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Submission to the Public Health (Tobacco
and Other Products) Bill 2023, and the
Public Health (Tobacco and Other
Products) (Consequential Amendments
and Transitional Provisions) Bill 2023
Inquiry



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AUSTRALIA

6 October 2023

Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra, ACT 2600

Dear Committee Chair,

Submission: Philip Morris Australia (PML) response to the Public Health (Tobacco and Other Products) Bill 2023 (“the Bill”), and the Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023 Inquiry

Philip Morris Australia thanks the Senate Community Affairs Legislation Committee for the opportunity to provide a submission to this Inquiry.

Philip Morris Australia is a part of Philip Morris International (PMI), a leading international producer of combustible and non-combustible tobacco products, with a presence in 180 markets globally. We support tobacco harm reduction and evidence-based regulation that properly balances the positive impact of its intended outcomes with the negative impact of any unintended consequences. Importantly, both in Australia and abroad, we are a leader in illicit trade prevention and advocate for policy solutions that help reduce tobacco harm, without driving tobacco underground or into the hands of youth.

PML has closely observed the changing dynamics of the tobacco industry, particularly in the last decade. It is our view that we are now at a critical juncture of tobacco regulation in Australia.

To achieve the objectives of the Bill and the measures proposed through the National Tobacco Strategy 2023-2030, it is imperative that the Parliament acknowledge and immediately act upon the harms that are caused through the pervasiveness of illicit tobacco in Australia, to ensure that any new laws are designed and implemented in a manner that does not accelerate the growth in the illicit tobacco market. This will require a significant uplift in resourcing for enforcement activity.

The scale of the illicit tobacco market is so significant that almost one in every four tobacco products sold and consumed in Australia come from the illegal black market¹. There now exists a sophisticated, end-to-end criminal supply chain through which illegal products are delivered to Australian consumers.

As a legal, taxed and regulated operator, we support tobacco harm reduction principles. However, in many instances, the Bill’s legislative mechanisms run counter to its objectives, insofar as they risk further growth in the illicit tobacco market. This means more crime in communities, threats against retailers and their staff and potentially youth uptake in smoking.

It is disappointing that the Department of Health and Aged Care’s (“the Department”) “Review of Tobacco Control Legislative Framework Impact Analysis” (“Impact Analysis”) fails to comprehend the size of the illicit

¹ [FTI Consulting, Illicit Tobacco in Australia 2022 Full Year Report, Published 18 May 2023](#)

tobacco trade in Australia, claiming that the risk of an increase in illicit trade as an unintended consequence of these Bills is ‘*expected to be low*’². This claim is contrary to historical trends.

It is widely accepted that illicit tobacco is run by organised crime. Profits are redirected into the supply of illicit drugs, the illegal arms trade and human trafficking. Today, the illicit tobacco market is worth \$4.2 billion in lost excise³ and at least \$400 million in GST payments. It is now recognised by law enforcement agencies that illicit tobacco is more profitable than other serious criminal activity conducted by organised crime.⁴ Australian communities are now experiencing direct conflict between competing organised crime syndicates over control of the illicit tobacco market. In 2023, there have been close to two dozen arson attacks on tobacco retailers. Law enforcement authorities have expressed public concern that “it is a matter of time before someone sleeping upstairs or next door (to a tobacconist) is killed”.⁵

It is unfortunate that the Bill’s Impact Analysis underplays the impact these proposed reforms will have on illicit tobacco. And it is concerning that illicit tobacco is not defined in the Bill’s general definitions. It is communities, consumers and law-abiding retailers who suffer the ultimate consequences of the illicit tobacco trade. These communities would expect, at a minimum, that the Bill contemplates illicit tobacco and its associated harms.

In the same way the Department has previously stated “it is not an illicit tobacco enforcement regime”⁶ this Bill risks the perception that the Department only intends to apply these new laws to those who intend to comply with them. This seeming indifference to those who repeatedly act outside the law only sends a message to dangerous criminals in our community that illicit tobacco will remain a high-reward, low-risk activity. This should (and does) concern those who have been directly or indirectly affected by the consequences of illicit tobacco in their communities – and made worse by the fact that many of the Bill’s provisions will create new and exclusive market opportunities for organised crime.

PML recognises that the Parliament has a legitimate right to make laws for products that can be consumed in Australia. However, with that comes a responsibility to account for the unintended consequences those laws might bring.

The Bill, as it is currently drafted, risks an accelerated proliferation of the criminal-run illicit tobacco trade. Further, there are practical and technical limitations that warrant the attention of the Committee and the Parliament.

For the benefit of the Committee, we have structured our submission along the following themes.

Public Health (Tobacco and Other Products) Bill 2023

- 1. The Bill risks failure to drive down smoking rates as intended in the National Tobacco Strategy***
- 2. The Australian Parliament must acknowledge the market and regulatory conditions facilitating the illicit tobacco market***
- 3. More legislation without enforcement will drive further growth in the illicit tobacco market***
- 4. Certain elements of the Bill are impractical as proposed***
- 5. The Bill’s Reporting and Disclosure requirements ignore the illicit tobacco market***

² [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

³ [FTI Consulting, Illicit Tobacco in Australia 2022 Full Year Report, Published 18 May 2023](#)

⁴ [Nine Now, The illegal trade funding human trafficking and terrorism, 2020](#)

⁵ [Herald Sun, Crime syndicates turn up heat to force tobacco shops to shut, 2 October 2023](#)

⁶ Community Affairs Committee, Health and Aged Care Portfolio, Question on Notice 370, 16 February 2023

6. *The Bill must set clearer parameters for disclosures of information for the protection of confidential information*

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023

7. *The Transitional Period is insufficient for industry, retailers and law enforcement agencies*

Australians expect that any new laws will be enforced to their fullest intent and capacity. They also expect that laws which create an obligation punishable by civil or criminal penalty will operate as both a general and specific deterrent against those who would ignore them. This is only possible if border and law enforcement agencies are properly supported, in both powers and resourcing, to enforce Australia's laws.

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

Yours sincerely,

Philip Morris Limited

1. The Bill risks failure to drive down smoking rates as intended in the National Tobacco Strategy

a) This Bill risks failing its core purpose of reducing smoking prevalence in Australia

One of the central objectives of the Bill is to reduce daily smoking prevalence in Australia. However, this simply cannot be achieved if one sizeable component of the tobacco market (illicit) is being ignored and allowed to grow at an exponential rate.

Over the past decade, the Department has failed to meet its own smoking prevalence targets and there is a risk that it will continue to do so without a targeted focus on illicit tobacco enforcement. Australia's National Health Agreement, developed in 2010, targeted a daily smoking prevalence rate of 10% by 2018⁷, which has not been met. Despite this failure, the National Tobacco Strategy 2022-2030 has moved the 10% target towards 2025 and established a 5% target by 2030.⁸

History has shown that legislating does not, in and of itself, change human behaviour. Nor does the setting of targets without a plan that accounts for real world conditions.

The rate of smoking prevalence in Australia is undoubtedly impacted by the consumption of illicit tobacco, which is not subject to product quality and assurance regulation or tax-based price signals. Survey data on smoking rates only indicates the volume and frequency of smoking, *not the source* of the tobacco product. It is therefore reasonable to deduce that smoking reduction targets are impeded by illicit tobacco consumption.

If the smoking prevalence targets of the past decade are not being met alongside a structural decline in tobacco excise collection, there is only one logical conclusion to be drawn – illicit tobacco consumption is growing.

