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| Regulatory Impact Statement – Tobacco Business Licensing Scheme  To support new Amendment Regulations to the Tobacco Regulations 2017 |

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# Executive summary

## Background

### Introduction of the tobacco business licensing scheme

Following the passage of the *Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Act 2024* (the Amendment Act)toamend the *Tobacco Act 1987* (the Tobacco Act), Victoria is introducing a tobacco business licensing scheme.

Tobacco is a highly addictive substance that is associated with significant health harms. Whilst smoking rates have declined over the last twenty years, it is recognised that more needs to be done to advance these efforts and appropriately control the sale of tobacco products.

The Commonwealth and all State and Territory governments recognise the importance of coordinated efforts to stop illicit tobacco. Victoria Police has reported over 100 arson attacks on businesses since March 2023 that have been linked to illicit tobacco and organised criminal activity. Under the existing Victorian regulatory framework, it can be difficult to identify illicit products and determine their source, which frustrates investigations.

The tobacco business licensing scheme, which will commence in two stages from 1 July 2025, will significantly strengthen the Victorian Government’s powers to enforce compliance with controls on the lawful sale and promotion of tobacco products and deter unlawful conduct in the industry, including:

* prohibiting the retail and wholesale sale of tobacco products by any person who does not have a licence
* safeguarding the suitability of licensed retailers and wholesalers of tobacco products
* minimising and mitigating the risks associated with the sale of tobacco products by enabling the imposition of conditions on licences, and
* providing sufficient powers to enable efficient and effective regulatory oversight.

The Amendment Act also strengthens offences, enforcement and compliance provisions for tobacco products.

The Amendment Act provides for several important features of the scheme to be established in Regulations. These are the subject of this Regulatory Impact Statement (RIS). These features will assist in operationalising the scheme, they are:

* categories of licences
* fees payable for applications under the scheme
* licence conditions, and
* information to be included with applications under the scheme.

### Victorian tobacco industry and the growth of illicit tobacco

DJCS estimates that there are approximately 10,000 tobacco supply premises in Victoria, including supermarkets, grocery stores, convenience stores, mixed businesses, liquor licensed premises, petrol stations, tobacconists, and wholesalers. There is currently limited visibility of the precise breakdown and composition of the industry.

In light of the recent increase in criminal activity associated with illicit tobacco, the introduction of the new tobacco business licensing scheme, and associated penalties for non-compliance, will help to prevent people from selling illicit tobacco, and deter unsuitable applicants from seeking to run a tobacco business.

## Problem identification

There are four central issues contributing to the introduction of the tobacco business licensing scheme:

* Smoking is the leading cause of avoidable disease and death in Australia.
* The growing market for illicit tobacco has been linked to serious and organised crime and is impacting the Victorian community.
* The gaps in Victoria’s current regulatory framework undermine public health efforts to reduce smoking rates.
* The Illicit Tobacco Review conducted by the Commissioner for Better Regulation in 2022 and the Public Accounts and Estimates Committee Inquiry into Vaping and Tobacco Controls in 2024 recommended the establishment of a tobacco business licensing scheme.

The central problem addressed in this RIS is that the tobacco business licensing scheme cannot be effectively operationalised without Regulations addressing the aspects not determined in the Amendment Act.

There are four aspects considered in this RIS.

* **Categories** – The need for categories of licences to support the regulator distinguishing between the operations of retailers and wholesalers of tobacco products.
* **Prescribed fees** – The need for fees for licence applications, variations, transfers, relocations and renewals to support the regulator reasonably recovering the costs of the tobacco business licensing scheme.
* **Licence conditions** – The need for Regulations prescribing licence conditions to allow the regulator’s regulatory oversight and its ability to impose conditions that address specific risks and concerns in the industry.
* **Prescribed information** – The need for prescribed information requirements for applications under the scheme to support the regulator obtaining sufficient and consistent information about the applicant or licensee to gain a better understanding of the industry and inform suitability and risk assessments, compliance strategies and licence conditions.

## Objectives

It is recognised that action must be taken to significantly strengthen regulation and enforcement of laws governing the supply of tobacco to limit the availability of illicit tobacco and punish those who distribute it. The central objectives of the Amendment Act in establishing the tobacco business licensing scheme are to:

* prohibit the retail and wholesale sale (and offering for sale) of tobacco products by any person other than a holder of a licence granted under the Act
* safeguard the suitability of licensed retailers and wholesalers of tobacco products
* minimise and mitigate the risks associated with the sale (and offering for sale) of tobacco products by enabling the imposition of conditions on licences, and
* provide sufficient powers to enable efficient and effective regulatory oversight.

For the purposes of the analysis in this RIS, the objectives outlined above are considered in the following ways:

* efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes
* burden on the industry, and
* burden on government.

The Victorian Government's Pricing for Value principles have been incorporated into the following fee objectives (see Appendix B for further detail on the pricing principles):

* Effectiveness and efficiency
* Equity, and
* Simplicity.

## Options for consideration in this RIS

After considering a range of possible policy responses, a range of options were developed and considered against the base case (i.e. where no Regulations are made) for each of the aspect areas.

### Categories

The base case would have no categories of licences to distinguish different sectors within the tobacco industry. The RIS considers one option for categorisation (basic categorisation), whereby retail and wholesale licence categories would be prescribed in the Regulations. Any premises where there are retail sales to members of the public, including by way of vending machines, would have a retail licence. Other premises would require a wholesale licence.

### Conditions

The base case provides forno uniform prescribed licence conditions. However, conditions may be applied to individual licences at the regulator’s discretion to mitigate specific concerns, although this is not expected to be applied often. Two options for conditions have been developed. Option 1 (basic Conditions) only allows wholesale tobacco products to be sold between licensed retailers and licensed wholesalers and requires that businesses keep records of all tobacco product sales and provide them to the regulator on request. Option 2 (advanced Conditions) is consistent with the basic conditions, with the addition of a minimum age of 18 years that a person can sell tobacco products (from 1 January 2027).

### Prescribed information

The base case would only require an applicant to provide the information that is specified in the Amendment Act. The RIS considers one option for prescribed information. When applying for, transferring, varying, relocating or renewing a licence, applicants will be required to provide comprehensive additional information and documentary evidence beyond the requirements of the Amendment Act, including business documents (e.g., ASIC extracts), and identity verification documents.

### Fees

Under the base case, no fees would be prescribed for applications under the scheme. The RIS considers two fee options. Option 1 (flat fees) is a flat fee which would be applied to all businesses. Option 2 (differentiated fees) is a differentiated fee that is structured to reflect the type of business that is seeking the licence.

Under both options, the regulator would recover the full costs of administering the scheme.

## Preferred option

It was determined that ***Option 1: Basic categorisation*** (retailer and wholesaler categories) would provide the best combination of information for the regulator while not introducing substantial burdens on the industry or the government. This option maintains administrative simplicity while providing the regulator with additional information about the industry to support its regulatory approach and future decisions.

The preferred option for conditions is ***Option 2: Advanced conditions***, which includes:

* only allowing wholesale tobacco products to be sold between licensed retailers and licensed wholesalers (if products are purchased from a wholesaler in Victoria or another jurisdiction in Australia which has a licensing scheme requiring the supplier to be licensed)
* requiring retailers and wholesalers to keep records of all tobacco product sales and provide periodic reports to the regulator, and
* establishing a minimum age that a person can sell tobacco products (18 years) from 1 January 2027.

The preferred option for prescribed information was ***Option 1: Prescribed information***. Licensees and licence applicants must provide information when applying for (and renewing), transferring, varying, or relocating a licence (section 4.4). The requirement to provide information such as business documents (e.g., ASIC extracts), and identity verification documents equips the regulator with greater intelligence to make determinations with respect to licensing.

Regarding fees, it was determined that the preferred option would be ***Option 1: Flat fee***, with the same fee for wholesalers and retailers. The preference for this optionwas driven by the fact that it does not introduce adverse outcomes, inequity, or undue complexity.

### Cost impacts of the preferred option

The costs and benefits of the options have been considered relative to the ‘base case’. The base case refers to the operation of the Amendment Act where no Regulations are prescribed to support the operationalisation of the tobacco business licensing scheme.

Wherever possible, the costs of options on businesses have been quantified. Costs are calculated over a 15-year period for fees, and a ten-year period for the conditions and prescribed information requirements.

In the context of the tobacco business licensing scheme, the benefits are difficult to quantify in monetary terms, therefore benefits have been qualitatively assessed use a multi-criteria analysis (MCA).

The 15-year cost to Government range used in this RIS is presented below given the uncertainty of regulatory costs to be recovered through fees:

Table 1: Establishment and ongoing costs of the tobacco business licensing scheme

| Cost | 15-year cost |
| --- | --- |
| Establishment costs | $8.939m |
| Ongoing costs | $201.321m - $275.917m |
| **Total cost base** | **$210.260m - $284.856m** |

The measurable costs to industry are summarised in the tables below.

Table 2: Total cost of advanced condition scenario and the prescribed information requirements (in net present value terms)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Industry | Average annual cost per business | Average annual cost to industry | 10-year net present value cost per business | 10-year net present value cost to industry |
| Retail | $478 | $4,720,000 | $4,770 | $47,200,000 |
| Wholesale | $952 | $47,600 | $9,500 | $476,000 |

### Fees

The table below presents the annual fee level for each service.

Table 3: Preferred Option Annual Fee Schedule (presented as a range pending the final Victorian Budget outcome)

|  | Fee unit | | Base fee | | 15-year revenue | |
| --- | --- | --- | --- | --- | --- | --- |
| Lower-bound fee | Upper-bound fee | Lower-bound fee | Upper-bound fee | Lower-bound revenue | Upper-bound revenue |
| New application (and renewal) | 67.36 | 91.26 | $1,100 | $1,490 | $180.297m | $244.263m |
| Transfer | 67.36 | 91.26 | $1,100 | $1,490 | $26.449m | $35.832m |
| Relocation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| Variation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| **Total revenue** |  |  |  |  | **$210.260m** | **$284.856m** |

The first licence application fee will cover the period from commencement anticipated in early 2026 to 30 June 2027.

It is proposed that the annual application and renewal fee, and the transfer fee, will be within the range of $1,100 - $1490. The fee for relocation and variation will be within the range of $220 - $298, or 13.47 – 18.25 penalty units.

While the Amendment Act provides a fee to be prescribed for an application to suspend or cancel a tobacco business licence, it is not the intention to impose a fee for this application as it is not intended to disincentivise anyone, such as a landlord or a licensee, from suspending or cancelling a licence. The Amendment Act also provides for a fee to obtain a copy of a licence. Businesses will be provided with a copy of their licence when their application is granted and will need to display it. The intention is to impose a small administrative fee of 2.5 fee units (approximately $40) in the Regulations, to recover the costs in retrieving and providing the copy to the licensee.

Additionally, a suite of other minor changes to the Tobacco Regulations 2017 (Tobacco Regulations) are proposed to support the operationalisation of the licensing scheme. These other amendments relate to infringement offences and penalties, the definition of illicit tobacco, entry with the consent of the owner or occupier of the tobacco supply business, and the establishment of a Register of Licensed Tobacco Suppliers. Provisions relating to e-cigarettes and specialist tobacconists will also be removed to align with the Amendment Act and Commonwealth legislation.

## Small business impact and competition assessment

### Competition assessment

The introduction of the tobacco business licensing scheme may cause an impact on small businesses, principally due to financial costs. This could include direct costs from the administrative and compliance burden from the licensing scheme, as well as indirect costs based on how the licensing scheme changes consumer purchasing behaviour.

It is noted that illicit tobacco suppliers are predominately small businesses. Goven one of the primary objectives of the scheme is to stop the flow of illicit tobacco, placing costs to these non-compliant small businesses would help the scheme achieve its objectives.

Overall, the impact on small businesses will likely be small. The Victorian tobacco business licence scheme is also broadly consistent with other Australian jurisdictions and recent reforms which have commenced in QLD and announced in NSW.

## Implementation plan

The tobacco business licensing scheme will commence on 1 July 2025, with full enforcement expected to commence in early 2026. Ahead of the scheme’s commencement, this RIS and the proposed Regulations will be the subject of public consultation from March 2025 until April 2025.

The regulator will also be implementing the necessary technology to operationalise the scheme and establishing the framework for enforcement and compliance.

Chapter 7 outlines the implementation plan in detail, including the time frames for key actions, the roles and responsibilities.

## Evaluation strategy

Evaluation of the preferred option will be critical to ensure the tobacco business licensing scheme is meeting its long-term objectives. It would also support the effective administration of the scheme over time and allow for any adjustments.

There will be three opportunities to evaluate the tobacco business license scheme - the legislated five-year Statutory Review of the scheme, the opportunity to evaluate the scheme as part of the sunsetting provision in the Tobacco Regulations and the ongoing approach to evaluating the ongoing operations of the tobacco licence scheme.

# Background

This chapter provides the background and context for this RIS. It provides a brief overview of the problems associated with the sale and supply of tobacco in Victoria that gave rise to the introduction of a tobacco business licensing scheme through the passage of the *Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Act 2024* (the Amendment Act). The Amendment Act amends the *Tobacco Act 1987* (the Tobacco Act) to introduce the licensing scheme.

## Introduction

Tobacco is a highly addictive substance that is associated with significant health harms. The use of tobacco products has been the subject of substantial public attention and health measures over many decades.

Whilst smoking rates have declined over the last twenty years driven by a combination of public health campaigning, increased regulation – such as no smoking areas and plain packaging legislation – and growing costs of cigarettes through increases in the tobacco excise,[[1]](#endnote-2) it is recognised that more needs to be done to advance these efforts and appropriately control the sale of tobacco products.

The Commonwealth and all State and Territory governments recognise the importance of coordinated efforts to stop illicit tobacco. The importation and supply of illicit tobacco is strongly associated with organised criminal activity due to the significant profits and relatively low penalties that have been previously associated with illicit tobacco. The sale of illicit tobacco undermines tobacco prevention taxation policies by making tobacco products cheaper and easier to acquire.

Victoria Police has reported over 100 arson attacks on businesses since March 2023 that have been linked to illicit tobacco and organised criminal activity. Under the existing Victorian regulatory framework, it is difficult to identify illicit products and determine their source, which often frustrates investigations.

### Introduction of a tobacco business licensing scheme

In 2024, the Victorian Government introduced the Amendment Act to amend the Tobacco Act. The introduction of the Amendment Act has been informed by the findings and recommendations of the Review into Illicit Tobacco completed by the Commissioner for Better Regulation in 2022 (the Illicit Tobacco Review), as well as the 2024 Public Accounts and Estimates Committee Inquiry into Vaping and Tobacco Controls (the PAEC Inquiry).[[2]](#endnote-3)

The Amendment Act introduces a regulatory framework for a tobacco business licensing scheme in Victoria and brings Victoria into line with all other Australian jurisdictions, which have established – or are in the process of establishing – tobacco business licensing schemes.

The Amendment Act provides for a tobacco business licensing scheme, to take effect in mid-2025 with full enforcement by no later than 1 July 2026.

