Office, *Submission 71*, p. 20.

18 Australian Taxation Office, *Excise duty rates for tobacco*, 22 February 2024, <<https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/tobacco-and-excise/excise-duty-rates-for-tobacco>> accessed 30 July 2024. Excise and duty on cigarettes increased from \$0.19 per stick in November 1999 to the current rate of \$1.28 per stick. While the increase in excise has contributed to the overall increase in the retail price of a packet of cigarettes, a 2023 study found the tax components (including goods and services tax as well as excise) comprise 73.3% of the final retail sale price, leaving 26.7% for the manufacturer, wholesaler and retailer. Applying this to the example of the \$46.95 packet of Winfield Blue 25s would leave \$12.68 profit. In Elizabeth Greenhalgh, Wendy Winnall and Michelle Scollo, ‘The pricing and taxation of tobacco products in Australia’, *Tobacco in Australia: Facts and issues*, report for Cancer Council Victoria, Melbourne, 2023, <<https://www.tobaccoinaustralia.org.au/chapter-13-taxation/13-0-introduction>> accessed 30 July 2024.

19 Parliamentary Budget Office, *Submission 71*, p. 20 (Committee calculation).

20 Detective Superintendent Jason Kelly, Anti-Gangs Division, Victoria Police, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 6.

The contrast between the costs of smoking legal and illicit cigarettes and vaping is shown in Table 3.1.

Table 3.1 Cost of legal and illicit cigarette use and vaping

	Average smoker of legal cigarettes	Average smoker of illicit cigarettes	Vaping
Daily cost	\$21.29	\$8.76	\$2.20–\$3.70
Weekly cost	\$149.06	\$61.43	\$15.20–\$25.40
Yearly cost	\$7,751.12	\$3,193.10	\$790–\$1,320

Source: Public Accounts and Estimates Committee.

Compounding the impact of high tobacco prices for smokers, and fuelling demand for cheaper illicit cigarettes, has been the recent high inflationary economic environment. The Australian consumer price index²¹ (CPI) average annual growth rate rose from 1.1% in the March quarter of 2021 to peak at 7.8% in December 2022.²² Many of the items driving the CPI increase over this time were essential goods and services, such as dairy products, fruit and vegetables, utility bills, insurance premiums, petrol and rental costs.²³

The PBO estimates that households in the lowest income bracket spend 3.7% of their disposable income on cigarette and tobacco products, while households in the highest income bracket spend only 0.7%.²⁴ Or as Jim O’Shea from the Victorian Aboriginal Community Controlled Health Organisation told the Committee ‘every dollar spent on tobacco and e-cigarettes is a dollar that is not spent on food, education or even housing.’²⁵ Therefore high tobacco prices have a greater impact on lower-income households.

FINDING 10: The demand for cheaper nicotine products comes at a time when the price of smoking legal cigarettes has increased considerably due to the increase in tobacco excise and accessibility of illicit cigarettes—coupled with a recent period of high inflation, placing pressure on household income and spending.

21 CPI is an economic indicator commonly used to measure inflation.

22 Australian Bureau of Statistics, *Consumer Price Index, Australia*, March 2024, <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/mar-quarter-2024>> accessed 9 July 2024.

23 Ibid.

24 Parliamentary Budget Office, *Submission 71*, p. 25.

25 Jim O’Shea, Chief Operating Officer, Victorian Aboriginal Community Controlled Health Organisation, Melbourne 29 April 2024, *Transcript of evidence*, p. 1.

3.3 Health impacts

3.3.1 Impacts of tobacco smoking

The negative health impacts of smoking are well established and widely documented. The WHO states that ‘all forms of tobacco use are harmful, and there is no safe level of exposure to tobacco.’²⁶

Australian Institute of Health and Welfare data found that 8.6% of Australia’s total incidence of disease was due to tobacco,²⁷ making it the primary risk factor that contributes to disease and death in this country and was responsible for:²⁸

- 76.4% of lung cancers
- 73.0% of all incidents of chronic obstructive pulmonary disease
- over 50.1% of oesophageal cancers.²⁹

Tobacco was also the main contributor to avoidable fatal diseases, contributing to 13.0% of all deaths in 2018. Several health organisations advised the Committee of the negative health impacts of smoking.³⁰

FINDING 11: Smoking is the leading cause of avoidable disease and death in Australia. Tobacco use is responsible for the increased and fatal incidence of a number of serious diseases, including cancer, heart conditions, respiratory conditions, oral health related conditions and asthma.

3.3.2 Impacts of e-cigarettes and vaping

A body of evidence into the health impact of e-cigarette use is yet to emerge, however, the Committee still heard evidence of many adverse health outcomes from vaping.³¹

The presence of nicotine in e-cigarettes and vaping products is a primary concern. Nicotine is an addictive substance and the risk of nicotine addiction increases with the rate of delivery, absorption and the level of blood concentration of nicotine attained

²⁶ World Health Organisation, *Tobacco*, 31 July 2023, <<https://www.who.int/news-room/fact-sheets/detail/tobacco>> accessed 10 July 2024.

²⁷ The Australian Institute of Health and Welfare’s ‘burden of disease’ measure reflects the level of disease that could have been avoided if everyone in Australia had never used or been exposed to tobacco in their lifetime. The latest in the series based on 2018 data and published in 2021.

²⁸ Australian Institute of Health and Welfare, *Australian Burden of Disease Study 2018: Interactive data on risk factor burden*, 24 November 2021, <<https://www.aihw.gov.au/reports/burden-of-disease/abds-2018-interactive-data-risk-factors/contents/tobacco-use>> accessed 10 July 2024.

²⁹ Ibid.

³⁰ National Heart Foundation of Australia, *Submission 99*, p. 4; Lung Foundation Australia, *Submission 84*, p. 6; Australian Dental Association Victorian Branch, *Submission 75*, p. 4; Asthma Australia, *Submission 85*, p. 2.

³¹ Emeritus Professor Simon Chapman, School of Public Health, University of Sydney, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 3.

in the system.³² Nicotine can reach the brain in less than 20 seconds if it is inhaled through a vape. This leads to peak blood nicotine levels within seconds, unlike other nicotine replacement therapies such as lozenges and nasal sprays.³³

E-cigarettes can cause ‘popcorn lung’, causing damage to the small airways in the lungs.³⁴ There is also evidence that they cause a flu-like illness, called E-cigarette or Vaping-Associated Lung Injury (EVALI), that in severe cases requires ventilator treatment in a hospital intensive care unit.³⁵

There is increased risk of accidental or intentional nicotine poisoning with greater concentration of the substance in e-liquids and ‘at home’ preparations.³⁶ Acute nicotine toxicity can result in nausea, seizures and in severe cases, respiratory depression which can be fatal.

Nicotine exposure during adolescence can also cause comorbid substance abuse and addiction, impairments in memory, anxiety disorders, depression and disruptive disorders.³⁷

FINDING 12: Both tobacco and e-cigarettes contain nicotine, which is highly addictive and detrimental to people’s health. It has negative impacts on the developing brain of young people.

Despite vapes being available in flavours that give the impression to users that they are not harmful, testing has shown that in addition to nicotine they also contain a wide range of dangerous chemicals, many related to the flavouring. VicHealth explained to the Committee that as well as nicotine, poisonous substances and heavy chemicals are found in e-cigarettes (Figure 3.2).³⁸

32 Australian National University, *Submission 88*, p. 6.

33 360Edge, *Supplementary submission 72a*, p. 12.

34 Australian Medical Association Victoria, *Submission 66*, p. 2

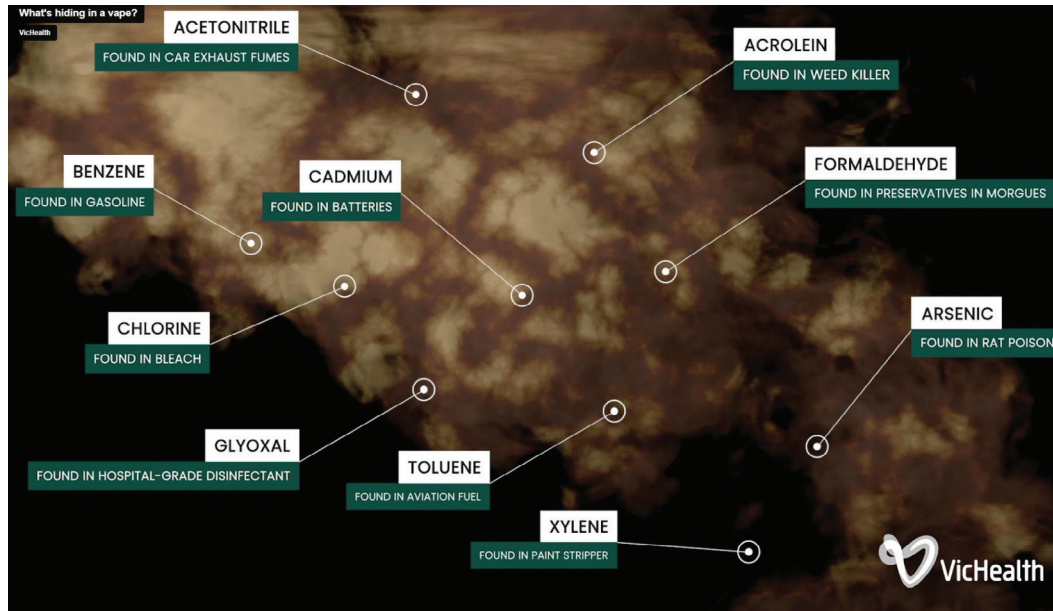
35 Dr Clare Looker, Chief Health Officer, Department of Health, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1; Dr Evelyn Lewin, NewsGP, *What is EVALI?*, 11 November 2020, <<https://www1.racgp.org.au/newsgp/clinical/what-is-evalli>> accessed 16 July 2024.

36 Australian National University, *Submission 88*, p. 6.

37 *Ibid.*

38 VicHealth, public hearing, Melbourne, 29 April 2024, *Presentation*, p. 3.

Figure 3.2 What's in a vape?



Source: VicHealth, public hearing, Melbourne, 29 April 2024, *Presentation*, p. 3.

FINDING 13: A wide range of substances and heavy chemicals have been found in e-cigarettes, that are poisonous if inhaled including chemicals found in car batteries, disinfectants, fuel products and poisons.

The indirect health impacts of e-cigarettes include second hand vapour being a trigger for asthma sufferers and acting as a ‘gateway’ to tobacco use. E-cigarette users are three times more likely to become tobacco smokers than non-users.³⁹

There is also indirect evidence of adverse effects of e-cigarette use on cardiovascular health markers, including blood pressure and heart rate and lung function.⁴⁰ The National Heart Foundation of Australia noted a recent study that found e-cigarette use is associated with a 33% increased risk of heart attack when compared to non-users, and a 2024 study that found e-cigarette users were 19% more likely to develop heart failure than people who had never used e-cigarettes.⁴¹

FINDING 14: E-cigarette users are three times more likely to take up tobacco smoking than non-users.

39 Emily Banks et al., *Electronic cigarettes and health outcomes: systematic review of global evidence*, Canberra, April 2022, p. xiii.

40 Lung Foundation Australia, *Submission 84*, p. 6.

41 National Heart Foundation of Australia, *Submission 99*, p. 4.

The Committee received many submissions from people who believe that e-cigarette use is healthier than smoking.⁴² However, the evidence provided to the Committee does not support this.⁴³ As Dr Sandro Demaio, the Chief Executive Officer of VicHealth, told the Committee, ‘saying that e-cigarettes are safer than smoking is like saying that they are safer than walking on a freeway; yes, it might be safer, but it is still a terrible idea and highly dangerous.’⁴⁴ Dr William Cross of the Goulburn Valley Public Health Unit told the Committee that based on the evidence available

there might be a hierarchy of what would be preferable consumption of nicotine potentially. We would consider e-cigarettes at this moment potentially being preferable to tobacco use, particularly when they are used under medical supervision. We would also consider that regulated products are likely to be less harmful than unregulated products, as the latter can give an undisclosed amount of nicotine and may also contain a broader range of potentially harmful chemicals.⁴⁵

The tobacco companies that appeared before the Committee stated that ‘the science is clearly established that nicotine is addictive’⁴⁶ and British American Tobacco Australia, stated its position is that ‘if you do not use these products, do not start.’⁴⁷

FINDING 15: There is no scientific evidence to show that e-cigarette use is healthier than smoking tobacco.

3.4 Social impacts

With such wide ranging financial and health impacts, it follows that tobacco and e-cigarette use harms do not just impact individuals—they impact their families, their work, school and our broader community.⁴⁸ The Committee was also advised of the impact of vaping on young people, particularly school children, parents, teachers and the wider Victorian education sector.

3.4.1 Impact of vaping on school children

One of the most concerning developments is how young people and school children have been targeted with vaping products.⁴⁹ It places enormous pressure on teachers

42 Tanisha Finlay, *Submission 1*, p. 2; Kirsten Baker, *Submission 11*, p. 2; Craig Sillington, *Submission 13*, p. 2; Name withheld, *Submission 14*, p. 2; Name withheld, *Submission 15*, p. 2; Adam Deane, *Submission 19*, p. 2; Patricia O’Bryan, *Submission 20*, p. 2; Dr Colin Mendelson, *Submission 36*, pp. 4–5.

43 VicHealth, *Submission 106*, pp. 14–15; Dr Clare Looker, *Transcript of evidence*, p. 1; Australian National University, *Submission 88*, pp. 6–9.

44 Dr Sandro Demaio, Chief Executive Officer, VicHealth, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 6.

45 Dr William Cross, Acting Clinical Director, Goulburn Valley Public Health Unit, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 1.

46 Philip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 7.

47 British American Tobacco Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 7.

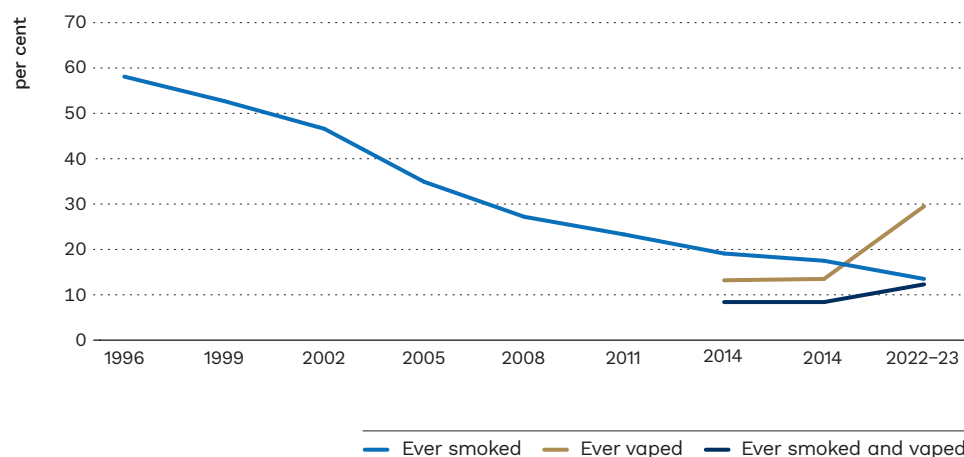
48 Dr Clare Looker, *Transcript of evidence*, p. 1.

49 Dr Sandro Demaio, *Transcript of evidence*, p. 3.

and education administrators across Victoria's schools.⁵⁰ While action has recently been taken at the Commonwealth level to ban importation of vaping products, the Committee heard disturbing details of the addictive nature of vaping and its impact on young people.⁵¹

The growth of vaping among school students over the last three years has been extraordinary (Figure 3.3).

Figure 3.3 Lifetime (ever) smoking and lifetime (ever) vaping over time among Australian secondary school students, 1996 to 2022–23



Source: Maree Scully et al., Cancer Council, *Australian secondary school students' use of tobacco and e-cigarettes*, report prepared for Australian Government Department of Health and Aged Care, December 2023, p. 17.

Overall, the vaping industry appears to target children and young people through:

- Heavy and positive promotion on social media, which is accessed by young people. The Committee heard examples of social media influencers promoting vapes on platforms such as TikTok.⁵² This includes major tobacco brands using social media channels such as Instagram to promote e-cigarette products.⁵³
- Product packaging designed to appeal to children and young people. Vaping products are readily available in varieties of confectionery-like flavours and in colour packaging that makes them appear like lollies. E-cigarettes have also been manufactured to emulate make-up pens, stationery items such as highlighters and USB sticks, hoodie toggles and soft drinks.⁵⁴

⁵⁰ Joel Hoffman, Senior Social Worker, Shepparton ACE Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 6.

⁵¹ Sabri Ibisi, School Captain, Greater Shepparton Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 5.

⁵² Associate Professor Becky Freeman, School of Public Health, University of Sydney, Melbourne, 29 April 2024, *Transcript of evidence*, p. 4; Joel Hoffman, *Transcript of evidence*, p. 8.

⁵³ Associate Professor Becky Freeman, 29 April 2024, *Transcript of evidence*, p. 2.

⁵⁴ Dr Sandro Demaio, *Transcript of evidence*, p. 2.

- Promoting vaping as a ‘safe’ or healthy product in comparison to tobacco, or other drugs. Associate Professor Becky Freeman told the Committee that

when we talk to young people in our focus groups and our studies, they tell us that they are attracted to the flavours of vapes and that, you know, vaping is not like proper smoking. It is not smelly, it is not socially unacceptable, it is not expensive. They come in these bright colours. Their peers accept it. They remain very adamantly anti-smoking, but vaping is not viewed in the same way at all, and they are attracted to the nicotine.⁵⁵

Without a regulatory regime overseeing the importation and sale of e-cigarettes in Victoria, vape stores (and other outlets selling e-cigarettes) have proliferated in areas where children have easy access to them.

Last year, the Western Public Health Unit (WPHU) released the findings of a study in the City of Brimbank.⁵⁶ The WPHU found 59 retailers across the LGA selling e-cigarettes, with a median distance from a school to the nearest e-cigarette retailer of 741 metres and 70% of schools in the LGA located less than one kilometre from an outlet.⁵⁷ The City of Brimbank, located within the north-western Melbourne region, has considerably higher e-cigarette users (7%) compared to other areas in Victoria (see Figure 2.7).

FINDING 16: Some of the ways the vaping industry has targeted children and young people to take up e-cigarette use include:

- promoting products positively across social media
- packaging the products to look appealing, eye catching and healthier than tobacco
- locating vape stores and other e-cigarette retailers near schools.

Impact of vaping on schools

The targeting of children to consume e-cigarettes and vaping products now means that ‘schools are at the front line of this serious failure of care for children’s health’⁵⁸ and vaping ‘has fast become the number one behavioural issue in schools.’⁵⁹

At the public hearing in Shepparton, the Committee heard from representatives of Shepparton Secondary College, Shepparton ACE Secondary College and Notre Dame College. It was told of the wide use of e-cigarettes by students in the Shepparton area,

⁵⁵ Associate Professor Becky Freeman, 29 April 2024, *Transcript of evidence*, p. 2.

⁵⁶ Western Public Health Unit, *Out and about: Snapshot of e-cigarette accessibility in Brimbank*, October 2023, Melbourne, p. 11.

⁵⁷ *Ibid.*, pp. 11–12

⁵⁸ Joel Hoffman, *Transcript of evidence*, p. 6.

⁵⁹ Dr Sandro Demaio, *Transcript of evidence*, p. 3.

due to students ‘not believe[ing] it is as dangerous as smoking. It is addictive, it is cheap and up until now it has been very accessible.’⁶⁰

The addictive nature of e-cigarettes has seen their use escalate on school property and in class as

vapes are very easily concealed because they are small, soundless and also smell like other products, such as perfume or aftershave—they can have a similar smell; they are undetected by teachers. Students find it very easy to conceal them within classes.⁶¹

To counter this, some schools have invested considerable resources in vape detector equipment—\$20,000 at Shepparton ACE Secondary College and \$40,000 at Notre Dame College.⁶² The Committee was advised of one school having to redesign its school uniform

because children were inhaling it in their hoodies and then breathing it down into the chest of the hoodies even in classes. They have had to redesign it so that kids can basically no longer vape in class. That is how serious this issue has become.⁶³

There are commonly held views by young people on the relative ‘safety’ of e-cigarettes (e.g. it is not as bad as marijuana addiction or it does not smell like tobacco). However, the Committee heard from witnesses who claimed some students with high levels of vape use progressed to marijuana use.⁶⁴

FINDING 17: The increase in students vaping while at school has increased to such an extent that schools now spend resources on addiction education and counselling, as well as other infrastructure upgrades such as vape detection equipment.

The ban on the importation of e-cigarettes came into effect on 1 January 2024, and the Committee received conflicting evidence regarding the decline in the availability of these products.⁶⁵ However, the level of nicotine addiction amongst Victorian school children is not likely to subside quickly, or easily, even with the ban on vaping product imports. The Committee heard that the best support that can be provided to students facing vaping addiction would be to give them ‘access to trained mental health support staff or even just a teacher that they can speak to about their issue or their addiction and a channel for them to receive support.’⁶⁶ To that end, the Committee believes the Victorian Government should investigate the provision of dedicated

60 Barbara O’Brien, Executive Principal, Greater Shepparton Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 5.

61 Sabri Ibsi, *Transcript of evidence*, p. 5.

62 Joel Hoffmann, *Transcript of evidence*, p. 6; Emma Reynoldson, Deputy Principal, Notre Dame College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 6.

63 Dr Sandro Demaio, *Transcript of evidence*, p. 3.

64 Emma Reynoldson, *Transcript of evidence*, p. 6; Sabri Ibsi, *Transcript of evidence*, p. 12.

65 Emeritus Professor Simon Chapman, *Transcript of evidence*, p. 2; Notes from Committee site visit to Victoria Police storage facility, Melbourne, 24 June 2024.

66 Risith Jayasekara, student representative, Victorian Student Representative Council, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4.

resources in the form of trained drug and alcohol specialists across the Victorian school system to provide targeted and appropriate support to young people who have become addicted to nicotine through vaping.⁶⁷

RECOMMENDATION 3: The Department of Education, in collaboration with the Department of Health, examine the barriers school children face in accessing support for nicotine use and addiction, including whether current programs are sufficient to determine if a dedicated counselling and support program for primary and secondary school children in relation to nicotine use and addiction needs to be set up and rolled out across Victoria.

3.5 Environmental impacts

Tobacco and e-cigarette use have a detrimental impact on the environment. Every stage of the tobacco and vape product cycle poses environmental threats, including:

- smoke and vapour contributing to thousands of metric tonnes of air pollution annually
- the presence of trillions of cigarette butts, the most common type of litter, found in 49% of all litter in Victoria in 2022
- cigarette butts taking up to 15 years to decompose, being eaten by wildlife and leaching chemicals into soil and water
- vapes not being able to be recycled due the chemical waste in enclosed batteries, posing risks to waste management and recycling facilities
- indoor vaping contributing to indoor pollution and poor air quality.⁶⁸

However, the most urgent environmental issues raised in the course of this Inquiry was the proliferation of discarded vaping products and the fire risks associated with products containing lithium-ion batteries in particular.

3.5.1 Limited guidance and environmentally safe e-cigarette disposal options

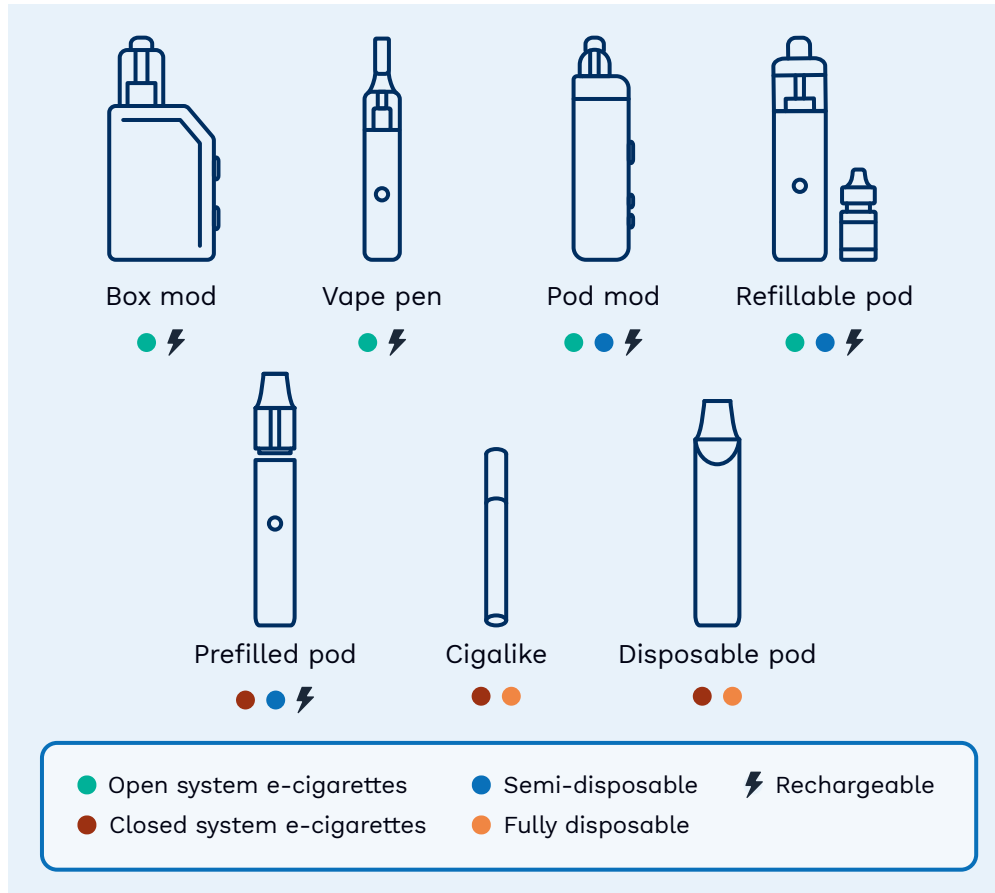
In addition to standard packaging waste, ‘closed system’ devices such as pre-filled pods and disposables are designed for single use and contain substantial plastic and chemical waste.⁶⁹ The range of e-cigarette types are shown in Figure 3.4.

⁶⁷ Joel Hoffman, *Transcript of evidence*, p. 8.

⁶⁸ Environment Protection Authority, *Submission 115*, p. 7; Associate Professor Michelle Jongenelis, *Submission 30*, p. 7; Australian National University, *Submission 88*, p. 11.

