

Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024

Submission No:	15
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Publication:	
Attachments:	See attachment
Submitter Comments:	



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AUSTRALIA

SUBMISSION TO THE TOBACCO AND
OTHER SMOKING PRODUCTS (VAPING)
AND OTHER LEGISLATION AMENDMENT
BILL 2024



PHILIP MORRIS

AUSTRALIA

28 June 2024

Health, Environment and Agriculture Committee
Queensland Parliament
Parliament House
George Street, Brisbane, QLD, 400

Dear Madam/Sir,

Submission: Philip Morris Limited response to the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 Inquiry ("the Inquiry")

Philip Morris Australia (PML) thanks the Health, Environment and Agriculture Committee ("the Committee") of the Queensland Parliament for the opportunity to make a submission to this important Inquiry.

This Bill presents a time-critical opportunity for Queensland to take national leadership once again in combatting illicit tobacco and illegal vaping, and future-proof the effectiveness of its tobacco product licensing scheme.

Illicit tobacco continues to accelerate, now accounting for 28.6% of overall tobacco consumption in Australia and costing the federal Government approximately \$4.85 billion in lost excise revenue.¹

Crime gangs, in efforts to control market share and maintain illicit tobacco profits, are becoming increasingly hostile towards one another. This is resulting in dangerous and retaliatory criminal warfare, which is contributing to an entrenched culture of violence, all at the expense of community safety. In what is an emerging trend, crime gangs are targeting vulnerable children and young adults to perpetrate serious crimes on their behalf.

Non-therapeutic vaping products, supplied mostly under the black market, are just as pervasive in the community. These products are unregulated, untested and are dangerous to those that consume them, especially children and young adults. The sale of illicit vaping products is subjected to fractured and inconsistent law enforcement, ignoring the Government's therapeutic model, of which Philip Morris is an approved, regulated and trusted participant.

The criminality of these illicit products is multi-faceted, beyond the retailer-to-consumer transaction. Legislation therefore must contemplate the totality of criminal activity, not allowing for ambiguity, jurisdictional inconsistencies or loopholes to be exploited for what would otherwise be unlawful and punishable conduct.

Our principal recommendation to this Inquiry is that the Committee support the passage of this Bill and its amendments in full. We also recommend the Committee raise amendments in this Bill to ensure complementarity with federal legislation.

If the Committee has any questions with respect to our submission, please do not hesitate to contact PML at

[REDACTED]

We thank the Committee for its consideration of our submission.

Yours sincerely,

Philip Morris Limited

¹ [FTI Consulting, Illicit Tobacco in Australia 2023, May 2024](#)

‘Illicit nicotine’ is growing and making the Queensland community less safe

Nationally, as at the end of 2023, illicit tobacco accounted for 28.6% of overall tobacco consumption in Australia, a market share which has doubled in size from five years ago. In 2023, over \$4.8 billion in tobacco excise tax was lost to the illicit trade.²

Illegal vaping products are as big a scourge on the community as illicit tobacco. Black market operators supply untested, unregulated, and unknown disposable vaping products to vulnerable populations, outside the therapeutic model. According to recent data, people aged 14 and over who reported vaping in the past year increased from 2.5% in 2019 to 7% in 2022-2023. Teen vaping use has also increased significantly - from 1.8% in 2019, to 9.7% in 2022-23³.

The federal Government’s own Impact Analysis into its recent vaping reforms estimates that only 8% of adult vapers purchase vapes under the prescription model. The National Illicit Drug Reporting System survey in 2022 (also referenced in the Impact Analysis) concludes only 3% of vapers have a prescription⁴. In any event, these are alarming figures. There is no other legal consumer good category in Australia, of which over 90% of the market is illegal.

The profits from these products are pocketed by organised criminal gangs and funneled into other criminal activities, such as the supply of illegal drugs, the illegal firearms trade, human trafficking, and other serious crimes. Queensland, like Victoria, has experienced a steady wave of illicit tobacco crime over the past 18 months, which has included multiple arson attacks, aggravated robberies, and vandalism⁵. In Victoria alone, this has resulted in close to 70 arson attacks on tobacconists since March 2023⁶.

Queensland has taken recent important steps to curb illicit tobacco crime, legislating for a tobacco product licensing scheme, which will require retailers and wholesalers to demonstrate they are fit and proper persons. While a character assessment is important, it must be supported with stronger legislation, which captures a wider range of conduct via which illicit tobacco crime is perpetrated.

‘Illicit Nicotine’ is often one trade and should be treated as such

Illegal tobacco and vaping products are not distinctly separate markets operating separate of one another. Criminal gangs which largely control these trades, operate them concurrently, as this is more efficient for importation and distribution purposes, and both product types are typically sold in the one retail outlet.