The Amendment Act sets out the following features of the tobacco business licensing scheme:

* **Licensing** – establishes a licensing scheme (with the ability to set fees) prohibiting the sale of tobacco products without a licence, introduces powers to impose conditions and suitability requirements on licensees.
* **Administration** – provides for the Department of Justice and Community Safety (DJCS) to manage the new tobacco business licensing scheme, collaborating with other government entities such as the Department of Health (DH), which oversees the remainder the Tobacco Act, and Victoria Police, which handles serious and organised crime related to tobacco.
* **Suitability of licensees** – allows individuals or a body corporate to apply for a tobacco business licence, mandates submission of prescribed information, permits the regulator to seek information from Victoria Police, enables the regulator to refuse unsuitable applicants, and allows for the imposition of conditions on licences.
* **Suspension and cancellation of licences** – allows the regulator to vary, suspend, or cancel a tobacco business licence if conditions are breached or suitability is lost, initiate suspension or cancellation following a show cause notice, immediately suspend licences for up to 90 days for serious contraventions, and disqualify individuals or corporations from holding a licence for up to 5 years.
* **Ongoing reviews of suitability** – permits the regulator to review a tobacco licence at any time, considering suitability and potentially requiring a criminal history check, with inquiries to Victoria Police, government agencies, and local councils to verify compliance.
* **Penalty Regime** – introduces measures to address non-compliance, including amending existing offences for possessing and selling illicit tobacco and new offences for selling tobacco without a licence, and stipulates strong penalties for supplying illicit tobacco, supported by cooperation with Victoria Police and other authorities to combat organised crime in the tobacco industry.
* **Enforcement** – grants licensing inspectors’ inspection and enforcement powers, allows the regulator to issue improvement notices and accept enforceable undertakings, enhances Victoria Police's role in combating illicit tobacco by enabling enforcement powers, and establishes a collaboration between the regulator and Victoria Police for compliance and serious crime investigation.
* **Review of decisions** – establishes an internal review process for certain regulatory decisions and an external review process through the Victorian Civil and Administrative Tribunal, allowing affected individuals to appeal decisions and enabling Victoria Police to object to licence applications based on undisclosed protected information.
* **Statutory Review** – includes provisions requiring a statutory review of the tobacco business licensing scheme to be undertaken after 5 years of operation. The objective of these provisions is to facilitate transparent reporting on the tobacco business licensing scheme’s effectiveness, as recommended by the PAEC Inquiry.
* **Data collection** – mandates improved data collection on tobacco sales and supply by requiring the regulator to maintain and publish a Register of Licensed Tobacco Suppliers, detailing each licence, business name, premises address, licensee's licence number, and other prescribed information.

The Amendment Act also provides for several important features of the scheme to be established in Regulations and the subject of a RIS process. These features will assist in operationalising the scheme, and include:

* categories of licences
* fees payable for applications under the scheme
* licence conditions, and
* information to be included with applications under the scheme.

A range of other matters such as infringement penalties and prescribed details relating to illicit tobacco offences will also be addressed through Regulations but will not be assessed in detail in this RIS as they are not likely to impose a regulatory burden on businesses. Given the penalties and infringements may support behavioural change, some impacts are discussed qualitatively in section 6.6.

Some of the key issues giving rise to the tobacco business licensing scheme are briefly summarised in the Problem Identification chapter, with the primary focus being on the residual problems of the Amendment Act. In particular, the issues identified in the Second Reading Speech, the PAEC Inquiry, and the Illicit Tobacco Review are reflected on.

## Victorian tobacco industry – a snapshot

While the exact number of retailers selling tobacco products is difficult to determine due to the lack of visibility or requirement to inform the Victorian Government when selling tobacco, DJCS estimates that there are approximately 10,000 tobacco supply premises in Victoria, including supermarkets, grocery stores, convenience stores, mixed businesses, liquor licensed premises, petrol stations, tobacconists, and wholesalers.

In terms of retailers, major supermarkets are the primary source of licit tobacco products in Australia, however smaller retailers play a significant role in tobacco supply. The current estimation of tobacco retailers was determined through a combination of DH and Municipal Association of Victoria estimates, as well as estimates from the Department of Treasury and Finance (DTF) using Australian Bureau of Statistics (ABS) business counts data.

In terms of wholesalers, an estimated 85 per cent of wholesale tobacco is supplied through British American Tobacco Australia, Philip Morris (Australia) Limited, and Imperial Tobacco Australia Limited.[[3]](#endnote-4) The remaining 15 per cent is supplied through as many as 60 other wholesalers.[[4]](#endnote-5) It should be noted that the exact number of wholesalers operating in Victoria is not known and that the working estimate used by DJCS is 50 (using information from IBISWorld about the total number of wholesalers in Australia).[[5]](#endnote-6)

The tobacco retailing industry can be further categorised by type of retailer. Table 4 puts forward a summary of the number of premises according to the analysis provided below. The numbers have been rounded to avoid false precision, noting that accurate and granular data is not available. Some retailers, such as convenience stores, may fall into several categories, including minor fuel retailers and supermarkets and other store-based retailing. In the absence of sufficiently granular data, they are not assigned a specific sub-category.

The approach to developing these estimates included a desktop scan of the number of premises operated by major retailers and the number of online retailers that would provide tobacco products in Victoria. ABS business count data provided an overarching view of the number of retailers.

* Major fuel retailers and supermarkets are classified as those that operate under a large corporate model or a franchise agreement.
* Minor fuel retailers and supermarkets would include any smaller independent fuel retailers or supermarkets not captured in the sub-category above. In many cases, it would also include convenience stores.
* The liquor retailers sub-category includes pubs, clubs, bars, and liquor stores.
* The Other Store-Based retailing n.e.c. (not elsewhere classified) sub-category represents a large proportion of the premises and includes some convenience stores (not captured elsewhere) and tobacconists.
* The online-only retailers sub-category refers to the businesses which do not have an obvious store front presence and have websites where there appears to be tobacco supplied in Victoria.
* Vending machines in Victoria must be located within premises which have a liquor or gaming licence.

Table 4: Sub-categorisation of retailers

| Sub-categories of tobacco retailers | Estimated number of premises |
| --- | --- |
| Major fuel retailers and supermarkets | 3,000 |
| Minor fuel retailers and supermarkets | 800 |
| Liquor retailers | 900 |
| Other Store-Based Retailing (not elsewhere classified) | 5,000 |
| Online-only sale | 20 |
| Premises with vending machines | 230 |
| **Total** | **9,950** |

### The extent to which the tobacco business licensing scheme will stop illicit tobacco

The Victorian Government shares the significant community concern regarding illicit tobacco, with arson attacks and other crimes on tobacco businesses continuing to occur across the state, as well as in other states nationally.

The introduction of the new tobacco business licensing scheme, and associated penalties for non-compliance, will help to prevent people from selling illicit tobacco, and deter unsuitable applicants from seeking to run a tobacco business.

The tobacco business licensing scheme will facilitate intelligence collection to support Victoria Police and other law enforcement efforts to combat serious and organised crime and disrupt illicit tobacco supply chains.

Victoria Police, along with federal and state partner law enforcement agencies, will continue to target and prosecute serious and organised crime involved in the importation and supply of illicit tobacco.

The nature and extent of Victoria’s illicit tobacco problem is explored in section 2.1.

## Current scope of the Tobacco Act and its objectives

In Victoria, the sale and use of tobacco products is governed by the Tobacco Act. The purpose of the Tobacco Act is to prohibit the sale or promotion of certain tobacco products and certain non-tobacco products, and to create offences in relation to smoking and the possession of tobacco products.

The Tobacco Act also establishes the Victorian Health Promotion Foundation (VicHealth), which creates and funds public health interventions, conducts research on population health, produces public campaigns, and provides expertise about best practice public health management.[[6]](#endnote-7)

The objectives of the Tobacco Act are summarised in Table 5 below, noting that they will be updated following the commencement of the Amendment Act.

The Tobacco Regulations 2017, which are made underneath the Tobacco Act, further outline requirements for the sale and advertising of tobacco in Victoria.

Table 5: Objectives of the Tobacco Act 1987

| Objectives of the Tobacco Act |
| --- |
| The primary objective of the Tobacco Act is the active discouragement of the smoking of tobacco by:   * encouraging non-smokers, particularly young people, not to start smoking * limiting exposure of children and young people to persuasion to smoke * encouraging and assisting smokers to give up smoking, and * promoting health and illness prevention.   As part of this, the Tobacco Act states that the Government should:   * plan and co-ordinate an integrated State-wide program to reduce the prevalence of smoking in Victoria * encourage agreements to prohibit or limit the places and times at which people may smoke in enclosed public places or in the work environment * ensure that tobacco usage by all age and sex groups in the population is monitored and reported upon regularly, and * evaluate the effectiveness of anti-smoking programs and plan future activities and policies on tobacco usage. |

## Recent developments in the Commonwealth regulatory framework

The Australian Government has broad powers to place downward pressure on the consumption of tobacco in Australia.

* Production of tobacco – the growth or production of tobacco or tobacco products without a licence is prohibited. There are currently no licensed tobacco growers in Australia.[[7]](#endnote-8)
* Taxation – imported tobacco incurs a border excise of $1.37 per cigarette or $2,101.89 per kilogram with a view to financially disincentivising tobacco smoking.[[8]](#endnote-9)
* Sale of tobacco – tobacco products are to be sold in packages with specified colours and without branding, logos or promotional text. Tobacco products must also display certain text and graphic health warnings.
* Advertising – any advertising in Australia that may encourage or persuade people to smoke or use tobacco products is banned.

The recent passage of the *Public Health (Tobacco and Other Products) Act 2023* consolidates existing tobacco-related laws and introduces new measures aimed at discouraging the use of tobacco products. Improvements to the existing framework include tighter controls around health warnings, design features and ingredients in tobacco products alongside an expansion of existing advertisement and sponsorship restrictions on tobacco to apply to e-cigarettes.[[9]](#endnote-10)

These legislative reforms have increased penalties for the unlawful importation, domestic manufacture, supply and commercial possession of illicit tobacco and allows States and Territories to enforce them.[[10]](#footnote-2) However, the effectiveness of the new legislation acting as a significant deterrent remains unclear at this stage given it has only recently come in effect.

## Regulatory approaches in other Australian jurisdictions

All Australian jurisdictions have taken measures to control the sale and supply of tobacco products, and most have licensing or notification schemes in place. The table below presents a summary of the notification and licensing schemes in place in other Australian jurisdictions.

Table 6: Notification or licensing schemes in place in Australia

| Jurisdiction | Type of Scheme | Scope of Scheme | Fees | Conditions and comments |
| --- | --- | --- | --- | --- |
| ACT | Licensing | Retailers; wholesalers | ü | Licence holders must display their licence in a prominent location near the point of sale  Common licence expiry date on 31 August. Partial fees apply to licences purchased partway through the year |
| QLD | Licensing | Retailers; wholesalers | ü | Display an approved copy of the licence at the retail or wholesale outlet so that it can be easily read by customers at all times that the business is open. Online sellers must also display an approved copy of the licence on the website  Tobacco may only be sold from one point of sale  Separate licence for each premises |
| NSW | Licensing | Retailers; wholesalers | ü | NSW previously enforced a notification scheme for tobacco retailers, however a new licensing scheme covering both retailers and wholesalers is expected to come into effect on 1 July 2025 |
| NT | Licensing | Retailers | ü | Retailers and wholesalers must provide the government with sales information to inform compliance and enforcement activities  Unless the premises are liquor licensed, tobacco may only be sold from one point of sale  Licence holders must display their licence in a prominent location near the point of sale |
| SA | Licensing | Retailers; wholesalers | ü | Indirect sale is prohibited  Separate licence for each point of sale  Licence holders must display their licence in a prominent location near the point of sale |
| TAS | Licensing | Retailers; wholesalers; indirect sellers | ü | Separate licence for each premises  Retailers and wholesalers must provide the government with sales information to inform compliance and enforcement activities |
| WA | Licensing | Retailers; wholesalers; indirect sellers | ü | Separate licence for each premises  Retailers and wholesalers must provide the government with sales information to inform compliance and enforcement activities  Licence holders must display their licence in a prominent location near the point of sale |

## About the Regulatory Impact Statement

This RIS explores the problems and options for the operationalisation of the tobacco business licensing scheme. It considers four aspects that need to be addressed following the passage of the Amendment Act, including prescribing categories; conditions; information to be provided to apply for, transfer, renew, relocate, vary and suspend or cancel a licence; and fees. Options and design elements are proposed for each of the aspects.

In relation to fees, the RIS explains the method used to cost the implementation and operation of a tobacco business licensing scheme in Victoria. It takes into consideration the Victorian Government’s *Pricing for Value* *Guide*, which states that there should be full cost recovery for regulatory fees unless this would substantially undermine other important objectives.

The RIS has been prepared through consultation and engagement with Better Regulation Victoria (BRV).

This RIS considers the Premier’s *Economic Growth Statement* delivered on 10 December 2024, announcing Government’s increased focus on an efficient and effective regulatory system for businesses.[[11]](#endnote-11)

A preferred option is developed with additional details about the operation of the scheme, implementation considerations, and an evaluation strategy.

## Structure of the Regulatory Impact Statement

The structure of the remainder of this RIS is as follows:

Chapter 2: Problem Identification

Chapter 3: Objectives

Chapter 4: Options considered in this RIS

Chapter 5: Impact Assessment

Chapter 6: Small Business Impact and Competition Assessment

Chapter 7: Implementation Plan

Chapter 8: Evaluation Strategy

Appendices

# Problem Identification

This Chapter briefly summarises some of the key issues that gave rise to the tobacco business licensing scheme. In line with the Victorian Guide to Regulation, the Chapter then explores the “residual problems” of the Amendment Act that could be addressed through Regulations.

## Broad policy problems

There have been two recent government inquiries into the broad policy problems in the tobacco industry and the regulatory environment.

The PAEC Inquiry preceded the passage of the Amendment Act and had a broad scope of investigation that included consideration of electronic cigarettes or e-cigarettes (broadly referred to as ‘vapes’). Although many of the findings and recommendations refer to both vapes and tobacco, the focus of the Amendment Act was the introduction of a tobacco business licensing scheme. This is in recognition of the work underway at the Commonwealth level to control the sale and use of vapes outside of a therapeutic context as a nicotine cessation therapy. The Illicit Tobacco Review had a narrower scope of inquiry, and many of the findings and recommendations were incorporated into and taken up by the PAEC Inquiry. The Terms of Reference for both inquiries can be found in **Appendix A**.

Some of the key issues raised through the PAEC Inquiry and Illicit Tobacco Review are summarised below.