The illicit tobacco market does not operate in a vacuum. It is dependent on market and regulatory conditions that support its profitability. Plainly, in Australia, the policy settings are not working. This is playing an active role in stagnating smoking prevalence targets.

b) The Bill does not address the illicit tobacco recommendations of the NTS 2023-2030

The National Tobacco Strategy 2023-30 in Priority Area 8 clearly states that *"Implementing and enforcing strong measures to control illicit tobacco trade can enhance the effectiveness of high tobacco taxes and other tobacco control policies. Additionally, strong surveillance, enforcement, and fines, across all supply chains, are warranted"*.⁹

Priority Area 8 provides recommended actions that the federal Government should *"continue to engage in international cooperation relating to tobacco taxation and addressing illicit trade in tobacco products, including through the WHO FCTC"* and *"continue enforcement efforts to prevent the illegal importation, supply and cultivation of tobacco; and enhance technology and staff capability to identify and respond to illicit trade in tobacco"*.¹⁰

⁷ [Productivity Commission, National Agreement Performance Agreement 2009-2010, National Healthcare Agreement, December 2010](#)

⁸ [Department of Health and Aged Care, National Tobacco Strategy 2023-2030](#)

⁹ Ibid

¹⁰ Ibid

In its own text, the NTS calls for “strong measures to control illicit tobacco trade” to “enhance the effectiveness of high tobacco taxes and other tobacco control policies.” The corollary of this recommendation is that, without strong measures, tobacco control policies are less effective.

It is concerning that the Bill has effectively ignored the illicit tobacco recommendations of the NTS. It has, instead, taken a narrow focus on the legal and regulated market, endangering the ambitions of the NTS.

This approach risks even more consumption of illicit products and further failures in meeting smoking reduction targets. Australia is at risk of falling even further behind in reducing smoking prevalence if the structural elements of the illicit tobacco trade are not dealt with.

c) The Impact Statement fails to give legislative effect to the obligations of Article 15 of the WHO FCTC

The Impact Analysis to the Bill consistently cites the importance of the World Health Organisation Framework Convention on Tobacco Control (‘WHO FCTC’), and Australia’s obligations as an original signatory. It emphasises that this was the first international treaty negotiated under the guidance of the WHO and has become one of the most rapidly and widely embraced treaties in United Nations history. The Impact Analysis then specifically references several relevant articles of the FCTC so as to indicate that the proposed legislative reforms have been constructed to align with the requirements of the FCTC.¹¹

One of the WHO FCTC obligations the Impact Statement states, as per Article 15, is for Australia to “*eliminate all forms of illicit trade in tobacco products*”. This obligation is irreconcilable with the Impact Statement, which claims “*there is not anticipated to be any meaningful change to the illicit trade because of the proposed measures*”.¹²

The WHO FCTC has recognised that effective tobacco control strategies require a multi-faceted regulatory strategy that concurrently addresses ‘demand reduction strategies as well as supply issues’. The core demand reduction provisions in the WHO FCTC are contained in Articles 6-14. The core supply reduction provisions are contained in articles 15-17, which includes the illicit trade in tobacco products¹³. The proposed Bill, therefore, while aspiring to meet Australia’s obligations under the FCTC, risks failure to do so.

d) The Impact Statement fails to calculate the true cost burden because it has ignored the illicit market

The Department has provided an estimated cost outline for its preferred regulatory option (Option 3) with supporting commentary. Both the estimated cost and the basis for its calculation are troubling. The Department has stated “*there is some potential that the measures would increase prices, but this is not expected to be significant because the majority of the retail prices component is made up of tobacco excise and GST. Tobacco excise and GST are existing measures which are outside the remit of this legislative review.*”¹⁴

¹¹ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

¹² Ibid

¹³ [World Health Organisation, Framework Convention on Tobacco Control, 2003](#)

¹⁴ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

It goes on to state that *“Changes to any regulatory framework can create risks of unintended consequences. For example, it could be hypothesised that changes to tobacco products would result in increased illicit trade in tobacco or affect e-cigarette usage patterns. However, the risk of this is expected to be low.”*¹⁵

The Impact Statement’s estimated costs is \$21.77 million per year. This has been calculated per annum over a ten-year period and justified on an additional 73 people permanently quitting smoking each year.¹⁶

This cost estimate may be problematic for multiple reasons. It may have overlooked the several unintended consequences of the proposed legislation, each of which could have a further cost impact. For instance, menthol cigarettes and capsules currently represent an estimated \$2 billion in excise tax value to the Australian Government¹⁷. If these products are banned as proposed, this could potentially cost the Government and the Australian taxpayer up to \$2 billion if the users of these products are easily able to switch to the illicit market. It is our view that this approach will fail to deliver the Government its intended public health dividend; demand for these products will instead be serviced by the untaxed illicit market.

Any additional losses in excise will further add to the existing excise tax loss, approximated at \$4.2 billion and \$400 million in GST receipts (in 2022). While tobacco excise and GST policy setting may be outside the remit of this Inquiry, it is important that the Committee give consideration to the ongoing revenue leakage to the Commonwealth, both in its ability to fund services and infrastructure, and as an indicator of consumer migration to the illicit market.

The Impact Statement fails to consider the complete spectrum of costs to retailers, much of which impacts small and independent businesses.¹⁸ The indirect costs to retailers (through the expansion of the illicit market) will compound the direct and immediate cost of reduced sales. This will place further pressure on law abiding and taxpaying small businesses, whose viability is already threatened by the size and tactics of those involved in the illicit market.

The estimated economic burden of \$21.77 million per year also potentially underrepresents the true economic cost to the industry, which will need to redesign and reconfigure entire manufacturing processes, factor additional manufacturing costs into its business model and consider new machinery and equipment to be compliant. Tobacco manufacturing is undertaken at a global scale with multiple inputs across complex supply chains.

The Impact Statement also fails to evaluate the additional cost to law enforcement. In a market where almost one in four products is illegal, the costs attached to enforcement are material. To fully undertake a cost-benefit analysis and understand the impact on all stakeholders, these cost factors must be accounted for.

The Impact Statement points out that the *‘nature of the expected burden on individual users relates to inconveniences with adapting to the new regulatory environment’*.¹⁹ The data clearly illustrates that punitive regulations are not just inconvenient to users, but they are dissuasive in the use of regulated products. The alternative often is a transition to unregulated products.

If it is the view of those who drafted the Impact Statement that the true cost visited upon consumers is a mere “inconvenience”, it leaves open the question of whether they thought banning entire product

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Industry data

¹⁸ [AFR, Illegal tobacco, rising cigarette prices dent supermarket profits, 21 August 2023](#)

¹⁹ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

categories was an effective population level smoking reduction policy. There is a risk that those consumers will not “adapt to the new regulatory environment” as intended, and will instead move to the illicit market.

2. The Australian Parliament must acknowledge the market and regulatory conditions facilitating the illicit tobacco market

a) The different components of the illicit market speak to its complexity

For the Committee’s benefit, it is worth elaborating upon the composition of Australia’s illicit tobacco market, which is made up of multiple categories.

