

Tobacco and Other Smoking Products Amendment Bill 2023

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Queensland Parliament Health and Environment Committee
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Dear Secretariat,

SUBMISSION: QUEENSLAND PARLIAMENT HEALTH AND ENVIRONMENT COMMITTEE – TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2023

Philip Morris Limited (PML) welcomes the opportunity to make a submission to the Queensland Health and Environment Committee regarding the Queensland Parliament's Tobacco and Other Smoking Amendment Bill 2023.

PML acknowledges the positive steps in bringing Queensland in line with other states through the establishment of a licencing scheme for the sale of smoking products, whilst also addressing issues such as the production and sale of illicit tobacco within Queensland and prosecuting the unlawful supply of smoking products (including illicit vapes) and introducing stronger penalties and enforcement action.

Illicit Tobacco remains a serious problem

Illicit tobacco accounts for approximately one in five (19.3%)¹ tobacco products consumed in Australia and costs governments almost \$4 billion in evaded taxes every year. Of particular note to state and territory governments is the impact illicit tobacco has on GST collection, with \$400 million in GST lost in the previous financial year. Funds that otherwise could have been invested in schools and hospitals, but which is funnelled into organised crime.

KPMG estimates that in 2021 alone, an estimated 2,242 tonnes of illicit tobacco was consumed, up from 2,223 tonnes in 2020.² In the 2020-21 financial year, the Australian Border Force seized 1,248.5 tonnes of illicit tobacco, from 484.65 tonnes in the previous financial year.³ Total consumption of tobacco products declined in 2021, driven by a decline in legal sales, illicit tobacco's share of market increased from 16.9% in 2020 to 19.3% in 2021.⁴

¹ KPMG, Illicit Tobacco in Australia 2021 Full Year Report, Published 9 June 2022

² ibid

³ Department of Home Affairs' Annual Report 2020-21, Published 16 September 2021

⁴ KPMG, Illicit Tobacco in Australia 2021 Full Year Report, Published 9 June 2022

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Because illicit tobacco is sold without tobacco excise or GST, it can be sold at a much lower price than legal taxed tobacco products. It also means that, even at a significantly lower price, illicit tobacco can be sold at higher margins – generating a greater profit for those who import and sell it – at a cost to taxpayers, law-abiding retailers and the community.

Illicit tobacco is sourced from a variety of means, including illegal importation, domestic cultivation and theft, and it is run by organised crime for profit. Organised crime produces and imports illicit tobacco because it is low risk and high reward – it is more profitable than the importation of illegal drugs, while its penalties and the risk of prosecution are much lower.⁵

The profits illicit tobacco generates are directed into other criminal activities,⁶ including narcotics, the illegal arms trade and human trafficking.⁷ The broader community is put at risk by the illicit tobacco trade, with consumers (and many legislators) not appreciating the connection between illicit tobacco and the criminal enterprises it supports. Illicit tobacco is not a victimless crime.

Federal law enforcement agencies now cite the fact that organised crime opportunistically leverages Australia's high rates of tobacco excise to market illicit tobacco at low prices and high margins, which is why in the last financial year, the Australian Border Force intercepted 150,000 illegal shipments of tobacco.⁸

To illustrate the scale of the problem, a recent market survey carried out between June – December 2022 found that of the 446 Queensland retailers sampled, more than 37% were found to be selling illicit smoking products.

The Illicit Tobacco Market is motivated by price and profit

Price sensitive consumers buy illicit tobacco because they cannot or choose not to purchase (the vastly more expensive) legal, regulated and taxed tobacco products.

A decade of aggressive tobacco excise increases from 2010 to 2020 created the ideal market conditions necessary for Australia's illicit tobacco market. In that time, excise increased by over 400%, while illicit tobacco's share of market doubled.⁹

With a 20-pack of factory-made cigarettes now retailing for up to \$65 (of which more than half is tax) many consumers have turned to the illicit black market, where they can purchase a similar product for less than half the cost of its legal variant.

Organised crime networks know the appeal of cheap tobacco products and will establish or engage shopfronts within close proximity of law-abiding retailers. Consumers are then drawn to the illegal shopfront, placing pressure on the law-abiding retailer to close – giving the illegal shopfront exclusive market access.

⁵ Channel 9, The illegal trade funding human trafficking and terrorism

⁶ Australian Border Force, Man jailed after more than three million cigarettes seized, 20 December 2022

⁷ ABC News, Crime groups using illicit tobacco to finance drug trade and terrorism as cigarette prices soar, says Australian Criminal Intelligence Commission, 18 June 2022

⁸ Brisbane Times, States join fight against black-market cigarettes as border seizures jump 86%, 18 August 2022

⁹ KPMG, Illicit Tobacco in Australia 2021 Full Year Report, Published 9 June 2022

The negligible cost of illicit tobacco means a criminal syndicate only needs one of every 30 containers to make it through to still make a profit.¹⁰

Concerningly, with post-COVID supply chain pressures, those involved in the illicit tobacco trade are turning to burglaries and armed robberies to acquire products for resale on the black market, resulting in damage to property and threats to the safety of retail workers.¹¹

It is unacceptable that the current landscape is one in which honest businesses – the majority of which are small and family-run enterprises, who sell legal, regulated and taxed tobacco products in compliance with commonwealth and state laws – are forced to compete against lower priced illegal products on which no excise or GST is paid – and who pay no taxes associated with the legitimate operation of a business, such as income and payroll taxes.