#### Smoking is the leading cause of avoidable disease and death in Australia[[12]](#footnote-3)

Nicotine in tobacco is highly addictive, and the use of tobacco leads to serious diseases such as cancer, heart conditions, respiratory issues, oral health problems, and asthma. National data shows that smokers are more likely to live in disadvantaged, regional, or remote areas, have disabilities, experience unemployment, and have less formal education compared to non-smokers.[[13]](#endnote-12)

Although smoking rates have fallen in Victoria, from 22.1 per cent of the population in 2001 to 9.2 per cent by 2022, these reductions are under threat. The proliferation of readily available illicit tobacco – sold under the counter – is circumventing tobacco control measures such as excise and plain packaging, which have served as effective deterrents of tobacco use. This is undermining efforts to curb the use of tobacco products and reduce the associated health harms.

#### The growing market for illicit tobacco has been linked to Serious and Organised Crime (SOC) and is impacting the Victorian community

The black market for illicit tobacco in Victoria is fuelled by factors such as price differences between legal and illicit cigarettes, a lack of licensing, limited enforcement, and insufficient penalties for illegal activities. While the overall value of the tobacco market in Victoria for 2023 is estimated at $6.0 billion, the value and proportion of the illicit tobacco market is contested. Estimates range between 6.1 per cent and 40.0 per cent.[[14]](#endnote-13) This illegal trade negatively impacts small and medium businesses that only sell licit tobacco as consumers take up cheaper illicit tobacco, increasing the risk and incidence of violence, and imposing additional costs to address such violence. It has also led the Commonwealth to revise its tobacco excise revenue down by $4 billion, which would be in part driven by a reduction in the number of smokers as well as the increase in illicit tobacco.

There has been a significant increase in organised crime related to the illicit tobacco market. In January 2024, Victorian emergency services responded to five arson attacks linked to underworld gangs engaging in the illicit tobacco market within one week. This brings the total number of arson attacks to more than 40 between October 2024 and February 2025.[[15]](#endnote-14) More recently, it emerged that Melbourne’s tobacco war had claimed the life of a “completely innocent” house sitter in Melbourne’s west.[[16]](#endnote-15) This is contributing to substantial community concern about the scale and harms associated with the illicit trade of tobacco and is resulting in additional economic costs for the Victorian community.

Compared to other black-market products, it is understood that illicit tobacco is generally more profitable than other drugs. A packet of cigarettes bought for between $2 and $5 overseas could be sold for between $16 to $20, whereas a legally bought pack (with excise duties included) can cost upwards of $40.[[17]](#endnote-16) Compounding the issue, the penalties for illegally importing tobacco, which range from fines to five years’ imprisonment,[[18]](#endnote-17) are more lenient than the importation of other illicit drugs, which can attract more than 10 years in prison and much larger fines.[[19]](#endnote-18)

It has been reported that criminal gangs are using violent threats against tobacco store owners to extort payments and to coerce retailers into selling illicit tobacco. Store owners who refuse to participate have been the target of arson attacks as part of threats which have been termed “earn or burn”. Store owners who sell illicit tobacco for rival gangs have also been targeted in these attacks.[[20]](#endnote-19) The growth in organised criminal activity is a central concern for both the Victorian and Federal Governments, with significant resources going towards joint investigations to combat the sale and supply of illicit tobacco, and its associated harms.

#### Gaps in Victoria’s current regulatory framework undermine public health efforts to reduce smoking rates

There are a number of agencies responsible for the administration and enforcement of tobacco regulation across all three tiers of government in Australia.

In Victoria, DH was the previous sole lead agency for tobacco law and regulation. DJCS is responsible for the tobacco business licensing scheme, while DH remains responsible for the remainder of the Tobacco Act under a shared responsibility arrangement. DH therefore retains lead responsibility for administration of health promotion, smoking cessation, enforcement of smoke-free area offences, and preventing broader tobacco and smoking harms. Local council officers are primarily responsible for enforcing compliance with the Tobacco Act. Departmental officers do not currently undertake any enforcement, although the power to appoint them to do so exists.

The gaps in the current regulatory framework are preventing the Government from adopting a targeted approach to compliance, enforcement, and education activities in the tobacco industry operating in Victoria. The Government has limited visibility over the tobacco retailers and wholesalers operating in the market. Further, there is no process for safeguarding the suitability of tobacco retailers and wholesalers. The absence of visibility and safeguards inhibits targeted compliance, enforcement, and education activities, thereby diminishing the ability to minimise and mitigate the harms associated with the sale of tobacco products.

The tobacco business licensing scheme will support Victoria Police and other law enforcement efforts to combat serious and organised crime, through intelligence and licensing enforcement action.

#### The Illicit Tobacco Review and the PAEC Inquiry recommended the establishment of a tobacco business licensing scheme

The Amendment Actaligns Victoria with other States and Territories by introducing a robust tobacco business licensing scheme. It provides the legislative framework for the establishment of a tobacco business licensing scheme (section 1.1.1 outlined the key features established through the Amendment Act).

The new tobacco business licensing scheme is intended to deter unsuitable people from seeking to run a tobacco supply business. The tobacco business licensing scheme will facilitate intelligence collection to support Victoria Police and other law enforcement efforts to combat serious and organised crime and disrupt illicit tobacco supply chains through enforcement action.

Importantly, there are four elements that are not sufficiently defined in the Amendment Act. These residual issues are the focus of this RIS and include:

* categories of licences
* fees payable for licence application (including for annual licence renewal), transfer, relocation and variation
* licence conditions, and
* information to be included with applications to the regulator under the scheme.

The Amendment Act makes several other enabling amendments that are not likely to impose a significant burden relative to the base case, and therefore do not require an options assessment as part of this RIS, including:

* infringement offences and penalties
* details relating to illicit tobacco offences (including the definition of a commercial quantity of illicit tobacco and applicable Commonwealth legislation), and
* the removal of references to specialist tobacconists (which will no longer exist following the commencement of the new tobacco business licensing scheme) and e-cigarettes (which are regulated under Commonwealth legislation).

## Aspects to be addressed

The central problem addressed in this RIS is that the tobacco business licensing scheme cannot be effectively operationalised without Regulations, and addressing the residual problems is not accounted for in the Amendment Act. Under the Amendment Act, businesses will be required to obtain a licence, but there will be no meaningful distinction between the categories of licences offered, insufficient information to support the identification of risks and emerging issues, no ability to impose standardised conditions to respond to risks, and no mechanism for recovering the costs of the scheme.

This section explores the four aspects of the Amendment Act which can be addressed through Regulations.

### Categories

The Amendment Act provides for the Regulations to establish different categories of tobacco licences to enable the tobacco business licensing scheme to be appropriately tailored to reflect different types of tobacco businesses. The categories of licence may be used to set fees, guide the information sought in the application form – as well as tailor licence applications – and other forms, establish conditions, inform the risk of non-compliance, and inform the regulator’s compliance activities. Different categories of tobacco business may also incur different licence fees.

#### The absence of Regulations prescribing the categories of licence prevents the regulator from easily distinguishing between the operations of retailers and wholesalers of tobacco products.

Categories can be used to group businesses with similar vulnerabilities and risk profiles. Without categories, the regulator would not be able to easily distinguish between different types of businesses which could complicate and diminish the effectiveness of the regulatory framework. In practice, it would become more difficult to target specific types of business with communication, engagement and risk mitigation strategies. For example, the regulator may become aware of particular activities associated with organised crime, such as sophisticated counterfeit illicit tobacco targeting particular retailers. The regulator may then choose to direct its communications to the retailers within that area to ensure they are aware of their obligations and of the regulator’s awareness of the activity, to promote compliance without implicating the whole industry. Under the current settings of the Amendment Act, the regulator may not be able to identify and target types of businesses and operations which carry heightened risk.

Additionally, it may be difficult to understand and minimise unnecessary burden on businesses while ensuring the scheme is effective in achieving its objectives. The absence of Regulations which define categories of licences would hamper the regulator’s efforts to target tobacco businesses according to any identified risk characteristics.

In the event that the regulator deems it necessary to introduce additional conditions on particular segments of the industry (such as wholesalers but not retailers), businesses may struggle to understand the specific requirements they need to meet if they are not categorised and messaging will not be able to be targeted. This may lead to confusion about the application process, particularly when the absence of categories is inconsistent with most other Australian jurisdictions. As the scheme takes effect, there may be circumstances where specific licensee groups require supplementary guidance or are subject to additional conditions. In the absence of a distinction between categories of businesses, guidance and requirements may be misinterpreted or taken out of the context in which they were intended. This may cause confusion and increase the administrative burden on both licensees and the regulator. Prescribed categories could support simplification and understanding of the scheme.

Ultimately, any other flexibility desired through the tobacco business licensing scheme flows from the ability to distinguish businesses based on the characteristics of their work and the associated risk profiles. Without categorisation, as new risks and issues emerge, the regulator may not be able to target regulatory activities (such as compliance, enforcement, or education activities) to the segments of the industry that meet the identified risk characteristics.

### Licence conditions

The Amendment Act enables the regulator to impose conditions on a licence. This may be a general condition that applies to all licensees or specific conditions applying to a particular licensee. Conditions may be imposed by the regulator when granting a licence, transfer, relocation or variation application.

#### The absence of Regulations prescribing licence conditions inhibits the regulator’s regulatory oversight and its ability to impose conditions that address specific risks and concerns in the industry. It also prevents the regulator from considering and consulting on the potential impact of conditions on businesses and would not be in line with community expectations in supporting the effective operationalisation of the tobacco business licensing scheme.

In applying conditions, this RIS assesses the impact and provides an opportunity to consult on conditions. Without following this process, the industry and community may not feel that the imposition of conditions has been duly considered and the subject of sufficient scrutiny.

Prescribed conditions are considered to be a community and government expectation for the tobacco business licensing scheme. The PAEC Inquiry made several findings in relation to conditions (with particular reference to data collection), and parliamentary debate during the passage of the Amendment Act also indicated strong support for a condition around data collection. It may therefore be insufficient in meeting community and government expectations to not follow the due process of considering conditions.

The following issues may exist in the absence of prescribing conditions, which could affect the effective operationalisation of the tobacco business licensing scheme:

* Without prescribed conditions on licensees, elements of the scheme that could reduce harm are hindered, such as information provision, and the monitoring of emerging trends and activity in the supply chain. For example, under the current settings of the Amendment Act, the regulator will not have the information required to be able to identify and mitigate risks associated with particular businesses or practices in the industry. Imposing information provision requirements may enable the regulator to identify potential illegal activity in a particular business’ operations and seek to disrupt further illegal activity both up and down the supply chain. Importantly, the imposition of conditions will provide the regulator with the information needed to respond to emerging risks in the industry or address particular circumstances.
* It would be difficult to require the retention of records across the industry. Record keeping provides the regulator with intelligence about the industry that can be harnessed to target compliance, enforcement, and education activities. There would be no opportunity for the regulator to audit the sales of tobacco products which may otherwise unearth illicit activity.
* There would be limited mechanisms to obstruct the flow of illicit tobacco through the legal supply chain. Requirements exist in other jurisdictions, such as Queensland and the Northern Territory, to ensure that a retailer may only purchase tobacco products from a licensed wholesaler and that a wholesaler may only sell tobacco products to a licensed retailer. This approach introduces an accountability mechanism from within the industry whereby retailers would be alerted to any wholesalers attempting to operate without a licence, and vice versa. This ensures that the regulator has greater visibility of who is operating in the industry and illicit activity can be swiftly identified. The absence of such an accountability mechanism may inhibit the monitoring of the tobacco supply chain to identify possible illicit activity. Furthermore, conditions that require retailers and wholesalers to be licensed to engage in tobacco business adds additional accountability to the supply chain, where any unlicensed retailers are incentivised to obtain a licence in order to continue selling tobacco products. In so doing, they would be subjecting themselves to any suitability checks associated with securing a licence, intended to identify and mitigate risks associated with the sale of tobacco and illicit activity.
* The absence of conditions could inhibit the regulator’s ability to prevent minors from selling tobacco products. Minors employed in the sale of tobacco products handle these products, which are legally required to be concealed behind coverings, as part of their regular duties. Through this regular handling, minors acquire knowledge and familiarity with brand names and variants. Research demonstrates a strong link between product familiarity, regular exposure to advertising or promotion, and an increased likelihood of minors starting to smoke.[[21]](#endnote-20), [[22]](#endnote-21) One study found a 15 per cent higher rate of smoking initiation among youths exposed to cigarette advertising compared to those who were not exposed. A review of the literature concluded that the evidence meets statistical standards for establishing a causal relationship between smoking product advertising and smoking initiation by minors.[[23]](#endnote-22) Minors involved in the sale of smoking products may not fully grasp the health risks of smoking or the repercussions of selling such products to other minors, potentially leading to violations of the Tobacco Act. Factors such as peer pressure, fear of negative social consequences, or a lack of confidence in asking for proof of age can increase the likelihood of underage sales by children. In response to this issue, the Western Australian Government enacted legislation in late 2018 to prohibit the sale of tobacco products by children. The policy received significant support, with 86 per cent of submissions indicating full or partial approval. Both non-government organisations and individuals agreed that young people were more inclined to sell to minors without requesting proof of age.[[24]](#endnote-23) It should be noted that there is a similar prohibition on minors selling alcohol in Victoria.

### Prescribed information

The Amendment Act provides for Regulations to be made to set out the information required to be provided by each applicant with respect to the application they are making. The Amendment Act expressly provides for information to be prescribed in Regulations and in a form approved by the regulator. The information that is prescribed in the Amendment Regulations will inform the licensing application forms that will be used under the scheme.

#### The absence of Regulations prescribing information that is required for licensing applications, may prevent the regulator from obtaining sufficient and consistent information about the applicant or licensee to enable a better understanding of the industry and to inform suitability and risk assessments, compliance strategies and licence conditions.

Under this scenario, an applicant would only be required to provide the information that is specified in the Amendment Act, which provides for the following elements:

* list the names, addresses and dates of birth (if applicable) of the applicant and the associates of the applicant[[25]](#footnote-4)
* specify, as the proposed licensed tobacco premises, premises that are a permanent structure located in Victoria (that is, businesses may not operate from non-permanent structures such as pop-up stalls), and
* the regulator may request the applicant to provide any other document or information that the regulator reasonably requires to assess the application.

This means that there would be limited mechanisms to determine whether applicants across the industry possess other elevated risk factors such as having been found guilty (within the preceding five years) of a suitability offence,[[26]](#footnote-5) whether they have a history of non-compliance with a tobacco licence in another state or territory, or whether they have been insolvent or declared bankrupt. Licences could be granted to inappropriate persons or businesses, increasing the risk of harm to the community.

Although under the Amendment Act the regulator may still request additional information through the licence application process, the absence of consistent information provision from across the industry presents a challenge for fulsome data collection to inform regulatory activities and suitability assessments.

Following the recent increase in criminal activity associated with the sale and supply of illicit tobacco, it has been noted that there were large gaps in the intelligence and understanding of who was selling tobacco products and the locations of these sales.[[27]](#endnote-24) The absence of information gathering has been identified as a possible hindrance to the investigations into related crimes, such as the arson attacks on tobacco retailers.[[28]](#endnote-25) Although the enforcement of illicit tobacco trade currently remains a matter for police investigations, information gathering through the tobacco business licensing scheme could support the swift identification of areas of possible illegal activity.