⁶⁹ Australian National University, *Submission 88*, p. 10.

Figure 3.4 Varieties of e-cigarettes



Source: Elizabeth Greenhalgh, Wendy Winnall, and Michelle Scollo, 'E-cigarette products and the e-cigarette market', *Tobacco in Australia: Facts and issues*, Cancer Council Victoria, Melbourne, 2023, <<https://www.tobaccoinustralia.org.au/chapter-18-e-cigarettes/18-1-the-e-cigarettemarket>> accessed 5 July 2024.

Ideally an e-cigarette would be disassembled into its component parts, with the e-liquid, plastic packaging and electronic waste components all disposed of separately. However, this is not possible in 'closed system' vape products seen in Figure 3.4, which are unable to be dismantled and tend to be thrown out as a whole.⁷⁰

Vape waste is controlled under Victoria's existing environmental regulations, and transporters of vape waste receive Environment Protection Authority (EPA) permission or licence to do so once they have demonstrated appropriate fire risk and monitoring controls.⁷¹ However, the EPA also noted the difficulty for waste management operators to manage this when they are unaware of the presence of batteries in the vape-related waste they are carrying and storing.⁷²

70 Australian National University, *Submission 88*, p. 10.

71 Lee Miezi, Chief Executive Officer, Environment Protection Authority, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 2.

72 Ibid.

In addition, the EPA told the Committee that currently very few disposal facilities will accept vapes and the recovery rate of batteries from vapes is only 10–12%.⁷³ According to the EPA, ‘an expansion of disposal options is critical to reducing the risks from waste lithium-ion batteries but will take some time to occur.’⁷⁴

Not all e-waste disposal facilities based in council offices currently accept e-cigarettes. The Municipal Association of Victoria (MAV) noted there is a six-month used vape recycling trial currently underway in an inner metropolitan council, demonstrating that access to correct e-waste disposal services for used vape products is far from universal in Victoria.⁷⁵ The EPA does not have a definitive list of the resource recovery facilities or transfer stations that accept vapes for recycling.

FINDING 18: Safe disposal options for used and discarded vapes in Victoria are limited. The percentage of Sustainability Victoria recycling centres that accept vapes is unknown.

E-cigarette products are also currently not subject to consistent disposal guidelines or protocols. There is currently no national recycling program and vaping products are not collected as part of the *National Television and Computer Recycling Scheme*.⁷⁶ Waste industry representatives informed the Committee that there are now millions of discarded vape products—with flammable batteries embedded in them—in circulation across the general and recycled waste management systems.⁷⁷

The environmental problems and costs associated with the safe and environmentally sustainable disposal of illicit vapes confronting enforcement agencies such as Victoria Police are significant and discussed in Chapter 4.

FINDING 19: There are currently no national mandated e-cigarette disposal or recycling programs or guidelines.

RECOMMENDATION 4: The Victorian Government, through agencies such as Sustainability Victoria, the Environment Protection Authority and Local Government Victoria provide further funding to expand the current e-waste disposal program in place across Victoria’s councils to include e-cigarettes.

RECOMMENDATION 5: The Victorian Government establish e-cigarette waste disposal guidelines and regulations and advocate for the introduction of nationally consistent e-cigarette waste disposal guidelines and regulations.

⁷³ Environment Protection Authority, public hearing, Melbourne, 15 July 2024, *presentation*, p. 2.

⁷⁴ *Ibid.*, p. 6.

⁷⁵ Municipal Association of Victoria, *Submission 73*, p. 8.

⁷⁶ Australian National University, *Submission 88*, p. 10.

⁷⁷ Waste Management and Resource Recovery Association Australia, *Submission 93*, p. 2.

3.5.2 Fire risk posed by batteries

Principal among recycling and waste industry representative concerns is the treatment of batteries (and lithium-ion batteries) in discarded vaping products. As the Australian Council of Recycling (ACOR) noted in its submission: ‘while there is a legitimate focus on the dangers of lithium-ion batteries, no battery of any form is acceptable in conventional waste and recycling streams.’⁷⁸

There is considerable risk of battery acid and other toxic chemicals leaking from e-cigarette lithium-ion batteries and circuit boards.⁷⁹ The e-liquid itself is also a chemical waste product (Figure 3.2).

The EPA noted that in 2023 Victoria’s fire services responded to at least one significant lithium-ion battery-related fire each week.⁸⁰ ACOR also noted that fires

caused by batteries are widespread across material recovery facilities (MRFs), in waste and recycling trucks, transfer stations, metal and e-waste recycling facilities and in landfills—in short, at every point across collection, disposal and recovery streams.⁸¹

In December 2022 a fire at the Hume recycling centre in the Australian Capital Territory was ignited by incorrectly disposed batteries.⁸²

As ACOR informed the Committee

Vapes constitute not only a public health challenge, but also, along with other embedded batteries, pose an existential threat to the recycling sector through increasingly frequent and severe fires at every point along the recycling supply chain.⁸³

FINDING 20: The presence of lithium-ion batteries in discarded disposable vape products has increased the fire risk across recycling supply chains and other waste management systems.

At the national level, products that have poor environment and human health and safety impacts over their life cycle can be the focus of dedicated product stewardship schemes, and appear on the annually updated ‘priority product stewardship list’.⁸⁴ While a *Battery Stewardship Scheme* exists, embedded batteries in used and discarded e-cigarettes are not currently included and were also not listed in the priority product

⁷⁸ Australian Council of Recycling, *Submission 92*, p. 1.

⁷⁹ Australian National University, *Submission 88*, p. 10.

⁸⁰ Environment Protection Authority, *Submission 115*, p. 2.

⁸¹ Australian Council of Recycling, *Submission 92*, p. 1.

⁸² *Ibid.*, p. 2.

⁸³ *Ibid.*, p. 8.

⁸⁴ Department of Climate Change, Energy, the Environment and Water, *Product Stewardship in Australia*, 3 October 2021, <<https://www.dcccew.gov.au/environment/protection/waste/product-stewardship>> accessed 18 July 2023.

list for 2023–24.⁸⁵ The EPA informed the Committee that they continue to advocate federally for the expansion of the current battery stewardship scheme to include embedded batteries.⁸⁶ The Committee believes more action could be taken at the Commonwealth level.

RECOMMENDATION 6: The Victorian Government advocate to the Commonwealth Government for the development of a dedicated e-cigarette product stewardship scheme, including placing e-cigarettes on the next Commonwealth Minister for Environment’s annual priority product stewardship list.

3.5.3 The need for consumer education

The EPA noted that as some vaping products will be available through pharmacies, there is the potential to improve the manufacturing and labelling standards on the products to reduce fire and other disposal risks from the product.⁸⁷ The Committee pointed out that it will be difficult to regulate the manufacture and labelling of illegally imported products, hampering attempts to educate users on how best to dispose of used vaping products.⁸⁸

In the absence of:

- effective product stewardship on the part of e-cigarette manufacturers and suppliers that might give information to consumers of their products on correct disposal, and
- limited opportunities via e-waste recycling centres for consumers to correctly dispose of used e-cigarettes

the Committee believes the best option in the short term for improving the disposal of discarded vapes and reducing fire risks and other environmental hazards is to educate the community.

While the EPA outlined several campaigns it has developed concerning litter enforcement and e-waste, the Committee notes that there is no campaign targeting vaping products, outlining the risks they pose and providing information on their correct disposal.⁸⁹ Given the pressing environmental risks posed by vaping products, there appears to be an urgent need for such a public awareness campaign.

⁸⁵ Department of Climate Change, Energy, the Environment and Water, *Battery Stewardship Scheme*, 18 July 2022, <<https://www.dcceew.gov.au/environment/protection/waste/product-stewardship/products-schemes/battery-stewardship>> accessed 18 July 2024; Department of Climate Change, Energy, the Environment and Water, Minister’s Priority List 2023–24, 24 November 2023, <<https://www.dcceew.gov.au/environment/protection/waste/product-stewardship/ministers-priority-list-23-24>> accessed 18 July 2024.

⁸⁶ Jacquie Stepanoff, Director, Policy and Regulation, Environment Protection Authority, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4.

⁸⁷ Lee Miezis, *Transcript of evidence*, p. 2.

⁸⁸ Public Accounts and Estimates Committee, public hearing (Environment Protection Authority), Melbourne, 15 July 2024, *Transcript of evidence*, pp. 2–4.

⁸⁹ Environment Protection Authority, *Submission 115*, pp. 3–4.

RECOMMENDATION 7: The Victorian Government, through the Environment Protection Authority, develop and deliver a sustained community education campaign on the environmental risks posed by e-cigarettes and vaping, including information on how best to dispose of these products.

Chapter 4

The impacts of illicit vapes and tobacco on law enforcement and the Victorian justice system

4.1 Overview

This chapter examines the impact on law enforcement and the Victorian justice system from the illicit trade in vapes and tobacco (second term of reference). The key findings are:

- The drivers behind the illicit trade include the price differential between legal and illicit products, the lack of regulation and the large profits available to those involved.
- There are a number of agencies involved in the regulation and enforcement of the industry with the lead agency in Victoria being the Department of Health (DH). The DH delegates this power to local councils whose enforcement officers are under-resourced and insufficiently trained so are unable to provide effective enforcement regarding the supply and sale of nicotine products.
- Current penalties for illicit importation are an insufficient disincentive and the large profits attract organised crime involvement which impacts Australian Border Force, the Australian Taxation Office and Victoria Police.
- Small and medium-sized businesses selling legal products are subject to loss of earnings, increased crime and in some instances coercion from organised crime.

4.2 Drivers behind the illicit vape and tobacco industry in Victoria

Victoria Police explained the key factors driving the illicit industry in its written submission to the Inquiry:

Reducing the affordability of legal tobacco (by increasing the excise) has likely contributed to the growth of the illicit tobacco market in Victoria...

Victoria is the only jurisdiction without a tobacco licensing scheme or equivalent. Both the illicit tobacco and vapes markets have benefitted from low barriers to entry, low levels of regulatory enforcement, negligible repercussions, and the ability to make lucrative profits which offset any penalties incurred.¹

¹ Victoria Police, *Submission 113*, p. 9.

Other experts agree with this position, attributing the strong demand to the:

- Price differential between legal and illicit cigarettes: Experts argued that due to the price of legal cigarettes, most smokers cannot afford them; Australia has the most expensive cigarettes in the world.² Some advocate for lowering the cost of the legal product so consumers preference it over the illicit product.
- Lack of regulation—absence of licensing and enforcement: Victoria is currently the only Australian state without a tobacco licensing scheme. The Municipal Association of Victoria (MAV) believes that ‘although a licensing scheme will not solve all problems, it would enable clearer accountability on retailers and enhance capacity to enforce non-compliance and illicit sales.’³
- Illicit tobacco and vapes are low-risk high-reward commodities for serious and organised crime (SOC): There are little or no repercussions for importing them with current penalties regarded a minor ‘cost of doing business.’ Australian Border Force (ABF) advised that importing illicit tobacco attracts a relatively small fine in comparison to the profits being made. In contrast, importing heroin, for example, can result in a life sentence.⁴
- Large profits: ‘These groups [serious and organised crime networks] generate significant profits, which are frequently reinvested to fund other criminal activities, such as illicit drugs, trafficking and so on.’⁵ Organised crime gangs only need approximately 1 in 30 containers containing illicit products to get across the border for their business model to be profitable.⁶

Demand for illicit nicotine products has surged since 2019. As Cancer Council Victoria explained to the Committee

the countries with the highest taxes have tended to have the lowest levels of illicit tobacco, and that has certainly been the case in Australia until very recently. Surveys from the national drug strategy household survey show almost no change in the level of people using chop-chop tobacco or cigarette packets without the Australian packaging between 2010 and 2019; but yes, there has been a very big jump between 2019 and 2022–23.⁷

2 Rohan Pike Consulting, *Submission 67*, p. 3; Rohan Pike, Rohan Pike Consulting, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4. Refer also to Dr James Martin, *Submission 89*, p. 2.

3 Municipal Association of Victoria, *Submission 73*, p. 9. Refer also to Better Regulation Victoria, *Addressing illicit tobacco: review into Victoria’s approach to illicit tobacco regulation*, supplementary evidence received 29 April 2024, p. vi.

4 Notes from Committee site visit to Victoria Police storage facility, Melbourne, 24 June 2024; Department of Health and Department of Education, *Submission 103*, p. 7.

5 Assistant Commissioner Erin Dale, Tobacco and E-Cigarette Whole of Government Taskforce, Australian Border Force, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

6 Notes from Committee site visit to ABF Container Examination Facility, Melbourne, 24 June 2024.

7 Dr Michelle Scollo, Senior Policy Adviser, Cancer Council Victoria, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4.

FINDING 21: Several drivers have contributed to the extensive black market in illicit vapes and cigarettes in Victoria including the price differential between legal and illicit cigarettes, absence of a licensing scheme, lack of enforcement activity and minor penalties for illegal activity, with products readily available and accessible in local shopping strips. The 'low-risk high-reward' nature of these commodities have attracted overseas crime syndicates to the lucrative market.

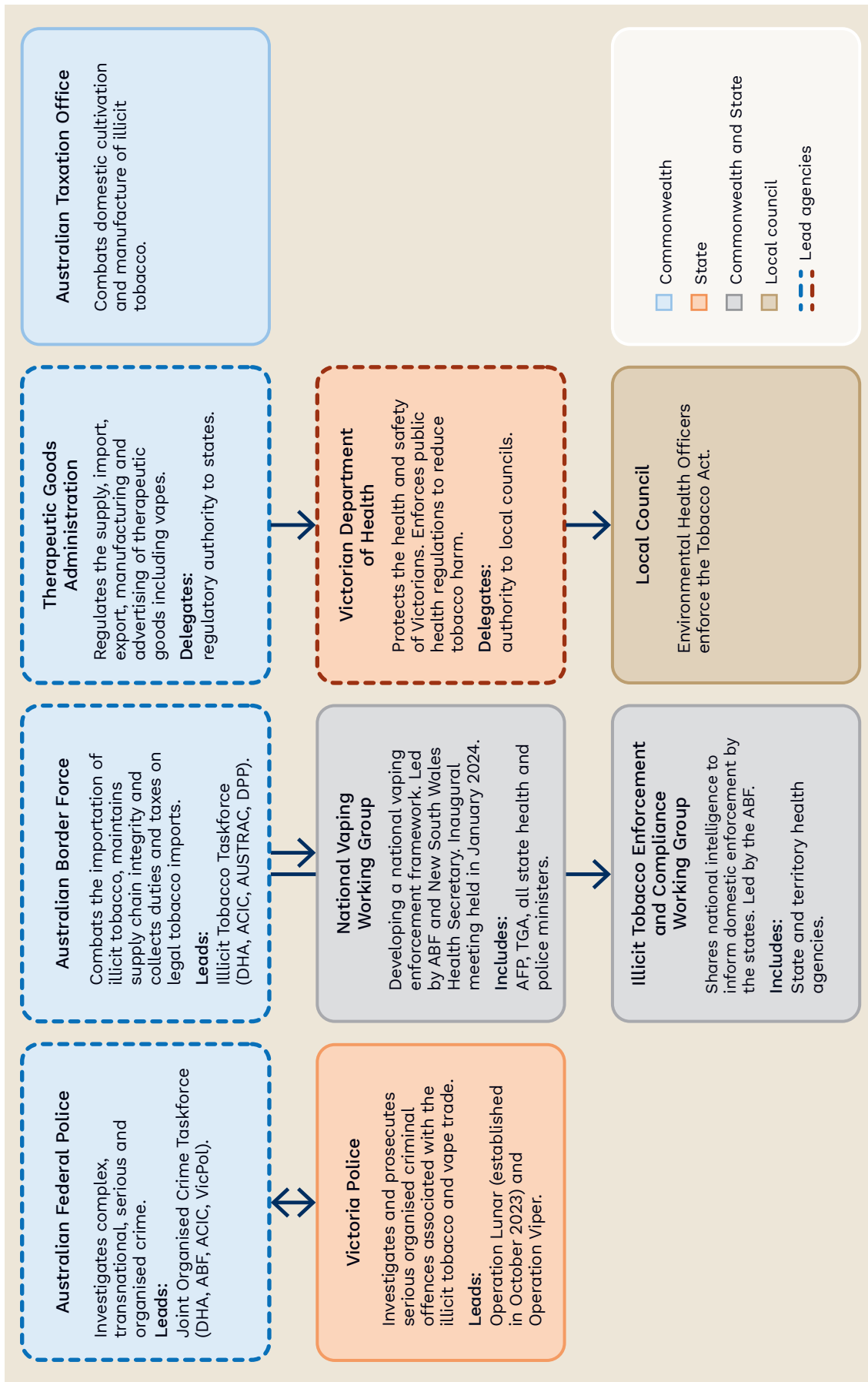
4.3 Repercussions

The Victorian Chief Health Officer advised the Committee that 'the Commonwealth is responsible for enforcing restrictions at our border, things like seizing illicit tobacco and non-therapeutic e-cigarettes, and state and territory governments are responsible for policing the sale and supply of tobacco and e-cigarettes in retail settings.'⁸

The network of enforcement agencies involved is illustrated in Figure 4.1. In Victoria, the DH is currently the lead agency responsible for the administration and enforcement of vaping and tobacco regulation.

⁸ Dr Clare Looker, Chief Health Officer, Department of Health, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 2.

Figure 4.1 The roles and relationships between key enforcement agencies



Source: Public Accounts and Estimates Committee.

FINDING 22: There are several agencies responsible for the administration and enforcement of vaping and tobacco regulation across the three tiers of government in Australia. In Victoria, the Department of Health is the lead agency.

4.3.1 Department of Health and local councils – enforcement

The central law governing tobacco in Victoria is the *Tobacco Act 1987* (Vic). According to DH, since the introduction of vapes, regulations concerning them have been progressively introduced to align with the regulations on tobacco products under the Act.⁹ While an authorised officer from DH could undertake enforcement activities, according to the department, it is not resourced to perform those functions.¹⁰ Under the Act, DH delegates its authority to enforce the Act to local councils, which is undertaken by Environmental Health Officers (EHOs).

Councils have an important role in instigating public health promotion initiatives and developing local laws for smoking in certain public places. This is discussed in Chapters 5 and 6. DH supports councils through the \$1.4 million *Local Government Tobacco Education and Enforcement Program*, which DH funds. As part of this program, Victorian councils carry out education and enforcement activities with tobacco and e-cigarette retailers and in places where smoking and vaping bans apply such as restaurants. As the MAV explained, councils' activities mostly relate to checking that retail signage, displays and sales meet regulatory requirements. Councils can also enforce smoking bans.¹¹

The Victorian Chief Health Officer advised that 'With the current shape of the *Tobacco Act* in Victoria, local council or local government do really drive the compliance and enforcement around tobacco sale in the state.'¹² However in practice, several sections of the *Tobacco Act* are not enforced and prosecuted by DH and councils. According to 2022–2023 data (most recent) published by the MAV:

- No tobacco retailers, e-cigarette retailers and specialist retailers were prosecuted by local councils as a result of visits initiated by council officers.
- Only six fines were issued to tobacco retailers, e-cigarette retailers and specialist retailers.
- No details were provided regarding the number of prosecutions arising from complaints to council (retail settings).¹³

⁹ Department of Health and Department of Education, *Submission 103*, p. 6; For example, several retail breaches now include e-cigarette retailing premises.

¹⁰ *Ibid.*

¹¹ Municipal Association of Victoria, *Submission 73*, p. 5.

¹² Dr Clare Looker, *Transcript of evidence*, p. 6.

¹³ Municipal Association of Victoria, December 2023, *Local government tobacco and e-cigarette control activities 1 July 2022 to 30 June 2023: Final report* (full version), p. 10.

The situation has not changed since 2022–2023. The MAV went on to say that there have been ‘very few’ prosecutions by councils in the last 12 months.¹⁴

Local councils and EHOs are not enforcing the current legislation for several reasons, including:

- deficiencies in the current legislation and ambiguity regarding the legal mandate of local councils to enforce it, particularly in relation to the sale of vapes containing nicotine
- illicit tobacco sales by businesses are predominantly unregulated
- safety concerns of council staff, particularly for those working in smaller towns or regional areas
- EHOs not being adequately trained or equipped to manage illegal activity
- resourcing issues – difficulties recruiting EHOs and funding
- the inability to identify who to prosecute, the cost of taking legal action and consequent diversion of scarce resources from other health promotion activities, low fines and failure to deter businesses from restocking their shops
- the lack of support from other government agencies.¹⁵

Details of how DH is working in partnership with its Commonwealth counterparts, the Therapeutic Goods Authority and local councils to address the problems regarding enforcement were not provided to the Committee. The Commonwealth Department of Health and Aged Care directed the Committee to its high-level submission to the Senate Committee Inquiry into the *Vaping Reforms Bill 2024*.¹⁶

FINDING 23: The Department of Health and local councils in Victoria are not currently taking enforcement action against the sale of illicit vapes and tobacco for several reasons. These include deficiencies in the current legislation, safety concerns and lack of resources.

¹⁴ Rosemary Hancock, Manager, Health and Local Economies, Municipal Association of Victoria, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 9.

¹⁵ Rosemary Hancock, *Transcript of evidence*, pp. 8, 9; Varinder Sapehiyia, Board Director, Environmental Health Australia, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, pp. 2, 8, 9; Department of Health and Department of Education, *Submission 103*, p. 7; Kernow Environmental Health and Immunisation, *Submission 58*, p. 4; City of Casey – Public Health Team, *Submission 105*, pp. 2–3 and *Submission 105a*, p. 2; Municipal Association of Victoria, *Local government tobacco and e-cigarette control activities 1 July 2022 to 30 June 2023: Final report*, p. 5; Louise Mitchell, Director, Community, Greater Shepparton City Council, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, pp. 1–3, 5; Greater Shepparton City Council, Inquiry into Vaping and Tobacco Controls, questions on notice received 8 May 2024, pp. 4–5; Hobsons Bay City Council Health Department, *Submission 12*, p. 2; City of Melbourne, *Submission 77*, p. 1; Environmental Health Australia, *Submission 97*, p. 2; Municipal Association of Victoria, *Council enforcement of the Tobacco Act*, further information received 6 May 2024; Notes from Committee site visit to Victoria Police storage facility, Melbourne, 24 June 2024.

¹⁶ Department of Health and Aged Care, *Submission 110*.

4.3.2 Victoria Police – enforcement

The justice system, and in particular law enforcement agencies such as Victoria Police and ABF, are significantly impacted by the illicit vaping and tobacco trade.

Victoria Police becomes involved in enforcement when there are links between the illicit tobacco and vape trade and SOC.¹⁷ Operation Lunar was established in October 2023 to respond to the escalating SOC offending associated with the illicit tobacco and vape trade.¹⁸ This taskforce investigates and disrupts such offending. It consists of investigators and intelligence specialists with experience in gang crime, arson explosives, criminal proceeds and SOC. It is supported by the Viper Taskforce.

There are an estimated 1,100 small ‘pop up’ tobacconists in Victoria, approximately one quarter of which are in regional areas.¹⁹ The vast majority sell illicit products and are run by individuals. They turn over enormous profits. Some legitimate businesses are victims of extortion. As Detective Superintendent Jason Kelly from the Anti-Gangs Division explained to the Committee in Shepparton:

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. It is significant money – thousands of dollars a week and tens of thousands of dollars a week of profit – and very low output for them.²⁰

The following figure shows a snapshot of the types of criminal activity impacting on community safety as of April 2024 (Figure 4.2). Since then, the criminal activity has continued with at least an additional 17 tobacconists and other stores set alight.²¹

17 Victoria Police, *Submission 113*, p. 3; Organised crime offences are defined under section 3AA of the *Major Crime (Investigative Powers) Act 2004* (Vic). An ‘organised crime offence’ is an indictable offence against the law of Victoria that is punishable by level 5 imprisonment (10 years maximum) or more, involves two or more offenders and:

- involves substantial planning and organisation, forms part of systemic and continuing criminal activity, and has a purpose of obtaining profit, gain, power or influence or for sexual gratification where the victim is a child, or
- two or more of the offenders involved in the offence are, at any time, either declared individuals or declared organisation members.

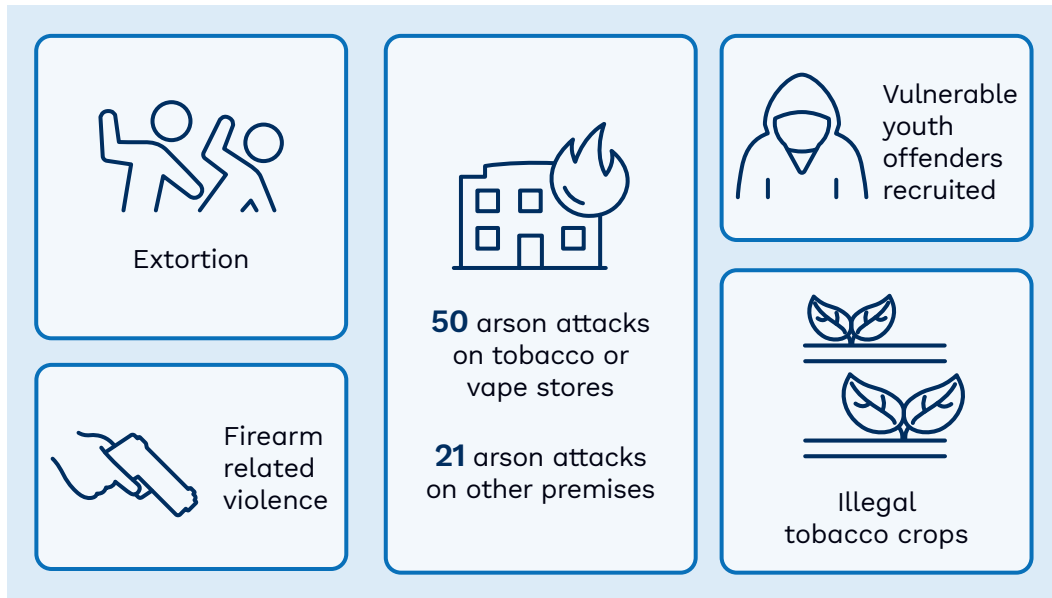
18 Victoria Police, *Submission 113*, p. 4.