- *Unbranded tobacco* - illegal loose-leaf tobacco upon which no duty has been paid and which carries no labelling or health warnings. It is sold and consumed either in roll your own (RYO) form (called “chop chop”) or inserted into empty cigarette tubes. It is commonly sold in both bags and boxes. Unbranded tobacco consumption is the largest component of total illicit tobacco consumption estimates, with a 4% increase in volume terms since 2021. (1.53 tonnes were consumed in 2021 and 1.59 tonnes were consumed in 2022). This uptick is driven by the increase in the number of consumers who reported purchasing unbranded (chop chop) tobacco across 2022. Purchase incidence has progressively increased by over 12 percentage points since the pre-COVID period (to 31% in Q2 2022 and 33% in Q4 2022).²⁰
- *Contraband* - these are trade-marked products not complying with Australian regulations such as plain packaging (or exceed personal limits for returning overseas travellers) and smuggled to Australia, avoiding duties and taxes. This component of the market grew by a staggering 44.8% in 2022, which was partly due to the re-opening of international borders, bringing higher volumes of smuggled or undeclared products.²¹
- *Counterfeit* – cigarettes manufactured illegally (without the trademark owner’s consent) and smuggled to Australia (or could include production without a licence in Australia), avoiding duties and taxes. This component of the market grew by 27.3% in 2022 from 2021.²²
- *Illicit ‘whites’/domestic illicit plains* - cigarettes manufactured overseas, smuggled and sold in Australia through illegal channels, avoiding taxes. Illicit white brands may have packaging designed for the domestic Australian market (TPP Act compliant) and these are referred to as domestic illicit plains. Alternatively, those brands that do not have packaging for the Australian market are referred to as non-domestic illicit whites.²³

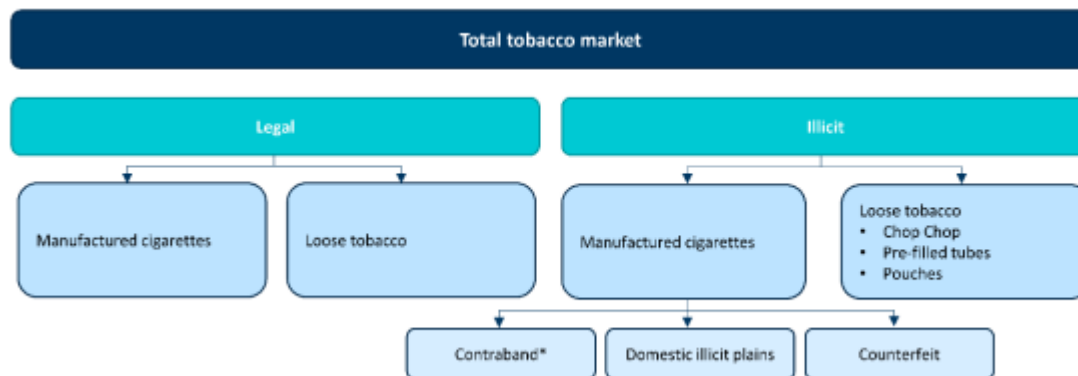
²⁰ [FTI Consulting, Illicit Tobacco in Australia 2022 Full Year Report, Published 18 May 2023](#)

²¹ Ibid

²² Ibid

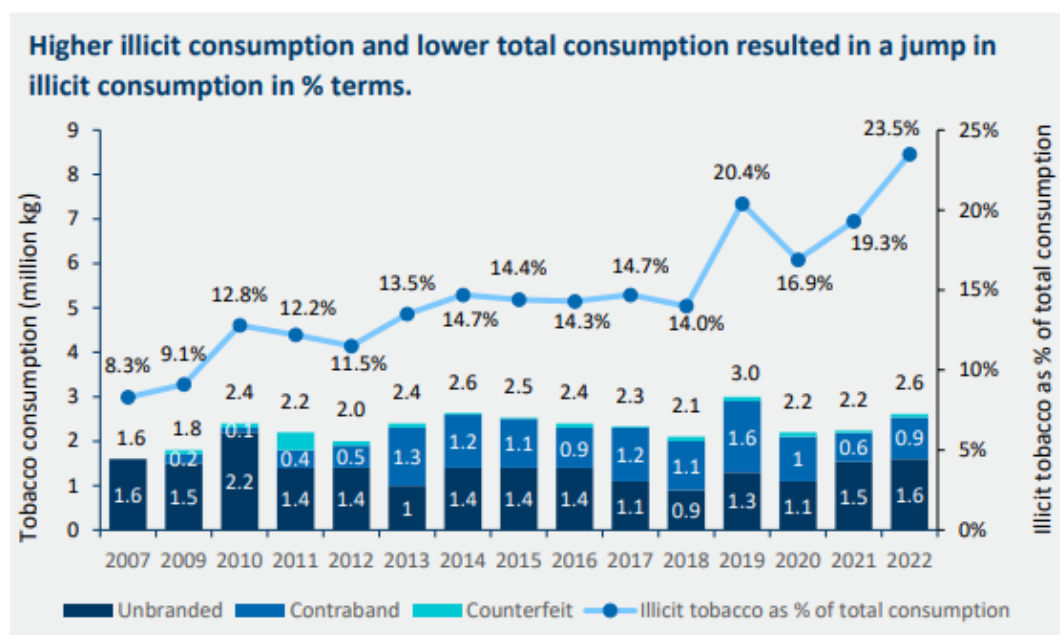
²³ Ibid

Figure 3²⁴ below represents the composition of Australia's tobacco market (both legal and illegal)



The growth of the illicit trade has continued on an upward trajectory over the past fifteen years. It is estimated that the pure volume of total illicit tobacco consumed in 2022 (2.6 million kilograms) rose by 16.3% compared to the previous year. The potential value of lost excise tax to the Australian Government in 2022 is estimated at \$4.2 billion.²⁵ A further \$400 million is lost in Goods and Services Tax.

Figure 4 below illustrates a 15-year trajectory of illicit tobacco consumption as a percentage of total tobacco consumption in Australia. Illicit tobacco use in Australia has almost tripled in the last 15 years, growing from 8.3% of the market in 2007, to reach a staggering 23.5% of the market.²⁶



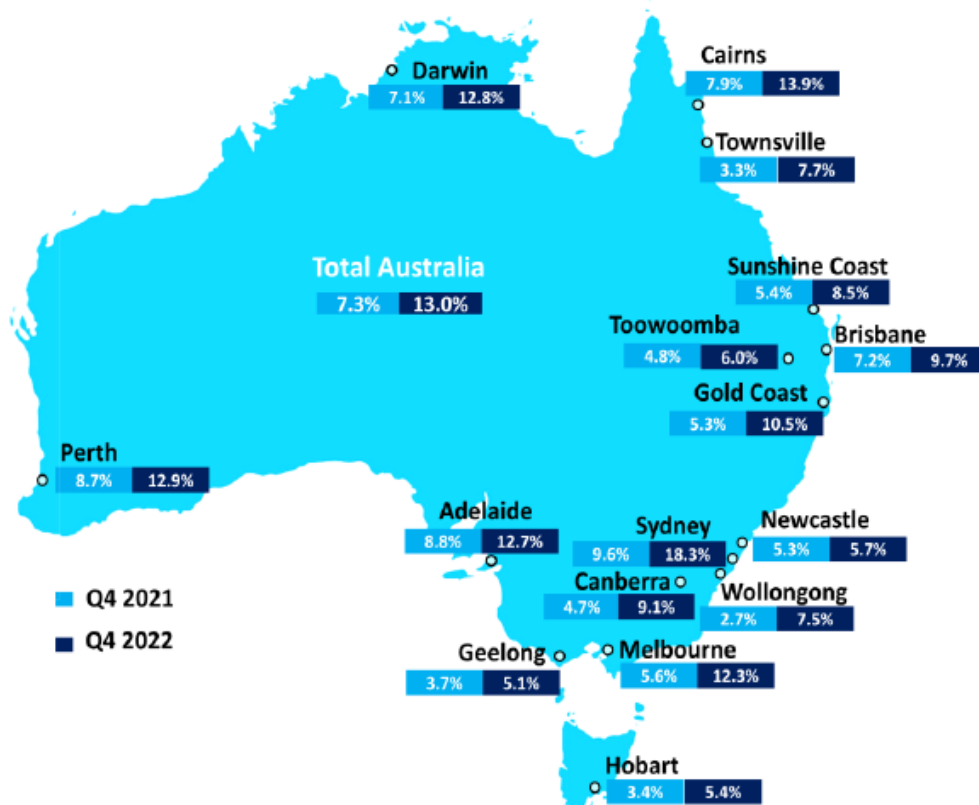
²⁴ Ibid

²⁵ Ibid

²⁶ Ibid.