Without prescribing the information required for the regulator to make informed licensing decisions, there could be further practical challenges in the form of:

* determination delays if the regulator requires additional ad hoc information from applicants, imposing a greater burden on the industry, and
* a high volume of requests for reviews of the regulator’s decisions, imposing a greater burden on the regulator.

### Prescribed fees

The Amendment Act sets out the types of applications able to be made under the tobacco business licensing scheme and expressly provides for application fees to be prescribed in Regulations.

#### The absence of Regulations prescribing the fees for licence applications, variations, transfers, relocations and renewals prevents the regulator from reasonably recovering the costs of the tobacco business licensing scheme.

According to the *Pricing for Value* guide established by the DTF, regulators are encouraged to fully recover the costs of the scheme unless this would substantially conflict with other Pricing Principles in the guide or with other important objectives.

Without fees to recover the costs of the scheme, the taxpayer would effectively be funding the regulator’s costs associated with licensing, compliance, and other regulatory functions, and this would be contrary to DTF’s *Pricing for Value* principles. According to Principle 1, the regulator should aim to recover the full costs of service provision to promote efficient consumption. In the context of this tobacco business licensing scheme, the fee pricing should reflect the costs of delivering the associated regulatory services (including the costs of processing applications, compliance, and enforcement activities). Doing so ensures that the value of resources required to administer the scheme are known to the community.

From an efficiency and equity perspective, the cost of licensing should be borne by those who create the need for regulation and not the general community. In accordance with Principle 2, only those wishing to sell tobacco products will require a licence and therefore should be the only parties required to pay for the cost of the scheme.

# Objectives

This Chapter outlines the broad objectives of tobacco control measures in Victoria, including the Tobacco Act and the Amendment Act for the establishment of the tobacco business licensing scheme. In recognition of the fee setting element of this RIS, the Victorian Government’s *Pricing for Value* Pricing Principles and their alignment to the scheme are also discussed in this Chapter. Finally, building on the broad objectives, a set of objectives for the tobacco business licensing scheme are set out in Table 8 and will form the basis of the analysis of options in the RIS.

## Government’s broader policy objectives

Legislation regulating the sale and advertising of tobacco products, and prohibiting smoking in certain areas, has continued to contribute to the decline of smoking rates in Victoria and to a growing awareness of the harm associated with smoking. These laws have strong community support and contribute to reducing smoking rates and tobacco-related harm. Table 5 in Section 1.3 presented the objectives outlined in the Tobacco Act.

Further, it is recognised that action must be taken to significantly strengthen regulation and enforcement of laws governing the supply of tobacco to limit the availability of illicit tobacco and punish those who distribute it. The central objectives of the Amendment Act in establishing the tobacco business licensing scheme are to:

* prohibit the retail and wholesale sale (and offering for sale) of tobacco products by any person other than a holder of a licence granted under the Amendment Act
* safeguard the suitability of licensed retailers and wholesalers of tobacco products
* minimise and mitigate the risks associated with the sale (and offering for sale) of tobacco products by enabling the imposition of conditions on licences, and
* provide sufficient powers to enable efficient and effective regulatory oversight.

These broad policy objectives are applied to the objectives for the Regulations explored in this RIS.

## The Victorian Government’s pricing principles

In implementing a tobacco business licencing scheme for retailers and wholesalers in Victoria, a fee-setting process must follow the Victorian Government's Pricing for Value principles as directed by the Treasurer and DTF. The *Pricing for Value* guide includes 12 principles that go beyond cost recovery, providing a thorough framework for evaluating, creating, and reviewing user charges and regulatory fees. These principles ensure cost recovery practices in Victoria are transparent, efficient, effective, and in line with legislative requirements and government policy. The principles allow setting prices at, above, or below actual costs based on various scenarios, such as signalling higher risks or avoiding barriers to entry. This flexible framework applies to diverse situations, including service provision by the State and industry-managed co-regulatory schemes. The guide's principles have directed DJCS's fee-setting process and will be used to analyse options for the tobacco business licensing scheme.

These pricing principles as they relate to the RIS are explored in greater detail in **Appendix B**. The objectives for the fee setting process are outlined in Table 7 below.

Table 7: Fee objectives for the tobacco business licensing scheme

| Objective | Description |
| --- | --- |
| **Effectiveness and efficiency** | Promote compliance and cooperation with the tobacco business licensing scheme, while not leading to any unintended consequences. |
| **Equity** | Fairly differentiate fees based on factors such as ability to pay, risk profile, or other relevant characteristics of the business, noting that the fee cannot be considered a tax.  Minimise risks associated with barriers to entry and inequity, noting that businesses of different sizes participate in the tobacco market. |
| **Simplicity** | Ensure the fee structure is straightforward and easy for users to comprehend and for the regulator to manage. |

## Objectives of these Regulations

In recognition of the broader policy objectives, Table 8 outlines the three central objectives of the tobacco business licensing scheme to be addressed through the making of Regulations. Additional descriptions that should be considered in delivering on the objectives are also provided in the table.

Table 8: Policy objectives for the tobacco business licensing scheme

| Objective | Description |
| --- | --- |
| **Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes** | Prohibit the sale (and offering for sale) of tobacco products by any person other than a holder of a licence, thereby contributing to the primary goal of the Tobacco Act which is the active discouragement of the smoking of tobacco and the development of a co-ordinated and integrated State-wide program to reduce the prevalence of smoking in Victoria.  Safeguard the suitability of sellers of tobacco products and minimise and mitigate the risks associated with the sale (and offering for sale) of tobacco products by enabling the imposition of conditions on licences. This in turn will minimise non-compliance with the *Tobacco Act*, which bans the sale of tobacco to underage people; discourages the advertising and promotion of tobacco products; restricts displays; and mandates the display of health promotion material. Non-compliance may also arise from the proliferation of illicit tobacco.  Provide sufficient powers to enable efficient and effective regulatory oversight, thereby supporting the regulator to operationalise the scheme through information, categories, and conditions that enable decision-making and risk minimisation. Deter unsuitable people from seeking to run a tobacco supply business. The option should enhance oversight of the industry to prevent harm. |
| **Minimise burden on the industry** | Simple and clear regulatory options to reduce complexity and minimise the time required to make an application and for application processing. Regulatory requirements should be clear and straightforward, particularly for major processes such as licence applications, transfers, renewals and compliance.  Minimise risks associated with barriers to entry and inequity, noting that businesses of different sizes participate in the tobacco market.  Only impose regulatory requirements and burden on those who engage in or interact with the industry. |
| **Minimise burden on government** | Minimise the burden on the government in establishing the Regulations and related processes. Simpler regulatory structures will be easier to implement.  Ensure that the option is feasible for the first iteration of the Regulations for the tobacco business licensing scheme in Victoria. |

# Options considered in this RIS

The *Subordinate Legislation Act 1994* (the SL Act) governs the development and establishment of statutory rules and legislative instruments in Victoria. When evaluating whether a proposed statutory rule or legislative instrument imposes a significant economic or social burden on a segment of the public, the SL Act Guidelines (the Guidelines) stipulate that the Minister must consider:

* the base case (the scenario without the proposed rule or instrument)
* whether the proposed statutory rule or legislative instrument places a burden on one or more sectors of the public; and
* whether that burden is considered a “significant economic or social burden.”

The Guidelines suggest preparing a range of options for consideration, including co-regulation, non-regulatory approaches, and strategies that reduce the burden on both industry and/or the community. The following processes were conducted to identify feasible options for this RIS:

* performing a comprehensive costing of all regulatory and quasi-regulatory expenses related to the tobacco industry, including the costs of the regulator and Victoria Police
* comparing tobacco licensing and regulatory systems in other jurisdictions
* engaging with various government agencies and departments for cost inputs, and
* utilising this information to review a broad spectrum of options, followed by proposing several options for detailed analysis.

Several other amendments contained in the proposed Regulations play an enabling function and are unlikely to materially impact the industry except in limited circumstances (such as following non-compliance). These amendments are of a technical or machinery nature and help other areas of the Amendment Act or Regulations to function efficiently. Alternative options are not considered for these amendments, but consideration has been given to ‘designing’ these proposals in accordance with the objectives outlined in Section 3.

## Summary of approach to developing the options considered in this RIS

Four groups of options have been developed to address each of the residual problem areas described above. The groups of options cover:

1. Categories
2. Conditions
3. Prescribed information, and
4. Fees.

## Categories

### Base case

There would be no categories of licences under the Amendment Act. Licences will still be valid without a category (i.e., no categories of licences being prescribed in Regulations would not affect the validity of licences that are issued).

### Option 1: Basic categorisation

Under this option a retail and wholesale licence category would be prescribed in the Regulations. Any premises where there are retail sales to members of the public, including by way of vending machines, would have a retail licence. Other premises would require a wholesale licence.

It is anticipated that some businesses may fall into both categories, in which case they would need to obtain a separate licence under each category.

## Conditions

### Base case

There would be no uniform prescribed licence conditions for a general licence. However, conditions may be applied to individual licences at the regulator’s discretion to mitigate specific concerns, for example, requiring the retailer to refrain from displaying particular products.

The imposition of conditions could be informed by consideration of a number of factors including the information provided by the applicant (for example, business type, location, and products sold), history of compliance with the scheme or intelligence received from Victoria Police or local councils.

Any conditions imposed on a business would be specifically targeted to that business and not consistently applied across the industry.

### Option 1: Basic conditions

This option proposes two conditions:

* Strengthen controls to obstruct the flow of illicit tobacco by only allowing wholesale tobacco products to be sold between licensed retailers and licensed wholesalers, and
* Enhance the Regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees by requiring retailers and wholesalers to keep records of all tobacco product sales.

The detail behind each condition is explored below.

#### Strengthen controls to obstruct the flow of illicit tobacco

* Retail licensees must only purchase tobacco products from a licensed wholesaler (if products are purchased from a wholesaler in Victoria or another jurisdiction in Australia which has a licensing scheme for tobacco wholesalers).
* Retail licensees that purchase tobacco products from a supplier in an Australian jurisdiction must check that the supplier has a current licence, if required, before purchasing tobacco products.
* Wholesale licensees must not sell a tobacco product except to a licensed retailer or wholesaler, if products are being sold to a location within Victoria or another jurisdiction in Australia in which the retailer or wholesaler must be licensed.
* Wholesale licensees must check that a tobacco retailer in Victoria has a current licence before selling tobacco products.
* A transitional arrangement will be in place where licence holders can also purchase tobacco from a Victorian wholesaler if the wholesaler has applied for a licence before the commencement of the scheme.

#### Enhance the Regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees

***Retailers and wholesalers***

* A licensee that purchases tobacco must keep records of purchases for a minimum period of 2 years after the invoice is issued.
* If a licensee purchases tobacco products from a Victorian wholesaler or other licensed wholesaler from an Australian jurisdiction, they must keep records including the following:
  + the invoice
  + date of the supply of the tobacco product
  + brand name, type, variant and quantity of the tobacco product, and
  + the wholesaler’s licence number, business/company names, contact details (name/address/phone number/email address), and ABN/ACN.
* If a licensee purchases tobacco products directly from overseas, or a jurisdiction without a tobacco wholesaler licensing scheme, they must keep records for a minimum period of 2 years after the invoice is issued by the overseas wholesaler, including the following:
  + the invoice
  + name of the overseas seller, business names, contact details (name/address/phone number/email address)
  + (if imported from overseas) proof of legal importation and taxation/excise payment
  + date of supply, and
  + brand name, type, variant and quantity of the tobacco product.
* A licensee must keep a record of the number and type of tobacco products purchased and sold each month on a template provided by the regulator and provide the records of sales to the regulator annually as part of the licence renewal application.
* A licensee must maintain a list of the addresses of any premises used for the storage and distribution of tobacco products under the licence and provide it to the regulator on request.

***Wholesalers***

* A licensee that is a tobacco wholesaler must provide an invoice, in English, with the following details visible:
  + a unique identifier
  + date of the supply of the tobacco products
  + brand name, type, variant and quantity of the tobacco products
  + licence number, business names, contact details (name/ address/phone number/email address), and ABN/ACN of the retailer/wholesaler being supplied
  + the wholesaler’s licence number, business names, contact details (name/ address/phone number/email address), and ABN/ACN.
* A licensee that is a tobacco wholesaler must retain a copy of each invoice for at least two years after issuing the invoice and provide it to the regulator on request.

### Option 2: Advanced conditions

This option is consistent with the basic conditions described above, with the addition of a minimum age (of 18 years old) that a person can sell tobacco products. This addition is expected to require more adjustment to business operations, particularly where retailers do not have large pools of staff.

Under this option, a retail licensee must not, from 1 January 2027, allow a person under the age of 18 to sell tobacco products from the licensed premises. Noting that the tobacco business licensing scheme takes full effect by no later than 1 July 2026, the 1 January 2027 date provides time for businesses to make changes to existing staff arrangements, to ensure that persons selling tobacco are 18 years or older.

## Prescribed information

### Base case: No prescribed information

Under the base case, an applicant would only be required to provide the information that is specified in the Amendment Act, which provides for the following elements:

* list the names, addresses and dates of birth (if applicable) of the applicant and the associates of the applicant
* specify, as the proposed licensed tobacco premises, premises that are a permanent structure located in Victoria (that is, businesses may not operate from non-permanent structures such as pop-up stalls)
* the regulator may request the applicant to provide a National Police Check for licensing applications and their associates
* the regulator may request the applicant to provide any other document or information that the regulator reasonably requires to assess the application.

### Option 1: Prescribed information

When applying for, varying, relocating, transferring, renewing or suspending/cancelling a licence, applicants will be required to provide comprehensive additional information and documentary evidence beyond the requirements of the Amendment Act, including business documents (e.g., ASIC extracts), and identity verification documents. This requirement extends to natural person applicants, company directors, partners, and key business personnel. Applicants must submit suitability, associate, business, and premises information. This approach allows the regulator to make well-informed decisions regarding the applicant’s suitability to hold a tobacco licence and the proposed tobacco business, including information about the premises and trading activities.

The following list provides a summary of the key information requirements:

* For body corporates, applicants will need to provide the Australian Company Number. If body corporate applicants are a company registered under the *Corporations Act 2001* (Corporations Act), they will also need a copy of a current and historical company extract from ASIC. If the body corporate is not a registered company under the Corporations Act*,* they should provide evidence of incorporation. Body corporates would also be required to disclose director IDs for each director and the full name and contact details of the applicant who may be contacted by the regulator.
* The Australian Business Number of the applicant (if applicable).
* The partnership name, if the applicant is applying on behalf of the partnership.
* A proof of identity document and a use in the community document that is different from the proof of identity. This would apply to the applicant, partners in a partnership and directors.
* Details of the proposed licensed tobacco premises, such as the address; full name of the owner of the premises; the position title and contact details of the person who could be contacted by the regulator about the premises; any other shops or business names associated with the premises; details of any liquor licence granted with respect to the premises; and the nature and scope of the business.