19 Detective Superintendent Jason Kelly, Anti-Gangs Division, Victoria Police, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, pp. 1–9.

20 Detective Superintendent Jason Kelly, *Transcript of evidence*, p. 6.

21 There has been extensive media coverage of the criminal activity. For example: John Silvester, ‘Where there are smokes there are fires: inside Victoria’s tobacco war’, *The Age*, 14 June 2024, <<https://www.theage.com.au/national/victoria/where-there-are-smokes-there-are-fires-inside-victoria-s-tobacco-war-20240612-p5jl5e.html>> accessed 10 July 2024.

Figure 4.2 Crimes associated with the illicit tobacco and vape trade, March 2023–April 2024



Source: Adapted from Assistant Commissioner Martin O'Brien, Crime Command, Victoria Police, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, pp. 1–2.

Victoria Police advised that the illicit tobacco and vaping industries significantly impact the Victorian justice system. These impacts are multifaceted, as follows:

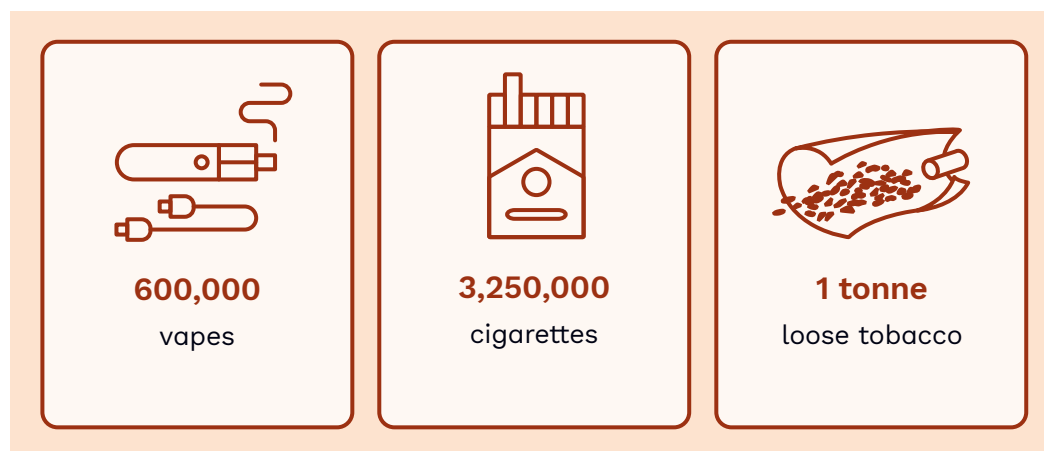
- Increased SOC offending linked to the illicit tobacco and vape markets requires the allocation of significant investigation and prosecution resources. As a result, staff, technology, and finances are diverted away from other critical police service needs to address SOC offending.
- The rapidly changing nature of the illicit tobacco and vaping industry could necessitate specialised education and training for law enforcement in areas such as cybercrime, supply routes and advanced surveillance and analysis techniques.
- The need to safely test, store and dispose of large quantities of illicit tobacco and vape products for evidentiary purposes is a significant and unsustainable burden on Victoria Police.
- The loss of tax revenue due to the illicit tobacco trade has broad economic implications, affecting funding for public services including the justice system.²²

²² Victoria Police, *Submission 113*, p. 10.

As a result of the work of the two police taskforces, over a six-month period there has been 84 search warrants executed, resulting not only in the seizure of goods (Figure 4.3) but also:

- 52 individuals arrested for arson, extortions and associated criminal offending linked to SOC connected to the illicit tobacco trade
- 71 people charged with unlawful possession offences relating to the illicit tobacco and vape trades.²³

Figure 4.3 Goods seized by Victoria Police, November 2023–April 2024



Source: Adapted from Assistant Commissioner Martin O'Brien, Crime Command, Victoria Police, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

The police work, including seizures, is ongoing with several large seizures since April 2024.²⁴

Assistant Commissioner of Crime Command, Martin O'Brien, advised the Committee that 'We have made significant numbers of arrests, we have put a significant number before the courts and we still have got a significant number to go before the courts.'²⁵ Hence the costs to the community extend to the court system and in some cases the corrections system also. These resources could otherwise be directed towards community safety initiatives or public order matters.

These actions taken by Victoria Police have 'disrupted' or 'suppressed' the illegal activity, but the Committee was told that it is not realistic, even with the introduction of the new Commonwealth legislation and a possible Victorian licensing scheme, to have zero organised crime. Since the introduction of new Commonwealth legislation

²³ Assistant Commissioner Martin O'Brien, Crime Command, Victoria Police, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

²⁴ For example, refer to 'Police seize tonnes of illegal tobacco after raids in Victoria linked to organised crime gangs', *ABC News*, 9 July 2024, <<https://www.abc.net.au/news/2024-07-09/police-illegal-tobacco-raids-victoria-melbourne/104073830>> accessed 13 August 2024.

²⁵ Assistant Commissioner Martin O'Brien, *Transcript of evidence*, p. 7.

on 1 March 2024, which banned the import on all non-therapeutic vapes (disposable and reusable), Victoria Police has not seen changes to the number of seizures or number of shipments of illicit material.²⁶

Victoria Police explained that the crime syndicates are global with people located offshore, which poses a significant challenge. However, Victoria Police is supported in its activities through its excellent relationships with Commonwealth law enforcement partners including the Australian Federal Police, Australian Criminal Intelligence Commission and ABF.²⁷ The Australian Tax Office (ATO) is also currently assisting Victoria Police in the storage of illicit tobacco seizures and there have been recent joint operations targeting the growth of illegal tobacco crops.²⁸ Victoria Police is represented on the Australian Federal Police's Joint Organised Crime Taskforce (JOCT) and shares intelligence through the JOCT with the ABF's Illicit Tobacco Taskforce.²⁹

To better understand the substantial costs of transporting, storing and destroying seized materials including vapes the Committee undertook a site visit to a Victoria Police storage facility for vapes on 24 June 2024. This facility showed vapes need to be stored with 24/7 CCTV monitoring, fire-proof camera security, ventilation, frequent temperature testing and must be distanced from any surrounding buildings or property because of the fire risks posed by lithium-ion batteries and synthetic nicotine content. The storage must meet occupational health and safety requirements and be manned 24/7. The seized goods must be stored until disposal authorisation is granted by the courts which may take weeks to months. There is currently no established nor legislated best practice method of vape storage and disposal in Australia. The Committee was advised that a Victoria Police seizure of 100 pallets of vapes cost \$200,000 to dispose of safely. Each pallet is approximately one cubic metre in volume.³⁰

The current approach to the evidentiary storage of vapes by Victoria Police is unsustainable with a suitable long-term storage solution yet to be identified.³¹ To meet the ongoing demand for evidentiary storage, Victoria Police will be required to secure commercial leasing arrangements that will require capital and operating funds.³²

The Committee also visited the ABF Container Examination Facility on 24 June 2024. It saw goods that had been seized by the ABF over the previous weekend including three pallets of vapes (15,000 vapes) and a 40-foot shipping container full of cartons of illicit

26 Notes from Committee site visit to Victoria Police storage facility, Melbourne, 24 June 2024.

27 Detective Superintendent Jason Kelly, *Transcript of evidence*, p. 6.

28 Further details on the ATO's work responding to the domestic cultivation and manufacture of illicit tobacco within Australia is explained in its submission no. 112. As of 30 June 2024 the ATO had seized 13,466,878 cigarette sticks, up from 1,207,516 in 2022–2023 nationally. Australian Tax Office, *Illicit Tobacco: Tackling illicit tobacco*, 2024, <<https://www.ato.gov.au/about-ato/tax-avoidance/the-fight-against-tax-crime/our-focus/illicit-tobacco>> accessed 10 July 2024.

29 Victoria Police, *Submission 113*, p. 6.

30 Notes from Committee site visit to Victoria Police Storage Facility, Melbourne, 24 June 2024.

31 Victoria Police, *Submission 113*, p. 7.

32 *Ibid.*, p. 6.

cigarettes (12–15 million sticks) which had come from the United Arab Emirates labelled ‘Manchester, Made in the United Kingdom’.³³ The ABF advised that:

- The volume of tobacco entering Australia is significantly increasing, largely through shipping containers. The amount of vapes was declining but has starting to rise again. There is no distinct pattern to the shipment arrivals that the ABF can discern.
- More illicit goods are being seized, because of the additional ABF resourcing and the volumes being imported.
- China is the main supplier of vapes to Australia. China and the UAE are the main suppliers of illicit tobacco.
- Like Victoria Police, the ABF is also facing challenges with the safe storage and costly disposal of illicit vapes and tobacco.³⁴

A National Vaping Working Group, led by the ABF, has been established and met for the first time in January 2024 to ‘stamp out unlawful vapes in the community’.³⁵ Membership to this group also includes the New South Wales Health Secretary and all State health and police ministers are represented on it.³⁶ This positive development to develop a national enforcement strategy is discussed in more detail in Chapter 5. A funding commitment of \$188.5 million, over four years, was made in 2023–24 by the Commonwealth Government for the ABF to ‘deliver a coordinated multi-agency, multi-jurisdictional response to the illicit tobacco trade, in conjunction with Commonwealth, state, and territory partners.’³⁷

FINDING 24: Victoria Police is involved in enforcement when there are links between the illicit tobacco and vape trade and serious and organised crime. It is a costly, resource intensive exercise, that diverts public funding away from community safety initiatives and other public order matters. The trade also incurs costs for other parts of the justice system including the courts and prisons.

FINDING 25: Victoria Police works closely with partner agencies such as the Australian Border Force and Australian Taxation Office to disrupt the illicit vaping and tobacco trade.

³³ Notes from Committee site visit to ABF Container Examination Facility, Melbourne, 24 June 2024.

³⁴ Ibid.; Assistant Commissioner Erin Dale, *Transcript of evidence*, pp. 1, 3, 4.

³⁵ National Vaping Working Group, Inaugural meeting 30 January 2024, Communique, <<https://www.tga.gov.au/sites/default/files/2024-02/nvbwg-communique-30-january-2024-sent-members.pdf>> accessed 13 August 2024.

³⁶ Ibid.

³⁷ Commonwealth Government, *Budget 2024–25: Budget Paper No. 2: Budget Measures*, Canberra, May 2024, p. 139.

4.3.3 Criminal impacts on established small and medium businesses

Over 20 submissions were received from small and medium businesses, convenience stores, and groups representing tobacco retailers. These legitimate retailers advised of the multiple impacts the illicit vaping and tobacco trade is having on them. There are three areas:

- decreasing tobacco sales
- increased risk and incidents of violence
- additional costs responding to criminal activity.

Almost every small or medium business that made a submission, reported that the illicit tobacco trade has resulted in decreasing sales of cigarettes, putting a financial strain on owners. When an illicit tobacco retailer opens in the vicinity of a legal retailer, there is a migration of customers to the less expensive option. Legal retailers cannot compete with the cheaper prices. This results in not only a loss in tobacco revenue for small and medium businesses, but reduces foot traffic which impacts revenue from staple items, alcohol, and other incidentals usually purchased alongside cigarettes.³⁸

The decrease in sales is significant with some sales declining by up to 50% after an illicit tobacco retailer had opened nearby.³⁹ One business owner estimated \$45,000 of sales revenue was lost each month, another lost \$10,000 per week in tobacco sales. An independent retailer noted that sales lost equated ‘to thousands of dollars a week’ once its patrons became aware of an illicit tobacco retailer nearby.⁴⁰ These losses mean that some businesses are struggling to stay open, with—what some feel—insufficient support from Victorian authorities.⁴¹

Retailers also reported a heightened risk of violence, as well as experiences of actual violence towards them. They also raised concern over the series of arson attacks on illicit tobacco retailers that threatened to spill over to legitimate businesses. Threats of violence were reported, with one submission noting that ‘Retailers are regularly on the receiving end of coercive tactics from criminals pushing illegal products.’⁴² Another described a specific tactic: “Pay or burn” is the ultimatum to Victorian retailers ... [meaning] Pay a \$1,000-a-week tax to criminal syndicates or have your shop burnt down.’⁴³ A submission representing a coalition of businesses, retailers and trademark holders advised that they saw ‘a sustained presence of organised crime entering the retail sector either through front operations or intimidation ... property and physical crime threats to themselves [businesses], their workers and families.’⁴⁴

38 IGA, *Submission 38*, p. 2; Name withheld, *Submission 52*, p. 3.

39 MGA Independent Businesses Australia, *Submission 69*, p. 4; Name withheld, *Submission 43*, p. 2.

40 MGA Independent Businesses Australia, *Submission 69*, p. 3; IGA, *Submission 38*, p. 2; Ritchies Stores Pty Ltd, *Submission 46*, p. 3.

41 newsXpress, *Submission 47*, p. 1; Ritchies Store Ptd Ltd, *Submission 46*, p. 3; IGA, *Submission 56*, p. 2; Foodworks, *Submission 63*, p. 1.

42 Name withheld, *Submission 52*, p. 1.

43 *Ibid.*, p. 2; Australian Association of Convenience Stores, *Submission 96*, p. 3.

44 Retail and Trade Brands Advocacy, *Submission 61*, p. 1.

Threats, regardless of whether they result in violence, are causing immense stress to Victorian businesses and their workers. Almost every business spoke of this stress. Retailers stated that: there is ‘a sense of fear among business owners’,⁴⁵ ‘the fear of property damage is constant’,⁴⁶ there is ‘a climate of fear and insecurity amongst local businesses’,⁴⁷ ‘fear and insecurity [is] generated by the violent tactics employed by those operating within this illegal trade’,⁴⁸ and that businesses are ‘living with the constant fear of being contacted and involved in standover tactics by criminal networks.’⁴⁹ Numerous businesses requested that their submissions be published anonymously, due to the fear of being targeted by criminal groups as a result of participating in the Parliamentary Inquiry.

Businesses also advised of associated crime due to the illicit vaping and tobacco industry, in particular, shoplifting by criminals. One submission stated that tobacco retail businesses ‘constantly face various risks including but not limited to robberies, thefts.’⁵⁰ Viva Energy Australia referenced recent statistics from the Crime Statistics Agency, which showed that criminal incidents of theft from a retail store had risen by more than 40% between March 2023 and March 2024.⁵¹ Robberies or break-and-enters are occurring ‘on a far too regular basis’, and cash and tobacco are the primary targets.⁵² These incidents have had demonstrable impacts on staff which are often described as ‘traumatic’.⁵³ Another submission noted that there were constant attempted break-ins to try and sell stolen goods on the illicit market and in turn this increased the risk of holding tobacco stock.⁵⁴

The costs associated with responding to threats and violence, are putting further financial strain on small and medium businesses. Multiple submissions referenced increased security and insurance costs to their businesses in the wake of escalating violence.⁵⁵ Businesses are investing significant financial resources to ensure the safety and security of ‘physical premises, insurance systems, alarm systems for emergencies, and extensive employee training.’⁵⁶ Furthermore, if robbery or break-ins do occur, they result in other costs such as counselling services for employees, higher levels of absenteeism and staff turnover, and repair costs.⁵⁷

45 Foodworks, *Submission 41*, p. 2.

46 Name withheld, *Submission 52*, p. 2.

47 IGA, *Submission 56*, p. 2.

48 *Ibid.*, p. 3.

49 Australian Association of Convenience Stores, *Submission 96*, p. 3.

50 Name withheld, *Submission 59*, p. 2.

51 Crime Statistics Agency, *Recorded Criminal Incidents*, June 2024, <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-criminal-incidents-2>> accessed 5 July 2024 (Committee calculation).

52 Viva Energy Australia, *Submission 95*, p. 1.

53 *Ibid.*

54 Foodworks, *Submission 63*, p. 1.

55 *Ibid.*; Viva Energy Australia, *Submission 95*, p. 1; Name withheld, *Submission 59*, p. 2.

56 Name withheld, *Submission 59*, p. 2.

57 Viva Energy Australia, *Submission 95*, p. 1.

FINDING 26: The criminal activity associated with the illicit vaping and tobacco trade is affecting small and medium business owners. Impacts include the loss of tobacco sales, increased risk and incidence of violence, and additional costs of responding to such violence.

Chapter 5

Legislative, regulatory and administrative frameworks

5.1 Overview

This chapter discusses the frameworks governing tobacco and e-cigarettes across Australia and examines Better Regulation Victoria (BRV)'s recommendations, in light of evidence provided to this Inquiry (second and third terms of reference). The key findings are:

- There are two separate regulatory frameworks for tobacco and e-cigarettes. This results from tobacco's classification as a consumer product and e-cigarettes as a pharmaceutical product.
- In 2024 the Commonwealth Government introduced reforms which positioned the Commonwealth Therapeutic Goods Administration (TGA) as the lead agency for regulatory oversight of e-cigarettes, however, it is not yet clear which agencies will be responsible for enforcement.
- There are different perspectives on the causes of the issues with the sale and control of tobacco and e-cigarettes. One perspective focuses on the predatory nature of the tobacco industry and the other on the economics of cheaper prices and higher profits in the illicit trade.
- The World Health Organisation, BRV and other local experts support the introduction of a licensing scheme in Victoria for the sale of tobacco products and e-cigarettes.
- The Committee supports the recommendations of the BRV report on Victoria's approach to illicit tobacco regulation in principle, and further contends that all these elements must be coordinated and implemented in full to be effective.
- There is a need for an independent, well-resourced, standalone regulatory agency with compliance and enforcement powers over legal and illicit nicotine products.
- Significantly increased fines and penalties including jail time, if introduced, along with more effective enforcement, have the potential to impact the illicit trade.

5.2 Tobacco and e-cigarette regulatory frameworks

In Australia, there are two separate regulatory frameworks for the control of tobacco and e-cigarettes:

- with tobacco classified as a consumer product regulated by the Commonwealth, state and local governments through a number of different Acts and Regulations; and
- e-cigarettes classified as a pharmaceutical product, which is regulated by the Commonwealth TGA and supported by state and territory health departments and law enforcement agencies.

It is not clear, when serious and organised crime (SOC) is not a factor, which Victorian Government agencies are enforcing legislation regarding the supply and sale of illicit tobacco. With the recent reforms introduced by the Commonwealth Government, detailed in the following section 5.2.1, it is also unclear whether the TGA will enforce the legislation banning illicit e-cigarettes, or if this responsibility will be delegated to a Victorian Government agency, and if so, which one/s.

Nicotine for human use is classified as a Schedule 7 poison, except for nicotine in tobacco when prepared and packed for smoking and nicotine in smoking cessation aids.¹ Nicotine pouches, for example, are prohibited, while tobacco products, such as cigarettes, can be sold as consumer products.

Since 1 October 2021, e-cigarettes containing nicotine have been classified as a Schedule 4 medicine, requiring a prescription to access from a pharmacy.² From 1 October 2024, e-cigarettes will be classified as a Schedule 3 substance.³ This change means that therapeutic e-cigarettes can be obtained from a pharmacist without a prescription following the provision of professional advice. People under the age of 18 will still require a prescription to access vaping products from a pharmacy.⁴

The Victorian Branch of the Pharmacy Guild of Australia opposes the Schedule 3 classification of e-cigarettes, stating it was not consulted by the Commonwealth Government on the recent change.⁵ The Guild argues that e-cigarettes lack proven efficacy for smoking cessation and are not TGA approved or listed on the Australian Register of Therapeutic Goods.⁶ It highlights the potential long-term harms, and advocates for these products to be classified as Schedule 4 medicines.⁷ The Guild also

1 In Victoria, the *Therapeutic Goods (Poisons Standard—June 2024) Instrument 2024* (Cth) is given legal effect through the *Drugs, Poisons, and Controlled Substances Act 1981* (Vic) and associated regulations.

2 Department of Health, *Regulation of nicotine for human use*, 11 January 2022, <<https://www.health.vic.gov.au/drugs-and-poisons/regulation-of-nicotine-for-human-use>> accessed 26 July 2024.

3 Department of Health and Aged Care, *Changes to the regulation of vapes*, 1 July 2024, <<https://www.tga.gov.au/products/unapproved-therapeutic-goods/vaping-hub/changes-regulation-vapes>> accessed 19 July 2024.

4 Ibid.

5 Rachel Obradovic, Pharmacy Guild of Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, pp. 1–2.

6 Ibid., p. 1.

7 Rachel Obradovic, Jessica Seeto, Pharmacy Guild of Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, pp. 3, 5, 7, 8.

raises concerns about legal liability for pharmacists. Major pharmacy chains like Terry White, Chemmart and Priceline have decided not to stock e-cigarettes due to insurance liability and the lack of measures to prevent consumers from purchasing multiple vapes from different pharmacies.⁸ Data on the number of pharmacies already dispensing e-cigarettes on prescription is not yet available and the Guild states it is too early to say how many pharmacies intend to supply them.⁹ The Guild urges the creation of guidelines for pharmacists to follow if they conduct a patient consultation for the supply of e-cigarettes.¹⁰

5.2.1 Commonwealth e-cigarette and tobacco reforms

Enhanced powers, new offences and civil penalties to regulate e-cigarettes by the TGA and tobacco by Commonwealth, state and territory agencies were introduced with the enactment of the *Public Health (Tobacco and Other Products) Act 2023* (Cth) (see section 5.6.3 for further discussion). Significantly, this Act consolidated legislative instruments concerning plain packaging, health warnings, advertising and sponsorship, including through social media, into a single piece of legislation.

The Act addresses the importation of vaping goods into Australia by providing additional enforcement powers to the Australian Border Force (ABF)—bringing regulations in line with restrictions for tobacco. However, the Act does not make any changes to how the ABF and the Australian Tax Office (ATO) enforce the excise and duties of tobacco products. The enforcement roles of the ABF and ATO are discussed in Chapter 4.

The *Public Health (Tobacco and Other Products) Act 2023* (Cth) also established the Illicit Tobacco and E-cigarette Commissioner. The role of this office is to support the development of strategies to address the illicit market, report on its prevalence in Australia and advise on the development of relevant new laws.¹¹ An interim Commissioner was appointed on 1 July 2024, however, as of 25 July 2024, no information on the establishment of the office or its work has been published by the Department of Home Affairs.¹²

Under the *Public Health (Tobacco and Other Products) Act 2023* (Cth) powers may be delegated to any state or territory government officials with responsibility for compliance and enforcement of regulated tobacco and vaping products. However, how the enforcement of illicit tobacco in wholesale, retail and commercial settings is implemented is yet to be determined.

⁸ Rachel Obradovic, Jessica Seeto, *Transcript of evidence*, pp. 3, 5, 7, 8.

⁹ Pharmacy Guild of Australia, *Inquiry into Vaping and Tobacco Control hearings*, response to questions on notice received 22 July 2024, p. 1.

¹⁰ Rachel Obradovic, *Transcript of evidence*, pp. 1–2.

¹¹ Department of Health and Aged Care, *Submission 110*, p. 5

¹² Hon Mark Butler MP, *Illicit Tobacco & E-cigarette Commissioner to step up fight against illegal nicotine products*, 1 July 2024, Media release.

FINDING 27: The *Public Health (Tobacco and Other Products) Act 2023* (Cth) substantially reformed the Australian tobacco and e-cigarette regulatory landscape through the provision of enhanced powers and new offences and penalties. It closes the loopholes that have previously hampered government agencies trying to combat the illicit trade.

Further reforms, that specifically address vaping, were introduced by the Commonwealth Government between 1 January and 1 October 2024. These reforms introduced a pharmaceutical model for e-cigarettes which positions the TGA as the lead enforcement agency for the regulation of e-cigarettes, including:

- Prohibiting personal and commercial importation and manufacture of non-therapeutic e-cigarettes
- Implementing stricter safety standards for packaging, labelling, nicotine content, and limiting flavouring to mint, menthol and tobacco for therapeutic e-cigarettes
- Imposing TGA licensing, permit and notification requirements for imported and manufactured therapeutic e-cigarettes and wholesale, transport, logistics and storage providers, and limiting distribution to only prescription medicine supply chains.¹³

Under this new *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (Cth), the TGA can conduct investigations into unauthorised vaping products and can issue warrants. However, the Act does not specifically regulate the supply and commercial possession of therapeutic goods, which should be enforced by states and territories under their respective medicines and poisons laws.¹⁴ Powers under this new Act may be delegated to a state or territory department, unit or authority that already has functions relating to therapeutic goods, health or law enforcement. However, there is no detail in the Act regarding which agency is responsible for enforcing e-cigarettes in wholesale, retail and commercial settings.¹⁵

FINDING 28: The Commonwealth Government has enacted reforms to implement a pharmaceutical model for the regulation of e-cigarettes, led by the Therapeutic Goods Administration. However, 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.

¹³ Department of Health and Aged Care, *Changes to the regulation of vapes*.

¹⁴ Department of Health and Aged Care, *Submission 110*, pp. 10, 13.

¹⁵ Rachel Obradovic, *Transcript of evidence*, pp. 1-2; Notes from Committee site visit to Victoria Police facility, Melbourne, 24 June 2024.

5.2.2 Regulation of tobacco and e-cigarettes in Victoria

As outlined in Chapter 1, the *Public Health and Wellbeing Act 2008* (Vic) sets the broad framework for public health measures to protect public health and wellbeing in Victoria. The public health and wellbeing plans the Department of Health (DH) is required to develop every four years under this Act, inform the objectives of municipal public health and wellbeing plans developed by councils, also every four years.¹⁶

The regulation of tobacco and e-cigarettes are covered by the *Tobacco Act 1987* (Vic) and *Tobacco Regulations 2017* (Vic). Although DH is the lead enforcement agency under these legislative instruments, it delegates this authority to councils (see Chapter 4). Councils also develop local laws to control smoking in public places and administer the *Cigarette Sales to Minors Program* to identify and reduce the retail supply of cigarettes to people under the age of 18 years.¹⁷ According to DH, over the past 20 years this program has effectively improved compliance with sales to minors laws.¹⁸ Unlike other public health regulatory schemes, participation in the program is voluntary, nevertheless 58 of the 79 councils opted to take part.¹⁹ The Municipal Association of Victoria advised that councils also share local knowledge about illicit distribution with law enforcement and health agencies.²⁰

Under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic), Victoria Police may enforce offences of sale and possession relating to prohibited nicotine. However, its enforcement action regarding illicit products is currently limited to serious and organised crime under the *Crimes Act 1958* (Cth) and *Major Crime (Investigative Powers) Act 2004* (Vic), as well as referring offenders possessing illicit products to its drug diversion program.²¹

There is currently no single agency with clear accountability for the enforcement of illicit tobacco and e-cigarettes in Victorian wholesale, retail and commercial settings. Victoria Police and DH advised that they were waiting on the introduction of the Victorian tobacco licensing scheme and further advice from the Commonwealth on the new enforcement regime for tobacco and e-cigarettes.²²

¹⁶ Rosemary Hancock, Municipal Association of Victoria, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 5; Department of Health and Department of Education, *Submission 103*, p. 1.