b) The national scale of the illicit tobacco problem across Australia

The importation, distribution, sale and consumption of illicit tobacco is part of a mature sophisticated crime-driven ecosystem operating across all states and territories. In a recently conducted ‘Empty Discarded Pack Survey’, which is a national collection survey of discarded tobacco packaging, ‘non-domestic incidence’ (illicit) was found to be ubiquitous across Australia. This is represented in **Figure 5 below**.²⁷



c) The impact of illicit tobacco on the Australian community

An unchecked illicit tobacco market harms the community in multiple ways. Because illicit tobacco is sold without tobacco excise or GST, it can be sold at a much lower price than regulated and taxed tobacco products. Even at significantly lower sale prices, illicit products can generate higher margins and profits. The demand for illicit tobacco is met by organised crime, who bring harm into the communities in which they operate, and are rarely held accountable for what is a highly profitable illegal industry.

Illicit tobacco is a scourge to the community, presenting a range of challenges as outlined below.

Economic damage to the law-abiding small business community

- Illicit tobacco unfairly disadvantages legal Australian businesses, small and independent operators, who are doing the right thing by participating exclusively in the legal market and paying their taxes.

²⁷ Ibid

These legal operators, either through coercion or intimidation, are driven out of business by the criminals who run the illicit tobacco trade.²⁸

- In March 2023, the NSW Small Business Commissioner wrote an opinion piece commenting that “*if legitimate retailers of legal tobacco products are put out of business it is likely we will see additional sales of the illegal, unregulated and untaxed alternative. It is time to get serious about stamping out the sale of illicit tobacco in NSW as existing strategies are not working. A lack of enforcement is aiding illegal activity and punishing law abiding small business*”.²⁹

Criminal intimidation in the community and arson attacks on small business

- Small businesses are increasingly facing criminal intimidation and standover tactics, especially in localities where the illicit tobacco trade is most profitable. Criminal gangs are enlisting or coercing retailers into selling illegal products, who soon find themselves inescapably involved in a criminal supply chain, and the consequences that follow³⁰. State and territory law enforcement, through lack of resourcing and jurisdictional confusion, are struggling to make any appreciable impact on the illicit market.
- The flagrant criminality of the illicit tobacco trade has recently become even more worrisome and apparent to the community, partly due to the constant stream of arson attacks on tobacco shops. Because the illicit tobacco trade is so lucrative and so poorly enforced, it has attracted a criminal competitive market, which is now embroiled in turf wars amongst one another to control market share, prices and profit. This tension has invariably led to disputes and violence between the major criminal players, which are increasingly being settled by commissioning arson attacks on rival illicit tobacco retailers.³¹ Arson attacks are also used for coercive purposes, where law-abiding retailers are retaliated against for not agreeing to sell illicit products or for refusing an instruction to close. Since March 2023, Australia wide, there have been almost two dozen separate arson attacks on tobacco retailers.³² The overwhelming majority of these have been in Queensland and Victoria, where the latter still lacks a tobacco licensing scheme and the former having yet to implement one.

The proceeds of illicit tobacco contribute to a wider criminal ecosystem and even more serious crime

- Illicit tobacco is not a victimless crime. It is considered a low-risk and high-reward activity for organised criminals. What is often underappreciated is the fact that it provides a rich funding source for more serious criminal activity. This includes illegal narcotics, firearms, criminal gang activity and in some instances, money laundering to finance trafficking.³³ Illicit tobacco is an entrenched feeder source into the organised crime ecosystem, which is an ongoing and serious threat to community safety.³⁴

²⁸ [Townsville Bulletin, Illicit tobacco shops outnumber legal retailers in Qld, Townsville tobacconist says, 12 April 2023](#)

²⁹ [NSW Government, Small Business Commissioner, Opinion: Time to get serious about sale of illegal tobacco, 2 March 2023](#)

³⁰ [Daily Mail, Terrified tobacconists in the crosshairs of feared vape gangs who demand small business owners sell them their shops, as cops admit they are powerless to stop the intimidation, 26 March 2023](#)

³¹ [ABC News, Police target ‘main players’ in illegal tobacco trade as Melbourne shop goes up in flames, 21 September 2023](#)

³² [Herald Sun, Crime syndicates turn up heat to force tobacco shops to shut, 2 October 2023](#)

³³ [Channel 9, The illegal trade funding human trafficking and terrorism](#)

³⁴ [Australian Strategic Policy Institute, Cheap cigarettes could be funding terrorism, 11 November 2020](#)

- Organised criminal syndicates are becoming increasingly flagrant in their disregard for the law and this rise in confidence is supported through failed policy in two ways. Firstly, a decade of aggressive tax increases and ineffective policy settings helped position illicit products as cheaper and more attractive options to cost sensitive and low-income consumers. Secondly, and simply, illegal operators can succeed in the black market because they can get away with breaking the law. Enforcement of any law is intended to act as a deterrent to existing and prospective criminals. However, with illicit tobacco, this objective is failing. Those involved in the illicit tobacco trade know there is a low risk of detection and an even lower risk of a meaningful penalty.
- Australian Border Force Commander Raef McDonough has recently highlighted the urgency of this problem, *“Criminal syndicates are extremely sophisticated and have the ability to adapt and diversify their business model in attempts to ensure the continuous supply of illicit tobacco. Illicit tobacco profits are often linked to drug trafficking and money laundering, further lining the pockets of criminal syndicates while our communities struggle through cost-of-living pressures”*.³⁵

Illegal vapes are a risk to those who consume them

- Another objective of the proposed legislation is to *“address the health risks posed by vaping”* and while this a welcome addition, it requires a more consistent approach to enforcement. It is estimated that there are approximately 2 million users of nicotine vaping products in Australia today³⁶, which represents a fourfold increase over three years³⁷.
- In a recently conducted independent survey, almost half of all respondents (aged between 15 and 30) were confirmed as being current users or former users of vaping products. Illegally supplied disposable devices were the most popular, being used by 60% of respondents, with this being especially high amongst younger users. 80% of 15–21-year-olds used disposable devices as compared to 40% of 22–30-year-olds.³⁸ Considering the only legal mechanism for accessing nicotine vaping products in Australia is via a doctor’s prescription, it is clear that the overwhelming majority of products supplied in Australia come via the illegal black market.
- Illegal disposal vaping products are being supplied to children and young adults with little to no transparency or quality control over their ingredients or nicotine content. Illicit suppliers circumvent the law through inaccurate product labelling, omitting, or misrepresenting the presence or concentration of nicotine, or the use of prohibited ingredients. The community cannot be assured of the safety or ingredients in these products because regulators have failed to keep up with the volume of products arriving in Australia. To date, seizures of illicit vaping products represent a small fraction of what is estimated to be smuggled into Australia.
- The Federal Government in its 2023/24 Budget missed an opportunity to address the issue of illicit vaping. Despite the more than 90 million illegal vapes flooding our shores, the Government did not provision a meaningful increase in resourcing or a genuine enforcement plan to tackle the issue, leaving it to parents and schools to police what should be a priority of law enforcement.³⁹