Intelligence gathering is fundamental to the effective operation of the licensing scheme and can be advanced by requiring that certain information be provided as part of the licensing application process. The core design element that is not subject to optionality is prescribing certain information about the applicant, such as additional personal details and requiring identity verification documents. This enables individuals with a history of criminal activity to be more readily identified, with flow on benefits for the regulator to monitor compliance and undertake enforcement activities.

## Fees

### Base case

Under the base case, no fees would be prescribed for applications under the scheme. This would mean that there is no ability to recover the cost of developing and operating the scheme.

### Option 1: Flat fee

A flat fee would be applied across all businesses reflecting the costs of the regulator to administer the scheme.

Fees for transferring licences would be on par with new applications (and renewals), while relocating or varying a licence would incur lower fees. The fee determination would consider the time and resources needed to assess each application type. For example, transferring a licence would require similar effort as a new application (or renewal), while relocating or varying a licence would involve less complexity.

### Option 2: Differentiated fees

The fee structure would be differentiated between retailers and wholesalers, reflecting the costs of the regulator to oversee the different sectors within the industry.

Consistent with the previous option, fees for transferring licences would be on par with new applications (and renewals), while relocating or varying a licence would incur lower fees.

The analysis in section 5.5.3 outlines the fees under a differentiated fee model.

## Options considered but not progressed for further analysis in this RIS

DJCS has considered a number of other options that could address the aspects and achieve the objectives set out in the previous chapter. These options are briefly outlined in the sections below but have not been progressed to a more detailed description of the option or impact assessment.

There will be opportunities to explore these options again in two years when the Tobacco Regulations sunset, and again after five years of operation of the licensing scheme, when there is a legislated review (required under the Amendment Act). These are discussed further in Chapter 8.

#### Categorisation by segment of the retailing sector

This option could categorise premises by sub-sectors according to Table 4 (with the opportunity to charge differentiated fees according to the categories).[[29]](#footnote-6) The merits of this approach are that it enables a highly granular level of understanding of the makeup of the industry and supports a more informed and targeted compliance approach that minimises harm. This risk-based approach could increase the efficiency of the tobacco business licensing scheme.

The retail sector could be divided into sub-categories, such as supermarkets, fuel retailers, liquor retailers, other store-based retailing (which could include convenience stores), and premises with a vending machine.

The risk-based approach would involve identifying which sub-categories present the greatest and least risk of non-compliance. This would enable the regulator to target particular sub-categories and support a more efficient regulatory regime.

This approach also lends itself to developing a fee schedule that imposes fees according to the risk and business characteristics of the licensees within a sub-category. That is, the businesses which are the riskiest and impose a greater burden on the regulator to oversee would pay higher fees.

There are several key limitations of this option that render it infeasible at this stage.

* This approach brings considerably higher administrative complexity which may not be resolved within the timeframes for the tobacco business licensing scheme’s commencement. The option could incur higher regulatory costs associated with processing applications with greater complexity.
* To analyse this option in the future, more information would be needed on the composition of the industry and the risks associated with each sub-category. Currently, there is limited information on the nature of the industry (including the number of premises within each category and the relative risk profiles) to be able to fairly adopt this approach.
* There is a risk that retailers may misrepresent which sub-category they belong to if they perceive there to be a benefit (for example, through lower fees). The regulator would be required to verify the information provided by retailers, which would bring additional regulatory burden and could increase the cost of operating the business licensing scheme.
* This approach is inconsistent with other tobacco business licensing schemes in Australia, where it is common to distinguish between retailers and wholesalers, with no further distinction for the sub-categories of retailers.

#### Categorisation by business size within the retailing sector

This option could categorise businesses by using the size of the businesses selling tobacco as a proxy for risk. It therefore possesses similar attributes to the option described above (such as enabling greater regulatory efficiency). This option may also lend itself to developing a fee schedule according to ability to pay, whereby larger businesses with a higher ability to pay could incur a higher fee.

To operationalise this option, information would be required on elements such as the turnover of the business or the number of employees within a business. Currently, there is insufficient information to provide a comprehensive view of the industry makeup. It should also be noted that the fee cannot be considered equivalent to a tax or excise duty, as the High Court of Australia has previously ruled against calculating tobacco licence fees based on business revenue,[[30]](#footnote-7) which may introduce legal complexity in the development of this option.

This option – consistent with the option described above – would also introduce administrative complexity to establish within the timeframes for commencement of the scheme. There is also insufficient information about the industry to be able to use the size of the business as a defensible proxy for risk. That is, while it is plausible to assume that larger businesses possess fewer high-risk characteristics, the specific characteristics are still unclear to DJCS.

# Impact assessment

## Methodology

### Base case

The costs and benefits of the options are considered relative to a ‘base case’. The base case refers to the operation of the Amendment Act where no Regulations are prescribed to support the operationalisation of the tobacco business licensing scheme. The use of a base case as the preferred basis for analysing the incremental costs and benefits is discussed in Chapter 4.

### Calculation of costs and benefits

#### Cost to Government

The proposed costs of the scheme are presented in this section and serve as the basis of the cost recovery calculations, applying the Government’s policy position of full cost recovery. However, given the uncertainty of regulatory costs to be recovered through fees this RIS presents the cost base as a range. Table 9 outlines the costs to Government over a 15-year period. Two categories of costs are presented: establishment costs that are incurred in setting up the tobacco business licensing scheme and ongoing costs that result from operating the scheme.

As outlined in Section 7.2.1, the Victorian Civil and Administrative Tribunal (VCAT) will have a role in reviewing decisions made by the regulator. Under VCAT’s user-pays funding arrangements, the cost to establish VCAT’s functions under the scheme and the cost for VCAT to finalise tobacco licensing-related matters will be paid by the regulator.

The cost base over 15 years, in cumulative financial (undiscounted) terms, is outlined below.

Table 9: Establishment and ongoing costs of the tobacco business licensing scheme

| Cost | Description | 15-year cost |
| --- | --- | --- |
| **Establishment costs** | Costs incurred over the first four years of the scheme to establish the tobacco business licensing scheme and regulator, including:   * regulatory staff and other operating costs incurred during establishment only * web content, media and campaigns * establishing the regulator’s functions, processes, governance and support recruitment activity, and * development and establishment of an IT platform to underpin the licenses. | $8.939m |
| **Ongoing costs** | Costs incurred following the establishment of the scheme, accounting for: |  |
| * the costs of the regulator in administering the scheme, including assessing applications and conducting compliance and enforcement activities, and | $127.008m - $174.069m |
| * the costs incurred by Victoria Police in reviewing and assessing applications. | $74.312m - $101.848m |
| **Total cost base** |  | **$210.260m[[31]](#footnote-8) - $284.856m** |

#### Cost to businesses

Wherever possible, the costs of options have been quantified. Costs are calculated over a 15-year period. Typically, the analysis period would align with the life of the Regulations. However, as these new Regulations amend the Tobacco Regulations, they will expire in two years. The analysis period used in this RIS is 15 years for the fees (noting that there will be an opportunity to review these new Regulations when the Tobacco Regulations expire in 2027 and again within five years from the scheme’s commencement under a legislated review of the licensing scheme contained in the Amendment Act).

Ten-year discounted cash flows are used for the economic analysis in relation to the conditions and prescribed information requirements. The costs are discounted so that they reflect costs in today’s dollar terms. The real discount rate used is four per cent, as recommended in the Victorian Guide to Regulation.

#### Calculation of benefits

In the context of the tobacco business licensing scheme, the benefits are difficult to quantify in monetary terms, therefore benefits have been qualitatively assessed using MCA (see below). Some of the main challenges associated with quantifying the benefits are briefly described below:

* **Attribution** – the tobacco business licensing scheme forms part of a suite of measures designed to reduce the prevalence of smoking. It would be difficult to attribute some of the benefits to the health and safety of the community specifically to the scheme. It is also difficult to attribute specific elements of the Regulations to the benefits of the licensing scheme overall (which is established by the Act under the base case). Additionally, other activity in the illicit tobacco area – such as greater enforcement at the state and Federal levels – may make it difficult to estimate future impacts.
* **Behavioural Factors** – changes in behaviour can be influenced by a variety of factors, including policy (such as other tobacco control policies), social, economic, cultural, and personal influences, making it difficult to attribute the effects of the tobacco business licensing scheme.

### Multi-criteria analysis

MCA is used in this RIS to evaluate the options, leveraging analysis of the costs and benefits of each option. This approach is typically used when it is challenging to quantify and assign monetary values to many of the impacts of a proposed measure, such as the benefits of avoided harms and risks associated with tobacco. Additionally, it provides a consistent method for comparing a variety of alternative approaches. In the context of fee criteria, given that the costs to industry equal the benefits in terms of cost recovery and revenue to government, MCA enables a more holistic consideration of the impacts of different fee structures.

This method requires judgments about how each option will contribute to a set of criteria that are chosen to reflect the associated benefits and costs. A qualitative score is assigned based on the impact of the proposal on each criterion, and an overall score is calculated by multiplying the score assigned to each measure by its weighting and summing the results. Quantified costs are reflected (where relevant) in the MCA scores.

The criteria for the MCA are selected to reflect the Government’s objectives and weighting priorities related to operationalising the tobacco business licencing scheme while minimising the regulatory burden on businesses.

The MCA provides a mechanism for comparing options when the available data is neither consistent nor comprehensive. It can also be applied in situations where there is a combination of quantitative and qualitative data available.

#### Criteria and weights

Two sets of criteria are used: one for the assessment of fees and another for the assessment of the other policy options. This approach is used to reflect different objectives (outlined in Chapter 3) of the fee and policy components of the proposed Regulations.

Table 10 details the three criteria and allocated weightings that will be used to assess the fee options. Two key principles in defining the criteria are that they should be mutually exclusive and completely exhaustive. As discussed in Chapter 3, it is appropriate that fees be set in a manner that recovers the costs of the scheme while balancing the generally accepted fee design principles of efficiency, effectiveness, equity, and simplicity. Efficiency (i.e., full cost recovery) has been used to set fee levels for both options. However, given both options are designed to fully cost recover, it is not included as an explicit criterion in the MCA.

Table 10: Criteria used to assess fees

| **Criteria** | **Description** | **Weight (%)** |
| --- | --- | --- |
| **Effectiveness** | Promote compliance and cooperation with the tobacco business licensing scheme, while not leading to any unintended consequences. | **33.33%** |
| **Equity** | Fairly differentiate fees based on factors such as ability to pay, risk profile, or other relevant characteristics of the business, noting that the fee cannot be considered a tax.  Minimise risks associated with barriers to entry and inequity, noting that businesses of different sizes participate in the tobacco market. | **33.33%** |
| **Simplicity** | Ensure the fee structure is straightforward and easy for users to comprehend and for the regulator to manage. | **33.33%** |

Table 11 details the three criteria and allocated weightings that will be used to assess the policy options (categories and conditions). According to BRV’s Guidance Note on MCA criteria, the weights assigned can have a significant effect on outcomes. For example, a high weighting on benefit-related criteria relative to the cost criteria biases the outcomes for a given set of scores:

* against options that have relatively low costs (the variable about which the evidence tends to be more robust), and
* towards options that rate highly on the benefits-related criteria (which tend to be measured on a more subjective basis).

It has therefore been decided that neutral weights of 50 per cent in total for the cost-related criteria and 50 per cent in total for the benefit-related criteria should be applied. It has also been determined that costs to industry and the Government are equally important and are equally weighted (25 per cent each).

Table 11: Criteria used to assess the policy options

| **Criteria** | **Description** | **Weight (%)** |
| --- | --- | --- |
| **Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes** | Prohibit the retail and wholesale sale (and offering for sale) of tobacco products by any person other than a holder of a licence, thereby contributing to the primary goal of the Tobacco Act which is the active discouragement of the smoking of tobacco and the development of a co-ordinated and integrated State-wide program to reduce the prevalence of smoking in Victoria.  Safeguard the suitability of licensed retailers and wholesalers of tobacco products and minimise and mitigate the risks associated with the sale (and offering for sale) of tobacco products by enabling the imposition of conditions on licences. This in turn will minimise non-compliance with the Tobacco Act, which bans the sale of tobacco to underage people; discourages the advertising and promotion of tobacco products; restricts displays; and mandates the display of health promotion material. Non-compliance may also arise from the proliferation of illicit tobacco.  Provide sufficient powers to enable efficient and effective regulatory oversight, thereby supporting the regulator to operationalise the scheme through information, categories, and conditions that enable decision-making and risk minimisation. Deter unsuitable people from seeking to run a tobacco supply business. The option should enhance oversight of the industry to prevent harm. | **50%** |
| **Burden on the industry** | Simple and clear regulatory options to reduce complexity and minimise the time required to make an application and for application processing. Regulatory requirements should be clear and straightforward, particularly for major processes such as licence applications, transfers, renewals and compliance.  Minimise risks associated with barriers to entry and inequity, noting that businesses of different sizes participate in the tobacco market.  Only impose regulatory requirements and burden on those who engage in or interact with the industry. | **25%** |
| **Burden on government** | Minimise the burden on the government in establishing the Regulations and related processes. Simpler regulatory structures will be easier to implement.  Ensure that the option is feasible for the first iteration of the Regulations for the tobacco business licensing scheme in Victoria. | **25%** |

#### Scoring

The MCA uses a scoring scale that ranges from -10, where a proposal does not meet any of the Government’s objectives, to +10, where the Government’s objectives are fully met.

A score of 0 represents a position equivalent to no improvement on the base case. Table 12 shows the range and description of the scoring within that range that will be applied to each element of the major issues being dealt with through the options.

Table 12: MCA scoring scale

| Assigned score | Description |
| --- | --- |
| -10 | Very significant negative impact |
| -7 | Significant negative impact |
| -3 | Moderate negative impact |
| 0 | No impact compared with Base Case |
| 3 | Moderate positive impact |
| 7 | Significant positive impact |
| 10 | Very significant positive impact |

## Categories

### Overview of this section

The purpose of this section is to examine the options for categorisation. These options set out to solve the matters outlined in Chapter 2.

***The absence of Regulations prescribing categories of licence prevents the regulator from distinguishing between different types of businesses that sell tobacco products.***

### Options for analysis

One option for categories was analysed and compared to the base case.

#### Base case: No categories

The base case would have no categories. A licensing scheme can operate, but there will be no distinction between different types of businesses that sell tobacco products.

#### Option 1: Basic categorisation

This Option introduces differentiation according to the type of activities associated with that business. This recognises that there may be different regulatory activities associated with retailers and wholesalers. For example, while a retailer is expected to have a prominent store front and point of sale for tobacco products where the regulator can monitor compliance with requirements, a wholesaler may be operating from a warehouse where the regulator would be required to undertake more detailed investigation of the products to ensure that the licensee is operating in a compliant manner.

#### Jurisdictional comparisons

It is common throughout Australia for tobacco licensing schemes to distinguish between the activities of retailers and wholesalers. The Australian Capital Territory, Queensland, Tasmania, South Australia, and Western Australia have distinguished between retailers and wholesalers through the application process.