And it is why, increasingly, law-abiding retailers are saying that they cannot continue to trade while illicit remains dominant.

Nicotine Vaping Products (NVPs) Background Information

Nicotine vaping products are regulated by the Therapeutic Goods Administration as prescription-only medicines for smoking cessation.

While there is some regulatory overlap in the treatment of vaping products – Queensland regulates “*personal vaporisers*” as “*smoking products*” – nicotine vaping products may only be lawfully supplied by a pharmacist to a prescribed user.¹²

On 22 March 2023, the Minister for Health and Aged Care, the Hon Mark Butler MP, stated that there were more than 2 million users of vaping products in Australia.¹³ This represents a four-fold increase in the number of users over the past 16 months, with data from the Therapeutic Goods Administration indicating the vast majority of users do not hold a prescription from an authorised prescriber.

A report in *The Australian* on 21 March 2023 stated that there are more than 90 million disposable vaping products imported into Australia every year, almost all of which are sold on the black market. This black market is facilitating alarming levels of youth uptake.¹⁴

The current regulatory model presents a number of challenges for states and territories, not least of which is the jurisdictional responsibility around the testing and seizure of illegally supplied NVPs, most of which are packaged as non-nicotine.

¹⁰ ABC News, Crime groups using illicit tobacco to finance drug trade and terrorism as cigarette prices soar, says Australian Criminal Intelligence Commission, 18 June 2022

¹¹ Channel 9, \$20,000 worth of cigarettes stolen in Melbourne service station robbery, Published 3 July 2022

¹² Queensland Health, Smoking laws in Queensland, Published 6 October 2021

¹³ The Age, Bid to ease vaping rules goes up in smoke, Published 22 March 2023

¹⁴ The Australian, Nationals push to legalise nicotine vapes, Published 21 March 2023

Data from the Therapeutic Goods Administration’s own laboratory testing reveals that over 78% of products that were labelled non-nicotine or omitted nicotine from their ingredient lists were found to contain nicotine, and 32% of those products contained a prohibited ingredient.¹⁵

There is no other product in Australia – and certainly not a therapeutic good – where over 90% of the products sold are either illegal or illegally supplied. As with illicit tobacco, organised crime will continue to exploit market opportunities in NVPs until the gap between regulatory obligations and regulatory enforcement is closed.

There is clearly a need to establish closer working relationships between state and federal law enforcement agencies, and we commend the Queensland Government’s proposal to make the Queensland Police Force a responsible agency in the fight against illicit tobacco and illegally supplied NVPs – especially given the involvement of organised crime in the cultivation, importation and supply of illicit products.

Queensland Tobacco and Other Smoking Products Amendment Bill 2023 Recommendations

PML makes the following submission recommendations in relation to the Tobacco and Other Smoking Products Amendment Bill 2023:

1. Establishing a licencing scheme for the wholesale and retail sale of smoking products.
2. Ensuring effective deterrents against the unlawful supply of illegal smoking products (illicit tobacco), including stronger penalties and law enforcement.
3. Empowering monitoring compliance with Commonwealth requirements for smoking products – including shared information between the State and Australian Federal Government.

These recommendations are aligned with the Queensland Government’s bill for the establishment of a Queensland licencing system for the sale of smoking products, whilst also acting on stringent enforcement measures for the supply, production and sale of illicit tobacco.

Given the seriousness of the effects of illicit tobacco on public health, government revenue, legitimate business and criminal benefit, the penalties outlined while increased are not enough to strongly deter the unlawful sale and supply of smoking products.

The penalty units set for unlicensed sale, supply and possession of illicit tobacco should be increased to at least double the amount, particularly considering the significant money derived from the crime.¹⁶

Furthermore, in many instances the provision of a custodial sentence in addition to the fine may be a more appropriate form of punishment.

As the licencing amendments will not come into effect until September 2024 and the magnitude of the problem as it currently stands, ongoing active enforcement of the current laws is needed to address the state’s booming Illicit tobacco trade.

¹⁵ Budget Supplementary Estimates 2022–23, Community Affairs Legislation Committee, Question on Notice 126, Portfolio question number: SQ22-000489

¹⁶ Queensland Health, Smoking laws in Queensland, Published 6 October 2021

Phillip Morris thanks the Queensland Parliament Health and Environment Committee for the opportunity to make a submission on the Tobacco and Other Smoking Products Amendment Bill 2023 and would welcome further discussion on these and any other matters.

PML's external affairs team can be contacted on [REDACTED].

Yours sincerely,

Philip Morris Limited