³⁵ [Nine News, Delivery drivers arrested in multimillion-dollar tobacco bust, 11 September 2023](#)

³⁶ [Vaping without a prescription won’t be allowed, says Health Minister Mark Butler \(smh.com.au\)](#)

³⁷ National Drug Strategy Household Survey 2019

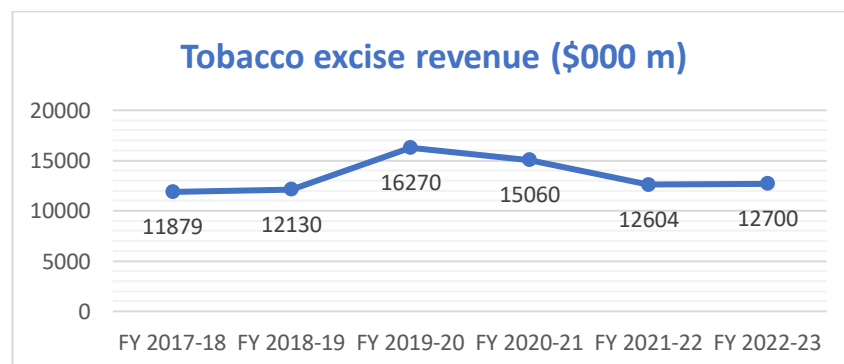
³⁸ Ibid

³⁹ [Australian Association of Convenient Stores, Over 90 million illicit vapes and not a single dollar for enforcement: Health Minister’s incompetence exposed, 10 May 2023](#)

The loss of tax revenue from illicit tobacco harms government revenues and policy initiatives

- The potential excise tax and GST value lost to the Australian Government is approximately \$4.2 billion and \$400 million respectively.⁴⁰ The 2023/24 Federal Budget announced annual tobacco excise increases by 5% each year over the next three years. Excise tax increases are intended to make tobacco less affordable and therefore less attractive. However, this approach has become counterproductive. Aggressive tobacco tax policy has created the market conditions for an untaxed illicit tobacco market.
- This is now a significant drain on excise collection, with successive revenue write downs in the billions of dollars ⁴¹. The recently announced excise increases will do little more than mask the structural decline in tobacco excise through the growth of the illicit market.
- In the 2019-20 Pre-election Economic and Fiscal Outlook, tobacco excise collection in the 2022-23 financial year was forecast to be \$16.96 billion⁴². Its most recent revision at the 2023-24 Budget was \$12.7 billion – a write-down of \$4.26 billion in just three years⁴³.
- ATO data reported that the tobacco excise gross tax gap increased from \$655 million in 2015–16 to \$3.98 billion in 2019–20 ⁴⁴.
- There is a clear correlative relationship between the past decade of aggressive excise increases and the growth of the illicit tobacco market. Although excise increases are intended to discourage smokers and reduce smoking prevalence, they are punitive and operate counterproductively, driving price-sensitive consumers to cheaper untaxed alternatives. Compounded by the current inflationary and cost-of-living pressures, illegal operators are incentivised to flood the market with cheaper products.

The figure below clearly illustrates the current downward trajectory of tobacco excise revenue collected by Government. Tobacco excise has decreased from \$16.2 billion in FY 19-20 to an estimated \$12.7B in FY22-23. **This is represented in Figure 6 below.**



⁴⁰ [FTI Consulting, Illicit Tobacco in Australia 2022 Full Year Report, Published 18 May 2023](#)

⁴¹ [The Australian, Retailers warn of \\$5bn budget loss from illicit tobacco sales and an explosion in vaping, 10 April 2023](#)

⁴² PEFO 2019-20

⁴³ Budget 2023-24

⁴⁴ [Australian Taxation Office, Table 1: Tobacco tax gap 2015-16 to 2020-21](#)

Illegal products are untested, unknown and harmful to consumers above and beyond the harms of smoking

- Illegal tobacco products are harmful to consumers beyond the known risks of compliant tobacco products. Illegal products are not delivered to the market via a regulated supply chain, and as such, are not subject to the rigorous safety, testing and quality controls that legal products are. Over twenty years ago, in December 2000, Philip Morris Australia voluntarily signed an agreement with the Australian Government for the “*Disclosure of the Ingredients of Cigarettes*”.⁴⁵ Every year since, PML provides an annual list of its cigarette ingredients to the Government. There is no such commitment to transparency and reporting by illegal operators.
- Products manufactured by legal entities are also required to comply with various packaging and labelling laws, which are openly flouted by the illicit market. which The community has no awareness as to what is in products such as ‘chop chop’ and no ability to make an informed decision about what they are consuming.⁴⁶ In Australian Border Force seizures of illicit tobacco, they have “*detected poisons such as formaldehyde and found rat faeces inside illicit tobacco*”.⁴⁷

3. More legislation without enforcement will drive further growth in the illicit tobacco market

a) The objectives of Measure 4 in the Impact Statement will not be effective without enforcement

PML supports the intent of Measure 4 of the Impact Statement – *Improve coverage, enforcement and compliance for tobacco control*.⁴⁸ We recognise that there is some appetite from the Department to refine its framework of investigative powers and penalties that are intended to deliver stronger compliance.

Legislative powers have been expanded to include provisions for greater penalties, infringement notices, and the ability to repossess products for analysis and testing. However, there is a significant risk that without a measurable plan of enforcement activity, these provisions will remain dormant elements of the new consolidated legislation. Measure 4 references that “*providing Authorised Officers with the powers to conduct inspections of a retail premise that is open to the public without having to seek the consent of the site operator will increase the ability of Authorised Officers to detect tobacco products that do not comply with the legislation*”.⁴⁹

These powers are a welcome addition to the proposed legislation and should be complemented by a transparent reporting mechanism. The Department should also review and refresh its 2018 Enforcement Policy in the context of this new legislation and be required to undertake and catalogue enforcement activity in accordance with the enhanced risk profile.

b) Those breaching the new legislation must be held to account

The Impact Statement makes the following assertion with respect to compliance and enforcement under the Plain Packaging Act.

⁴⁵ [Department of Health and Aged Care, Voluntary agreement for the disclosure of the ingredients of cigarettes, 20 December 2000](#)

⁴⁶ [Metro UK, Fake cigarettes contain insects, faeces, dangerous toxins, tobacco boss warns, 27 August 2018](#)

⁴⁷ [House of Representatives, Customs Amendment: immediate destruction of illicit tobacco Bill, 2019](#)

⁴⁸ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

⁴⁹ Ibid

“Compliance with the TPP Act and TPP Regulations is generally high amongst regulated, excise-paid products. However, compliance with the ‘tobacco product requirements’ of the TPP Act is much lower in black-market products”.