¹⁷ Municipal Association of Victoria, *Submission 73*, p. 5; Municipal Association of Victoria, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*; Louise Mitchell, Greater Shepparton City Council, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*; Greater Shepparton City Council, Inquiry into Vaping and Tobacco Control hearings, response to questions on notice received 8 May 2024, p. 3.

¹⁸ Department of Health and Department of Education, *Submission 103*, p. 8.

¹⁹ *Ibid.*

²⁰ Municipal Association of Victoria, *Submission 73*, pp. 6, 10.

²¹ Victoria Police, *Submission 113*, p. 3; Department of Health and Department of Education, *Submission 103*, p. 7.

²² Dr Clare Looker, Chief Health Officer, Department of Health, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 2; Rosemary Hancock, *Transcript of evidence*, p. 1; Notes from Committee site visit to Victoria Police storage facility, Melbourne, 24 June 2024.

5.2.3 Consumer demand versus market supply approaches to tobacco and e-cigarette control

The Committee received conflicting evidence on what constitutes the most effective approach to tobacco and e-cigarette control:

- Health professionals and public health organisations see the cause of tobacco and e-cigarette harm stemming from a predatory tobacco industry seeking to increase uptake of harmful products by vulnerable cohorts.
- Criminologists, law enforcement proponents, retailers, the tobacco industry, and harm-reduction advocates were more likely to take a market supply perspective, where the high cost of legal products and inadequate regulations create a lucrative market for serious and organised crime.

Both perspectives agree that stricter enforcement action and stronger penalties are required to prevent and reduce harms. However, their perspectives differ on the impact restricting access to products, such as vapes, has on the community. These views are explored further in Appendix B.

FINDING 29: There are demand and supply-side approaches to managing the harm caused by tobacco and e-cigarettes. The Committee received evidence on the benefits and limitations of both control approaches.

FINDING 30: The Commonwealth Government's approach to tobacco and e-cigarette control aims to reduce consumer demand by increasing taxes and restricting access to vaping products through a pharmaceutical model. It is too early to detect the impact of this new approach to nicotine products including vapes on the community.

RECOMMENDATION 8: The Victorian Government report to the Commonwealth Government on the outcomes of the new federal approach to e-cigarette regulation by 1 July 2026 and if necessary, advocate for any necessary reforms to national legislative, regulatory and administrative frameworks.

5.3 Establishment of a licensing scheme

5.3.1 Licensing of tobacco and e-cigarettes in Australia

Across Australian jurisdictions, different types of licensing schemes exist for wholesalers and retailers of tobacco and e-cigarettes:

- A **Positive scheme** requires an application and fee to a relevant authority to hold a tobacco license.

- A **Negative scheme** does not require notification of intent, an application or fee, instead a person may be banned from selling tobacco products.
- 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.²³

Table 5.1 shows tobacco and e-cigarette licensing requirements across Australian jurisdictions as of 23 July 2024.

Table 5.1 Retail and wholesale tobacco and e-cigarette licensing schemes across Australian jurisdictions

Jurisdiction	Licence scheme type	Tobacco retailers	Tobacco wholesalers	E-cigarette retailers
Victoria	N/A To be introduced	N/A	N/A	✗
Australian Capital Territory	Positive	✓	✓	✓
New South Wales	Notification	N/A	N/A	✗
Northern Territory	Positive	✓	✓	✓
Queensland	Currently negative	Positive from 1 September 2024	Positive from 1 September 2024	✗
South Australia	Positive	✓	✗	✓
Tasmania	Positive	✓	✗	✓
Western Australia	Positive	✓	✓	✗

Source: Michelle Scollo, 'Licensing of tobacco sellers', *Tobacco in Australia*, June 2024, <<https://www.tobaccoinaustralia.org.au/chapter-11-advertising/indepth-11b-licensing-of-tobacco-sellers>> accessed 19 July 2024.

Many jurisdictions have established tobacco licensing schemes within the last 20 years.²⁴ The *National Tobacco Strategy 2023–2030* and the 2003 World Health Organisation *Framework Convention on Tobacco Control* both highlight the necessity of licensing tobacco retailers to regulate the illicit tobacco trade.²⁵ The Commonwealth *Inquiry into Illicit Tobacco* recommended that the Commonwealth Government explore options to develop a nationally consistent licencing regime for tobacco products.²⁶ The government 'noted' this recommendation in its response, but re-iterated the

23 Commonwealth Government, *Australian Government response to the Parliamentary Joint Committee on Law Enforcement report: Inquiry into Illicit Tobacco*, Canberra, 2021, p. 6.

24 World Health Organisation, *WHO Framework Convention on Tobacco Control*, Geneva, 2003.

25 Department of Health and Aged Care, *National Tobacco Strategy 2023–2030*, Canberra, 2023, p. 23; Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, Melbourne, 2022, <<https://www.parliament.vic.gov.au/49d14a/contentassets/518e279146dc496393a39c6e55684b88/addressing-illicit-tobacco---final-report.-20-may-2022-1.pdf>> accessed 2 August 2024, p. 6.

26 Parliament of Australia, Parliamentary Joint Committee on Law Enforcement, *Illicit Tobacco*, Canberra, 2020, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/IllicitTobacco46th/Report> accessed 2 August 2024, p. 73.

jurisdictional boundaries that are at play for tobacco retail licencing.²⁷ Cancer Council Victoria have been advocating for the introduction of a positive tobacco licensing scheme in Victoria for the last two decades.²⁸

On 28 March 2024, the Victorian Government committed to establishing a wholesale and retail tobacco licensing scheme.

FINDING 31: Since 2003 the World Health Organisation has recommended the establishment of tobacco licensing scheme as have local public health experts. The Victorian Government announced that it will establish a wholesale and retail tobacco licensing scheme in late 2024.

5.3.2 Better Regulation Victoria – Recommendation 1

The comprehensive BRV report on Victoria’s approach to illicit tobacco regulation contains several recommendations that are key to improving the frameworks to minimise tobacco and e-cigarette harm and control illicit trade. These recommendations include:

- the establishment of a licensing scheme
- improving regulatory oversight
- enhanced powers of investigation and enforcement
- providing for increased deterrence via stronger penalties.²⁹

BRV found broad support for a licencing scheme for retailers and wholesalers of tobacco and e-cigarette products.³⁰ BRV compared licensing arrangements across Australia and identified several key features recommended for the Victorian licensing scheme:

- The amounts set as the annual licensing fees for retailers and wholesalers will allow for the recovery of the implementation and administration costs of the scheme, placing no cost burden on Victorian taxpayers; fees will be in line with those of other jurisdictions.³¹
- Implementation of a digital scheme which includes an online public register of retailers and limits applications to one per business to reduce the regulatory burden on licensees.³²

27 Commonwealth Government, *Australian Government response to the Parliamentary Joint Committee on Law Enforcement report: Inquiry into Illicit Tobacco*, p. 6.

28 Rachael Andersen, Quit Victoria, public hearing, 15 July 2024, Melbourne, *Transcript of evidence*, p. 1.

29 Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria’s Approach to Illicit Tobacco Regulation*, p. vi.

30 *Ibid.*, pp. 17–18.

31 *Ibid.*, pp. 18, 22.

32 *Ibid.*, p. 20.

- Establishment of a fit and proper person test for licence applicants similar to the liquor licensing process.³³
- Requirement of staff training in Responsible Sale of Tobacco via online platforms.³⁴

BRV also suggested a scheme to include:

- Separate licenses for each retail and wholesale premise, and a licence for out-of-state wholesalers selling in Victoria
- Application refusal for those who have had a relevant licence refused or cancelled
- Body corporate licence holders must nominate responsible directors
- Licence suspension or cancellation for sale of illicit products
- Licensed retailers to purchase products from licensed wholesalers only
- Mandatory display of licence details and responsible service information at point-of-sale
- Periodic reporting of wholesaler sales
- Prohibition of online or telephone sales of tobacco products and e-cigarettes.³⁵

5.3.3 Key features of an effective positive licensing scheme

Licensing schemes allow governments to monitor the sale of tobacco and e-cigarette products and facilitate the enforcement of non-compliance and illicit sales while also acting as a deterrent.³⁶

Additional elements of an effective licensing scheme were recommended to the Committee and are set out below.

High annual licence fees

High annual fees and annual licence review were highlighted as key elements of an effective licensing scheme.³⁷ Several Australian and international jurisdictions have high annual licence fees for retailers, typically indexed for inflation, and have demonstrated success in reducing the number of tobacco retail outlets. These include:

- Tasmania with an annual fee of \$1,340

³³ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, p. 21; In evidence to the Inquiry, Hobsons Bay City Council suggested that the test be modelled on Section 7 of the *Victorian Rooming House Operators Act 2016*, administered by Consumer Affairs Victoria, and that it be made available to the Illicit Tobacco Taskforce. Source: Hobsons Bay City Council, *Submission 12*, p. 5.

³⁴ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, p. 21.

³⁵ *Ibid.*, pp. 23–24.

³⁶ Municipal Association of Victoria, *Submission 73*, p. 9.

³⁷ Associate Professor Becky Freeman, University of Sydney, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 7; Hobsons Bay City Council, *Submission 12*, p. 5; Professor Coral Gartner, University of Queensland, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 1.

- Northern Territory and Western Australia have annual fees of approximately \$300.³⁸
- Helsinki, in Finland, has a licence processing fee of €210 (\$AUD 344) and an additional control fee of €500 (\$AUD 821) per point of sale.³⁹

Tasmania reduced its outlets by 20% between 2016 and 2024, while Finland saw a 28% reduction between 2016 and 2018.⁴⁰

Wholesalers are also required to have a licence in some jurisdictions; for example, Western Australia's licence for wholesalers is approximately \$800 annually.⁴¹

The Tobacco Station Group recommended that Victoria introduce an annual licensing fee in line with liquor licensing fees, at \$2,000 annually.⁴² They estimated this would generate \$8 million revenue, which would allow for proper regulatory enforcement, as occurs with liquor.⁴³ In contrast, the Australian Association of Convenience Stores advised a cost of \$300 for retailers and \$700 for wholesalers was appropriate to cover enforcement costs and ensure compliance.⁴⁴ Ultimately, the licence fee should generate enough revenue to meet the costs of enforcement while creating a reasonable threshold for retailers wanting to sell nicotine products.

Restrictions on licenses granted – total number and geographic location

An effective licensing scheme also facilitates restrictions on tobacco retailers located near schools. Other jurisdictions restrict the number and location of licensed premises.

The San Francisco Department of Public Health operates a 'sinking lid' model.⁴⁵ In 2015, it capped the number of licences to 45 within each Supervisorial District.⁴⁶ Existing licences were allowed to remain, but if a business closed, a new licence would not be granted in districts where 45 or more licences existed.⁴⁷ San Francisco also does not issue new licences to retailers that are within 500 feet (150 metres) of a school

38 Government of Tasmania, Department of Health, *Smoking Products Retailers Guide*, Hobart, 2020; Australian Government, *Smoking Product Licence – Tasmania*, 2024, <<https://ablis.business.gov.au/service/tas/smoking-product-licence/7413>> accessed 18 July 2024; Northern Territory Government, *Tobacco licenses*, 2024, <<https://nt.gov.au/industry/licences/tobacco-licenses>> accessed 4 July 2024; Government of Western Australia, Department of Health, *Tobacco sellers licensing*, 31 October 2023, <https://www.health.wa.gov.au/articles/s_t/tobacco-sellers-licensing> accessed 4 July 2024.

39 City of Helsinki, *The rates of the City of Helsinki's environmental health care starting from 1 March 2024*, Helsinki, 2024, p. 7.

40 Shannon M Melody et al., 'The retail availability of tobacco in Tasmania: evidence for a socio-economic and geographical gradient', *The Medical Journal of Australia*, vol. 208, no. 5, 2018, pp. 205–208; Government of Tasmania, Department of Health, correspondence, 4 July 2024 (Committee calculation); Mirte A G Kuipers et al., 'Tobacco retail licencing systems in Europe', *Tobacco Control*, vol. 23, 2022, pp. 784–788.

41 Government of Western Australia, Department of Health, *Tobacco sellers licensing*.

42 Tobacco Station Group, *Submission 70*, p. 8.

43 Ibid.

44 Australian Association of Convenience Stores, *Submission 96*, p. 5; Associate Professor Becky Freeman, 15 July 2024, *Transcript of evidence*, pp. 1–2.

45 San Francisco Department of Public Health, *Qualifying for a New Tobacco Permit*, 2023, <<https://www.sfdph.org/dph/eh/Tobacco/permits.asp>> accessed 3 July 2024.

46 Ibid.

47 Ibid.

or another tobacco retailer, or to premises that were not previously occupied by another tobacco retailer.⁴⁸ This has significantly reduced the number of retailers from approximately 1,000 in 2015, to just over 600 by 2023—a 40% reduction.⁴⁹

Similarly, Philadelphia implemented a licence density policy in late-2016. It capped the number of retailers at 1 per 1,000 people in each district, as well as restricting retailers in proximity to schools.⁵⁰ Current retailers were grandfathered if they renewed their licences on time, but if the retailer closed, they could not transfer their licence to a new location and a new licence would not be granted in its place. This policy was introduced alongside a rise in its annual fee, to prevent the sale of tobacco to minors and reduce the number of tobacco retail outlets—particularly near schools in lower-income areas where the density was shown to be higher. After three years, the number of retailers in Philadelphia reduced by 20%, with a larger decrease in low-income areas.⁵¹

Professor Coral Gartner from the School of Public Health, University of Queensland, highlighted the density limits introduced in 2013 as part of Hungary's licensing scheme.⁵² The density policy gave the state exclusive control of tobacco retail and granted a limited number of 20-year licenses through its dedicated body.⁵³ The goal was to reduce tobacco availability to minors and non-smokers. As a result, the number of youth smokers decreased by approximately 50% and adult smokers by 10%.⁵⁴ Reducing availability was cited as crucial to this success, with the number of retailers in Hungary falling from around 43,000 in 2013 to 5,848 by 2023, an 86% reduction.⁵⁵

Data collection from licensed retailers

Data collection is an important and useful element of licensing schemes. Such data can detect signs both of illicit trade and areas with high concentrations of sales so enforcement can be better focussed. Open data that is easily accessible is also seen as beneficial.⁵⁶ For example, Western Australia has a public database that displays where

48 San Francisco Department of Public Health, *Qualifying for a New Tobacco Permit*.

49 Bright Research Group for the San Francisco Tobacco-Free Project, *Reducing Tobacco Retail in San Francisco: A Case Study*, San Francisco, 2016, p. 2; San Francisco Department of Public Health, *Qualifying for a New Tobacco Permit*.

50 Associate Professor Becky Freeman, 15 July 2024, *Transcript of evidence*, p. 5; Counter Tobacco, *Reducing Retailer Density in Philadelphia*, 25 January 2022, <<https://countertobacco.org/resources-tools/stories-from-the-field/reducing-retailer-density-in-philadelphia>> accessed 19 July 2024.

51 Counter Tobacco, *Reducing Retailer Density in Philadelphia*.

52 Professor Coral Gartner, *Transcript of evidence*, p. 2.

53 Tamás Joó et. al., 'Impact of regulatory tightening of the Hungarian tobacco retail market on availability, access and cigarette smoking prevalence of adolescents', *Tobacco Control*, 2024, doi: 10.1136/tc-2023-058232

54 Ibid.

55 Ron Klein, 'The traffic law is ten years old: we already know what the biggest success of the National Tobacco Shop is', *Világgazdaság*, 23 February 2024, <<https://www.vg.hu/kiskereskedelem/2023/07/tizeves-a-trafikatorveny-mar-tudjuk-mi-a-nemzeti-dohanybolt-legnagyobb-sikere>> accessed 8 July 2024 (Committee calculation).

56 Associate Professor Becky Freeman, 15 July 2024, *Transcript of evidence*, pp. 1–2, 4; Professor Coral Gartner, *Transcript of evidence*, p. 6; Cancer Council Victoria, Inquiry into Vaping and Tobacco Control hearings, response to questions on notice received 22 July 2024, p. 4.

tobacco retailers are located, which helps determine density.⁵⁷ Tasmania requires licence holders to record all tobacco sales—the product type, brand name, product description and quantity sold.⁵⁸ In South Australia, licensed retailers must keep records of tobacco and e-cigarette products sold or stored on the premises for two years.⁵⁹ In the United Kingdom, licence holders must record sales and note the product type when they receive payment.⁶⁰ Ontario, Canada, requires licensed tobacco retailers to keep records of all tobacco purchases and sales for seven years.⁶¹

RECOMMENDATION 9: The Victorian Government implement the suggested elements for an effective tobacco licensing system recommended by Better Regulation Victoria.

RECOMMENDATION 10: The Victorian Government’s licensing scheme include:

- a. High annual licence fees akin to the fees charged in Tasmania to cover the cost of administering and enforcing the scheme.
- b. Restrictions on the number of licences granted, density limits for each local government area, and prohibition of licenses within 150 metres of a school.
- c. Requirements for licensed retailers and wholesalers to collect data on the product type, brand name, product description and quantity sold, and keep records for at least two years.
- d. A public database on where nicotine retailers are located, a public register of licencees and quantities sold by location.

RECOMMENDATION 11: An evaluation framework be embedded in Victoria’s new tobacco and e-cigarette licensing scheme. The framework should include targets and timeframes to facilitate transparent reporting on its effectiveness in controlling the harm caused by nicotine products – legal and illicit.

57 Associate Professor Becky Freeman, 15 July 2024, *Transcript of evidence*, pp. 1–2; Government of Western Australia, Department of Health, *Public register of tobacco sellers license*, 2024, <https://www.health.wa.gov.au/Articles/N_R/Public-register-of-tobacco-sellers-licenses> accessed 19 July 2024.

58 Government of Tasmania, Department of Health, *Smoking Products Retailers Guide*, p. 8.

59 Government of South Australia, Consumer and Business Services, *Licence conditions for selling tobacco products*, 2024, <<https://www.cbs.sa.gov.au/sections/Licences/tobacco-licensing-and-enforcement-in-sa/licence-conditions-for-selling-tobacco-products>> accessed 16 July 2024.

60 United Kingdom Government, *Selling and storing tobacco products*, 1 July 2022, <<https://www.gov.uk/guidance/selling-and-storing-tobacco-products#if-you-only-sell-to-the-public>> accessed 4 July 2024.

61 Ontario Government, *Basic rules for tobacco retail dealers*, 7 September 2023, <<https://www.ontario.ca/document/tobacco-tax/basic-rules-tobacco-retail-dealers>> accessed 8 July 2024.

5.4 Clear and effective regulatory oversight

5.4.1 Better Regulation Victoria Recommendation 2

Stakeholders participating in the BRV review emphasised that any licensing scheme must be underpinned by clear and effective enforcement and regulatory oversight. BRV heard that without adequate enforcement illicit trading would persist and a licensing scheme would only burden compliant retailers also losing income to illicit tobacco sales.⁶² But stakeholder's views differed on the suitability and effectiveness of local government investigating illicit tobacco sales.⁶³ The majority also viewed illicit tobacco as a criminal issue, rather than a health issue.⁶⁴

In BRV's view, a new licensing scheme offers the chance to review existing responsibilities, arrangements, and mechanisms for regulatory oversight.⁶⁵ BRV recommended a state government body lead the regulation of tobacco and canvassed the benefits and shortcomings of existing agencies, including DH, Department of Justice and Community Safety (DJCS) and Business Licensing Authority (BLA).⁶⁶

BRV did not make a recommendation on whether health or criminal perspectives should be favoured when addressing illicit tobacco.⁶⁷ However, noting the relationship between illicit tobacco sales and organised crime, BRV concluded that enforcement must be supported by Victoria Police. Additionally, BRV determined that local government enforcement activities should be limited to smoke-free areas and, where necessary, information gathering on licensed retailers and wholesalers.⁶⁸

Although BRV concluded that a state government body should lead regulation in Victoria, it also noted a coordinated national approach was the most effective way to tackle illicit tobacco sales. Finally, BRV recommended, to ensure clarity and collaboration across state agencies, police, local government, industry and health experts, the establishment of a statutory advisory body to oversee regulatory practice matters.⁶⁹

5.4.2 The role of councils

The Committee supports BRV's recommendation for enforcement activities to be moved from local government to a state government body. Victoria is the only jurisdiction where local government is expected to undertake tobacco control enforcement outside

⁶² Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, p. 24.

⁶³ *Ibid.*, pp. 24–26.

⁶⁴ *Ibid.*, p. 27.

⁶⁵ *Ibid.*, pp. 26–27.

⁶⁶ *Ibid.*, pp. 27–29.

⁶⁷ *Ibid.*, p. 1.

⁶⁸ *Ibid.*, pp. 27–30.

⁶⁹ *Ibid.*, p. 30.

of ‘no smoking’ areas.⁷⁰ The many reasons why councils in Victoria are not taking enforcement action on the sale of illicit vapes and tobacco was explored in Chapter 4.

RECOMMENDATION 12: The Victorian Government amend the relevant legislation to limit the enforcement powers of local government to smoke-free areas and, where necessary, information gathering on retailers and wholesalers involved in the illicit trade of tobacco, vapes and other nicotine products.

5.4.3 Effective and well resourced enforcement body

BRV noted that in all other Australian jurisdictions health departments are involved in tobacco regulation, but that in some cases enforcement is undertaken by another agency, often in collaboration with police.⁷¹

Several witnesses to the Committee’s Inquiry argued that enforcement should not be the responsibility of DH.⁷² While DH has proficiency in regulating tobacco control policies and implementing public health measures, it lacks experience and expertise in dealing with SOC. Additionally, although authorised officers of DH could undertake enforcement activities, the department is not resourced to do so.⁷³ Industry and law enforcement representatives pointed to the South Australian system, where enforcement activities have been moved from the health department to the state’s consumer services division to free up harm reduction capacity.⁷⁴ The Committee recognises the value of DH retaining some responsibility for tobacco controls where they relate to public health measures.

The relationship between SOC and the sale of illicit tobacco and e-cigarettes in Victoria is deep and pervasive.⁷⁵ Dr James Martin advised 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.’⁷⁶ 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.⁷⁷

⁷⁰ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria’s Approach to Illicit Tobacco Regulation*, p. 28.

⁷¹ Ibid.

⁷² Ritchies Stores Pty Ltd, *Submission 46*, p. 4; Rohan Pike Consulting, *Submission 67*, p. 5.

⁷³ Department of Health and Department of Education, *Submission 103*, p. 7.

⁷⁴ Rohan Pike, Rohan Pike Consulting, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 3; Phillip Morris Limited 1, Phillip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 2; British American Tobacco Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, pp. 9–10.

⁷⁵ Imperial Brands Australasia, *Submission 64*, p. 7; Dr James Martin, *Submission 89*, p. 3; Ritchies Stores Pty Ltd, *Submission 46*, p. 3; Victoria Police, *Submission 113*, p. 3.

⁷⁶ Dr James Martin, Senior Lecturer, Criminology, School of Humanities and Social Sciences, Deakin University, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4.

⁷⁷ Ritchies Stores Pty Ltd, *Submission 46*, p. 4; Rohan Pike Consulting, *Submission 67*, p. 5; Dr James Martin, *Transcript of evidence*, p. 4; British American Tobacco Australia, *Transcript of evidence*, p. 9; Phillip Morris Limited 1, *Transcript of evidence*, pp. 3, 9.

It is the Committee's view that responsibility for enforcement should be carried out by a new standalone nicotine enforcement and compliance agency under DJCS—similar to the liquor and gaming regulatory bodies in Victoria—and work in partnership with Victoria Police and Commonwealth agencies. This reflects the findings of the Commonwealth Parliamentary *Inquiry into Illicit Tobacco*, which supported moving enforcement responsibilities from health departments to a law enforcement framework, where 'responsibility for combatting illicit tobacco, including enforcement activities ... [is] shared between the Commonwealth and state and territory governments.'⁷⁸

Victoria Police suggested its focus should remain on the disruption of serious and organised crime and that licensing enforcement should sit within a body with regulatory expertise in that area.⁷⁹ However, any enforcement activities must continue to be supported by Victoria Police. Rohan Pike stated

[Victoria Police] are the only agency in this state that can plan and organise an effective response and have the powers to deal with organised crime. They must be involved in the formation and execution of whatever system is created.⁸⁰

Industry representatives similarly asserted that SOC was prolific in the trade of illicit tobacco, transforming enforcement from a public health issue to a crime issue.⁸¹

The Committee emphasises that any new enforcement body, as well as Victoria Police's illicit tobacco and vaping-related operations, must be underpinned by adequate and consistent funding. Victoria Police advised the Committee that responding to SOC activity linked to illicit tobacco and e-cigarettes is 'unquestionably' within its remit, but that currently its 'response capacity is finite'.⁸² This report has also identified some of the existing challenges associated with funding of councils' enforcement activities. One suggestion received by the Committee to ensure future enforcement activities are well resourced is for the Commonwealth Government to allocate a portion of the revenue from the tobacco excise to the states and territories, to incentivise and compensate governments for increased regulatory activity.⁸³

RECOMMENDATION 13: The Victorian Government consider establishing an independent, well-resourced, standalone regulatory agency within the Department of Justice and Community Safety to work in close partnership with Victoria Police and Commonwealth agencies to undertake compliance and enforcement activities regarding legal and illicit nicotine products.

⁷⁸ MGA Independent Businesses Australia, *Submission 69*, p. 8.

⁷⁹ Phillip Morris Limited 2, Phillip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 11; Victoria Police, *Submission 113*, p. 11.

⁸⁰ Rohan Pike, *Transcript of evidence*, p. 4.

⁸¹ British American Tobacco Australia, *Transcript of evidence*, p. 9.

⁸² Victoria Police, *Submission 113*, p. 5.