This is certainly consistent with the recent experience of both federal and state law enforcement agencies⁷. Existing legislation should not create a situation where law enforcement officers encounter illicit tobacco and illegal vapes under one criminal activity but are required to prosecute under multiple legislative and penalties frameworks. We therefore support the amendment under this Bill to broaden “illicit tobacco” to “illicit nicotine products”.

Criminals should not be able to exploit legislative loopholes and passivity in the judicial process

Criminal enterprises have over time, continued to adapt, and evolve, whereas legislation has not kept pace. Crime gangs deliver illicit nicotine products to the market via mature, well-organised supply chains. These supply chains often involve multiple locations and multiple participants undertaking various types of illegal activity across those locations. This criminal participation extends far beyond the end retail transaction of an illicit product to a consumer. The law should not operate in a way to absolve from liability those who are complicit within a step of the supply chain, especially where their actions may be less overt.

² Ibid

³ [Australian Institute of Health and Welfare, National Drug Strategy Household Survey 2022-2023, 29 February 2024](#)

⁴ [Department of Health and Aged Care, Proposed reforms to the regulation of vapes Impact Analysis, October 2023](#)

⁵ [The Guardian, Earn or Burn: The fire bombings and underworld conflicts exposing Australia’s illicit tobacco trade, 21 October 2023](#)

⁶ [Nine News, Tobacco store and businesses targeted in separate attacks in Melbourne, 11 June 2024](#)

⁷ [Crime and Corruption Commission Queensland, Multi-million dollar laundering investigation smashes illicit tobacco and vape supply, 31 August 2023](#)

We welcome the proposed amendments to the legislation, which will close loopholes so that perpetrators cannot operate outside the law by relying on narrow definitions of activity (including supply and possession), location of goods, or persons directly responsible.

Similarly, we welcome proposed amendments creating additional powers for law enforcement and the judiciary to order the interim closure or injunction against premises and persons supplying illegal nicotine products. Under the current enforcement framework, recidivist operators often continue to supply illegal products, even after action has been taken against them. With these new mechanisms, such illegal supply can be stopped quickly without first being subjected to a long judicial process, even where the culpability is clear.

Complementarity between state and federal legislature is required

The Public Health (Tobacco and Other Products) Act 2023 ('the federal legislation') stipulates substantial breaches and penalties for the sale of tobacco products not in compliant retail packaging. This penalty amounts to \$626,000 for individuals and \$6,260,000 for corporations (per offence). Section 7(4) provides if an act or omission is an offence under the federal legislation and the same is also an offence against a law of a State or Territory, and the offender has been punished for the offence under the law of the State or Territory; the offender is not liable to be punished for the offence under the Tobacco Act.⁸

As a point of comparison, under the proposed amendment to section 161 of the TOSPA Act, the penalty for the supply or possession of illicit tobacco as part of business activity would amount to \$309,600⁹. While the federal legislation does provide for its concurrent operation with state and territory legislation, this dissimilarity in the quantum of penalty gives rise to a problematic situation. Those involved in the illegal trade, if routinely prosecuted and fined under Queensland legislation, would always be subjected to a lesser financial penalty than if prosecuted under federal legislation.

With this in mind, we recommend that penalties within the Queensland legislation be amended for consistency with federal legislation. We also recommend penalties in the Queensland legislation concerning illegal vaping, be aligned with penalties for comparable offences under the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024.

Transition of illicit enforcement responsibility to Business Queensland

The South Australian Government, in handing down its 2024-25 Budget, announced that it would be transferring illicit tobacco enforcement responsibility from SA Health to its Commissioner for Consumer Affairs and Business Services. The SA Premier's rationale for the transferal was that SA Health's efforts in tobacco control were best directed towards the delivery of public health campaigns and harm minimisation, as opposed to enforcement. It was therefore appropriate that its consumer affairs department managed illicit tobacco enforcement, which was comparable in nature to liquor and gambling.¹⁰

We recommend that Queensland also adopt a similar approach and transition enforcement responsibility from Queensland Health to Business Queensland, the body also responsible for liquor and gaming licensing enforcement. The rationale for this would be comparable to what was espoused in South Australia in that a business and consumer affairs department and regulator has specialised expertise in carrying out licence-based enforcement. It will also support Queensland in the likely increased enforcement activity once the new federal vaping laws are passed and come into effect.

[End]

⁸ [Public Health \(Tobacco and Other Products\) Act 2023](#)

⁹ [Queensland Parliament, Tobacco and Other Smoking Products \(Vaping\) Legislation Amendment Bill, 2024](#)

¹⁰ [Government of South Australia, Major Enforcement Clampdown on illegal tobacco and vapes in SA, 29 May 2024](#)