*“Most outcomes in tobacco plain packaging matters include providing education and issuing notices of alleged non-compliance and warning letters”.*⁵⁰

This assessment should be troubling to the Committee as it is inconsistent with the evidence presented above on the current scale and pervasiveness of illicit tobacco in Australia. It should be concerning that in a market in which almost one in four products is illegal, the majority of TPP Act violations have been concluded through *“providing education and issuing notices of alleged non-compliance and warning letters”* – as per the Department’s Impact Statement.⁵¹

The Department’s own *Tobacco Plain Packaging Act Enforcement Policy* of May 2018, developed to support the Plain Packaging Act, is worth examination at this point. It provides that the Department:

Will refer an alleged contravention to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution where there is sufficient prima facie evidence that an offence has been committed and one or more of the following applies:

- *public interest considerations support prosecution action;*
- *other enforcement options are not appropriate, or have been employed but proved ineffective;*
- *the alleged contravention is of such significance that a strong disincentive to potential offenders is warranted, and prosecution is considered to be an appropriate enforcement action;*
- *the compliance history of the non-compliant manufacturer or supplier demonstrates a high risk of ongoing or future non-compliance.*⁵²

The Enforcement Policy also clearly stipulates that one of the reasons the Department is *“more likely to proceed to high-level enforcement action”* is *“in circumstances where the conduct is brazen, reckless and /or clearly not in line with the intention of the relevant legislation”*. This Policy then categorises its Tier 1 (High Risk) enforcement options as civil prosecution, criminal prosecution, infringement notice and injunction.⁵³ Beyond tobacco seizures at the border, the Australian Taxation Office in 2021-2022 seized and destroyed 110,349 kilos of illegal tobacco. It simply cannot be the case that with such high volumes infiltrating the community, the conduct of criminals is not categorised as brazen or reckless.⁵⁴

Despite this, it is alarming that the Department cannot point to any enforcement action under the Plain Packaging Act during recent periods. At the 2022-23 Supplementary Budget Estimates (Community Affairs), on Notice, the Department was asked:

- *“In its report to the Legal and Constitutional Affairs Legislation Committee on 13 February, the Australian Border Force stated that from July 2022 to 31 December 2022, the ABF detected and seized 62,900 consignments of illicit tobacco, including 823 million cigarette sticks and 355 tonnes*

⁵⁰ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

⁵¹ Ibid

⁵² [Department of Health and Aged Care, Tobacco Control Enforcement Policy, May 2018](#)

⁵³ Ibid

⁵⁴ [Daily Telegraph, Sydney black market cigarettes cost economy billions of dollars, 10 June, 2023](#)

of loose-leaf tobacco. Given that almost all illicit cigarettes sold in Australia are in packaging not compliant with the Tobacco Plain Packaging Act, how many prosecutions have been initiated by the Department of Health against individuals or organisations prosecuted by other agencies for importing or selling illicit cigarettes”?

- The Department answered: “*The Department of Health and Aged Care (the department) has not initiated prosecutions against individuals or organisations for the import or sale of illicit tobacco. The department administers the Tobacco Plain Packaging Act 2011 (the TPP Act). The TPP Act is not an illicit tobacco enforcement regime*”.⁵⁵

The Department cannot afford to continue in its lax approach to enforcement and prosecutions under this new legislation. There is too much volume of illicit products and too many sophisticated criminals operating in tandem for our border forces, customs agencies and the police to mitigate the challenges on their own.⁵⁶ The Department must be held accountable to deliver a renewed enforcement policy in support of the new legislation and it must be held accountable to actual prosecution outcomes.

In the absence of this, the Department risks continuing along a track record of failure in meeting the objectives of the current Plain Packaging Act, or indeed the new consolidated Bill. A poor track record of enforcement will continue to impede the success of the current Plain Packaging laws and undermine confidence in the Government’s new reform package. This approach also entrenches unequal treatment towards law abiding participants in the industry, including manufacturers, importers, and retailers, who undertake considerable effort and investment in complying with the law.⁵⁷

An admission from the Department that “illicit tobacco enforcement is a law enforcement responsibility” invites consideration by the Committee about whether the Department is the appropriate body to have carriage of this legislation and its enforcement.

4. Certain elements of the Bill are impractical as proposed

a) Product naming conventions assist adult tobacco users to distinguish between legal and illegal tobacco products

Chapter 3 of the Bill: ‘Product Regulation and standardisation’ provides the following commentary as a supporting rationale for the proposed regulations (released as part of the Exposure Draft)

- *The attractiveness and appeal of tobacco products is strongly associated with their physical characteristics and design features.*
- *Product design features, such as crush balls/capsules (which add a flavour or substance to a tobacco product when crushed by the user) and novel cigarette filters make products more attractive to current smokers and attract new users.*
- *This measure aims to reduce the attractiveness of tobacco products by regulating product design features that may enhance novelty or appeal.*
- *Under “Brand and variant name use”, it is asserted that brand and variant names that create the false impression that a tobacco product is less harmful than others will be restricted. This measure aims to reduce the ability of packaging to mislead consumers about the harmful effects of smoking. This will target descriptors and specific terms which falsely imply reduced harm.*⁵⁸

⁵⁵ Community Affairs Committee, Health and Aged Care Portfolio, Question on Notice 370

⁵⁶ [The Canberra Times, ABF raids 11 properties in Queensland and NSW to bust illegal tobacco syndicate, 11 August, 2023](#)

⁵⁷ [Australian Financial Review, Illegal tobacco, rising cigarette prices dent supermarket profits, 21 August, 2023](#)

⁵⁸ [Department of Health & Aged Care, Public Health \(Tobacco and Other Products\) Bill 2023](#)

The Bill and Regulations (from the Exposure Draft) then provide an exhaustive list of prohibited terms, names and banned ingredients that cannot feature in tobacco products.⁵⁹

It is a flawed characterisation that all brand names and variants are ‘adding novelty and appeal’ or are ‘misleading’ or the ‘attractiveness and appeal’ of products is associated with design features.

Types, variations and brand names are all important informational components of the designation and naming conventions within a legal, regulated and taxed market. Product variations and types disseminate information to consumers to help them differentiate between products and make an informed choice about what they are purchasing. Similarly, brand naming conventions with textual colour and variant descriptors help customers navigate across product ranges.

On the above basis, PML strongly disagrees, that as it relates to its portfolio, naming conventions on brand names, types and variants are misleading. The regulated tobacco market, not unlike other consumer goods markets, is a competitive industry with multiple organisations offering multiple products under different assortments, sizes, types and variations. In such a market (like any legal market), consumers must retain the ability to navigate between products and make an informed choice according to their own product preferences and affordability.

Meanwhile there are multiple brands and formats being sold illegally in thousands of stores nationally, including sales to youth, without any enforcement. In almost all cases, these products are not compliant with the TPP Act.

b) Specific product bans will give a competitive advantage to the illicit black market

Several of the proposed Chapter 3 provisions of the Bill as they relate to menthol and crush ball products will inevitably divert consumers of those products to the illicit market.

The Committee should investigate whether the removal of certain product categories will have the effect of diverting consumers of those products to the illicit market, which presently constitutes one quarter ‘of tobacco consumption in Australia.

Blanket bans on the availability and access to tobacco products will not be effective on their own, especially when a sophisticated black market stands ready to fill any gaps in the market.

c) Standard pack sizes of 20’s brings Australia into line with global approach

The Bill introduces mechanisms to limit pack sizes for factory made cigarettes to 20 sticks. We note this would largely bring Australia into line with the majority of other comparable countries in the world.

d) Prohibited ingredients categories are too broad

The proposed Bill prohibits the use of certain ingredients and ingredient categories in tobacco products, which have not been articulated as we await the release of the proposed Regulations. Notably though, Measure 6 under the preferred regulatory option (Option 3) seeks to “*prohibit a specific list of additives that increase palatability (flavours and sweeteners), have colouring properties, create the impression of health benefits, or health effects (for example health boosters)*”.