⁸³ Hobsons Bay City Council Health Department, *Submission 12*, p. 5.

RECOMMENDATION 14: The Victorian Government encourage the Commonwealth Government to allocate a fixed percentage of revenue from the tobacco excise to state and territory governments to support increased regulatory and enforcement activities regarding illicit nicotine products.

The Committee notes the importance of a nationally consistent approach to the enforcement of illicit tobacco and e-cigarettes.⁸⁴ BRV asserted that without a coordinated national approach, criminal organisations would be incentivised to operate in jurisdictions with less restrictive conditions or less rigorous penalties or enforcement action.⁸⁵ BRV recommended the Victorian Government continue to collaborate with the Commonwealth Government on cross-jurisdictional enforcement and compliance activities, including advocating for formalised governance arrangements.⁸⁶ The important work of the ABF-led Illicit Tobacco Enforcement and Compliance Working Group, and more recently formed National Vaping Working Group, are positive steps in this direction.

5.5 Enhance investigation and enforcement powers

5.5.1 Better Regulation Victoria Recommendation 3

BRV called for strengthened enforcement and investigative powers for authorised officers/inspectors and Victoria Police.⁸⁷ BRV found that authorised officers in other jurisdictions face less restrictive powers of entry than in Victoria.⁸⁸ BRV identified several additional investigative and enforcement powers that should be provided to both authorised officers/inspectors and Victoria Police. These included, subject to the required human rights charter assessment process, search warrant powers and the power to:

- enter premises for compliance monitoring without consent from the owner or occupier
- seize tobacco products, equipment and documents involved in alleged offences by retailers
- inspect, make copies or take extracts of documents
- immediately cancel a licence if a licensee, nominee or associate is suspected to have sold illicit tobacco
- issue 'on-the-spot' fines

⁸⁴ Victoria Police, *Submission 113*, p. 19.

⁸⁵ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, p. 39.

⁸⁶ *Ibid.*, p. 39.

⁸⁷ *Ibid.*, pp. 32–33.

⁸⁸ *Ibid.*, p. 33.

- require businesses to produce documents and information
- attribute the presence of excess tobacco on a premises as evidence of the sale of tobacco by the occupier.⁸⁹

5.5.2 Authorised officers lack effective powers

Current enforcement and investigation powers of inspectors is ineffective, as noted in Chapter 1.⁹⁰ Local government emphasised the difficulty faced by Environmental Health Officers in obtaining and maintaining the consent of an occupier of a premises and highlighted the timeliness and costliness of attaining search warrants.⁹¹

Victoria Police recommended that authorised officers be empowered to enter, execute searches and seize items from licensed premises with and without warrants and to close down premises when licence breaches are detected.⁹² British American Tobacco (BAT) Australia also called for broader powers for police and authorised officers to issue on-the-spot-fines during seizures of illicit tobacco.⁹³ Additionally, Professor Coral Gartner noted that enforcement powers need to allow for the search and seizure of illicit products not located at a business's address.⁹⁴

The Health Department of Hobsons Bay City Council suggested the *Tobacco Act 1987* (Vic) be amended to include powers of entry and seizure similar to the *Food Act 1984* (Vic).⁹⁵ The *Food Act 1984* (Vic) and the *Liquor Control Reform Act 1998* (Vic) both contain examples where authorised offices are given greater powers for entry and seizure where they suspect breaches are occurring.

RECOMMENDATION 15: The Victorian Government amend the relevant legislation to incorporate the full suite of additional investigative and enforcement powers identified by Better Regulation Victoria for authorised officers employed by the new independent regulatory agency established under Recommendation 13.

5.5.3 Support from law enforcement and empowering police as authorised officers

Under the *Tobacco Act 1987* (Vic) police in Victoria are currently not allowed to execute search warrants where they believe illicit activity is taking place. This is because it is only local councils who are permitted to conduct searches of tobacco retailers.⁹⁶

⁸⁹ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, pp. 33–34

⁹⁰ Hobsons Bay City Council Health Department, *Submission 12*, p. 3; MGA Independent Businesses Australia, *Submission 69*, p. 8.

⁹¹ Hobsons Bay City Council Health Department, *Submission 12*, p. 3; Varinder Sapehiyia, Board Director, Environmental Health Australia, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 2.

⁹² Victoria Police, *Submission 113*, p. 19.

⁹³ British American Tobacco Australia, *Transcript of evidence*, p. 1

⁹⁴ Professor Coral Gartner, *Transcript of evidence*, p. 1.

⁹⁵ Hobsons Bay City Council Health Department, *Submission 12*, p. 5.

⁹⁶ Victoria Police, *Submission 113*, p. 12.

Instead, Victoria Police must obtain warrants under the *Crimes Act 1958* (Cth) or other Commonwealth legislation.⁹⁷

However, it is clear that police support of enforcement activities is essential. In both Western Australia and South Australia police have the power to enter and search premises under state-based tobacco legislation.⁹⁸

Queensland also recently introduced legislation to ‘streamline compliance and enforcement’, where health officials have police support for investigative and enforcement activities.⁹⁹ Queensland health officials also have the power to issue individuals and businesses with warnings and on-the-spot fines, seize prohibited products, initiate legal proceedings and inspect premises.¹⁰⁰ They must also obtain consent or a warrant to enter a premises.¹⁰¹

The *Public Health (Tobacco and Other Products) Act 2023* (Cth) allows for state or territory officers with responsibility for compliance and enforcement of tobacco and vaping products to be appointed as authorised officers.

Designating police in Victoria as authorised officers would simplify the process for police to support local council officers and inspectors in accessing and searching premises.¹⁰² Allowing Victoria Police to obtain and execute search warrants would similarly improve enforcement abilities.

RECOMMENDATION 16: The Victorian Government amend the legislation to define police officers as authorised officers with the power to obtain search warrants and carry out enforcement and investigation activities regarding nicotine products.

5.6 Increased deterrence via stronger penalties

5.6.1 Better Regulation Victoria Recommendation 4

BRV’s review commented on the low-risk, high-profit nature of illicit tobacco and supported stronger penalties for illegal activity. Most submissions to BRV’s review agreed there needs to be higher maximum penalties for serious offences and repeat offenders, and a number suggested that owners of retail premises and consumers who purchase illicit tobacco should also face penalties.¹⁰³

⁹⁷ Victoria Police, *Submission 113*, p. 12.

⁹⁸ MGA Independent Businesses Australia, *Submission 69*, p. 8.

⁹⁹ Ibid.

¹⁰⁰ Queensland Health, *Penalties, fines and enforcement*, 4 July 2024, <<https://www.health.qld.gov.au/public-health/topics/atod/smoking-laws/penalties>> accessed 17 July 2024.

¹⁰¹ *Tobacco and Other Smoking Products Act 1998* (Qld), s 181(1).

¹⁰² Hobsons Bay City Council Health Department, *Submission 12*, p. 5; MGA Independent Businesses Australia, *Submission 69*, p. 9.

¹⁰³ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria’s Approach to Illicit Tobacco Regulation*, pp. 34–35.

BRV concluded that offences and penalties should be set to address the most serious criminal elements of the illicit tobacco trade, including violence and trafficking commercial quantities of drugs. BRV concluded that maximum penalties for the sale of illicit tobacco should also include imprisonment and be subject to ratios outlined in the *Sentencing Act 1991* (Vic).¹⁰⁴

Intensive enforcement and severe penalties should be focused on those involved in the supply and sale of illicit tobacco, rather than consumers who purchase illicit tobacco because government is better placed to focus on public health measures, support and education, than punishment of consumers.¹⁰⁵

BRV suggested:

- Reviewing offences to ensure strong penalties for the sale of illicit tobacco or sale without a license, premises' owners knowingly involved in illicit sales and provision of false information to inspectors or in license applications.
- Maximum penalties for illicit tobacco sales should be higher than for unlicensed sales, with harsher penalties for repeat offenders, including imprisonment.
- Courts having the authority to disqualify individuals found guilty of selling illicit tobacco from obtaining a tobacco licence for up to five years.¹⁰⁶

5.6.2 Penalties must outweigh the profits of illicit trade

Existing penalty levels in Victoria were criticised for being 'absent or insignificant'.¹⁰⁷ Penalties for illicit tobacco are less than other illicit drugs (such as methamphetamine) and this discrepancy has created an opportunity for criminals.¹⁰⁸ As tobacco is an addictive product, coupled with the lack of strong penalties, criminals have been able to 'take advantage of people's dependence'.¹⁰⁹ Several submissions argued that the existing penalties were insufficient to deter criminals when weighed up against the profitability of the illicit trade.¹¹⁰ In the rare case a retailer selling illicit products is penalised, it has little impact

you will see the store reopen and return to selling illicit tobacco the very next day because they know that any fines handed out can be quickly paid off with the profits from just a few days...[they]...likely know that in the event they are raided the fines they will be given are small and there are no mechanisms in place to stop them resuming business the next day.¹¹¹

¹⁰⁴ Better Regulation Victoria, *Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation*, pp. 35–36.

¹⁰⁵ *Ibid.*, p. 36.

¹⁰⁶ *Ibid.*, p. 37.

¹⁰⁷ Rohan Pike Consulting, *Submission 67*, p. 5.

¹⁰⁸ Professor Coral Gartner, *Transcript of evidence*, p. 3.

¹⁰⁹ *Ibid.*

¹¹⁰ Hobsons Bay City Council Health Department, *Submission 12*, p. 2; Ritchies Store Pty Ltd., *Submission 46*, p. 3; Gippsland Development Group, *Submission 49*, p. 2; Department of Health and Department of Education, *Submission 103*, p. 7.

¹¹¹ Ritchies Store Pty Ltd., *Submission 46*, p. 3.

These operators often view such fines as merely a cost of doing business and were equivalent to ‘petty cash’ for criminals.¹¹² Expert witnesses highlighted the importance of serious penalties being on the table to effectively deter illicit tobacco and e-cigarette offenders.¹¹³

Rohan Pike stated the court system has long treated tobacco crime as not serious, resulting in low penalties and sentences.¹¹⁴ For penalties to be effective, offences must be provable and enforceable. Victoria Police noted this, highlighting difficulties in prosecuting offences under the *Tobacco Act 1987* (Vic). Its concern was with the requirement ‘to prove a state of mind, criminalising a person’s knowledge of whether the goods were prohibited, smuggled or excise duty not paid.’¹¹⁵ This is particularly challenging at the retail level, as the retailer is often removed from the importation process.

FINDING 32: Current penalties for illicit tobacco and e-cigarette trade are too low to deter offenders. Witnesses suggested that Victoria increase these penalties and ensure they are enforceable by the appropriate authorities.

5.6.3 Tobacco and e-cigarette control penalties in Australia

The *Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018* (Cth), administered by the Australian Taxation Office, created a new regime for tobacco offences in 2018. It amended several acts to adjust penalties and establish new offences, with penalties calculated by penalty unit—\$330 at the Commonwealth level as of July 2024.¹¹⁶ In contrast, Victoria’s penalty unit is \$197.59.¹¹⁷ The most serious offence under the Act is manufacturing or producing illicit tobacco, which carries a fine up to \$495,000 or 10 years imprisonment.¹¹⁸ Buying or selling illicit tobacco can result in fines of up to \$330,000 and/or five years in prison.¹¹⁹ Other Commonwealth laws, the *Taxation Administration Act 1953*, the *Excise Act 1901* and the *Customs Act 1901*, impose similar penalties, including fines up to \$330,000 or five times the would-be excise duty and/or

112 Gippsland Development Group, *Submission 49*, p. 2; Emeritus Professor Simon Chapman, University of Sydney, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 9.

113 Rohan Pike, *Transcript of evidence*, p. 3; Dr James Martin, *Transcript of evidence*, p. 4; Emeritus Professor Simon Chapman, *Transcript of evidence*, p. 9.

114 Rohan Pike, *Transcript of evidence*, p. 4.

115 Victoria Police, *Submission 113*, p. 12.

116 *Taxation Administration Act 1953* (Cth), the *Excise Act 1901* (Cth), and the *Income Tax Assessment Act 1997* (Cth).

117 Parliament of Australia, *Treasury Laws Amendment (Illicit Tobacco Offences) Bill 2018, 2024*, <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6049> accessed 17 July 2024; Australian Taxation Office, *Illicit tobacco*, 9 July 2024, <<https://www.ato.gov.au/about-ato/tax-avoidance/the-fight-against-tax-crime/our-focus/illicit-tobacco>> accessed 11 July 2024; Parliament of Australia, *Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024*, 30 May 2024, <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2324a/24bd074> accessed 17 July 2024; Department of Community Justice and Safety, *Penalties and values*, 1 July 2024, <<https://www.justice.vic.gov.au/node/1815/penalties-and-values>> accessed 17 July 2024.

118 Australian Taxation Office, *Illicit tobacco*.

119 Ibid.

five years of jail time.¹²⁰ However, as noted, these offences are difficult to prove as the prosecution must demonstrate the intent to import illicit tobacco.¹²¹

The *Public Health (Tobacco and Other Products) Act 2023* (Cth) created new offences and civil penalties. They include major penalties of \$660,000 for an individual or \$6,600,000 for a corporation.¹²² State or territory enforcement agencies can impose these penalties, which are a much higher than those any state or territory. However, it is currently unclear how effectively this authority is being exercised in practice.¹²³

The state and territory fines for retailers caught selling tobacco without a license, selling illicit tobacco, or selling to minors are set out in Appendix C. Victoria's penalties for the sale of illicit tobacco or sale of tobacco to a minor are generally higher than those in other Australian jurisdictions. However, other states and territories have stronger licence revocation capability. In Queensland and Western Australia, children cannot sell legal tobacco. The *Tobacco Act 1987* (Vic) does not prohibit individuals under 18 years of age selling e-cigarettes and tobacco products to minors.¹²⁴

RECOMMENDATION 17: The Victorian Government amend the relevant legislation to strengthen retail and wholesale licence revocation capability and prohibit the sale of tobacco and other nicotine products by people under the age of 18 in Victoria.

With the introduction of the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (Cth) changes to penalties relating to vaping were introduced 'to deter unlawful conduct, among commercial and criminal groups seeking to profit from vapes.'¹²⁵ The unlawful importation of vaping products may incur seven years imprisonment and/or 5,000 penalty units (\$1.65 million) for an individual, a civil penalty of 7,000 penalty units (\$2.31 million) or 70,000 units (\$23.1 million) for a body corporate.¹²⁶ These penalties are significant, and have the potential to be effective if enforced. However, as these penalties are not currently being applied by the judiciary, their impact on retailers dealing in illicit e-cigarettes is still unknown.¹²⁷

FINDING 33: Recent Commonwealth legislative reforms have increased penalties for the unlawful importation, domestic manufacture, supply and commercial possession of illicit tobacco and e-cigarettes and allows states and territories to enforce them in some cases. However, the effectiveness of the new legislation acting as a significant deterrent is unclear.

¹²⁰ *An Act to provide for the administration of certain Acts relating to Taxation, and for other purposes 1953* (Cth); *An Act relating to the Customs 1901* (Cth); *An Act relating to Excise 1901* (Cth).

¹²¹ Victoria Police, *Submission 113*, pp. 14–15.

¹²² *Public Health (Tobacco and Other Products) Act 2023* (Cth).

¹²³ *Public Health (Tobacco and Other Products) Act 2023* (Cth), p. 153; Australian Taxation Office, *Illicit tobacco*.

¹²⁴ Municipal Association of Victoria, *Submission 73*, p. 11.

¹²⁵ Department of Health and Aged Care, *Submission 110*, p. 8.

¹²⁶ *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (Cth); Victoria Police, *Submission 113*, p. 14; Department of Health and Aged Care, *Submission 110*, pp. 8–9.

¹²⁷ Rohan Pike, *Transcript of evidence*, p. 2.

The *Tobacco Act 1987* (Vic) was last amended on 1 July 2024.¹²⁸ Under the Act, retailers and wholesalers may be penalised for possessing illicit tobacco in violation of the *Customs Act 1901* (Cth) and *Excise Act 1901* (Cth).¹²⁹ However, as discussed in Section 5.4.2, council enforcement is rare, and the penalties are relatively small compared to the profits from illicit tobacco.

FINDING 34: Victoria's primary legislation for regulating tobacco and e-cigarettes is the *Tobacco Act 1987* (Vic). Under the Act, modest penalties may be incurred for possessing or selling illicit tobacco products. However, enforcement by local councils is rare.

5.6.4 Illicit tobacco and e-cigarette penalties – some international examples

In Hungary, penalties for non-compliance follow a 'three strike' system: fines, temporary closure, and permanent closure.¹³⁰ Emeritus Professor Simon Chapman highlighted the penalties applied in Taiwan.¹³¹ In Taiwan, legislation amended in 2023 introduced heavier penalties, including fines between \$AUD 454,000 and \$AUD 2.2 million for importing or manufacturing e-cigarettes.¹³² Although the impact of these fines is not yet clear, they are significant.

In 2023, the United Kingdom strengthened penalties for illicit tobacco, allowing investigators to fine retailers up to \$AUD 19,752, seize and destroy products, and deactivate licenses.¹³³ When Philadelphia introduced density regulations for tobacco retailers in 2016, it also strengthened the penalty system whereby after a third violation in two years, retailers are prohibited from selling tobacco for a year. If the retailer was located near a school or in a district that is over its density cap, the retailer would lose their licence permanently.¹³⁴ This year, Ireland raised the minimum tobacco sale age to 21 and increased penalties for selling to minors. For a first offence, offenders face fines up to \$AUD 6,653 and/or six months in prison.¹³⁵

Judging the success of penalty structures is challenging, however, due to the rapidly changing legislative landscape and lack of causative data on the impacts.

¹²⁸ *Tobacco Act 1987* (Vic).

¹²⁹ *Tobacco Act 1987* (Vic), p. 72; Department of Community Justice and Safety, *Penalties and values*.

¹³⁰ Ron Klein, 'The traffic law is ten years old: we already know what the biggest success of the National Tobacco Shop is.'

¹³¹ Emeritus Professor Simon Chapman, *Transcript of evidence*, p. 9.

¹³² Health Promotion Administration, Ministry of Health and Welfare, *Amendment to Tobacco Hazards Prevention Act effective from March 22, 2023*, 28 September 2023, <<https://www.hpa.gov.tw/EngPages/Detail.aspx?nodeid=1054&pid=17534>> accessed 16 July 2024; *Tobacco Hazards Prevention Act*, 2023 (China).

¹³³ United Kingdom Government, *Tobacco trace and track penalties*, 10 July 2023, <<https://www.gov.uk/guidance/tobacco-track-and-trace-penalties#if-trading-standards-visit-you>> accessed 3 July 2024.

¹³⁴ Counter Tobacco, *Reducing Retailer Density in Philadelphia*.

¹³⁵ Department of Health (Ireland), *Minister for Health introduces the Public Health (Tobacco) (Amendment) Bill 2024 to the Oireachtas*, 4 July 2024, media release.

FINDING 35: A variety of penalties are imposed overseas for the illicit tobacco and cigarette trade, including large fines, jail time and retail licence revocation.

RECOMMENDATION 18: The Victorian Government review current penalties contained in State legislation regarding the illicit tobacco and cigarette trade with a view to increasing them.

Chapter 6

Public health measures

6.1 Overview

This chapter examines the effectiveness of current public health measures to prevent and reduce the harm of tobacco use and vaping in Victoria and explores potential reforms (fourth term of reference). Public health measures are interventions, activities, policies, or programs aimed at improving and protecting public health and wellbeing. Public health measures in this chapter refer to those measures specifically targeted at tobacco use and vaping.¹ The key findings are:

- Public health measures are developed and/or delivered through a complex framework, which involves the Commonwealth, state and local governments and agencies underpinned by others including healthcare providers.
- The *National Tobacco Strategy 2023–30* is intended to provide national consistency.
- The *Tobacco Act 1987* (Vic) and public health and wellbeing plans developed under the *Public Health and Wellbeing Act 2008* (Vic) establish targets for public health measures aimed at addressing smoking and vaping issues.
- Local councils, community health services, local public health units and schools play a crucial role in delivering programs at a local level.
- Established targets under the *National Tobacco Strategy* to reduce smoking rates by 2025 have already been met in Victoria, however smoking is the single biggest contributor to avoidable death and the burden of disease in the state, implying that the targets are not ambitious enough.
- Aboriginal communities are significantly affected by smoking and vaping and yet reduction targets for First Peoples are less ambitious than the general population.
- Limits on the delivery of programs to reduce and cease smoking are caused by insufficient capacity and funding.
- Despite e-cigarettes being available in Victoria for more than 15 years, current access to treatment for cessation is limited. Early intervention is critical as data indicates e-cigarette users are more likely to progress to tobacco use.
- Quit Victoria, run by Cancer Council Victoria, provides a highly effective and cost-effective means of delivering public health programs designed to reduce tobacco use for adults.
- Programs specifically designed for and by those under 18 years of age are needed.

¹ The *Public Health and Wellbeing Act 2008* (Vic) refers to 'public health interventions'—activities undertaken to improve public health and wellbeing—which the Committee uses interchangeably with 'public health measures'. Source: *Public Health and Wellbeing Act 2008* (Vic), s 4.

6.2 Current public health measures and targets

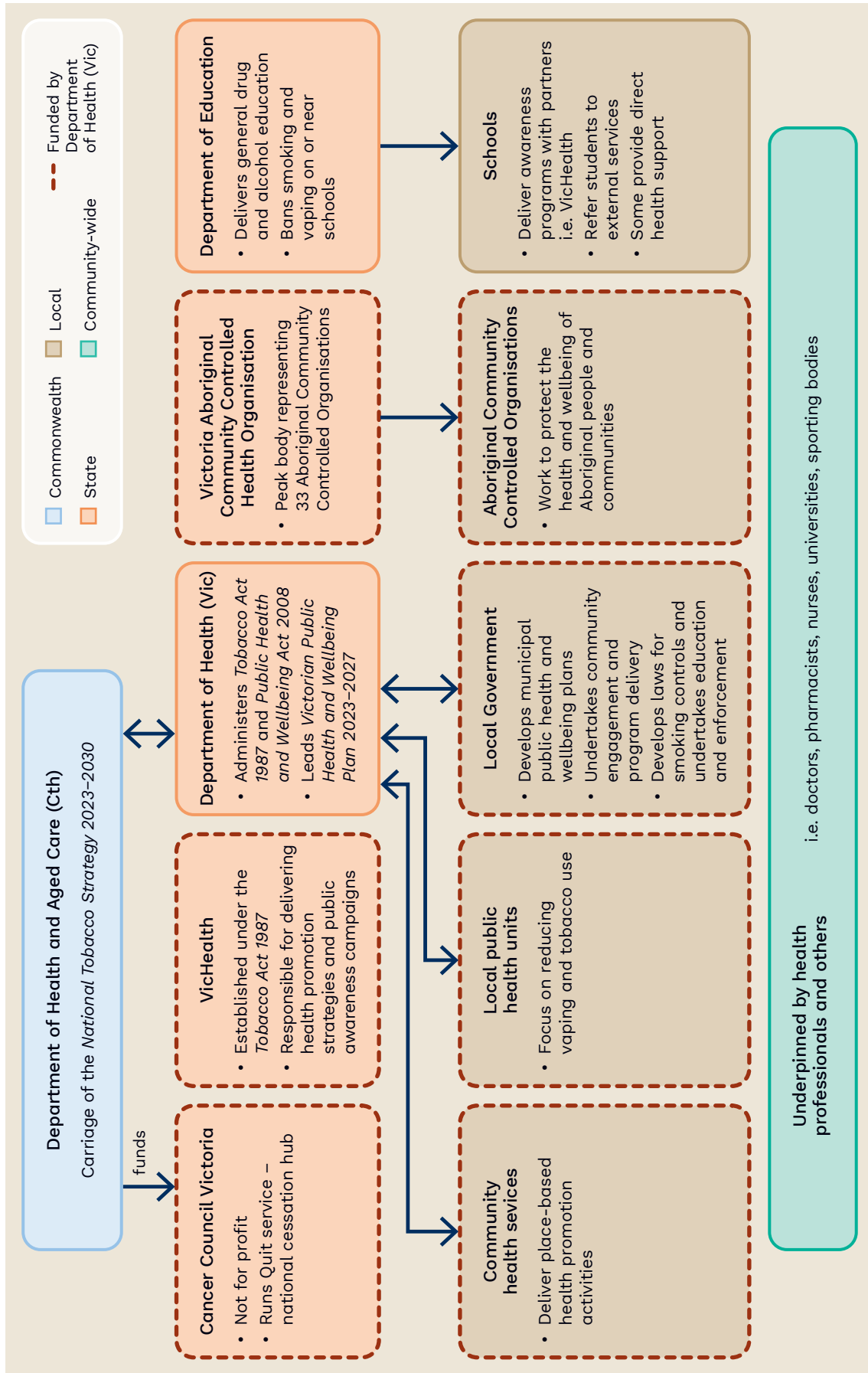
Public health measures are delivered in Victoria via a complex framework (Figure 6.1):

- population-level² education campaigns are usually conducted by organisations which have coverage across the state
- targeted, place-based prevention and intervention programs are run at the local level by councils, health services and schools
- a network also exists of federal, state, regional and local partnerships with multiple agencies, organisations and services carrying out sometimes overlapping roles.

The priorities of the public health system are set out in legislation and reflected in policy. Its success is reliant on effective coordination across the Commonwealth, state and local governments and associated statutory agencies, driven by health professionals.

2 Population-level health interventions are policies or programs that identify and seek to address the underlying social, economic, and environmental conditions that affect a whole population, rather than just individuals or groups of individuals. This can be at a federal, state or community population-level. Source: Penelope Hawe and Louise Potvin, 'What is population health intervention research?', *Canadian Journal of Public Health*, vol. 100, 2009.

Figure 6.1 Key elements of Victoria’s public health framework—tobacco and vaping



Source: Public Accounts and Estimates Committee

6.2.1 National Tobacco Strategy 2023–2030

The *National Tobacco Strategy 2023–2030*, developed at the Commonwealth level, sets out a national policy framework for the Commonwealth and state governments working to reduce smoking and vaping prevalence.³ The strategy's goal is for 10% or less of Australians to be smoking daily by 2025 and 5% or less by 2030.⁴ A further goal is to reduce the daily smoking rate among First Nations people to 27% or less by 2030.