### Multi-criteria analysis scoring summary

#### Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes

**Base case: No categories**

The base case is not expected to equip the regulator with sufficient information to support the swift identification of illicit tobacco in the industry. The recent strengthening of the New South Wales scheme – which is being transitioned to a licensing scheme with categories for retailers and wholesalers – demonstrates that categorisation is a useful regulatory setting.

The base case does not enhance oversight of the industry to prevent harm and does not assist the regulator in expanding its information about the industry to inform future regulatory approaches. It ultimately does not sufficiently operationalise the scheme.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic categorisation**

Enables a more granular level of understanding of the makeup of the industry and supports a more informed and targeted compliance approach that minimises harm. The categories offer the opportunity to easily target conditions and fees to different categories of business based on any identified risk characteristics.

This greater understanding of the industry may support the regulator to identify illicit tobacco activity in specific parts of the industry to streamline compliance efforts.

Retail and Wholesale categories have been used by most other Australian jurisdictions (ACT, QLD, SA, NSW and WA). Using nationally consistent categories supports Victoria’s operationalisation of a nationally consistent licensing scheme.

*A score of* ***3*** *is assigned for this criterion*

#### Burden to industry

**Base case: No categories**

There is no additional burden on the industry associated with the base case. In the absence of categories, there is no additional barrier to entry.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic categorisation**

This option allows for more tailored development of application forms, licence conditions, communications and engagement for the end user, as well as differentiated fees (if appropriate). The distinction between retail and wholesale is clear and simple for industry to understand and apply and would impose limited additional regulatory burden on businesses.

There would be some additional administrative and financial burden on businesses who are both a retailers and wholesalers, as they would be required to obtain both licences. This would effectively duplicate the effort required and cost incurred by those businesses falling into both categories.

Due to the additional impacts on businesses conducting both retail and wholesale trade, this option is expected to impose a marginally greater burden than the base case, under which there would be no requirement to specify categories. However, this is considered to be a small burden.

*A score of* ***-1*** *is assigned for this criterion*

#### Burden on government

**Base case: No categories**

There is no additional burden on government associated with the base case. It is simple and feasible to be implemented.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic categorisation**

This option would require the regulator to develop simple forms and processes to give effect to two categories. This is expected to be feasible within the required timeframe.

*A score of* ***-1*** *is assigned for this criterion*

#### Scoring summary

Through the MCA process for the policy options, ***Option 1: Basic categorisation*** emerged as the preferred option.

Table 13: Policy option multi-criteria analysis

|  | Weight | Base case | Option 1: Basic categorisation |
| --- | --- | --- | --- |
| Efficient and effective operationalisation of the tobacco business licensing scheme | 50% | 0 | 3 |
| Minimise burden the industry | 25% | 0 | -1 |
| Minimise burden on government | 25% | 0 | -1 |
| **Weighted score** | **100%** | **0.00** | **1.00** |

## Conditions

### Overview of this section

The purpose of this section is to examine the options for standardised tobacco licence conditions. In the absence of standardised conditions, the regulator would still be able to apply bespoke conditions on specific businesses.

Standardised licence conditions can help the regulator monitor the supply chain and mitigate the risks associated with certain types of business.

The following issues might exist in the absence of prescribing uniform conditions:

* the regulator would not be able to require the retention of records across the whole industry, and
* there would be limited additional mechanisms to obstruct the flow of illicit tobacco through the legal supply chains.

### Options for analysis

Two licence conditions options were analysed and compared to the base case.

#### Base case: No licence conditions

The base case is a scenario where there would be no uniform prescribed licence conditions for a general application. However, conditions may be applied to individual licences at the regulator’s discretion to mitigate specific concerns. While the regulator can impose conditions on licences in the base case, this may not happen often, or consistently.

#### Option 1: Basic conditions scenario

Option 1 includes the following conditions:

* tobacco products can only be sold between licensed retailers and licensed wholesalers (if products are purchased/sold in Victoria or another Australian jurisdiction which has a licensing scheme requiring the supplier to be licensed)
* retailers and wholesalers must keep records of all tobacco product sales for a minimum period of two years after the invoice is issued (including relating to purchases overseas). Detailed information of the records to be provided can be found in Section 4.3.2, and
* retailers and wholesalers must provide high-level records to the regulator annually, and other detailed records to the regulator on request.

#### Option 2: Advanced conditions scenario

Option 2 includes the conditions imposed by the **Basic conditions scenario**, plus the additional condition that a retail licensee must not allow a person under the age of 18 years to supply tobacco products under the licence. This condition would be effective from 1 January 2027.

#### Jurisdictional comparisons

Tobacco licensing requirements are imposed in many states and territories. These jurisdictions vary based on the relative strictness of their requirements.

Similar to the proposed condition to prohibit people under the age of 18 from selling tobacco, other jurisdictions have a ban on tobacco sales by minors. For example, the Northern Territory, Queensland and Western Australia have a ban on tobacco sales by minors.[[32]](#endnote-26)

Further, some jurisdictions have requirements which require licensees to submit sales information to the regulator. For instance, in Tasmania, sales data must be reported annually by all retailers.[[33]](#endnote-27) South Australia also requires licensees to keep and retain records for two years of the suppliers, importers and/or manufacturers of all tobacco and e-cigarette products that are sold, supplied, possessed and/or stored on the premises.[[34]](#endnote-28)

Finally, similar to the proposed condition under both options that licensees can only buy within the legal supply chain of licensees, most jurisdictions – except the Northern Territory – require both wholesalers and retailers in the tobacco industry to be licensed. [[35]](#endnote-29) For instance, in Queensland, licensed wholesalers can only sell tobacco products to licenced retailers.[[36]](#endnote-30)

### Costs associated with the options

The costs and benefits of the licence condition options were quantified where possible and assessed.

The benefits of the licence condition options were difficult to assess. This is because the benefits are generally ‘avoided costs’ in terms of lower harms associated with non-compliance with tobacco laws.

The main costs associated with licence conditions are the administrative and compliance burdens that the condition imposes on businesses. Licence conditions can also place administrative costs on the regulator. However, the costs to the regulator were assumed to have been included in the cost base described at the start of this Chapter.

The costs from licence conditions were assessed for the basic conditions scenario (Option 1) and the advanced conditions scenario (Option 2). The primary cost driver for basic conditions is the time taken to comply with the three uniform requirements. The additional cost driver for the advanced conditions is the requirement to ensure someone over the age of 18 is available to conduct sales of tobacco products. These costs were assessed below.

The costs for the base case scenario were not assessed because it is assumed that the regulator will not often exercise their powers to impose conditions on specific licensees to mitigate specific concerns. Therefore, it is difficult to quantify how it will impact business.

#### Basic conditions scenario cost estimates

The basic conditions scenario includes strengthening controls to obstruct the flow of illicit tobacco and enhancing the regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees.

**General assumptions**

The main drivers of the costs for complying with these basic conditions include: the amount of time taken to understand and comply; the value of a retail or wholesale worker’s time; and the frequency with which businesses need to comply with condition requirements.

The median weekly earnings in the retail and wholesale trade industries have been used to proxy the value of a retail or wholesale worker’s time. Median earnings were chosen over average earnings because average earnings can be positively skewed by high income earners. These costs were then converted into hourly estimates by dividing the weekly earnings by 37.5 (working hours in a full-time working week). These estimates are presented in Table 14 table below.

Table 14: Value of a retail and wholesale worker’s time

| Median earnings | Weekly | Hourly |
| --- | --- | --- |
| Retail median earnings[[37]](#endnote-31) | $1,334 | $35.57 |
| Wholesale median earnings[[38]](#endnote-32) | $1,610 | $42.93 |

Although the aggregate retail and wholesale trade industries might not completely represent the tobacco industry, they should provide a good proxy to assess the compliance burden impacts from the basic conditions scenario. There is also limited data on the tobacco industry earnings which would allow a more complete analysis, however, businesses that exclusively sell tobacco are expected to be a relatively small proportion of the total market for tobacco in Victoria.

**Strengthening controls to obstruct the flow of illicit tobacco**

This condition requires wholesale tobacco products to be sold between licensed wholesalers and licensed retailers.

To comply with this condition, businesses would be expected to access an online register of licensed retailers and wholesalers to confirm their licence status. This is expected to take approximately ten minutes to complete based on the time taken to navigate the tobacco licence registers in other Australian jurisdictions. This is presented in the table below.

Table 15: Time taken to check licence status

|  |  |
| --- | --- |
| Strengthen controls to obstruct the flow of illicit tobacco | Minutes |
| Time taken to check that the tobacco retailer/supplier has a current licence | 10 |

It is assumed that retailers would interact with a small number of wholesalers, and that wholesalers would serve a greater number of retailers. This is shown through the base frequency in the table below. For an illustrative example, it is assumed that a retailer would check the online register four times a year, and a wholesaler would check the register 120 times a year. It is assumed that this requirement would be more burdensome on wholesalers as they would sell to many retailers. In contrast, retailers likely only buy from a small number of wholesalers.

It is also assumed that the effort required to perform these checks would decrease after the initial years, as businesses become more familiar with the requirements and the process for checking the online register. A reduction in effort of 0.8 was applied to the first two years after the initial search on the online register. For example, this would mean businesses are assumed to be 20% faster at checking the online register in the second year relative to the first year. This is presented in the table below.

Table 16: Assumptions about the base frequency and reduction in effort

|  |  |  |
| --- | --- | --- |
| Categories | Base frequency (p.a) | Reduction in effort |
| Retailers | 4 | 0.80 |
| Wholesalers | 120 | 0.80 |

The following formula was used to estimate the administrative and compliance costs:

*Annual cost to comply = Time taken to check that the tobacco retailer or supplier has a current licence \* Median hourly wage \* Base frequency \* Reduction in effort*

The cost to comply is estimated over a 10-year horizon and discounted back to present value. An average annual cost in NPV terms was also estimated by dividing the 10-year cost estimate by 10. The net present value of the costs per retailer and per wholesaler are presented in the table below.

Table 17: Total cost of strengthening controls to obstruct the flow of illicit tobacco

|  |  |  |
| --- | --- | --- |
| Industry | Average annual cost in NPV terms | 10-year net present value cost |
| Retail | $13 | $132 |
| Wholesale | $396 | $3,955 |

**Enhance the regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees**

This condition requires retailers and wholesalers of tobacco to keep records on the sale and purchase of tobacco and report on certain records annually (section 4.4.2). High level data on the volumes and type of products sold will be recorded for each month and reported annually. Other detailed record keeping (such as invoices) must be retained and may be inspected by the regulator during compliance activities. There is also a requirement to keep records of storage facilities for retailers and wholesalers and to provide these to the regulator on request.

To comply with this condition, as an illustrative example, it is assumed that businesses would spend one hour every month completing additional record keeping requirements. It is also assumed that the annual reporting would take 90 minutes to complete, as it would involve compiling records across the entire year. These are high-level assumptions and will be better informed after the record keeping system is designed and implemented. This is outlined in the table below.

Table 18: Assumptions about time taken to complete record keeping

|  |  |  |
| --- | --- | --- |
| Requirements | Minutes | Frequency per year |
| Monthly record-keeping | 60 | 12 |
| Annual reporting | 90 | 1 |

The following formula was used to estimate the administrative and compliance costs:

*Annual cost to comply = Time taken to complete monthly record keeping\* Median hourly wage \* Frequency per year + Time taken to complete annual reporting\* Median hourly wage \* Frequency per year*

The cost to comply is estimated over a 10-year horizon and discounted back to present value. An average annual cost in NPV terms was also estimated by dividing the 10-year cost estimate by 10. The net present value of the costs per retailer and per wholesaler are presented in the table below.

Table 19: Total cost of record keeping requirements

|  |  |  |
| --- | --- | --- |
| Industry | Average annual cost in NPV terms | 10-year net present value cost |
| Retailers | $421 | $4,213 |
| Wholesalers | $509 | $5,085 |

**Summary**

In summary, the total 10-year net present value costs and 1-year average annual cost in net present terms for the Basic Conditions scenario is presented in in the table below. The cost to comply was estimated at both a business and industry level for both the retail and wholesale tobacco industry.

Table 20: Total cost of Basic Conditions Scenario

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Industry | Average annual cost in NPV terms cost per business | Average annual cost to industry in NPV terms | 10-year net present value cost per business | 10-year net present value cost to industry |
| Retail | $435 | $4,300,000 | $4,345 | $43,000,000 |
| Wholesale | $904 | $45,200 | $9,040 | $452,000 |

#### Advanced conditions scenario cost estimates

The advanced conditions scenario includes the basic conditions scenario, plus the condition that individuals under the age of 18 years would be prohibited from selling tobacco. This will place a compliance burden on retail businesses. The condition may require businesses to substitute away from workers under the age of 18, who are relatively less expensive, towards workers who are 18 or older. It could also create rostering problems for the business.

It is assumed that – wherever possible – business would substitute to an 18 -year-old employee as this would likely incur the lowest incremental cost. For example, hiring someone over the age of 20 could be more expensive than hiring an 18-year-old. Therefore, the compliance cost estimate provided will be a lower bound estimate.

The Fair Work Commission[[39]](#endnote-33) publishes the standard awards for each age group in the retail industry. Each age group generally has different award levels, which reflect the different tasks and levels of responsibility that an employee has.

For the purposes of this analysis, the average of the award levels for under 18-year-olds was assumed to reflect the cost of having an employee under the age of 18 in the retail tobacco sector. The average award levels for an 18-year-old were assumed to reflect the cost of having an 18-year-old employee. These award rates are shown below. On average, it is estimated to cost $6 per hour more to have an 18-year-old rostered on compared to a person under the age of 18. This is presented in the table below.

Table 21: Average award rate, by age

|  |  |
| --- | --- |
| Average award rates | Hourly |
| Average casual award (under 18) | $16.91 |
| Average casual award (18 years of age) | $22.91 |

To estimate the cost of this condition at an annual per worker level, average hours worked per week by under-18 employees was sourced from the ABS.[[40]](#endnote-34) This is presented as 10.4 hours in the table below. The following equation was then estimated:

*Annual cost to comply = wage difference between an 18-year-old retail worker and under 18-year-old retail worker\*average hours per week of an under 18-year-old retail worker \* number of weeks in a year.*

This annual estimate is shown in the table below.

Table 22: Annual cost per worker from the advanced condition

|  |  |
| --- | --- |
| Average hours worked per week from under-18 retail workers | Total annual cost per worker from the advanced condition |
| 10.4 | $3,276 |

It should be noted that many staff would be on permanent part-time or full-time contracts. As casual award rates are higher than permanent awards, casual award rates have been used to estimate the maximum potential impact.

It is also important to consider that this condition will not impose a cost on every business. For example, liquor and gaming venues may already require sellers to be over the age of 18. Further, large retailers may already have policies in place which restrict under 18s from selling tobacco.

The cost of banning under 18s from selling tobacco was not estimated at an industry level for the following reasons.