To ensure the effective implementation of the Government’s policy intention, while avoiding unintended consequences, certain adjustments ought to be considered to the proposed regulatory approach. This is on

⁵⁹ Ibid, Section 72

the basis that prohibiting entire ingredient list categories is an overzealous approach for two reasons. One, various ingredients are intrinsic to tobacco manufacturing and have no impact on the palatability of tobacco. Secondly, there are trace quantities of several ingredient types naturally occurring in tobacco, detectable only in extremely immaterial quantities.

Allowing for the restitution of ingredients lost during the curing (drying) process is one aspect that requires attention. Following the harvesting of the tobacco leaves, they must be cured before being sorted, packed, and processed. Curing refers to the drying of tobacco leaves and significantly impacts the final quality and characteristics of the tobacco. Depending on the curing method and type of tobacco used, naturally occurring sugars in the tobacco leaf are lost during the curing process.

To address this issue, it is advisable to permit the reintroduction of sugars lost during curing. Several jurisdictions worldwide recognise this need. The European Union Tobacco Products Directive prohibits characterising flavors but explicitly states that “the use of additives necessary for the manufacture of tobacco products, for example sugar to replace sugar that is lost during the curing process, should be allowed.”⁶⁰ Similarly, Brazil has banned the use of flavours and additives in tobacco products but allows for the restitution of sugars lost in the curing process, as stated in Article 7 of RDC 14/2012.⁶¹

The Bill could adopt a similar approach, acknowledging the realities of the manufacturing process without compromising its regulatory objectives. Another issue that should be addressed is the use of ingredients that perform the role of casing, as distinct from flavouring. These include carob bean and/or extract, cocoa and cocoa products, licorice extract, sugar: invert sugar, sugar: sucrose and should be added to the permitted ingredients list, when the draft Regulations are publicly released.

e) Health promotion inserts packaging requirements are problematic as proposed

The Bill requires that retail packaging must include health promotion inserts. The Draft Regulations (released as part of the Exposure Draft package) indicate the likely requirements of these inserts.

Regulations should make allowance for the complexities of the product manufacturing process. Tobacco products are manufactured largely through automated factory processes in which multiple inputs and materials are integrated at scale via a sophisticated assembly line. Like with any FMCG product, tobacco manufacturing follows a staged process in which different machinery is utilised to complete the different components of product assembly. The different elements of manufacturing do not follow a linear process and often occur at different stages.

This context is important to properly illustrate the impracticality of the draft legislation. The Bill proposes that health promotion inserts *‘in each HPI series are to be included in the retail packaging of tobacco products as nearly as possible in equal numbers’*. The Bill also provides that each unit of primary packaging in secondary packaging of tobacco products for which there is a HPI series, *must ‘include a different health promotion insert in the series’*. The draft Regulations then provides that if there are more primary packages in secondary packaging than there are health promotion inserts, the units of primary packaging *‘must include the health promotion inserts in the series as equally as possible’*.⁶²

⁶⁰ [Official Journal of the European Union, Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing directive 2001/37/EC](#)

⁶¹ [Article 7 of RDC 14/2012, Brazil](#)

⁶² [Department of Health & Aged Care, Public Health \(Tobacco and Other Products\) Bill 2023](#)

An example is then provided *“If there are 100 pouches of loose processed tobacco in the secondary packaging, the HPI series for that tobacco product must be included 10 times”*.⁶³

From a product manufacturing standpoint, this is an unnecessarily complex requirement. The primary packaging of each individual tobacco product occurs in a very different way and under a different supply chain to the secondary packaging of separate primary products. Moreover, various elements are highly automated and occur in different stages, at different times and often at different locations.

Regulations must be practical and cognisant of industry capacity and capability.

5. The Bill’s Reporting and Disclosure requirements ignore the illicit tobacco market

a) The Bill seeks to measure the regulated market but does not seek to measure the unregulated market

The Bill, as currently drafted, will not achieve its objective of building an evidence base around the totality of tobacco consumption in Australia. The Chapter 5 provisions of the Bill require entities to submit data on product ingredients, tobacco product volumes and marketing and promotional expenditure. However, as canvassed through this submission, these requirements will not capture the one quarter of tobacco products being sold and consumed through the illicit market.

The Impact Statement outlines the rationale for measure 10B (which requires mandatory disclosures of information) that *‘the reporting requirement will ensure there is information available that relates to the size of the market, including information about how much of each kind of tobacco product is imported, the total amount sold or supplied as well as information about such things as sales revenue’*.⁶⁴ The illicit component of the overall market is now undeniably significant. If the intent of this requirement is to understand the totality of the tobacco market in Australia, it cannot be blind to the illicit tobacco market.

The Chapter 5 provisions risk a further bifurcation of the regulated and unregulated markets, and will do nothing to expose illicit tobacco consumption at a population level.

Regulated manufacturers will be required to submit reporting to the Government, while the role of unregulated manufacturers and criminal organisations in the illicit tobacco market will not be accounted for.

On current estimates, over 60% of illicit tobacco is ‘unbranded tobacco’, which includes illegal loose-leaf tobacco, commonly known as ‘chop chop’. This product is farmed, cultivated and manufactured for human consumption entirely via an unregulated and unsupervised supply chain.⁶⁵ There is no accountability across product safety, integrity or quality standards, manufacturing processes, packaging or labeling, and labour conditions. Consumers of illicit tobacco are put at risk by products that have no quality assurance or control in their cultivation and manufacturing processes, and often contain undisclosed biological and chemical contaminants.⁶⁶

⁶³ Ibid

⁶⁴ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

⁶⁵ [FTI Consulting, Illicit Tobacco in Australia 2022 Full Year Report, Published 18 May 2023](#)

⁶⁶ [Daily Mail, Fake cigarettes containing human excrement, arsenic and dead flies flooding the UK | Daily Mail Online](#)

6. The Bill must set clearer parameters for disclosures of information for the protection of confidential information

a) The legislation should more clearly define the parameters of disclosable information

Many of the Chapter 5 provisions around reporting information and disclosure do not properly balance the risks to intellectual property or commercially sensitive data. They are also potentially duplicating existing legislative frameworks and agreements in place, through which product information is already provided to Government.⁶⁷

The Impact Statement has stated that *‘collected data will help identify emerging trends on new and novel tobacco advertising, promotion and sponsorship activities, which undermine the existing tobacco control framework. Publication of these reports will also support consumers to understand where marketing and promotional expenditure is directed’*.⁶⁸

All private enterprises that operate in a free-market economy should be concerned about the precedent set by the Chapter 5 provisions. ‘Sensitive’ information, from a commercial standpoint, is a broad category and can potentially encompass all manner of information that is not in the public domain. The language around disclosure must be more precise. The legislation should provide confidence and certainty to the private sector that the types of information required to be disclosed to government, and the manner of disclosure, is contained to specific purposes and circumstances.

b) PML is particularly concerned with the following provisions proposed in Chapter 5:

- *Publication and disclosure* – Section 145 stipulates that (1) the Minister **must** publish, in such manner as the Minister considers appropriate, each report given by a reporting entity under Division 1 (pertaining to tobacco product volumes, ingredients, marketing and promotional expenditure). The Minister may decide not to publish a report, or part of a report, having regard to the matters (if any) prescribed by the regulations made for the purposes of this subsection.⁶⁹
- *Disclosure for research, policy development or data analysis* – Section 146 provides that (1) the Secretary may disclose to another person or body information mentioned in S145(1) for the purposes of the person or body undertaking research, policy development or data analysis to assist the Department with the (a) administration of this Act or (b) achieving one or more objectives of the Act. (2) provides that reported information may only be disclosed to a person who is employed or engaged by the Commonwealth or by a Commonwealth entity or is a Commonwealth entity.
- *Disclosure to third parties*: Section 146(2)(c) provides that information may be disclosed to another person or body that is not a Commonwealth entity employee or a Commonwealth entity where that person has undertaken not to use or further disclose the reporting information in accordance with a written agreement.