A community is regarded as 'smokefree' where less than 5% of the adult population are daily smokers.⁵ The *National Tobacco Strategy* does not set any targets for rates of e-cigarette or other nicotine product use. In Victoria, 9.2% of the population are daily smokers.⁶

It is this national strategy that underpins smoking and vaping-related public health measures in Victoria. It identifies 11 priority areas for action, including:

- developing, implementing and funding evidence-based public health campaigns
- eliminating tobacco-related advertising, promotion and sponsorship
- expanding smoke-free regulations
- improving access to cessation services.⁷

The strategy aims to achieve national consistency across governments' and stakeholders' approaches to tobacco and e-cigarette controls, while also complementing existing state policies and legislation.⁸

In the 2023–24 Budget, the Commonwealth allocated \$511.1 million over four years, for:

- a new national lung cancer screening program
- nicotine-vaping regulation and reform
- public health campaigns and cessation support activities.⁹

With the following amounts of that allocation earmarked as follows:

- \$141.2 million to expand the *Tackling Indigenous Smoking* program
- \$63.4 million to delivering national public health campaigns
- \$29.5 million for cessation support activities.¹⁰

³ Department of Health and Aged Care, *Submission 110*, pp. 2–3.

⁴ Department of Health and Aged Care, *National Tobacco Strategy 2023–2030*, Canberra, 2023, p. 9.

⁵ Health New Zealand, *Smokefree Aotearoa 2025*, 24 October 2023, <<https://www.smokefree.org.nz/smokefree-in-action/smokefree-aotearoa-2025>> accessed 22 July 2024; Lily Matson, 'Steps towards a smokefree society', *Cancer Research UK*, 31 August 2022, <<https://news.cancerresearchuk.org/2022/08/31/steps-towards-a-smokefree-society>> accessed 22 July 2024.

⁶ Australian Bureau of Statistics, Table 29 (1.1, 1.3), *National Health Survey 2022*, June 2024, <<https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey/2022>> accessed 18 July 2024.

⁷ Department of Health and Aged Care, *National Tobacco Strategy 2023–2030*, p. 10.

⁸ *Ibid.*, p. 3.

⁹ Commonwealth Government, *Budget 2023–24: Budget Measures Budget Paper No. 2*, Canberra, 2023, p. 154.

¹⁰ *Ibid.*

The Commonwealth increased the tobacco excise in the 2023–24 Budget, which is estimated to raise an additional \$3.3 billion over five years.¹¹ Over the past decade, increasing the excise on tobacco has been used as a deliberate strategy to inflate the retail price of cigarettes, with the aim of making them less affordable and accessible. However, the Committee was advised by Cancer Council Victoria that

Until last year virtually no other tobacco control policy in Australia had been implemented since plain packaging was put into force in 2012, so it really was relying almost completely on tax increases – [there is] very little funding at the federal level for [public health] campaigns.¹²

FINDING 36: In Victoria, 9.2% of the population are smokers. This meets the target set in the *National Tobacco Strategy 2023–2030* of less than 10% by 2025.

FINDING 37: In the 2023–24 Budget, the Commonwealth Government allocated \$234 million to public health intervention to prevent and reduce vaping and smoking harms. Increases to the tobacco excise in the same budget are forecast to raise an additional \$3.3 billion over five years.

6.2.2 State-level public health measures

In Victoria, the delivery of health measures to prevent and reduce smoking and vaping harms is supported by two Acts of legislation:

- The *Tobacco Act 1987* (Vic) bans tobacco advertising, includes controls on the display and sale of tobacco, establishes smoke-free areas and regulates e-cigarettes and vaping in the same way as tobacco and smoking.¹³ Under the Act, the Minister for Health is required to plan and co-ordinate an integrated state-wide program to reduce the prevalence of smoking.¹⁴
- The *Public Health and Wellbeing Act 2008* (Vic) requires state and local governments to plan for, and contribute to, protecting and improving health and wellbeing in Victoria.¹⁵ Consequently, a state public health and wellbeing plan and municipal public health and wellbeing plans must be prepared every four years.¹⁶

Both Acts are administered by the Department of Health (DH), which undertakes strategic planning and oversight of the public health system. This planning and oversight is currently delivered through the *Victorian Public Health and Wellbeing*

11 Commonwealth Government, *Budget 2023–24: Budget Measures Budget Paper No. 2*, p. 11.

12 Dr Michelle Scollo, Senior Policy Adviser, Cancer Council Victoria, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 4.

13 Parliamentary Budget Office, *Submission 71*, pp. 9–10; Australian Medical Association Victoria, *Submission 66*, p. 3.

14 *Tobacco Act 1987* (Vic), s 5(2).

15 Department of Health and Department of Education, *Submission 103*, p. 2.

16 *Ibid.*

Plan 2023–2027.¹⁷ The plan guides departments, local government, funded agencies and partners in how to deliver activities aimed to reduce harm from tobacco and e-cigarette use.¹⁸ It aims to achieve a 30% reduction in smoking by both adults and adolescents by 2025 (against a 2011–12 baseline for adults and 2014 baseline for adolescents).¹⁹ According to DH’s latest progress report, while the target for reducing adult smoking rates is on track, the target for adolescents is not.²⁰ No targets have been set for vaping or other nicotine related products,²¹ despite e-cigarettes being available in Victoria for over 15 years.

The Victorian Health Promotion Foundation (VicHealth) is responsible for delivering health promotion strategies and public awareness campaigns.²² VicHealth is funded by DH to deliver health promotion in five strategic areas, one of which is to prevent tobacco and e-cigarette use. VicHealth does this in part through their funding of Quit Victoria—a program run by Cancer Council Victoria that delivers state-wide campaigns to reduce the prevalence of smoking and vaping.²³ Quit Victoria also operates Quitline—a smoking and vaping cessation support service.²⁴ Although the ‘Quit’ brand is used in messaging, sponsorship and smoking cessation programs across the country, Quit Victoria and its associated Quitline are state-based programs under the Cancer Council’s federal structure.²⁵ In 2022–23, VicHealth received \$3.7 million from DH to deliver campaigns to prevent tobacco and e-cigarette use, \$3.0 million of this allocation was paid to Quit Victoria.²⁶ VicHealth’s total revenue from the State Government in 2022–23 was \$44.7 million. Cancer Council Victoria also received \$22.9 million from the State Government, including funding from VicHealth.²⁷

FINDING 38: The *Victorian Public Health and Wellbeing Plan 2023–2027* contains targets to reduce the rate of smoking by adults and adolescents by 30% by 2025. The latest progress report found the target for adults will be met but not the target for adolescents. The plan does not contain targets for reducing the rate of e-cigarette or other nicotine product usage.

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- 17 Department of Health and Department of Education, *Submission 103*, pp. 10–12; Parliamentary Budget Office, *Submission 71*, pp. 26–27.
- 18 Department of Health and Department of Education, *Submission 103*, p. 10. For more information on state, local and regional partnerships, see: Department of Health, *Victorian Public Health and Wellbeing Plan 2023–2027*, Melbourne, September 2023, p. 8.
- 19 Department of Health and Human Services, *Victorian public health and wellbeing outcomes framework*, Melbourne, October 2016, p. 24.
- 20 Department of Health, *Victorian public health and wellbeing progress report 2023*, Melbourne, January 2024, pp. 29–30.
- 21 Department of Health and Human Services, *Victorian public health and wellbeing outcomes framework*, p. 24.
- 22 Department of Health and Department of Education, *Submission 103*, p. 3.
- 23 The Commonwealth also funds Quit Victoria, however, the Victorian Government is Cancer Council Victoria’s primary funding source. Source: Department of Health and Department of Education, *Submission 103*, pp. 12–13; Cancer Council Victoria, *Submission 101*, p. 2; Cancer Council Victoria, *Annual Review 2023*, Melbourne, 2023, p. 29.
- 24 Department of Health and Department of Education, *Submission 103*, p. 11.
- 25 Quit, *Quit Story*, 2024, <<https://www.quit.org.au/quit-story>> accessed 10 July 2024; Cancer Council, *About Cancer Council*, 2024, <<https://www.cancer.org.au/about-us/about-cancer-council>> accessed 10 July 2024; Cancer Council Victoria, *Submission 101*, p. 2.
- 26 Parliamentary Budget Office, *Submission 71*, p. 26.
- 27 VicHealth, *Annual Report 2022–23*, Melbourne, 2023, p. 41; Cancer Council Victoria, *Annual Review 2023*, Melbourne, 2023, p. 29.

In addition to leading population-level campaigns, VicHealth and Quit Victoria also partner with regional and local stakeholders to inform and deliver prevention and intervention programs. This includes developing educational resources and health promotion modules for parents, councils, schools, students and health services, and funding public health projects and partnerships.²⁸

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) similarly works with Quit Victoria, primary care providers and Aboriginal Community Controlled Organisations (ACCOs) to provide professional development and clinical tools to deliver culturally safe tobacco cessation support.²⁹

6.2.3 Local-level public health measures

The priorities of the *Victorian Public Health and Wellbeing Plan 2023–2027* drive local prevention and intervention programs which are delivered through a multi-faceted approach:

- Councils are responsible for developing their own plans to deliver community engagement programs which contribute to tobacco and e-cigarette education and harm reduction specifically for their communities.³⁰ Laws for controlling smoking in public places and creating smoke-free areas are also the responsibility of local government.³¹
- In Victoria, 58 of the 79 community health agencies³² currently deliver place-based health promotion activities focused on reducing tobacco and vaping harms.³³ These include:
 - education sessions for students and parents
 - training for health educators
 - co-designing programs and resources with and for young people
 - delivery of smoke-free campaigns and events
 - and implementation of tobacco-free policies, signage and programs.³⁴
- Primary healthcare services deliver face-to-face nicotine addiction support.³⁵

28 Parliamentary Budget Office, *Submission 71*, p. 26; VicHealth, *Submission 106*, p. 29; VicHealth, *2022–23 Annual Report*, p. 23; VicHealth, *Submission 106*, p. 29; VicHealth, *What VicHealth is doing about vaping*, 2 February 2024, <<https://www.vichealth.vic.gov.au/programs-projects/what-vichealth-doing-about-vaping>> accessed 4 July 2024.

29 Victorian Aboriginal Community Controlled Health Organisation (VACCHO), *Submission 108*, p. 4.

30 Municipal Association of Victoria, *Submission 73*, pp. 4–5.

31 Ibid.

32 Of these 79 community health agencies, 24 are independently managed and funded services, with the remaining 55 being community health services funded through the Victorian Department of Health. Source: Department of Health, *Community Health, 2023*, <<https://www.health.vic.gov.au/primary-and-community-health/community-health>> accessed 5 August 2024.

33 Department of Health and Department of Education, *Submission 103*, p. 11; Department of Health, *Community health*.

34 Department of Health and Department of Education, *Submission 103*, p. 11.

35 Community Health First, *Submission 78*, p. 2.

- Local public health units (LPHUs)³⁶ play a role in implementing smoking cessation programs and initiatives. Currently, five of the nine LPHUs in Victoria have a focus on reducing vaping and tobacco use and harms through community education and support, partnerships and collaboration, data monitoring and surveillance, and smoke-free policies.³⁷ The Committee cannot determine the funding allocated to community health services and LPHUs specifically for smoking and vaping public health measures, given DH provides global core operational funding to these organisations.
- Schools have access to curriculum resources for teachers and targeted education and awareness programs for children and young adults through partnerships with VicHealth, Quit Victoria and community health agencies.³⁸ The Department of Education (DE) does not deliver programs to students on the harms of smoking and vaping, and instead it provides general drug and alcohol education under the *Health and Physical Education* curriculum.³⁹ DE bans smoking and vaping on or nearby school premises and provides guidance to schools on implementing and communicating this policy. DE also issues resources on preventing and managing smoking and vaping and how to support students to stop vaping.⁴⁰ However, Quitline services, where students are often referred, are designed to meet the needs of adult clients not children. The department also employs nurses, student support services officers, and mental health practitioners and doctors in some schools who can provide direct support.⁴¹

6.3 Effectiveness of current measures

6.3.1 What does success look like?

Victoria has been a leader in tobacco control for many years and smoking rates have reduced significantly over the last two decades.⁴² The state has also met its <10% by 2025 target under the *National Tobacco Strategy*.⁴³ It is critical that the approaches leading to these declines are sustained and extended to prevent the uptake of all nicotine products, particularly illicit e-cigarettes which are growing in use.

³⁶ LPHUs work with DH, local health services, primary and community health services, and local government to administer programs for disease prevention and population health across nine regions, including responding to infectious disease outbreaks and delivering public health programs that impact their region.

³⁷ Department of Health and Department of Education, *Submission 103*, p. 11.

³⁸ VicHealth, *Submission 106*, p. 28; Ballarat Community Health, *Submission 109*, p. 3; Louise Mitchell, Director, Community, Greater Shepparton City Council, public hearing, Shepparton, 15 April 2024, p. 8.

³⁹ Parliamentary Budget Office, *Submission 71*, p. 27.

⁴⁰ Department of Health and Department of Education, *Submission 103*, pp 12–13; Parliamentary Budget Office, *Submission 71*, p. 27; Department of Education, *Smoking and Vaping Ban: Resources*, 7 June 2024, <<https://www2.education.vic.gov.au/pal/smoking-vaping-ban>> accessed 4 July 2024.

⁴¹ Department of Health and Department of Education, *Submission 103*, pp. 12–13; Department of Education, *Smoking and Vaping Ban: Policy*, 7 June 2024, <<https://www2.education.vic.gov.au/pal/smoking-vaping-ban>> accessed 4 July 2024.

⁴² Department of Health and Department of Education, *Submission 103*, p. 2.

⁴³ See Chapter 2 of this report for more information.

The fundamental aim of any public health measure is to prevent disease in the first place, but to also intervene early and reduce ill health to ensure people remain as healthy as possible, for as long as possible.⁴⁴ At their foundation these measures are processes which enable people to have control over and improve their health.⁴⁵ Yet smoking remains the leading cause of preventable death and the single biggest contributor to burden of disease in the state.⁴⁶

When asked by the Committee what successful tobacco and vaping reforms would look like, Professor Coral Gartner, School of Public Health, University of Queensland stated

[We are] not talking about eradication ... we are talking about tobacco smoking no longer being the leading cause of preventable premature death in Australia ... we are talking about reducing the population burden down to a more acceptable level and also not accepting the reality of [tobacco and e-cigarettes] being a widely retailed product that is considered a normal consumer product.⁴⁷

While the public health sector may recognise that total eradication of nicotine use is unrealistic, concerns have been raised that existing interventions and targets, set by the Victorian and Commonwealth Government, are not ambitious enough to address the harm being caused.

The World Health Organisation's (WHO) goal is to achieve a target where less than 5% of the global population is using tobacco products by 2040.⁴⁸ Its *Framework Convention on Tobacco Control*, which underpins this goal, now includes articles and obligations for nicotine addiction and electronic nicotine delivery systems. These were added in response to the growing availability and use of tobacco-free alternatives such as e-cigarettes and pouches.⁴⁹ Although the *National Tobacco Strategy* is aligned with this goal, with the aim to reduce the daily smoking rate to 10% by 2025 and 5% by 2030, it does not include smoke-free products in its target measures. Resulting in tobacco users switching to, or taking up vaping or other nicotine products, not being captured in the consumption data, and subsequently performance outcomes. Traditional tobacco companies are also now promoting 'smoke-free' futures, having pivoted their product offerings from traditional tobacco products like cigarettes towards vapes and pouches.⁵⁰

44 Australian Institute of Health and Welfare, *Health promotion and health protection*, 2 July 2024, <<https://www.aihw.gov.au/reports/australias-health/health-promotion>> accessed 24 July 2024.

45 Ibid.

46 Department of Health and Department of Education, *Submission 103*, p. 2.

47 Professor Coral Gartner, University of Queensland, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 5.

48 The Lancet, *What will it take to create a tobacco-free world?*, 14 March 2015, <[https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(15\)60512-8.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(15)60512-8.pdf)> accessed 24 July 2024.

49 World Health Organisation, *The WHO Framework Convention of Tobacco Control: an overview*, May 2021, <<https://fctc.who.int/docs/librariesprovider12/default-document-library/who-fctc-summary.pdf>> accessed 25 July 2024, p. 2; Department of Health and Aged Care, *Guidance for Public Officials on Interacting with the Tobacco Industry*, 2023, accessed 25 July 2024, pp. 4–6.

50 British American Tobacco Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 3; Philip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 3.

Sweden is considered a success story in smoking reduction globally; in 2020 it had a smoking rate of 11.1% amongst its population over 15 years-of-age.⁵¹ Yet 24% of the population continued to consume nicotine. This is due to the widespread prevalence of 'snus'—a tobacco pouch and a pre-cursor to the tobacco-free nicotine pouches now growing in popularity across Australia, Europe and North America.⁵²

The Swedish experience is an example of why the effectiveness of health measures aimed at reducing smoking should not be based on tobacco or cigarette use alone.

6.3.2 More ambitious, comprehensive and segmented targets need to be set for Victoria

More ambitious, comprehensive and segmented targets need to be established to include all nicotine consumption including vaping and the use of other nicotine products like pouches, not just smoking. While Victoria has already achieved the *National Tobacco Strategy's* 2025 target, 4,000 Victorians still lose their lives every year to smoking. It is important that progress towards these targets is transparent and reported in the DH's annual reports to track the effectiveness of public health measures.

All Victorian departments need to recognise that nicotine addiction is a priority health issue and requires urgent action due to its impact on the health of Victorians. Currently, positive outcomes are being limited by insufficient resourcing for the continuation and expansion of existing public health measures. Cancer Council Victoria has stated that funding limitations are substantially undermining its capacity to deliver public health campaigns.⁵³ Despite evidence that cessation services such as Quitline and public education campaigns are both highly cost effective and achieve positive health outcomes, the Victorian Government has denied funding for Quit Victoria over the last three years for major campaigns with proven effectiveness.⁵⁴

Vulnerable cohorts that typically consume more nicotine products than the general community need to have specific targets allocated to them.

Aboriginal and Torres Strait Islander communities

Tobacco smoking continues to have disproportionately negative impacts in Aboriginal and Torres Strait Islander communities.⁵⁵ Aboriginal people have a young population, with 50% under the age of 25, which also places them at higher risk of taking up vaping.⁵⁶ Programs such as the *Tackling Indigenous Smoking Program* and bespoke

51 World Health Organisation, *WHO global report on trends in prevalence of tobacco use 2000–2025*, Geneva, 2021, p. 73.

52 Ibid., p. 53; Maria Danielsson et al., 'Factors predicting willingness to quit snus and cigarette use among young males', *Scientific Reports*, 13 September 2020, <<https://doi.org/10.1038/s41598-023-42233-8>> accessed 24 July 2024.

53 Cancer Council Victoria, *Submission 101*, p. 52.

54 Ibid., p. 51.

55 VACCHO, *Submission 108*, p. 9.

56 Australian Bureau of Statistics, *Victoria: Aboriginal and Torres Strait Islander population summary*, 1 July 2022, <<https://www.abs.gov.au/articles/victoria-aboriginal-and-torres-strait-islander-population-summary>> accessed 24 July 2024.

Quitline services tailored to Aboriginal people, designed in collaboration with community to meet their specific needs, have been successful at promoting cessation.⁵⁷ However, more research into the behavioural aspects which influence Aboriginal young people to start vaping is necessary. This will ensure campaigns are designed effectively and tailored to meet their unique challenges.⁵⁸

It is disappointing to note that the targets set for Aboriginal communities are substantially less ambitious than those for the general population, with the *National Tobacco Strategy* aiming for a daily smoking rate of 27% by 2030 for the Aboriginal population in contrast to 5% for the wider Australian community.⁵⁹

FINDING 39: Aboriginal Victorians are disproportionately impacted by the risk of vaping harms, with higher existing smoking rates, and over 50% of the population being under the age of 25.

RECOMMENDATION 19: The Victorian Government continue to support Aboriginal Community Controlled Organisations to develop and deliver vaping and tobacco control initiatives relevant to their local communities.

RECOMMENDATION 20: The Victorian Government consider whether current targets are sufficient and where they are not, set more ambitious, comprehensive and segmented targets on the proportion of Victorians that smoke, vape and consume other nicotine products daily for the state public health and wellbeing plan. Outcomes should be reported in the Department of Health's annual report.

6.4 Potential reforms

6.4.1 The need for greater investment in prevention and cessation

Local community cessation programs are proving effective, limited only by the ability to scale them.⁶⁰ Community health services and local government receive promotion funding from DH through initiatives such as the *Community Health—Health Promotion* grants and the *Local Government Tobacco Education and Enforcement Program*. However, this funding is split across several competing health priority areas and budgets are limited.⁶¹ For instance, councils received an average of \$17,335 each under

57 Emily Colonna et al., 'Aboriginal and Torres Strait Islander peoples' Quitline use and the Tackling Indigenous Smoking program', *Public Health Research and Practice*, 5 March 2024, <<https://www.phrp.com.au/issues/online-early/quitline-and-tackling-indigenous-smoking-program/>> accessed 24 July 2024.

58 Clare O'Reilly, Director, Health and Healing, VACCHO, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 5.

59 Department of Health and Aged Care, *National Tobacco Strategy 2023–2030*, p. 9.

60 Community Health First, *Submission 78*, p. 6.

61 *Ibid.*, p. 5; VicHealth, *Strengthening tobacco control at a local level*, (n.d.), <https://www.vichealth.vic.gov.au/sites/default/files/2023-08/6SM_Strengthening_Tobacco_Control.pdf> accessed 25 July 2024.

the *Local Government Tobacco Education and Enforcement Program* in 2022–23. There was also a reduction in funding received by VicHealth to deliver prevention programs for tobacco and e-cigarette use, dropping from \$5.9 million in 2021–22 to \$3.7 million in 2022–23.⁶² These limits in capacity and funding have resulted in local government and other funded agencies finding it challenging to meet all the obligations outlined in their public health and wellbeing plans.

In response to rising e-cigarette usage by young people, there has been a surge in requests from schools and local government for targeted vaping education and awareness programs.⁶³ Similarly, primary care services have experienced an increase in individuals requesting nicotine addiction support. This increased demand is often not being met, and in many areas, there are waitlists to access such services.⁶⁴ Community health services are stretched to capacity and restricted by a lack of flexibility in funding arrangements to move existing resources into cessation support.⁶⁵

When asked by the Committee if there was enough state-level public health spending to achieve ‘success’, Cancer Council Victoria stated, ‘no, there is not ... we as a state, as a country, do not value sufficiently investment in prevention to prevent these harms that we see.’⁶⁶

FINDING 40: Limited funding and capacity are constraining the ability of councils, local health services and state health promotion agencies from meeting growing demand for awareness raising and nicotine cessation treatment services.

RECOMMENDATION 21: The State Government review the funding allocated to preventative health care in light of the health costs borne by individuals and the community from nicotine dependence.

6.4.2 Vaping and other nicotine products – the need for new approaches

Despite vapes being available in Victoria for at least the last 15 years there is inadequate provision of education and treatment services for people using vapes and other nicotine products.⁶⁷ Support services that do exist are primarily designed to meet the needs of adults. Access to general practitioners (GPs) and other primary

62 Parliamentary Budget Office, *Submission 71*, p. 26; Municipal Association of Victoria, *Local Government Tobacco and E-cigarette Control Activities: 1 July 2022 to 30 June 2023*, Melbourne, December 2023, p. 4.

63 Community Health First, *Submission 78*, p. 2.

64 Ibid.

65 Ibid., p. 7.

66 Todd Harper, Chief Executive Officer, Cancer Council Victoria, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 7.

67 Kylie Morphett, Wayne Hall and Coral Gartner, ‘The Development of E-cigarette Policy in Australia: The Policy, How It Came About and How It Is Justified’, *E-Cigarettes and the Comparative Politics of Harm Reduction*, 31 May 2023, <https://link.springer.com/chapter/10.1007/978-3-031-23658-7_3> accessed 24 July 2024.

care services are limited and cost-prohibitive for high-risk groups who may be seeking cessation support.⁶⁸ Nicotine dependence is increasingly affecting patients with intersections of disadvantage and young people, including children. As a result those who can access services are not guaranteed to receive support that is appropriate for their individual needs.⁶⁹

Despite the severe impacts of nicotine addiction, access to effective cessation tools like nicotine replacement therapies (NRTs) are limited. Fast acting and highly effective products such as nicotine gum and lozenges, are no longer available on the pharmaceutical benefit scheme.⁷⁰ In addition, best practice guidelines developed by the Royal Australian College of General Practitioners recommend that children not be prescribed any NRTs or e-cigarettes for vaping cessation.⁷¹ This approach may significantly increase their likelihood of continuing e-cigarette use illicitly or transitioning onto tobacco products.⁷²

FINDING 41: There is a gap in services for people seeking nicotine cessation treatment services, particularly those under 18.

6

In July 2024, the Commonwealth Government signed a three-year contract with Quit for \$10.3 million to deliver a new cessation platform via the Quit website.⁷³ This was to address concerns of a potential increase in tobacco use following the restriction of vaping products in recent Commonwealth legislation.⁷⁴ While this funding may go some way to addressing gaps in prevention and cessation support, significant problems remain which will require a whole-of-government response to address, in close collaboration with healthcare professionals. A one-size-fits-all approach will not be adequate. Rather, new tailored measures for diverse cohorts will be needed.

Dual consumption and under age consumers

Australia has one of the lowest rates of smoking amongst young people. However, the rates of smoking amongst this cohort have grown in recent years, rising from 1% in 2018 to 12.8% in 2023.⁷⁵ As vaping and smoking are intrinsically linked any approaches the Victorian Government takes towards lowering the instance of vaping through public health campaigns must also address the risks of taking up smoking. Dual use of tobacco and e-cigarettes is the most common pattern of nicotine use in Australia and

68 Australian Institute of Health and Welfare, *General practice, allied health and other primary care services*, 7 March 2024, <<https://www.aihw.gov.au/reports/primary-health-care/general-practice-allied-health-primary-care>> accessed 24 July 2024.

69 Community Health First, *Submission 78*, p. 1; Mark Metcalf, School Nurse, Greater Shepparton Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, p. 8.

70 Professor Coral Gartner, *Transcript of evidence*, p. 5.

71 Royal Australian College of General Practitioners, *Supporting smoking cessation: A guide for health professionals*, December 2023, p. 13.

