

Kathryn Bannon
Acting Deputy Secretary, Integrity, Regulation and Legal Services
Department of Justice and Community Safety
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000

18 March 2025

Dear Ms Bannon,

REGULATORY IMPACT STATEMENT FOR THE TOBACCO AMENDMENT (RETAILER AND WHOLESALE LICENSING SCHEME) REGULATIONS 2025

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Tobacco Amendment (Retailer and Wholesaler Licensing Scheme) Regulations 2025 (the proposed Regulations).

The Commissioner for Better Regulation is required to provide independent advice on the adequacy of RISs in accordance with the Subordinate Legislation Act 1994 Guidelines (the Guidelines). However, as the office of the Commissioner for Better Regulation is currently vacant, the Secretary to the Department of Treasury and Finance (or their delegate) is responsible for providing independent advice on the adequacy of RISs, in accordance with the Guidelines. The Secretary has delegated this responsibility to me in my capacity as Deputy Secretary of Economic Division.

A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received on 18 March 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.



Background and problems

In Victoria, the sale and use of tobacco products is governed by the *Tobacco Act 1987* (the Act). The Act prohibits the sale or promotion of certain tobacco and non-tobacco products and establishes offences in relation to the smoking and possession of tobacco. The Tobacco Regulations 2017 (the current Regulations) further outline requirements for the sale and advertising of tobacco in Victoria.

In the RIS, the Department outlines that the Victorian and Commonwealth Governments have taken measures to reduce tobacco consumption, such as excise duty and plain packaging requirements. It explains that these control measures have been undermined by the growing black market for illicit tobacco¹ products in Victoria, estimated to be between 6 to 40 per cent of Victoria's tobacco market, which has resulted in significant health and safety impacts on the community, as outlined below.

Firstly, the Department notes that smoking causes significant health harms and is the leading cause of avoidable disease and death in Australia. Tobacco is addictive and is linked to serious diseases such as cancer, heart conditions and respiratory issues. The Department explains that the proliferation of low-priced illicit tobacco products has undermined public health efforts to reduce tobacco consumption and the associated health impacts to the community.

Secondly, the Department outlines that illicit tobacco is linked to serious and organised crime (SOC). The Department notes that significant profits, the lack of licensing requirements, and insufficient penalties have encouraged the infiltration of SOC into the illicit tobacco market. The Department explains that the "tobacco wars" between organised crime groups has led to significant public concern over violent attacks, as well as costs incurred by emergency services in responding to incidents such as arson attacks. The Department also explains the illicit tobacco market negatively impacts businesses that only sell legal tobacco, as consumers may purchase cheaper illicit tobacco products.

The Department notes that two key inquiries have been conducted in relation to these problems: the former Commissioner for Better Regulation's 2022 Review into Illicit Tobacco, and the 2024 Public Accounts and Estimates Committee Inquiry into Vaping and Tobacco Controls. Findings from these inquiries have informed the *Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Act 2024* (the Amendment Act), which was passed by the Victorian Parliament in November 2024.

¹ Tobacco is considered illicit when it is produced in Australia (as no tobacco production licences are granted in Australia) or imported into the domestic market without customs duty being paid.

The Amendment Act establishes a tobacco business licensing scheme, which brings Victoria in line with other Australian jurisdictions. The scheme will take effect in two stages: businesses will be able to apply for and be granted a licence from 1 July 2025, while the scheme is expected to be fully implemented and enforced no later than 1 July 2026. The Amendment Act provides for the Department to manage the scheme, in collaboration with other entities such as the Department of Health² and Victoria Police. The Amendment Act also provides the regulator with powers to administer and enforce the scheme, and introduces stronger penalties for non-compliance.

The Department explains that amendments to the current Regulations are needed to operationalise the licensing scheme by prescribing licence categories, fees, licence conditions, and information to be included with applications. Without these amendments, the Department argues it would not be able to:

- meaningfully distinguish between different business types
- collect required information to support the identification of risks
- impose standardised conditions to address risks
- recover the costs of administering the scheme.

Options and Analysis

In the RIS, the Department considers options separately for **categories, conditions, application information**, and **fees**. Options are compared against the base case, where the tobacco licensing scheme has no further details or requirements prescribed beyond what is outlined in the Amendment Act.

The Department uses a multi-criteria analysis (MCA) to compare options for each of the options areas. For options relating to categories, conditions and prescribed application information, the Department uses the same MCA criteria and weights, which are:

- the efficient and effective operationalisation of the licensing scheme within timeframes (50 per cent)
- burden on industry (25 per cent)
- burden on Government (25 per cent).

For **categories**, the Department analyses one option (Option 1), which is to prescribe two licence categories (retailer and wholesaler), against the base case of having no prescribed categories. The Department assesses that Option 1 is preferred to the base case because it will enable a more granular understanding of the industry and support a more tailored approach to setting conditions and fees. Prescribing retailer and

² The Department notes it will be responsible for administering the licensing scheme. The Department of Health will remain responsible for the remainder of the Act, and for non-licensing elements of the tobacco regulatory framework such as health promotion and smoking cessation.

wholesaler licence categories also ensures that Victoria's tobacco licensing scheme is consistent with other Australian jurisdictions' licensing schemes.

For prescribing **conditions** on licences, the Department analyses two options:

- Option 1: basic conditions, which include the following requirements:
 - tobacco can only be sold between licenced retailers and wholesalers
 - licensees must keep records of all tobacco product sales for two years
 - licensees must provide high-level records to the regulator annually
- Option 2: advanced conditions, which includes the conditions imposed under Option 1, plus a requirement for retail licensees to not allow persons under the age of 18 to sell tobacco products (effective from 1 January 2027).