* There is no data to estimate the proportion of businesses that this condition would affect. As stated above, some businesses might already have policies in place that restrict the sale of tobacco to over 18s.
* Businesses will respond differently to this policy, making it difficult to estimate the costs at an industry level. For example, some businesses may just tweak their rostering requirements resulting in relatively low compliance burden. In contrast, smaller businesses may have to hire new staff.

### Multi-criteria analysis and scoring summary

The following section assesses the conditions using MCA.

#### Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes

**Base case: No uniform conditions**

The base case offers minimal harm reduction and illicit tobacco benefits. While the regulator would be able to place specific conditions on specific licensees to mitigate concerns around harm and illicit flow of tobacco, this would have little broad community benefit. This is because the conditions may be narrowly applied on specific businesses, and therefore, would not be expected to reduce harm and the flow of illicit tobacco across the whole industry.

The base case would likely not enhance oversight of the scheme. Under the Amendment Act (section 34ZD(3)), the regulator can impose conditions requiring the licensee to report to the regulator any activity that is conducted under the licence. However, the absence of uniform conditions on disclosing sales information would make it difficult for the regulator to monitor and enforce the licensing scheme. While the regulator can impose conditions on licences in the base case, this may not happen often, or consistently.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic conditions**

Option 1 will allow for a more efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes relative to the base case.

Option 1 would help reduce the flow of illicit tobacco relative to the base case. Requiring licensees to ensure that they only purchase from within the legal supply chain is a core part of ensuring that tobacco products of an unknown source are not sold through licensed retailers. Enhancing the regulator’s ability to monitor the sales of tobacco will also make it more difficult for licensees to engage in the illicit tobacco industry. This could help reduce the flow of illicit forms of tobacco by making it harder for illicit tobacco to be sold into the licensed market. Although, there are still risks that tobacco licence holders will sell illicit tobacco despite the record-keeping and reporting requirements, and it is noted that other jurisdictions with similar conditions imposed still have an illicit tobacco market.

Restricting the flow of illicit tobacco may also have the effect of discouraging smoking. Reducing the supply of illicit tobacco available to the market could reduce the total availability of tobacco. This could make tobacco harder to access and more expensive, which might act as a disincentive to smoke.

Option 1 would also likely reduce non-compliance with the Tobacco Act and support the regulator to operationalise the scheme relative to the base case. As stated above, strengthening controls to obstruct the illicit flow of tobacco and enhancing the regulator’s ability to monitor the sales of tobacco would help stop the proliferation of illicit tobacco, thereby minimising non-compliance with the Tobacco Act.

Option 1 would also deter unsuitable people from seeking to run a tobacco supply business. Requiring licensees to ensure that they only purchase from within the legal supply chain and maintain records of their legal purchases would help ensure that businesses only apply for a tobacco licence if they can lawfully operate in the market. Further, businesses who cannot meet these conditions who currently operate in the tobacco market may exit the market as they are not a suitable business to hold a licence.

Option 1 would also enhance oversight of the industry to prevent harm relative to the base case. Enhancing the regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees would make it easier for licensing inspectors to audit the sales of tobacco in a retail premises and track changes. Consistent recordkeeping requirements will also assist the regulator to audit to review records of sales to identify any concerns. These conditions could also enable the regulator to cancel licences of non-compliant businesses. For example, if a licensed tobacco retailer is not keeping records of tobacco purchased/sold, the regulator could have grounds to suspend their licence and stop them from selling tobacco.

*A score of* **5** *is assigned for this criterion*

**Option 2: Advanced conditions**

Option 2 would have the same harm minimisation and illicit tobacco benefits as Option 1.

In addition, Option 2 will better discourage the smoking of tobacco relative to the base case and Option 1. Employees under the age of 18 who sell tobacco may grow to view smoking as normal behaviour. They will also become familiar with brand names and be exposed to the variety of smoking products available. Persons under the age of 18 are also more likely to be vulnerable to pressure from peers to sell to persons under the age of 18. Therefore, banning the sale of tobacco by people under the age of 18 may help reduce some of these risk factors, helping reduce the prevalence of smoking in young adults.

*A score of* ***7*** *is assigned for this criterion*

#### Burden to industry

**Base case: No uniform conditions**

There would be low industry burden under the base case. This is because the absence of uniform conditions, the conditions would likely be narrowly applied on specific businesses. This would result in an overall lower administrative and compliance burden on industry. Further, the relatively low burden on industry means that the base case would not act as a major barrier to entry.

The lack of prescribed conditions under the base case may lead to confusion amongst industry. Given there would be no consistency in how the regulator applies specific conditions to specific businesses, it may be more difficult for businesses to understand their obligations and compliance requirements.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic conditions**

Option 1 would impose a greater burden on industry relative to the base case.

Strengthening controls to obstruct the flow of illicit tobacco will add more complexity to the scheme relative to the base case scenario, however, this effect is likely to be small. This is because it is simple and clear to understand that you can only purchase from within the legal supply chain. Further, the administrative burden imposed by this requirement will be relatively low. Although there will be an obligation on the licensee to confirm that the tobacco supplier that it is purchasing from, or selling to, is appropriately licensed, licence information will be included on the Public Register of Licenced Tobacco Suppliers in Victoria, and in most other states and territories. The RIS estimated that over a 10-year period the net present value cost would be $132 per retailer and $3,955 per wholesaler. This translates to about $1,300,000 for the total retail industry and about $198,000 for the total wholesale industry.

Enhancing the Regulator’s ability to monitor the sales of tobacco through conditions on record keeping would also likely place an administrative burden on industry relative to the base case. Industry would be required to retain records of purchases for 2-years; however, it is expected that most businesses would already undertake some recordkeeping for tax purposes. This is because under the base case, businesses would keep financial records such as invoices for at least five years as required under the *Income Tax Assessment Act 1997* and at least seven years as required under the Corporations Act. While businesses are legally required to keep some records relating to business income and expenses, these Acts do not require that those records prescribe the detail required for tracking illicit tobacco. This RIS estimated that the additional compliance burden over a 10-year period the net present value cost would be $4,213 per retailer and $5,085 per wholesaler. This translates to about $41,900,000 for the total retail industry and about $254,000 for the total wholesale industry.

Strengthening controls to obstruct the flow of illicit tobacco could be seen as anti-competitive and act as a barrier to entry relative to the base case. However, under the tobacco business licensing scheme all tobacco retailers and wholesalers in Victoria will be required to be licensed. This would align with most states and territories in Australia. Further, this will likely disproportionately act as a barrier to entry for illicit tobacco providers, which would align with the objectives of the licensing scheme.

*A score of* ***-7*** *is assigned for this criterion*

**Option 2: Advanced conditions**

Option 2 would place a greater burden on industry relative to the base case and Option 1.

Option 2 will place compliance burdens on businesses due to the requirement to always roster someone on over the age of 18. This will impact businesses who currently employ people under 18 years. Large businesses may be able to rearrange existing staffing arrangements to ensure that persons manning the counter are 18 years or older. Other business may need to employ additional staff. For these businesses it will likely be more expensive to employ an older more experienced staff. This was estimated to be about an extra $6 per hour, or an annual cost of about $3,276 per worker if a business had to completely switch to an older employee.

In saying this, Option 2 has been designed to provide a longer lead time for compliance to allow businesses to make other arrangements. The requirement that a licensee must not allow a person under the age of 18 years to supply tobacco products under the licence will not come into effect until 1 January 2027.

*A score of* ***-8*** *is assigned for this criterion*

#### Burden on government

**Base case: No uniform conditions**

The lack of uniform conditions would reduce the burden on government. While the Amendment Act enables the regulator to impose conditions on licences, it is assumed that this may not happen often under the base case. Therefore, the burden on government to impose, monitor and enforce conditions would be relatively low.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Basic conditions**

Option 1 would impose a greater burden on government relative to the base case. The basic conditions may increase establishment costs as it would require setting up a database for licensees and a system to maintain record keeping. Option 1 would also place an ongoing burden on government to monitor and ensure compliance with the basic conditions.

Option 1 should be relatively simple to implement. Government should be able to set up a suitable and efficient system for reporting before the first iteration of the scheme.

*A score of* ***-2*** *is assigned for this criterion*

**Option 2: Advanced conditions**

Option 2 will place greater burden on government relative to the base case, due to the reasons outlined in the MCA for Option 1. However, Option 2 scores lower than Option 1 as the condition that no one under the age of 18 can sell tobacco may place an additional enforcement burden on government to ensure this condition is upheld.

*A score of* ***-3*** *is assigned for this criterion*

#### Multi-criteria analysis scoring summary

The table below shows that the preferred option is Option 2 – the advanced condition scenario.

In comparison to the base case and Option 1, Option 2 would ensure the scheme is more efficient and effective at achieving its objectives. This is because the conditions it imposes will better discourage smoking, minimise non-compliance and support the regulator to operationalise the scheme.

However, Option 2 would have a larger burden on industry relative to the base case and Option 1, as the conditions it imposes would likely impose larger administrative and compliance costs on industry.

Option 2 also performed worse than the base case and Option 1 when it comes to minimising burden on government. This is because the age requirement for selling tobacco could place a larger monitoring and enforcement burden on government.

Despite performing slightly worse than Option 1 on minimising burden to industry and government, Option 2 is still the preferred option as it scored the highest for the efficient and effective operationalisation of the tobacco business licensing scheme, which was weighted as the most important criteria.

Table 23 - Summary of MCA analysis for licence condition options

|  | Weighting | Base case | Option 1: Basic conditions | Option 2: Advanced conditions |
| --- | --- | --- | --- | --- |
| Efficient and effective operationalisation of the tobacco business licensing scheme | 50% | 0 | 5 | 7 | |
| Minimise burden the industry | 25% | 0 | -7 | -8 | |
| Minimise burden on government | 25% | 0 | -2 | -3 | |
| **Weighted score** | **100%** | **0.00** | **0.25** | **0.75** | |

## Prescribed information

### Purpose of this section

The purpose of this section is to consider the prescribed information requirements on licensees.

Information requirements are an important part of the licensing scheme. The absence of prescribed information for licence application, transfers, variations, relocations and renewals would prevent the regulator from:

* having sufficient information to assess and determine applications under the legislation
* gaining a better understanding of the industry
* informing risk assessments, compliance strategies and licence conditions, and
* acquitting its obligations to consider certain information.

Further, intelligence gathering is fundamental to the effective operation of scheme and can be advanced by requiring that information be provided during licence applications.

### Options for analysis

One option for prescribed information was analysed and compared to the base case.

#### Base case: No prescribed information

The base case is a scenario where there would be no additional prescribed information requirements for licence applications, variations, relocations, transfers, renewals and suspensions/cancellations beyond what is already in the Amendment Act. For example, the Amendment Act enables the regulator to ensure a licensee is fit to hold a licence by requesting a National Police Check (NPC) from applicants and their associates.

#### Costs associated with the base case

The cost of a NPC will also impose compliance and administrative burdens on industry. However, the cost of a NPC will explicitly fall under the base case.

For simplicity, it was assumed a NPC would be undertaken by every applicant in the first year. In the following years a NPC will be required for new licensees (either new applicants or transferees). The NPC would not be required for renewals (unless there had been changes to criminal history in the intervening period). The costing assumptions are based on transfers only after year one, as DJCS has forecasted the number of licence transfers but not the number of new applications, given the uncertainty around these estimates.

Further, because the number of licence transfers have not been split by wholesale and retailers, the median retail wage was used to proxy the value of time.

The following formula was used to estimate the administrative and compliance costs from an NPC:

*Annual cost to comply = (Cost of NPC + median hourly earnings\*base frequency\*time taken for NPC Check) \*number per business*

The costing assumptions used are presented in the table below. A detailed analysis of the costing assumptions can be found in **Appendix C.**

| Hourly median earnings | Cost of police check | Time for police check | Base frequency (per annum) | Number per business |
| --- | --- | --- | --- | --- |
| $35.75[[41]](#endnote-35) | $86.50[[42]](#endnote-36) | 30[[43]](#endnote-37) minutes | 1 | 4 |

Table 24 - Assumptions used for National Police Check requirements

The total cost to industry to comply with the NPC were estimated over a 10-year horizon and discounted back to present value. An average annual cost in NPV terms was also estimated by dividing the 10-year cost estimate by 10.

Table 25 - Total cost NPC requirement

|  |  |
| --- | --- |
| Average annual cost to industry in NPV terms | 10-year net present value cost to industry |
| $900,000 | $9,000,000 |

#### Option 1: Prescribed information

Applicants (retailers and wholesalers) would be required to provide prescribed information in the proposed Regulations for licence applications, variations, relocations, transfers, renewals and suspensions/cancellations. This requirement also extends to associates of the applicant, such as company directors.

The prescribed information is additional information and documentary evidence beyond what is required in the Amendment Act. This information includes business documents (e.g., ASIC extracts) and identity verification documents. Applicants must also submit suitability, business, and premises information. Further detail about this information is provided in Section 4.4.2. While not included in the proposed Regulations, there will be a requirement to ensure a licensee is fit to hold a licence through a NPC. However, the cost of a NPC falls under the base case as the Amendment Act enables the regulator to request a NPC from licence applicants and their associates.

This prescribed information approach will allow the regulator to make well-informed decisions regarding the applicant’s suitability to hold a tobacco licence and provides information about the tobacco supply business to support compliance and enforcement strategies, including information about the premises and trading activities.

#### Jurisdictional comparison

It is instructive to compare the prescribed information requirements for the licensing scheme with other jurisdictions.

Most Australian jurisdictions with tobacco licensing schemes have some form of baseline information requirements. For example, in Queensland this can include information requirements about whether the licensee is a wholesaler or retailer, information on business directors and partners and the type of business they run.[[44]](#endnote-38) Similarly, South Australia requires an applicant’s Australian Business Number, the location of the business and details of directors and other persons of authority.[[45]](#endnote-39) This can help gather information to better understand the tobacco market and help the Regulator make more informed decisions.

Similar to a NPC, most jurisdictions have processes in place to ensure that licensees are fit to hold a licence. In the Northern Territory, like Victoria, an application for a licence must also include a national police certificate about the proposed manager of the business, which provides a summary of a person’s offender history in Australia.[[46]](#endnote-40) Similarly, other jurisdictions including Queensland and South Australia include conditions which allow them to refuse to grant or renew a licence if the applicant has been convicted of certain criminal charges.[[47]](#endnote-41)

### Costs associated with Option 1

The main costs associated with prescribed information requirements are the administrative and compliance burdens that it imposes on businesses to obtain ASIC extracts and to provide detailed information about applicant suitability, business and premises information, as outlined in Section 4.4.2. The main drivers of these costs are: the amount of time taken to comply; the value of a retail or wholesale worker’s time; the frequency with which businesses need to comply with information requirements; and the price of securing ASIC extracts.

The following formula was used to estimate the administrative and compliance costs of Option 1:

*Annual cost to comply = (ASIC extract cost + median hourly earnings\*base frequency\*time taken for ASIC extract + median hourly earnings\*time taken to complete other information requirements\*base frequency) \*number per business*

The costing assumptions used are presented in the table below. A detailed analysis of the costing assumptions can be found in **Appendix C**.