72 Clare O'Reilly, *Transcript of evidence*, p. 4.

73 Rachael Anderson, Director, Quit Victoria, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 1.

74 *Ibid.*, p. 3.

75 Rosemary Hancock, Manager, Health and Local Economies, Municipal Association of Victoria, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 5.

research indicates that dual use may be more harmful than using one type of tobacco or e-cigarette product alone.⁷⁶

Cancer Council Victoria noted that additional funding to target cessation services and public education was required to address both smoking and vaping in tandem. A blanket solution was simply not going to address ‘all the various permutations and combinations of current and potential single and dual users.’⁷⁷ Without having a range of approaches to prevention and cessation, there is a risk that poorly designed anti-vaping messaging may ‘inadvertently encourage young people to take up smoking instead.’⁷⁸ This outlook was supported by VicHealth with the Chief Executive Officer stating it is important that ‘we are segmenting the audience: there will never be one message for all of Victoria.’⁷⁹

Public education campaigns provide the ‘backbone to every other activity’ and the absence or reduction of these campaigns have been particularly detrimental to young people from disadvantaged groups.⁸⁰ As this cohort is also the most likely to take up vaping, it is critical education campaigns remain accessible to them. Mass media campaigns, combining motivational health messaging and directions to support, were found to be the most effective way to drive new client self-referrals to Quitline.⁸¹ However, referrals to cessation services cannot be effective unless those services are also funded and resourced adequately to meet growing demand.

FINDING 42: Demand for nicotine cessation services is likely to continue to grow, as the accessibility of these vape products decreases and some vape users transition to smoking tobacco and other nicotine products.

In 2022, an independent review found Quit Victoria’s Quitline service was highly cost effective, saving costs and improving health.⁸² Despite this, young people do not consider Quitline to be a first-line source of support or information. When asked by the Committee if young people had general knowledge of Quitline services, a student from the Victorian Student Representative Council (VicSRC) answered

no, none. No-one I know has taken part in those services and my friends try and quit. I do not think they [sic] [accessing Quitline] would have ever crossed their minds.⁸³

⁷⁶ Department of Health and Department of Education, *Submission 103*, p. 5.

⁷⁷ Cancer Council Victoria, *Submission 101*, p. 53.

⁷⁸ Ibid.

⁷⁹ Dr Sandro Demaio, Chief Executive Officer, VicHealth, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 4.

⁸⁰ Cancer Council Victoria, *Submission 101*, p. 52.

⁸¹ VicHealth, *Submission 106*, p. 27; Paul Crosland et al., ‘Cost-effectiveness and productivity impacts of call-back telephone counselling for smoking cessation’, *Public Health Research & Practice*, 8 June 2023, <<https://doi.org/10.17061/phrp33232306>> accessed 24 July 2024.

⁸² Paul Crosland et al., ‘Cost-effectiveness and productivity impacts of call-back telephone counselling for smoking cessation’.

⁸³ Grace Boehnke, student representative, Victorian Student Representative Council (VicSRC), public hearing, 15 July 2024, *Transcript of evidence*, p. 11.

Another student agreed, stating

a lot of students would see Quitline ... as something more aimed towards cigarette smokers and the older population rather than the younger students who are addicted to vaping.⁸⁴

Quit Victoria stated that it was critical existing services are supported to expand and 'meet the needs of a younger demographic as they try to quit.'⁸⁵

Children as young as 12 have been reported contacting services such as Quitline, seeking vaping cessation support.⁸⁶ It is crucial that effective, evidence-driven and relevant public health messaging reaches young people early to prevent nicotine addiction.

FINDING 43: Quitline is highly cost effective and successful in reducing harm from tobacco usage however it has been designed to meet the needs of adults.

FINDING 44: Some young people may not consider Quitline to be relevant to their demographic or an avenue for cessation support.

RECOMMENDATION 22: The Victorian Government review the impact of Quitline Victoria services for priority high-risk cohorts—especially those under the age of 18—and ability to meet any growing demand for nicotine cessation following the Commonwealth's vaping reform legislation.

RECOMMENDATION 23: The Victorian Government review the funding for existing anti-smoking campaigns to pivot to address all nicotine products, including e-cigarettes and nicotine pouches.

The need for co-design – emerging examples of success in regional Victoria

Multiple submissions and evidence to the Committee cited co-design of public health measures as a priority consideration to increase their effectiveness. Health programs developed with Aboriginal Victorians, such as the *Beautiful Shawl Project*, have demonstrated that collaborating with target audiences to design education approaches substantially improves the positive outcomes of these initiatives.⁸⁷

⁸⁴ Risith Jayasekara, student representative, Victorian Student Representative Council (VicSRC), public hearing, 15 July 2024, *Transcript of evidence*, p. 11.

⁸⁵ Rachael Anderson, *Transcript of evidence*, p. 1.

⁸⁶ Dr Sandro Demaio, *Transcript of evidence*, p. 3.

⁸⁷ Clare O'Reilly, *Transcript of evidence*, p. 8.

VicHealth highlighted the critical importance of including ‘the voices of young people and their lived experience’ in campaigns to de-normalise vaping within this demographic.⁸⁸ Co-design was also pressed as one of the most important elements to successful engagement with school-aged students in evidence presented by students from VicSRC

I think it is absolutely essential to co-design education around vaping and the harm that it causes with young people and with students, because ultimately, if it is not engaging, then students are not going to learn that much and are not going to be able to take it away into their daily lives ... not every student is the same, each student community is not the same, and it needs to be a diverse range of students.⁸⁹

DH acknowledged that health messaging may need to be adjusted ‘depending on where it is delivered and who delivers it’, however, investments in public health campaigns and cessation support are not going to yield the outcomes needed for young people and high-risk cohorts without putting their lived experience at the heart of program development.⁹⁰ Research undertaken for VicHealth’s *Talking to your teen about vaping* resources found that any format of ‘lecture-style’, anti-vaping education will cause teens to switch off and feel frustrated at the lack of dialogue: ‘young people want to see anti-vaping interventions that are engaging, dynamic and hold space for curious young people to have open conversations.’⁹¹

Peer-to-peer education and cessation approaches have been found to be particularly effective in engaging young people (see case study 5.1). VicHealth noted that ‘young people listen to each other; we listen to people who look like ourselves.’⁹²

Programs related to vaping harm education, particularly those targeted towards young people and those at higher-risk, such as Aboriginal and LGBTQ+ Victorians, are relatively new or still in development.⁹³ Public health organisations like VicHealth and The Matilda Centre, that are developing bodies of evidence and delivering pilot vaping education programs across the state, have identified evaluation of effectiveness as a key priority but concede that this takes time.⁹⁴

Initial research projects such as *Influencing Gen Vape* have identified areas where targeted public health measures are expected to prove highly effective. These include early intervention from primary school age and co-designing education campaigns with young people and higher-risk cohorts.⁹⁵ Limited definitive data is currently available on the outcomes of public health initiatives tackling vaping education in Australia.

⁸⁸ VicHealth, *Submission 106*, p. 26

⁸⁹ Grace Boehnke, *Transcript of evidence*, p. 7

⁹⁰ Dr Clare Looker, Chief Health Officer, Department of Health, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 4.

⁹¹ VicHealth, *Submission 106*, p. 30.

⁹² Dr Sandro Demaio, *Transcript of evidence*, p. 4.

⁹³ VicHealth, *Submission 106*, p. 27.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, p. 30.

Case Study 6.1 Best practice public health measures for young people

Gippsland Lakes Complete Health (GLCH) and Ballarat Community Health (BCH) run best practice vaping prevention and intervention programs for young people. They develop and deliver localised, evidence-based, co-designed support services and educational material.

GLCH's health promotion initiatives include:



co-designed, student-led education sessions, posters and videos for primary school children



information forums on vaping and young adults for parents, educators and health care professionals



targeted, interpersonal addiction support services for young people and adults.

BCH also delivers health promotion programs to 14 secondary schools to address ongoing increases in vaping rates in the local community. BCH worked with tenth-grade media students to co-design a series of videos on the harms of vaping for young people.

An evaluation of students who participated in the program found:



63% were more likely to say no to vaping after viewing the videos



66% knew how to support a friend dependent on vaping



77% knew where to seek help.

Sources: Gippsland Lakes Complete Health, *Submission 114*; Ballarat Community Health, *Submission 109*.

Studies from the United States of America (USA) found that the peer-to-peer, online vaping prevention curriculum *Vaping: Know the Truth*, developed for grades 7–12, led to a significant improvement in students' e-cigarette knowledge.⁹⁶ Programs, also based in the USA, focused on behavioural change towards vaping for the same grades have similarly seen higher levels of effectiveness. Especially when they include interactive elements, practical and relatable refusal approaches, content that outlines relevant health risks, and how to recognise or navigate industry marketing.⁹⁷

FINDING 45: Young people are engaged by evidence and data and need relatable interventions and education programs.

RECOMMENDATION 24: The Victorian Government work to ensure co-design is prioritised in all government funded public health education nicotine campaigns targeting young people and other high-risk cohorts.

RECOMMENDATION 25: The Victorian Government review current funding for the development of peer-to-peer vaping cessation support services.

As outlined in Chapter 3, schools and students face a litany of challenges as vaping use rises. While data on the evidence of effective education approaches remains limited, enough exists to determine that early intervention is critical. As noted earlier in this chapter, children as young as 12 are seeking cessation services and in evidence to the committee, instances have been observed by schools of primary school aged children using e-cigarettes.⁹⁸ Introducing compulsory smoking and vaping education from the primary school level, in line with current drug and alcohol education, is necessary.⁹⁹

Research from *Generation Vape*, the first national research project into the growing rates of e-cigarette use amongst young people, determined that four out of five parents consider initiatives that prevent children from vaping as a high priority public health issue.¹⁰⁰ However, parents were also found to be relying on schools as a primary source of information on the risks of vaping, feeling unsupported and unable

96 Elizabeth Hair et al., 'Vaping—Know the Truth: Evaluation of an Online Vaping Prevention Curriculum', *Health Promotion Practice*, 7 August 2023, doi:10.1177/15248399231191099

97 Jessica Liu, Shivani Mathur Gaiha and Bonnie Halpern-Felsher, 'School-based programs to prevent adolescent e-cigarette use: A report card', *Current Problems in Paediatric and Adolescent Health Care*, 6 May 2022, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9296568>> accessed 24 July 2024.

98 Barbara O'Brien, Executive Principal, Greater Shepparton Secondary College, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, pp. 9–10.

99 Matilda Centre for Research in Mental Health and Substance Abuse, *Submission 83*, p. 10.

100 Associate Professor Becky Freeman, University of Sydney, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 5.

to provide education on the subject themselves.¹⁰¹ While public health organisations such as VicHealth, DH and DE have developed resources for parents, there is still an expectation that this topic is addressed in a school environment.¹⁰²

FINDING 46: Introducing vaping education in the primary school years provides young people with the knowledge to make better informed decisions as they age.

FINDING 47: The majority of parents see preventing children from vaping as a high public health priority.

RECOMMENDATION 26: The Department of Education commit to making tobacco and vaping education programs compulsory curriculum at the primary school level and supply schools with resources to implement them, aligned with current drug and alcohol education curriculum commitments.

6.4.3 The future role of Local Councils in public health promotion

Local councils play a crucial role in positively impacting public health through community engagement, program delivery, regulatory activity and health and wellbeing planning, and have done so for a long time.¹⁰³ The Committee believes that councils should continue to have an important role to play in public health through programs such as the *Local Government Tobacco and E-cigarette Control Activity Program*. As the Municipal Association of Victoria explained, councils have a ‘unique perspective from on the ground of the concerns of local communities of the harms [of tobacco and e-cigarettes], particularly for young people’ which may not be able to be replicated in other areas of the public healthcare framework.¹⁰⁴

RECOMMENDATION 27: Local government be represented on the advisory board to the new state regulatory authority responsible for the state nicotine licensing system.

¹⁰¹ Associate Professor Becky Freeman, 29 April 2024, *Transcript of evidence*, p. 5.

¹⁰² Department of Health and Department of Education, *Submission 103*, p. 7.

¹⁰³ Rosemary Hancock, *Transcript of evidence*, p. 1.

¹⁰⁴ *Ibid.*

6.5 Opportunities to engage with the Commonwealth

There are a number of opportunities for the Victorian Government to engage with the Commonwealth for funding and assistance in developing effective prevention and treatment public health measures or to implement recommendations raised by organisations who have provided evidence to this Inquiry:

- Continue to fund co-designed public education campaigns to help young people better understand the health risks of vaping and smoking.¹⁰⁵
- Increase the number of nicotine replacement therapy (NRT) products, including nicotine gums and lozenges, available on the Pharmaceutical Benefits Scheme (PBS) and under the Closing the Gap co-payment program.¹⁰⁶
- Explore the feasibility of including smoking cessation care in the National Safety and Quality Health Service Standards, that provide consistency for patients in the level and types of care that should be expected from health service organisations and primary healthcare providers.¹⁰⁷
- Establish national-level guidelines for primary healthcare practitioners and GPs that take into consideration children may require NRT or other pharmacotherapy support to cease e-cigarette usage.¹⁰⁸
- Protect all public health policies from tobacco industry interference, as stated in the *National Tobacco Strategy*.¹⁰⁹

**Adopted by the Public Accounts and Estimates Committee
55 St Andrews Place, East Melbourne
12 August 2024**

¹⁰⁵ VicHealth, *Submission 106*, p. 26; Youth Affairs Council Victoria, *Submission 94*, p. 6.

¹⁰⁶ VACCHO, *Submission 108*, p. 19.

¹⁰⁷ Australian Commission on Safety and Quality in Healthcare, *The NSQHS Standards, 2024*, <<https://www.safetyandquality.gov.au/standards/nsqhs-standards>> accessed 25 July 2024.

¹⁰⁸ Youth Affairs Council Victoria, *Submission 94*, p. 7; Community Health First, *Submission 78*, p. 6; Associate Professor Michelle Jongenelis, *Submission 30*, p. 10.

¹⁰⁹ Department of Health and Aged Care, *National Tobacco Strategy 2023–2030*, p. 9.

Appendix A

About the Inquiry

A.1 Submissions

1	Tanisha Finlay	30	Associate Professor Michelle Jongenelis, Principal Research Fellow, Melbourne School of Psychological Sciences, The University of Melbourne
2	Name withheld	31	Name withheld
3	Drug Free Australia	32	Name withheld
4	Name withheld	33	Name withheld
5	Name withheld	34	Name withheld
6	Alan Gorley	35	Brendan Leonidas
7	Kim Parton	36	Dr Colin Mendelsohn
8	Scott McMahon	37	James Conlon
9	Kat Jones	38	IGA
10	Sean O'Garretty	39	Name withheld
11	Kirston Baker	40	Emmanuel College
12	Hobsons Bay City Council Health Department	41	FoodWorks
13	Craig Sillington	42	Qinghai Peng
14	Name withheld	43	Name withheld
15	Name withheld	44	Name withheld
16	Name withheld	45	Name withheld
17	Douglas Leitch	46	Ritchies Stores Pty Ltd
18	Kok How	47	newsXpress
19	Adam Deane	48	The Centre for Excellence in Child and Family Welfare
20	Patricia O'Bryan	49	Gippsland Development Group
21	Diane Iveson	50	Name withheld
22	Matthew Hanna	51	Name withheld
23	Confidential – not to be published	52	Name withheld
24	Ashley Gastelaars	53	Orygen
25	Vivien Feegar	54	Name withheld
26	Melissa Garrahy	55	Cignall Pty Ltd
27	Bubble Laboratory	56	IGA
28	David Illingworth	57	Samual Sexton
29	Name withheld		

58	Kernow Environmental Health and Immunisation	89	Dr James Martin, Senior Lecturer in Criminology, School of Humanities and Social Sciences, Deakin University
59	Name withheld	90	Philip Morris Limited
60	Name withheld	91	Andrew Thompson
61	Retail and Trade Brands Advocacy	92	Australian Council of Recycling
62	IGA	93	Waste Management and Resource Recovery Association of Australia
63	FoodWorks	94	Alcohol and Drug Foundation and Youth Affairs Council Victoria
64	Imperial Brands Australasia	95	Viva Energy Australia
65	Cignall store	96	Australian Association of Convenience Stores
66	Australian Medical Association	97	Environmental Health Australia
67	Rohan Pike Consulting	98	Royal Children's Hospital Melbourne
68	Victorian Alcohol and Drug Association	99	National Heart Foundation of Australia
69	MGA Independent Businesses Australia	100	Western Public Health Unit
70	Tobacco Station Group	101	Cancer Council Victoria
71	Parliamentary Budget Office (Victoria)	102	Public Health Association of Australia
72	360 Edge	103	Department of Health and Department of Education (Victoria)
73	Municipal Association of Victoria	104	Australian Council on Smoking and Health
74	Headspace National	105	City of Casey – Public Health Team
75	Australian Dental Association Victorian Branch	106	VicHealth
76	Australian Lottery and Newsagents Association	107	Royal Australian and New Zealand College of Psychiatrists Victorian Branch
77	City of Melbourne	108	Victorian Aboriginal Community Controlled Health Organisation
78	Community Health First	109	Ballarat Community Health
79	EnterpriseCreativeCloud Pth Ltd	110	Department of Health and Aged Care (Commonwealth)
80	Australian Institute of Family Studies	111	Associate Professor Becky Freeman, Prevention Research Collaboration School of Public Health, Faculty of Medicine and Health, The University of Sydney
81	Drug Policy Australia Limited	112	Australian Taxation Office
82	Public Health and Wellbeing Special Interest Group – Environmental Health Professionals Australia	113	Victoria Police
83	Matilda Centre for Research in Mental Health and Substance Use	114	Gippsland Lakes Complete Health
84	Lung Foundation Australia	115	Environment Protection Authority Victoria
85	Asthma Australia		
86	Grampians Public Health Unit		
87	Pharmacy Guild of Australia, Victoria Branch		
88	National Centre for Epidemiology and Population Health, The Australian National University		

A.2 Public hearings

Monday, 15 April 2024

Room 1, Parklake Shepparton, 481 Wyndham Street, Shepparton, Victoria

Name	Title	Organisation
Louise Mitchell	Director Community	Greater Shepparton City Council
Detective Superintendent Jason Kelly	Anti-Gangs Division	Victoria Police
In camera hearing	-	-
Barbara O'Brien	Executive Principal	Greater Shepparton Secondary College
Mark Metcalf	School Nurse	Greater Shepparton Secondary College
Sabri Ibisi	School Captain	Greater Shepparton Secondary College
Isabella O'Dwyer	School Captain	Greater Shepparton Secondary College
Joel Hoffman	Senior Social Worker	Shepparton ACE Secondary College
Emma Reynoldson	Deputy Principal	Notre Dame Secondary College
Megan Gray	Director of Wellbeing	Notre Dame Secondary College
Lee Collier	Manager Planning and Prevention	Goulburn Valley Public Health Unit
William Cross	Acting Clinical Director	Goulburn Valley Public Health Unit
Trish Quibell	Chief Executive Officer	Primary Care Connect
Broni Paine	Executive Manager Community Services	Primary Care Connect
Debbie McDonald	Manager Alcohol and other Drugs	Primary Care Connect

Monday, 29 April 2024

Meeting Rooms G1 and G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Cressida Wall	Commissioner	Better Regulation Victoria
Assistant Commissioner Martin O'Brien APM	Crime Command	Victoria Police
Rosemary Hancock	Manager Social Policy	Municipal Association of Victoria
Naree Atkinson	Policy and Project Adviser	Municipal Association of Victoria
Varinder Sapehiyia	Board Director	Environmental Health Australia
Dr Clare Looker	Victorian Chief Health Officer	Department of Health
Dr Sandro Demaio	Chief Executive Officer	VicHealth

Name	Title	Organisation
Assistant Commissioner Erin Dale	Tobacco and E-Cigarette Whole of Government Taskforce	Australian Border Force
Emeritus Professor Simon Chapman	School of Public Health	University of Sydney
Associate Professor Becky Freeman	School of Public Health	University of Sydney
Jim O'Shea	Chief Operating Officer	Victorian Aboriginal Community Controlled Health Organisation
Stephanie Kilpatrick	Executive Director, Policy Advocacy and Communications	Victorian Aboriginal Community Controlled Health Organisation
Clare O'Reilly	Director, Health and Healing	Victorian Aboriginal Community Controlled Health Organisation

Melbourne, 15 July 2024

Legislative Council Committee Room, Parliament House, Spring Street

Name	Title	Organisation
Rohan Pike	-	Rohan Pike Consulting
Withheld for security reasons	Withheld for security reasons	Philip Morris International
Withheld for security reasons	Withheld for security reasons	British American Tobacco Australia
Dr James Martin	Senior Lecturer, Criminology	School of Humanities and Social Sciences, Deakin University
Professor Coral Gartner	Professorial Research Fellow and Director, Centre of Research Excellence on Achieving the Tobacco Endgame	School of Public Health, University of Queensland
William Naughton-Gravette	Policy and Advocacy Manager	Victorian Student Representative Council
Risith Jayasekara	Representative	Victorian Student Representative Council
Grace Boehnke	Representative	Victorian Student Representative Council
Kevin Ch'ng	Representative	Victorian Student Representative Council
Andrew Dalgleish	President	Victorian Principals Association
Rachael Anderson	Director	Quit Victoria
Todd Harper	Chief Executive Officer	Cancer Council Victoria
Dr Michelle Scollo	Senior Policy Advisor	Cancer Council Victoria
Rachel Obradovic	Director	Pharmacy Guild of Australia
Jessica Seeto	Policy and Regulation Director	Pharmacy Guild of Australia
Associate Professor Becky Freeman	School of Public Health	University of Sydney
Lee Miezis	Chief Executive Officer	Environment Protection Authority Victoria

Name	Title	Organisation
Jacque Stepanoff	Director, Policy and Regulation	Environment Protection Authority Victoria
Mark Bannister	Manager, Waste and Land Policy and Regulation	Environment Protection Authority Victoria

Appendix B

Consumer demand vs market supply approaches to tobacco and e-cigarette control

B.1 Consumer demand approach to tobacco and e-cigarette control

The Departments of Health at both the Commonwealth and Victorian state levels cite the ready availability of nicotine products and targeted advertising, including online ads and influencer endorsements, as key drivers of tobacco and e-cigarette harm, particularly among youth. In Victoria, sales to minors have increased, with 22% of tobacco retailers selling to minors, undermining public health efforts aimed at reducing uptake and prevalence.¹ The Victorian Department of Health advocates for stricter regulations, limiting e-cigarette access through pharmacies and a licensing scheme to curb illicit sales, combined with enhanced education and cessation support.² This perspective is mirrored at the Commonwealth level with the implementation of a range of control measures to restrict product access and increase protections from commercial and other vested interests of the tobacco industry.³

VicHealth also highlights the predatory tactics of industry, such as using appealing flavours, strategic and misleading ads, leading to increased youth vaping and more vape stores near schools and low-income areas.⁴ According to VicHealth, the Commonwealth reforms aim to limit imports and close loopholes, reducing vape stores and enforcing regulations while balancing youth access restriction with controlled adult use for smoking cessation.⁵ VicHealth, Quit, and Cancer Council Victoria support prescription-only legislation for vaping products, opposing a commercial supply model.⁶ Quit and Cancer Council Victoria emphasise the need for effective supply chain control, including retail and wholesale licensing, coordinated law enforcement, and disrupting criminal networks to reduce illicit tobacco and support public health objectives.⁷

¹ Department of Health and Department of Education, *Submission 103*, pp. 6–7.

² Dr Clare Looker, Department of Health, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 3.

³ Department of Health and Aged Care, *Submission 110*, p. 3. The Commonwealth Government's approach is guided by its obligations under Article 5.2(b) of the *World Health Organisation Framework Convention on Tobacco Control* which obliges Parties to adopt and implement effective measures to prevent and reduce nicotine addiction.

⁴ Dr Sandro Demaio, VicHealth, public hearing, Melbourne, 29 April 2024, *Transcript of evidence*, p. 1.

⁵ *Ibid.*, pp. 2, 6.

⁶ VicHealth, *Submission 106*, pp. 10–11.

⁷ VicHealth, *Submission 106*, p. 22; Dr Michelle Scollo, Cancer Council, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 5.

Support for medically supervised access to e-cigarettes and increased provision of nicotine cessation treatments was provided by the Australian Medical Association (AMA) and Victorian Public Health Units.⁸ For example, the Grampians and Goulburn Public Health Units support Commonwealth e-cigarette reforms, but Goulburn raises concerns about higher access barriers in regional areas due to limited healthcare resources and higher costs.⁹

Academic experts emphasise the importance of restricting access through stringent regulations, supply chain control, and comprehensive public health strategies to combat e-cigarette and tobacco use. Professor Emily Banks highlights that e-cigarettes in Australia are readily available through illegal channels, contributing to widespread use among children and adolescents due to aggressive marketing, appealing product characteristics and addictiveness.¹⁰

Professor Coral Gartner further notes that the infiltration of illicit products in mainstream retail markets has normalised use and poses risks to retailers evidenced by arson attacks on tobacconists.¹¹ Professor Gartner advocates securing the tobacco supply chain and offering accessible, free smoking cessation services and reducing purchase triggers to support those trying to quit.¹²

Associate Professor Becky Freeman supports the prescription/medical access model for e-cigarettes, which protects youth and provides a regulated pathway for adult cessation. She argues that this approach is not akin to prohibition and will significantly curb illicit supply.¹³

B.2 Market supply approach

The Committee received 34 submissions from individuals.¹⁴ The majority discussed the benefits of vaping as a smoking cessation tool and supported e-cigarettes being regulated like tobacco. Several submitters highlighted that restricting access to products will only increase the illicit market.

⁸ Australian Medical Association Victoria, *Submission 66*, pp. 4–5.

⁹ Goulburn Valley Public Health Unit, public hearing, Shepparton, 15 April 2024, *Transcript of evidence*, pp. 2, 12; Grampians Public Health Unit, *Submission 86*, p. 11.

¹⁰ Australian National University, *Submission 88*, p. 4.

¹¹ Professor Coral Gartner, University of Queensland, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 1.

¹² *Ibid.*, p. 3.