The Department explains that both options will make it more difficult to buy and sell illicit tobacco, which is expected to stem the proliferation of illicit tobacco in Victoria. It notes that the record-keeping and reporting requirements will enhance the regulator's ability to monitor the tobacco market, audit tobacco businesses, identify non-compliance, and take enforcement action against non-compliant businesses. The Department estimates the average annual compliance costs of the basic conditions requirements to be \$435 per retailer and \$904 per wholesaler in net present value (NPV) terms, amounting to a 10-year cost to industry of \$43.5 million in NPV terms.

The Department identifies Option 2 as its preferred option for conditions. In addition to the benefits of the basic conditions outlined above, the Department explains that Option 2 will reduce young people's familiarity with tobacco products by banning minors from selling tobacco. The Department assesses that this ban may reduce smoking by young people. It outlines that this condition may impose costs on businesses to alter rostering arrangements or employ older and higher-paid staff, but notes that the longer lead time will enable businesses to make arrangements before this condition comes into effect in 2027. The Department estimates the incremental costs of this ban to be \$3,276 for each under-18 employee that is completely replaced by an older worker, although it notes that it lacks the data to estimate the cost of this condition at an industry-wide level.

For **prescribed information** to be included with an application, the Department analyses one option (Option 1). Under Option 1, applicants will be required to provide comprehensive additional information and documentary evidence, business documents (e.g., Australian Securities and Investment Commission Current Company Extracts) and identity verification documents.

The Department assesses that Option 1 is preferred to the base case because it will enable a better understanding of the industry and its compositional breakdown. The Department considers that the prescribed information requirements will allow the

regulator to identify potential risks posed by applicants and identify characteristics of high-risk businesses. The Department argues that this information could also support enforcement against illicit tobacco, for example in police investigations. In the RIS, the Department estimates the average annual compliance costs of providing the prescribed information to be \$43 per retailer and \$58 per wholesaler in NPV terms, amounting to a 10-year cost to industry of \$425,000 in NPV terms.

For the **fees** component, the Department considers effectiveness, equity and simplicity as its MCA criteria, and equally weights these three criteria at 33 per cent. The Department analyses two options related to application, renewal, transfer and variation fees:

- Option 1: a single flat fee for both retailers and wholesalers
- Option 2: differentiated fees for retailers and wholesalers, with wholesaler fees being double the retailer fee.

The Department identifies Option 1 as its preferred option. A flat fee structure is preferred because the Department argues that there currently is not enough information on the relative risk profiles of wholesalers and retailers to support a differentiated fee structure. The Department also considers that Option 2 would be more complex and inequitable (due to a significantly higher burden on wholesalers) compared to Option 1.

The Department presents a range for the licence fees under Option 1, pending finalisation of the regulatory costs that will need to be recovered through the licensing fees. Under Option 1, fees will range between \$1,100 and \$1,490 in 2026-27³ for licence applications and annual renewals, and between \$220 and \$298 for licence relocations and variations. The Department expects to collect between \$210 million to \$285 million in revenue over 15 years.

The Department acknowledges that Victoria's proposed licence fees will be higher than most other jurisdictions, but notes it is intending to fully recover establishment and ongoing costs over 15 years. It also notes that Victoria's fees will be comparable to existing fees in Tasmania and proposed fees in New South Wales.

In the RIS, the Department acknowledges that the proposed conditions, information requirements and flat licence fees may disproportionately impact smaller businesses. However, it argues that these costs would be mitigated through diverting tobacco sales from non-compliant to compliant businesses and that these licence fees would represent a small proportion of revenue for small businesses. The Department also expects that

³ The Department presents fees in forecast 2026-27 dollar terms as this will be the first full financial year in which fees will be incurred. The Department notes fees will be collected when the scheme comes into effect (expected to be early 2026).

costs incurred by tobacco businesses will be passed onto consumers. The Department outlines that the scheme is expected to disproportionately affect illicit tobacco suppliers, who are predominately small businesses. However, it considers that placing costs on these non-compliant businesses would help achieve the scheme's objectives.

Implementation and Evaluation

The Department explains that businesses will be able to apply for and be granted a tobacco licence from 1 July 2025, however the Department explains that the licensing scheme is not expected to come into full effect until early 2026. The Department also expects that enforcement and compliance action will commence in the first half of 2026. The Department explains it is establishing systems and processes to support the administration of the scheme. To avoid the need for licensees to renew their licence soon after they first apply, the Department explains that the initial licensing period will run for longer than 12 months, expected to be from early 2026 until the end of June 2027.

The Department will also engage with key stakeholders, including tobacco retailers and wholesalers, local councils and enforcement agencies such as Victoria Police, about the requirements under the proposed Regulations. The Department notes this engagement is important to identify potential issues in implementing the scheme, including in relation to compliance and enforcement.

The Department considers evaluation of the proposed Regulations to be critical in meeting its objectives. A legislated review of the scheme after five years of operation is required under the Amendment Act, which is in-line with the mid-term evaluation requirements under the Victorian Guide to Regulation. The Department explains that the current Regulations will sunset in July 2027, which will trigger a review of the Regulations. As such, it notes this sunset review will provide an opportunity to undertake an early evaluation of the elements prescribed in Regulations.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact Better Regulation Victoria on (03) 7005 9772.

Yours sincerely,



Paul Donegan

Deputy Secretary, Economic
Department of Treasury and Finance