⁶⁷ [Department of Health and Aged Care, Voluntary agreement for the disclosure of the ingredients of cigarettes, 20 December 2000](#)

⁶⁸ [Department of Health and Aged Care, Review of Tobacco Control Legislative Framework Impact Analysis, September 2023](#)

⁶⁹ [Parliament of the Commonwealth of Australia, Public Health \(Tobacco and Other Products\) Bill 2023, September 2023](#)

c) In consideration of the above Chapter 5 provisions, PML expresses concern with the following issues:

- Section 145(1) requires the mandatory disclosure of ‘reported information’ unless the Minister decides not to disclose subject to s145(2) or if the Minister is prohibited from doing so under s145(3). We recognise that s145(3) prohibits the disclosure of ‘reported information’ if it is a ‘trade secret’ or any ‘other information of the reporting entity that has a commercial value that would be, or could reasonably be expected to be, destroyed if the reported information were publicly disclosed’.
- However, the determination of whether ‘reported information’ satisfies one of these criteria should not be subject to the Minister’s discretion alone. There should be an objective test to determine the sensitivity and commercial value of the ‘reported information’, and a process that invites submissions from its owner of the ‘reported information’ about why or why not the ‘reported information’ should be disclosed. This process should be set out in the Regulations.
- Section 146(2) provides that any person or body can access sensitive and private industry information through written agreement with the Department. There is no guidance or information provided as to the enforceability of the written agreement, requirements around data security, and the type of reported information that can be disclosed. Again, ‘reported information’ that is a ‘trade secret’ or ‘other information of the reporting entity that has a commercial value that would be, or could reasonably be expected to be, destroyed if the reported information were publicly disclosed’ should not be disclosed or agreed to be disclosed without consulting the owner of the ‘reported information.’ Stringent data use and security requirements must be set out in the agreement, not less than those required by the owner of the reported information under their own data security policies.
- Section 147 provides a mechanism for publicly disclosing a reporting entity that has failed to comply with this Chapter. However, the Bill does not provide any mechanism for penalising entities or persons who misuse or improperly disclose ‘reported information’. Given that Section 145(3) contemplates the ‘destruction’ of improperly reported information, the Bill must set out a remedy for cases where this may happen.

7. The Transitional Period is insufficient for industry, retailers and law enforcement agencies

a) The proposed transitional period jeopardise law enforcement’s preparedness to deal with illicit

The scale, size and sophistication of Australia’s illicit market requires an equally sophisticated and organised response from the law enforcement community, backed by meaningful resourcing.

If, as expected, the current growth trajectory of illicit tobacco continues unabated, its market share is likely to exceed one in three products before the next federal election. Of the factors contributing to this is an annual 5% excise tax increase (above wage growth) over the next three years, the first of which commenced on 1 September 2023. The open turf wars now being waged for control of the illicit tobacco market - most prominent in Queensland and Victoria - demonstrates the urgency to act⁷⁰

⁷⁰ [The Age, Shop torched in another suspected tit-for-tat gang arson attack, 6 September, 2023](#)

Already operating within a sophisticated transnational supply chain, the illicit tobacco market will not hesitate to fill any market gaps created by poorly conceived legislation.

Jurisdictional responsibility for illicit tobacco is already complex, with multiple agencies at a federal and state level involved. Those involved in the illicit tobacco market are highly organised and motivated and are becoming increasingly agile in their avoidance of detection and sophistication of supply chains.

Border and law enforcement agencies cannot be expected to make an appreciable difference in the fight against illicit tobacco unless they are properly resourced and supported with laws that give them the agility to outmaneuver organised crime.

The Bill, in its totality, is a very significant legislative package and will require extensive planning, training and operational adjustments by all agencies involved.

The Australian Border Force has already said it will require an “uplift in capability and capacity” to expand its involvement in the detection and seizure of nicotine vaping products, on top of its responsibilities in illicit tobacco.⁷¹ The ABF stated in evidence at Budget Estimates:

“Prohibition [of] goods at the border, in itself, is unlikely to solve a problem.”⁷²

Similarly, we would submit that these significant reforms in tobacco will require time, planning and additional resourcing.

Beyond this, state and territory police forces are now monitoring and detecting more illicit tobacco-related criminal activity than ever before. Whereas criminal activity has historically been secondary and supported by illicit tobacco (narcotics, illegal arms, human trafficking and terrorism financing), law enforcement is now observing direct criminal activity associated with the illicit tobacco trade. Arsons and violent crimes are becoming increasingly commonplace⁷³. State and territory police forces, who are already overstretched and understaffed, must be supported with increased funding and powers, as well as Commonwealth-led coordination and intelligence sharing.

The Committee should consider whether the Bill’s transitional period is sufficient for border and law enforcement agencies, who inevitably will be left to undertake the majority of enforcement action.

The Impact Statement provides that “the Department will publish guidance materials of the new legislative requirements that clearly identify the changes which have been made, and their implications for various stakeholder groups. A resource page will be developed on the Department’s website to support industry and consumers to ensure they are informed of the changes and to support compliance with the reforms”.

Respectfully, guidance materials do not adequately prepare those at the frontline in the fight against illicit tobacco. What they require is more funding and lead time commensurate to the complexity of the reforms and the consequences that may follow in the illicit tobacco market.

⁷¹ [The Australian, Federal Budget 2023: Scourge of vaping loses out on bulk of tobacco hike, 10 May, 2023](#)

⁷² Legal and Constitutional Affairs Committee, Budget Estimates, 23 May 2023

⁷³ [Herald Sun, Mohammed Keshtiar linked to senior bokie figure, involved in the illicit tobacco trade, August 6, 2023](#)

b) The proposed transitional period is insufficient

The Consequential Amendments and Transitional Provisions Bill defines the ‘main transition period’ to be 12 months⁷⁴, effectively the manufacturers’ transition period. Separately, there is a three month ‘retailer transition period’⁷⁵, which is the sell-through period of stock manufactured prior to the ‘main transition period.’

The Impact Statement recognises that for tobacco manufacturers, the ‘phase-in period would have a number of implications’. Beyond what may have been considered, these implications cannot be understated; they are highly complex and require adjustments to a carefully calibrated supply chain and manufacturing process.

The Canadian Government has embarked on similar changes to the packaging and preparation of tobacco products. These changes were published in the Canada Gazette Part II on 7 June 2023 and took effect on 1 August 2023. They provided a manufacturer compliance deadline of 31 January 2025 for regular size cigarettes, and a retailer compliance deadline of 30 April 2025.

Noting Canada’s changes were a less significant reform package – they had already banned menthol cigarettes – they provided 18 months for manufacturers and an additional three months for retailers.

In light of the magnitude and scale of changes required in the manufacturing and supply chain adjustments, we strongly urge that the transition period be extended to match or exceed Canada’s. We therefore respectfully submit that a minimum 18-month manufacturer transition period from the date the Bill is assented should be considered to ensure the success of the Bill.

[END]

⁷⁴ [Department of Health & Aged Care, Public Health \(Tobacco and Other Products\) \(Consequential Amendments and Transitional Provisions\) Bill 2023](#)

⁷⁵ Ibid