¹³ Associate Professor Becky Freeman, *Submission 111*, p. 5; Becky Freeman, Michelle Jongenelis and Raglan Maddox, 'Australia: reclaiming tobacco and e-cigarette control leadership', *Health Promotion International*, vol. 38, no. 4, 2023. Refer also to Associate Professor Michelle Jongenelis, *Submission 30*, p. 9.

¹⁴ Refer to the PAEC website for the list of submissions from individuals at <https://www.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-vaping-and-tobacco-controls/submissions>.

The Committee received 21 submissions from retailers supplying tobacco and six submissions from peak bodies representing them.¹⁵ The Committee also heard from three tobacco companies.¹⁶ The majority of submissions from the commercial sector including retailers advocated for a tobacco and e-cigarette licensing system in Victoria, with some pointing out that vapes should be treated like a consumer product to reduce illicit trade, sale to minors and the significant associated health, economic and justice impacts.¹⁷ Several advised that councils did not have the resources to properly deal with illicit retailers and highlighted the need for effective enforcement and strong penalties.¹⁸ It was noted that the regulatory system for tobacco and e-cigarettes could be modelled on the Victorian liquor licensing system.¹⁹

Criminologist Dr James Martin and Rohan Pike—a former Australian Border Force official who established the Tobacco Strike Team—compare current e-cigarette restrictions and high-cost tobacco to prohibition, noting these measures lead to most products being sourced illegally.²⁰ As noted in Chapter 4, Victoria Police agree that the rising excise on legal tobacco has contributed to the growth in the illicit market.²¹ Rohan Pike asserts that flawed tobacco policy has weakened enforcement and undermined reduction goals.²² Despite arrests and seizures, the illicit market remains lucrative, resulting in violence over market share and unsafe products being accessed by minors.²³ Dr Martin questions the viability of the pharmaceutical model due to high costs and limited options, suggesting licensed sales of vaping products with strict standards and regulations, as well as reduced taxes will reduce the illicit market.²⁴

A harm minimisation approach to tobacco and e-cigarette control is advocated by Dr Colin Mendelsohn, the Victorian Alcohol and Drug Association (VAADA), and other bodies including the Australian Drug Foundation, the Royal Australia and New Zealand College of Psychiatrists and the Australian National Advisory Council on Alcohol and Other Drugs.²⁵ VAADA is concerned that Australia's e-cigarette pharmaceutical model

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- 15 Name withheld, *Submission 39*; Name withheld, *Submission 31*; Name withheld, *Submission 32*; IGA, *Submission 38*; Foodworks, *Submission 41*; Name withheld, *Submission 43*; Name withheld, *Submission 44*; Name withheld, *Submission 45*; Ritchies Stores Pty Ltd, *Submission 46*; newsXpress, *Submission 47*; Name withheld, *Submission 50*; Name withheld, *Submission 51*; Name withheld, *Submission 52*; Cignall Ptd Ltd, *Submission 55*; IGA, *Submission 56*; Name withheld, *Submission 59*; Name withheld, *Submission 60*; IGA, *Submission 62*; Foodworks, *Submission 63*; Cignall Store, *Submission 65*; Tobacco Station Group, *Submission 70*; Gippsland Business Development Group, *Submission 49*; Retail and Trade Brands Advocacy, *Submission 61*; MGA Independent Businesses Australia, *Submission 69*; Australian Lottery and Newsagents Association, *Submission 76*; Viva Energy, *Submission 95*; Australian Association of Convenience Stores, *Submission 96*.
- 16 Imperial Brands Australasia, *Submission 64*; Phillip Morris Limited, *Submission 90*; Phillip Morris Limited, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*; British American Tobacco Australia, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*.
- 17 Ritchies Stores Pty Ltd, *Submission 46*; Name withheld, *Submission 52*, p. 6; Australian Association of Convenience Stores, *Submission 96*, p. 3; Imperial Brands Australasia, *Submission 64*, p. 7; Phillip Morris Limited, *Submission 90*, p. 34.
- 18 Ritchies Stores Pty Ltd, *Submission 46*, p. 3; Name withheld, *Submission 52*, p. 6; Australian Association of Convenience Stores, *Submission 96*, p. 3.
- 19 Ritchies Stores Pty Ltd, *Submission 46*.
- 20 The Tobacco Strike Team is the predecessor to the Australian Border Force led Illicit Tobacco Task Force. Dr James Martin, Deakin University, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, p. 3; Rohan Pike, Rohan Pike Consulting, public hearing, Melbourne, 15 July 2024, *Transcript of evidence*, pp. 1–3.
- 21 Victoria Police, *Submission 113*, p. 8.
- 22 Rohan Pike, *Transcript of evidence*, p. 5.
- 23 Dr James Martin, *Transcript of evidence*, p. 4; Rohan Pike, *Transcript of evidence*, pp. 2–3.
- 24 Dr James Martin, *Transcript of evidence*, p. 4.
- 25 Victorian Alcohol and Drug Association, *Submission 68*, p. 15; Dr Colin Mendelsohn, *Submission 36*, p. 2.

will not mitigate the illicit trade and will restrict access to harm reduction, diverting resources from cessation programs.²⁶ According to VAADA, the illicit market reduces governmental control, exposing users to unregulated, dangerous products and criminalisation.²⁷ VAADA states that vaping is now an entrenched part of Australia's drug consumption. It calls for robust, evidence-supported regulation of e-cigarettes as consumer goods, balancing prevention and harm reduction.²⁸

The Australian Dental Association (ADA) highlights the severe oral health impacts of e-cigarette and tobacco use.²⁹ However, the ADA criticises the current prescription-only model for e-cigarettes as ineffective against the illicit market and suggests a consumer model with public health measures like taxation, nicotine limits, age verification, licensing, plain packaging, flavour restrictions, and advertising bans to better control use and reduce harm.³⁰

B.3 Consumer regulation model for e-cigarettes

Tobacco licensing schemes in overseas jurisdictions have different approaches to e-cigarettes. Finland, for example, includes vapes in its definition of 'tobacco products', meaning they are regulated within its tobacco scheme.³¹ The United Kingdom (UK) however, does not include e-cigarettes in its tobacco licensing scheme and while vaping products are subject to regulations, a retailer does not need a license to sell them.³²

Expert witnesses argued that after e-cigarettes were regulated as a consumer product in Canada, United States of America (USA), UK and New Zealand (NZ), their consumption increased and has not decreased since.³³ However others challenged this claim, arguing that although vaping had increased post-regulation in other markets, it had begun to decrease in recent years for younger populations.³⁴ The Committee was unable to identify reliable consumption trends post the introduction of vape regulations in these jurisdictions.

²⁶ Victorian Alcohol and Drug Association, *Submission 68*, pp. 15, 18.

²⁷ *Ibid.*, p. 15.

²⁸ *Ibid.*, pp. 15, 18.

²⁹ Australian Dental Association (Victorian Branch), *Submission 75*, pp. 4-5.

³⁰ *Ibid.*, pp. 6-7.

³¹ World Health Organisation, *Strong legislation helps defeat e-cigarettes in Finland*, media release, 20 May 2020.

³² United Kingdom Government, *Guidance: Advice for Retailers and Producers*, 23 March 2022, <<https://www.gov.uk/government/publications/advice-for-retailers-and-producers>> accessed 8 July 2024; Hit Vape, *Top vaping laws in the UK you need to know as a retailer*, 25 July 2023, <<https://hitvape.co.uk/blogs/hitvape-uk/top-vaping-laws-in-the-uk-you-need-to-know-as-a-retailer>> accessed 8 July 2024.

³³ Associate Professor Becky Freeman, *Submission 111*, pp. 5-6; Associate Professor Michelle Jongenelis, *Submission 30*, p. 9.

³⁴ Name withheld, *Submission 52*; Rohan Pike, correspondence, 8 July 2024; Australian Association of Convenience Stores, *Submission 96*, p. 3.

Appendix C

Penalties for sale of illicit products, sale without a licence and sale to minors in Australia

State/ Territory	Legislation	Penalty	Additional information
Victoria	<i>Tobacco Act 1987</i>	<ul style="list-style-type: none"> Selling to a minor: 120 penalty units (\$23,710.80) for individuals and 600 penalty units (\$118,554) for a body corporate Selling illicit tobacco: 240 penalty units (\$47,421.60) for individuals and 1200 penalty units (\$237,108) for a body corporate 	-
Australian Capital Territory	<i>Tobacco and Other Smoking Products Act 1927</i>	<ul style="list-style-type: none"> Selling to a minor: 200 penalty units (\$32,000) Selling without a license: 50 penalty units (\$8,000) Selling illicit tobacco (purchasing from someone 'who is not the holder of a wholesale tobacco merchant's license'): 50 penalty units (\$8,000) 	<ul style="list-style-type: none"> Authorised officers can immediately seize items related to a presumed offence. A license can be revoked, suspended or have conditions applied based on the actions of the licensee.
New South Wales	<i>Public Health (Tobacco) Act 2008</i> <i>Public Health (Tobacco) Regulation 2016</i>	<ul style="list-style-type: none"> Selling to a minor: 100 penalty units (\$11,000) for a first offence (500 units for a body corporate, \$55,000), 500 penalty units (\$55,000) for a second/ subsequent offence (1,000 units for a body corporate, \$110,000) Selling without having notified the state: 50 penalty units (\$5,500) Selling a prohibited tobacco product: 100 penalty units (\$11,000) for a first offence, 500 penalty units (\$55,000) for a second/ subsequent offence 	<ul style="list-style-type: none"> Inspectors can seize product they believe contravenes the Act.
Northern Territory	<i>Tobacco Control Act 2002</i> <i>Tobacco Control Regulations 2002</i>	<ul style="list-style-type: none"> Selling without a license: 500 penalty units (\$92,500) Selling to a minor: 200 penalty units (\$37,000) 	<ul style="list-style-type: none"> Inspectors can immediately seize items that are related to a presumed offence. A license may be suspended or cancelled if found guilty of an offense.
Queensland	<i>Tobacco and Other Smoking Product Act 1998</i> <i>Tobacco and Other Smoking Products Regulation 2010</i>	<ul style="list-style-type: none"> Selling to a minor: 140 units (\$22,582) for a first offence, 280 units (\$45,164) for second offence, 420 units (\$67,746) for a third/ subsequent offence Selling illicit tobacco: 300 units (\$48,390) Possessing illicit tobacco: 140 units (\$22,582) 	<ul style="list-style-type: none"> License may be suspended or cancelled. Authorised officer can seize products if they believe it is illicit.

Appendix C Penalties for sale of illicit products, sale without a licence and sale to minors in Australia

State/ Territory	Legislation	Penalty	Additional information
South Australia	<i>Tobacco and E-Cigarette Products Act 1997</i> <i>Tobacco and Other Smoking Products Regulation 2010</i>	<ul style="list-style-type: none"> • Selling to a minor: \$20,000 for a first offence, \$40,000 for a second/ subsequent offence • Selling without a license: \$20,000 (\$1,000 if license has expired) • Selling illicit tobacco: \$50,000 	<ul style="list-style-type: none"> • Authorised officers can seize and retain tobacco or e-cigarettes if they reasonably believe an offence has been committed. A licence can be revoked or suspended if the individual has violated the Act or is deemed 'not a fit and proper person'.
Tasmania	<i>Public Health Act 1997</i> <i>Public Health (Smoking Product License) Regulations 2019</i>	<ul style="list-style-type: none"> • Selling to a minor: 120 penalty units (\$24,240) for a first offence, 240 penalty units (\$48,480) for a second offence, 360 penalty units (\$72,720) for a third/ subsequent offence • Selling without a license: 50 penalty units (\$10,100) for a first offence, 100 penalty units (\$20,200) for a subsequent offence 	-
Western Australia	<i>Tobacco Products Control Act 2006</i> <i>Tobacco Products Control Regulations 2006</i>	<ul style="list-style-type: none"> • Selling without a license: \$50,000 • Selling to a minor: \$10,000 for a first offence (\$40,000 for a body corporate), \$20,000 for a second offence (\$80,000 for a body corporate) 	<ul style="list-style-type: none"> • Authorised officers can seize products they believe are relevant to their investigation. • Upon conviction, courts may restrict, suspend or revoke a retailer's license.

Sources: *Tobacco Act 1987* (Vic) ss 11A, 12; *Tobacco and Other Smoking Products 1927* (ACT) ss 14, 59–63, 67; *Public Health (Tobacco) Act 2008* (NSW) ss 22, 29, 39; NSW Health, *Penalties and Enforcement*, August 2022; *Tobacco Control Act 2002* (NT) ss 28, 42; *Tobacco and Other Smoking Product Act 1998* (QLD) ss 66–67, 161; *Tobacco and E-Cigarette Products Act 1997* (SA) ss 6, 31–34A; *Public Health Act 1997* (TAS) ss 64, 74A; *Tobacco Products Control Act 2006* (WA) ss 16(1), 115(a–b).

Minority report

VICTORIAN GREENS' MINORITY REPORT

Public Accounts and Estimates Committee - Inquiry into vaping and tobacco controls

Authored by Aiv Puglielli MLC

1. Introduction

Smoking is the leading cause of preventable disease and death in Australia¹.

The severity of the impact of this behaviour has been noted for some time now by the broader community and by health professionals; to the extent that smoking is now uncommon in Victorians who do not possess some kind of vulnerability or risk factor, are of a diverse background or are of lower socioeconomic status.

“Smoking has declined in Victoria amongst all social groups thanks to population-wide efforts that affect all sections of the community. However, higher rates persist amongst disadvantaged groups or priority populations.”

- Todd Harper, CEO Cancer Council, Public Hearing - 15 July 2024

To date, a failure to reduce demand for vapes (whether they be legal or illegal) threatens to reverse recent gains in relation to smoking, as a new generation of smokers begins with an e-cigarette and later transitions toward tobacco smoking due to nicotine addiction, access, cost or other factors.²

Accepted by many throughout the public inquiry process is the fact that the status quo in Victoria in relation to these products is unacceptable, with perceptions of high and growing prevalence of vaping among teens³ who buy vapes from pop-up tobacconists run by organised crime.

At the time of writing this minority report, Victorians are approximately six weeks away from being able to legally get nicotine vapes from a pharmacy, without a prescription.⁴

There are live questions as to what practical impact this change will have on the state of tobacco and e-cigarette use in Victoria. Concerns have been raised that pharmacies may not agree to dispense the products, despite evidence provided that they had been willing to do so under previous iterations of drafted federal legislation⁵. These federal changes passed through the Parliament during the inquiry process, and as such became a significant background to the remaining hearings and public commentary.

Further, a state licensing scheme was announced during the inquiry process⁶, having a similar impact on public discourse as proceedings continued.

¹ Australian Government Department of Health, Effects of smoking and tobacco - <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-smoking/effects>

² Cancer Council Victoria Submission

³ Cancer Council Victoria Submission

⁴ Australian Government Department of Health, About vaping and e-cigarettes - <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-vaping#vaping-and-ecigarette-laws>

⁵ Public Hearing 15 July - Pharmacy Guild of Australia, Victoria Branch

⁶ ABC News 28 March - 'Victorian Premier Jacinta Allan says government will roll out tobacco shop licensing by end of year' -

<https://www.abc.net.au/news/2024-03-28/victorian-premier-jacinta-allan-tobacco-licensing/103643714>

As both the federal and state arrangements continue to evolve, it's currently too early to draw conclusions on the potential full impacts of the reforms as things stand. However what is clear is the need to adapt and respond, with well-communicated evidence.

Legal or not, tobacco, vapes and other nicotine products are in the community, and we must do all that we can to reduce harms associated with their use.

2. Our communities and what they need

In the Victorian community, 9.2% of people aged 14 and over smoke tobacco daily and 8.9% of people in that age group vape⁷. As noted in the main committee report, there are gaps or discrepancies in the data underlying these figures which need to be rectified. In any case, the use of these products in the community is ongoing, and further state government health investment is required to address their health impacts.

Aiv PUGLIELLI: "Do you think there is at the state level enough public health spending each year to address the harms associated with these products?"

Todd HARPER: "No. No, there is not."

- Public Hearing, Cancer Council, 15 July 2024

Our communities, and their needs, are diverse

The main report makes the following findings in Chapter 2:

FINDING 3: National data indicates that 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.

FINDING 4: Victorian surveys have found socio-economic status and holding a healthcare card has no bearing on whether someone vapes. However, people are less likely to vape if they are heterosexual than if they identify as LGBTIQ+; are not receiving mental health treatment than those who are and be non-Indigenous compared to Aboriginal and Torres Strait Islander respondents.

However, the report fails to issue recommendations that would appropriately respond to these findings.

The health harms of tobacco and e-cigarettes are not distributed equally across our Victorian population. Smoking rates are higher in people living with mental illness, people with lower levels of education, people who are living with a disability, experiencing homelessness and in culturally and linguistically diverse populations.

- Dr Clare Looker - Chief Health Officer, Public Hearing, 29 April 2024

⁷ Victorian Parliamentary Budget Office submission

NEW RECOMMENDATION: That, in recognition of data showing that the highest rates of smoking are in communities of highest socioeconomic disadvantage and experiences of marginalisation, the Victorian Government target key tobacco and nicotine public health measures and health policy settings in such a way that:

- a) Policies and messages are appropriately targeted, and;
- b) Measures to reduce harms associated with nicotine do not inadvertently increase tobacco smoking rates.

Further, it is crucial that data is collected to assess the impact of any changes made to identify any intended or unintended consequences and ensure regulations and other mechanisms can be amended if required.

NEW RECOMMENDATION: That the Victorian Government ensure data collection to measure the prevalence and patterns of use of nicotine products following any legislative, regulatory or other changes to determine their impact.

Effectiveness of excise spending on reducing harm and demand

Health promotion campaigns to reduce demand in tobacco and minimise the harms associated with both tobacco and nicotine products are significantly underfunded by the State Government, especially when considering the scale of federal excise collected on legal tobacco products.

If the entirety of the more than \$12 billion federal tobacco excise tax were allocated to effective public campaigns to reduce demand for tobacco and nicotine products; to health programs designed to reduce harms for community members who smoke; and to our health system, which faces the burden of health complications and challenges arising from the use of tobacco and nicotine in the community, then Victoria could be much better poised to address the health needs of diverse and often vulnerable communities engaging with these products.

Therefore instead of the main report's recommendation to encourage the Commonwealth Government to allocate a percentage of the excise revenue to states and territories for increased regulation and enforcement, I suggest the following:

NEW RECOMMENDATION: That the Victorian Government advocate to the Commonwealth Government to (a) fully invest revenue from the tobacco excise to state and territory governments for public health programs associated with nicotine and tobacco products in the community and (b) reduce demand for these products.

NEW RECOMMENDATION: That the Victorian Government directly fund increased regulatory and enforcement activities regarding illicit nicotine and tobacco products.

Young people need support

There have been concerns raised in relation to teens who will need support to quit and reduce their use of nicotine products, and that these cessation supports will need to be targeted to these cohorts beyond the traditional Quit pathways⁸.

Young people need to be made aware of the symptoms of nicotine addiction and where they can access supports if needed.

NEW RECOMMENDATION: That the Victorian Government ensure that appropriate support is made available to students and young people, likely requiring multiple points of contact and forms of communication that are relevant to that demographic, including but not limited to schools.

Community campaigns need work

The hearings highlighted a clear desire for more effective community health campaigns. Concerns were raised that current campaigns targeting vaping fell well short of the watermark left by historic graphic attempts to drive down demand for nicotine products in the community via public and effectively utilised media⁹.

Question: "What about if you had a poster in the toilet that showed you are ingesting rat poison? Would that help you?"

Response: "The posters I think within the bathrooms at the moment have got cartoons on them and they are just like, 'Vaping's bad.' They are not very effective."

- Public hearing transcript, Victorian Student Representative Council, 15 July 2024

NEW RECOMMENDATION: That the Victorian Government resource and promote more effective campaigns to reduce demand for tobacco and nicotine products in public media, engaging in co-design processes with diverse community voices to best meet the needs of their community and effectively target communications.

⁸ Public hearings 15 July - Victorian Student Representative Council

⁹ Public hearings 15 July - Victorian Student Representative Council

Concerns from medicinal cannabis patients

Anecdotally, there are community concerns that medicinal cannabis patients may be captured under the newly passed changes in federal legislation. It is important that these reforms do not unfairly impact patients of medical cannabis or restrict their ability to consume their prescription medication in the way they choose.

NEW RECOMMENDATION: That the Victorian Government conduct a survey of medicinal cannabis patients within the state, reviewing the impacts that Federal legislative changes relating to tobacco and vaping products have had on their ability to consume their prescription medication.

Disposal Concerns

Considerable attention was paid by the Committee to the environmental impacts of vape products, particularly with regard to lithium-ion batteries and the problems associated with their disposal, with strong evidence provided regarding the progress still required for these products to be appropriately recycled at scale and to prevent fires and explosions in the waste collection cycle and in landfill.¹⁰

Despite the Environment Protection Authority detailing that in the 2022–23 financial year about 60 per cent of all EPA litter fines related to cigarette butts¹¹, the main report makes no specific recommendations regarding their disposal or potential reforms in this space. Exploration is occurring across the community for potential solutions to this issue, such as Australian charity No More Butts and Melbourne-based mycologists Fungi Solutions teaming up to start CigCycle, a research project seeking to determine whether Australian fungi can be used to create a viable recycling stream from cigarette butts¹².

NEW RECOMMENDATION: That the Victorian Government explore new potential pathways, partnerships and arrangements to identify scalable recycling pathways for cigarette butts.

¹⁰ Public Hearing - 15 July 24 - Environment Protection Authority Victoria

¹¹ Public Hearing - 15 July 24- Environment Protection Authority Victoria

¹² Sustainability Victoria - 16 March 23 - Cigarette butts get mushroom makeover

3. The pathway to now

Tobacco and nicotine products, whether legally or illegally obtained, are prevalent across the community. Considerable effort up until this point has been applied to restrict both the supply and demand for these products across the broader population.¹³

Historically, weighting has been more evenly distributed between these efforts, with particular success in the rate of demand reduction: the use of cigarettes has nearly halved since 2001, to 8.3% nationally and 9.2% in Victoria¹⁴. At the same time, there is great concern about the rapid increase in the uptake of vaping, particularly in young people¹⁵.

Local governments have not been well resourced or supported to address this issue¹⁶, and given the Victorian Labor Government's track record when it comes to supporting councils, that seems unlikely to change.

Councils are not to blame for the state of this issue in the community, nor are they single-handedly going to be able to tackle it going forward¹⁷.

We do not want to see a situation where the state hands responsibility to local government and pretends that it has done all that it can. Therefore, the recommendations in the main report for the State Government to take responsibility for licensing, enforcement and deterrents to genuinely address the business practices (legal and illegal) occurring in the community are welcome.

Councils should be supported to play a crucial role in honing the social environments of their localities to reduce demand for the product in public settings, including through smoke-free zones.

NEW RECOMMENDATION: That the Victorian Government empower and appropriately resource local councils to further enact social and environmental changes such as smoke-free zones and to assist in reducing demand for tobacco and nicotine products in public settings.

Penalties

In relation to penalties for sale or distribution of illicit tobacco and nicotine products, it was accepted by many contributions to the inquiry that these penalties must outweigh the profits on the continuance of this behaviour within organised crime¹⁸.

¹³ Australian Institute of Health and Welfare, Alcohol, tobacco & other drugs in Australia 2024
www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/harm-minimisation

¹⁴ Victorian Parliamentary Budget Office submission

¹⁵ Department of Health and Department of Education submission

¹⁶ Greater Shepparton City Council - Public hearing - - 15 April 24 -I

¹⁷ City of Casey submission

¹⁸ Victoria Police submission - Municipal Association of Victoria submission

That said, it is crucial that this process does not result in penalties or criminalisation of possession of illicit products (vapes or illicit tobacco) for personal use, and that any moves to increase penalties clearly exclude personal use. This is critical considering the data highlighting the higher prevalence of smoking and vaping among groups who are marginalised or experience disadvantage within the community.

NEW RECOMMENDATION: That the Victorian Government actively ensure that any increases, modifications to, or enforcement of penalties relating to illicit tobacco and nicotine products do not target individuals for possession of personal use quantities, particularly amongst marginalised demographics and First Nations community members.

I think there is a real danger that we see with criminalisation of people who vape, people who are not necessarily involved with commercial supply.

- Dr James Martin, Senior Lecturer, Criminology, School of Humanities and Social Sciences, Deakin University- Public Hearing - 15 July 2024

4. The pathway forward

At the time of writing, Victoria still has no retail licensing scheme for the sale of tobacco and vape products. This is despite the Member for Brunswick, Greens MP Tim Read, among others, calling for a licensing scheme for these products since August 2021¹⁹ and repeatedly since then.

If such a scheme had been undertaken and enforced, Victoria may well have found itself in a different position to where it stands today on this issue.

When it comes to addressing the harms of tobacco and nicotine products in the community in Victoria, the greatest risk to progress is prolonged inaction.

What have been the barriers to this reform?

Nationally, Labor has historically received hundreds of thousands of dollars in donations from organisations like the Australian Hotels Association²⁰ who have been outspoken lobbyists against banning smoking in outdoor dining and drinking areas.

¹⁹ Parliament of Victoria - Hansard - Adjournment - Tobacco Licensing Scheme - 5 August 2021

²⁰ Democracy for Sale - Labor - <https://democracyforsale.net/parties/labor/>

The Liberal/National Coalition have performed even more poorly on this front, amassing millions of dollars in donations from tobacco companies such as Philip Morris Limited²¹.

The influence of money and support from these industries has slowed the progress of crucial reforms in preventing harm and reducing demand for tobacco and nicotine products in the community. Each instance of delay to these reforms has had a direct cost on the lives of Victorians.

These dodgy donations must end if we are ever going to truly see a reduction in the suffering incurred by the community from the preventable harms from tobacco and nicotine products.

NEW RECOMMENDATION: That the Victorian Government legislate a ban on all donations from tobacco companies to political parties, and advocate to the Commonwealth Government for similar reforms to be enacted at the Federal level.

Signed:

A handwritten signature in black ink, appearing to read 'Aiv Puglielli', written in a cursive style.

Mr Aiv Puglielli MLC

Date: 21 August 2024

²¹ Democracy for Sale - Liberal/Nationals - <https://democracyforsale.net/parties/liberal-nationals/>