To estimate the cost of providing information about applicant suitability, as well as business and premises information, it was assumed that this would take about 20 minutes to complete. This assumption is based on the time taken to complete the Tasmanian tobacco licence application form.[[48]](#endnote-42)

Table 26 - Assumptions used for prescribed information requirements

| Industry | Hourly median earnings | Cost of ASIC extract | Time taken for ASIC extract | Time taken to complete other information requirements | Base frequency (per annum) | Number per business |
| --- | --- | --- | --- | --- | --- | --- |
| Retail | $35.75[[49]](#endnote-43) | $20.00[[50]](#endnote-44) | 30 minutes | 20 minutes | 1 | 1 |
| Wholesale | $42.93[[51]](#endnote-45) | $20.00 | 30 minutes | 20 minutes | 1 | 1 |

The costs to comply were estimated over a 10-year horizon and discounted back to present value. An average annual cost in NPV terms was also estimated by dividing the 10-year cost estimate by 10. The cost to comply was estimated at both a business and industry level for both the retail and wholesale tobacco industry. These costs are presented in in the table below.

Table 27 - Total cost of prescribed information requirements

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Industry | Average annual cost in NPV terms per business | Average annual cost to industry in NPV terms | 10-year net present value cost per business | 10-year net present value cost to industry |
| Retail | $43 | $423,000 | $425 | $4,200,000 |
| Wholesale | $48 | $2,400 | $476 | $24,000 |

### Multi-criteria analysis and scoring summary

#### Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes

**Base case: No prescribed information**

The base case is not expected to support the effective operationalisation of the scheme. The base case would not enable efficient and effective regulatory oversight as the regulator would not be obtaining sufficient information about the applicant or licensee. This inhibits the regulator’s ability to better understand the industry and inform risk assessments, compliance strategies, and any necessary licence conditions.

While police checks would be required, the base case is not effective in safeguarding the suitability of licensed retailers and wholesalers, as the regulator may reject fewer licence applications due to having less information about the applicant. The base case also does not provide for ID verification, which may mean licences are granted in inappropriate circumstances.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Prescribed information**

There are many benefits associated with prescribing information requirements. These benefits would include:

* enabling the regulator to gain a better understanding of the tobacco industry.Currently there is poor data on the number of retailers and wholesalers in the Victorian tobacco industry, as well as their sub-categories. Prescribed information requirements would allow the regulator to better understand the Victorian tobacco industry and its compositional breakdown.
* equipping the regulator with sufficient information to assess and determine applications under the legislation. The proposed regulations require the applicant to provide information relating to the tobacco supply business to be carried on under the licence, including information about the nature and scope of the tobacco supply business (such as information about the type of premises and proposed manner of sale, such as online or vending machine). Having data on tobacco businesses characteristics, such as the type of business (whether it is a company or not) and where the premises is located, would ensure the regulator is better placed to identify potential risks posed by applicants. This is because the information would allow the regulator to identify the characteristics of higher-risk businesses. This would help inform future risk assessments, as well as the design of compliance strategies and licence conditions. The provision of this information to the regulator could also support the regulator’s enforcement efforts and assist with further development and refinement of the licensing scheme in the future.
* improving intelligence gathering which could support the reduction in harms from illicit tobacco. The absence of information gathering has been identified as a possible hindrance to the investigations into tobacco related crimes, such as the arson attacks on tobacco retailers.[[52]](#endnote-46) Although the enforcement of illicit tobacco trade remains a matter for police investigations, information gathering through the tobacco business licensing scheme could support the swift identification of areas of possible illegal activity.

*A score of* ***4*** *is assigned for this criterion*

#### Burden to industry

**Base case: No prescribed information**

The base case is simple and clear, with no additional time commitment for the industry to comply. It is not expected to impose any broad additional burden or barrier to entry on the industry as there would be no prescribed information requirements. However, there could be some burden on certain industry participants who the regulator requests additional information from as needed.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Prescribed information**

This option would introduce some additional complexity and requirements for businesses compared to the base case. On the one hand, it is expected that the provision of basic information such as names, addresses, ABNs, and telephone numbers could be provided without imposing a substantial administrative burden on businesses. On the other hand, obtaining ASIC company information requires the payment of a fee by businesses, in addition to the time taken to complete the application. On a per business basis, the prescribed information requirement is estimated to cost retailers $43 and wholesalers $58 per year. Across the whole industry, this equates to approximately $425,000 in total burden across both retailers and wholesalers per year. This is considered to be a relatively modest cost imposition per business each year compared to the base case.

*A score of* ***-1*** *is assigned for this criterion*

#### Burden to government

**Base case: No prescribed information**

The base case does not impose a substantial burden on government as there will be no requirement to establish an information provision process through the licence application platform.

The regulator would need to request additional information on as needed basis, increasing the administrative burden on the regulator to identify when and what information is required each time.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Prescribed information**

The prescribed information requirement is expected to impose some additional burden on government through the development of forms and processes to collect and review the information. There would also be additional burden on the regulator to review the additional information provided with each application. Consistent with the basic conditions assessed in Section 5.3, the regulator would require a database to maintain records, however, the requirements of this system could be considered somewhat less onerous to meet because the database would not need to be accessible to or searchable by the general public (as would be required of the register of licensees). It is expected that this option is only slightly less simple to implement than the base case.

*A score of* ***-2*** *is assigned for this criterion*

#### Multi-criteria analysis scoring summary

The table below shows that the preferred option is Option 1 – the prescribed information scenario.

In comparison to the base case, Option 1 would ensure the scheme is more efficient and effective at achieving its objectives.

However, Option 1 would have a larger burden on industry relative to the base, as it would likely impose larger administrative and compliance costs on industry.

Option 1 also performed worse than the base case when it comes to minimising burden on government. This is mainly because the regulator would require a database to maintain records.

Despite performing slightly worse than the base case on minimising burden to industry and government, Option 1 is still the preferred option as it scored the highest for the efficient and effective operationalisation of the tobacco business licensing scheme, which was weighted as the most important criteria.

Table 28 - Summary of MCA analysis for prescribed information option

|  | Weighting | Base case | Option 1: Prescribed information |
| --- | --- | --- | --- |
| Efficient and effective operationalisation of the tobacco business licensing scheme | 50% | 0 | 4 |
| Minimise burden the industry | 25% | 0 | -1 |
| Minimise burden on government | 25% | 0 | -2 |
| **Weighted score** | **100%** | **0.00** | **1.25** |

## Fees

### Overview of this section

The purpose of this section is to examine the options for tobacco business licence and other application fees. These options set out to solve the aspects outlined in Chapter 2.

***The absence of Regulations prescribing the fees for licence applications, variations, transfers, relocations and renewals prevents the regulator from reasonably recovering the costs of the tobacco business licensing scheme.***

In assessing the options for fees, the main drivers of costs are the number of premises, and the number of applications for a licence (which also includes annual renewals), transfers, relocations, and variations. The impacts of different fee options are illustrated in this section by considering the relative advantages and disadvantages of a flat fee and a differentiated fee. Other (more minor) fees to be set by the Regulations are outlined in section 5.6.1.

Fees are presented as a range in recognition of the uncertainty of the regulatory costs that will need to be recovered by fees.

#### Basic assumptions

The first period of the licensing scheme is anticipated to commence in early 2026. Businesses can apply for and be granted a tobacco licence from 1 July 2025, but the licensing scheme is not expected to come into full effect until early 2026. The decision to set a longer initial licensing period (i.e. longer than 12 months) has been made to reduce the administrative burden on licensees, who would otherwise be required to apply for a renewal by 1 July 2026. All subsequent periods – commencing 1 July 2027 – would be one year in duration, with renewal on a financial year basis.

The licence fees are assumed to be indexed at a rate of 2 per cent per year. This estimate reflects the rounded average annual growth rate for fees.[[53]](#endnote-47) The Treasurer sets the actual indexation of the fee unit each year. The value of a fee unit is currently $16.33.[[54]](#endnote-48)

As outlined in the Chapter 3, options will be assessed on the basis of full cost recovery (i.e. 100 per cent recovery of the costs associated with the tobacco business licensing scheme).

#### Assumptions relating to the number of premises and applications

DJCS notes that there is currently limited information about the number and characteristics of tobacco retail and wholesale premises in Victoria. Using a combination of ABS business count data and other data sources,[[55]](#endnote-49) it is assumed that there are approximately 10,000 premises where tobacco is sold in Victoria. Of these premises, there are estimated to be approximately 50 wholesalers (revised estimate from IBISWorld report).[[56]](#endnote-50) One potential limitation of this data is that some tobacco retailers may not be captured in the ABS business counts data[[57]](#footnote-9).

Table 29 presents the estimated number of applications, renewals, transfers, relocations, and variations of tobacco business licences each year. DJCS assumes that there will be fewer licence transfers, relocations, and variations than new applications and renewals each year. A conservative (upper bound) estimate of 15 per cent of premises requiring a transfer each year has been applied. This would arise from a tobacco supply business changing hands. The regulator is not yet aware of how often this occurs in Victoria due to the unique nature of tobacco supply businesses as compared to liquor licensed premises. As businesses are required to apply to renew their licence each year, it is assumed that there will not be many relocations or variations in the first period of the scheme.

Operating costs have been based on the estimates for the number of new applications (and renewals), transfers, relocations, and variations each year. The estimates for those applications (and renewals), transfers, relocations, and variations have been aligned to that estimate driving the cost base to ensure that fees are not set too high. There will be review of the Regulations in 2027 and another review of the tobacco business licensing scheme after five years of operation, at which point the fees can be reviewed and revised if needed.

Table 29: Annual estimated applications, transfers, relocations, variations

| Annual estimated applications, transfers, relocations, and variations | # p.a. |
| --- | --- |
| New applications (and renewals) | 10,000 |
| Transfers | 1,500 |
| Relocations | 500 |
| Variations | 500 |

It is also assumed that there would be fewer transfers, relocations, and variations in the first period of the scheme. The presumption is that in the first period of the scheme, businesses will have only recently applied for their licence and are not expected to be applying for a transfer, relocation, or variation so soon after commencement.

Table 30: First period estimated applications, transfers, relocations, variations

| First period estimated applications, transfers, relocations, variations | # p.a. |
| --- | --- |
| Transfers | 200 |
| Relocations | 0 |
| Variations | 0 |

#### Base fee

The licence fees outlined in this section present the cost to obtain a licence in the 2026-27 financial year. This is presented as the base fee because it is the first full financial year in which a fee will be incurred. That is, the fee for 2025-26 is a proportional fee for the first period of the business licensing scheme (in other words, a fee covering the period from early 2026 until the end of June 2026).

In many cases, businesses will be supplying tobacco already and would be required to obtain a licence for a portion of the 2025-26 financial year. In effect, they would be required to pay for the licence period in accordance with the effective start date of the scheme in early 2026. The first fee for the licence period is presented in Section 5.6.1.

The base fee is set as a range pending the Victorian Budget outcome and is expected to be indexed at a rate of two per cent per year ongoing.

#### Reference fee

The cost associated with obtaining a new application is considered the reference fee. Other types of fees are adjusted from the reference fee after considering the extent of regulatory effort required to consider the application.

### Recovery of costs

#### Licence categories and their role in fees

Licence categories represent whether tobacco is sold in a retail or wholesale setting., Businesses that supply tobacco through both a retail and wholesale setting will require both types of licences. That is, those who wish to sell to members of the public for consumption/use (including by way of vending machines) would require a retail licence, and other premises (selling tobacco products to another supplier for on-sale) would require a wholesale licence. It is anticipated that some businesses may fall into both categories, in which case they would need to obtain both a retail and a wholesale licence. Categories of licence will be prescribed in Regulations as discussed in section 5.2.

#### Application process

All applications will be submitted to the regulator for review and determination. Applications must be in a form approved by the regulator and accompanied by all prescribed information. Applications will be provided to Victoria Police for review; however, Victoria Police may give written directions to the regulator regarding the provision of applications for review, including exempting the regulator from providing certain applications.

With the fee for a new application as the reference fee, it was assumed that the fee for a transfer should be set at 100 per cent of the reference fee given the transferee would be treated in the same way as a new licensee and would be subject to all suitability checks (including of business records and the details of any associates).

This is distinct from relocations and variations, which would incur 20 per cent of the reference fee. This assumes that the regulatory effort required to process a relocation or variation of a licence would be considerably less than what would be required for a new application or a transfer (as there would be no new background checks). The assumption has used Victoria’s liquor licensing scheme as a comparator. Under that scheme, the cost to vary a licence ranges from approximately 20 to 50 per cent of the licence application fee. DJCS has determined that the lower end of that range would be appropriate for variations and relocations, with a view to avoiding imposing an unnecessarily high fee and to prevent any adverse outcomes where licensees avoid actively varying licences to not incur the fee.

In practice, a relocation could entail a business moving premises, but there would be no requirement to check the business records or the suitability of the licensees and their associates. Equally, a variation could include businesses that need to vary the category of their licence or a condition on the licence. This would not involve any further checks of the business records or associates. These scenarios for relocations and variations constitute considerably less effort than a new licence application (and renewal) or a transfer.

Table 31: Proportional fee associated with different types of applications

|  |  |
| --- | --- |
| Type of application | Proportion of licence fee |
| Transfers | 100% |
| Relocations | 20% |
| Variations | 20% |

#### Compliance activities

Fees are expected to recover the costs of compliance activities associated with the scheme.

The regulator will have powers to deter retailers and wholesalers from non-compliance with the tobacco business licensing scheme and any licence conditions, including enforcing penalties for offences. Compliance and enforcement will be undertaken by dedicated licensing inspectors appointed by the regulator and could include:

* Reviews of licences
* Powers of entry, search and seizure
* Prosecution of offences and issuing infringements
* Enforceable undertakings, and
* Suspension or cancellation of licences.

The deterrence of unsuitable people from seeking to run a tobacco supply business will support Victoria Police and other law enforcement efforts to combat serious and organised crime, through intelligence and licensing enforcement action.

#### Costs incurred by Victoria Police

Victoria Police will also play a key role in ensuring the suitability of licensees under the tobacco business licensing scheme, through providing input on licensing decisions.

Victoria Police will have additional powers in relation to existing offences under the Tobacco Act and the business licensing scheme, including the ability to obtain search warrants, enter premises and seize illicit items.

The Amendment Act authorises information sharing between the regulator and Victoria Police to support the regulator in enforcing the licensing scheme, and Victoria Police’s role in relation to criminal activity.

This RIS considers the recovery of direct costs associated with the business licensing scheme, while encouraging compliance and providing incentives for licensees to minimise harms. The intention is to provide a fee regime that also considers licensees’ ability to pay.

### Options for analysis

Two options for licence fees were analysed and compared.

#### Base case: No fee

The base case would have no fees.

#### Option 1: Flat fee

The costs associated with this option draw on the total number of tobacco retailing and wholesaling premises. Each business will be charged the same reference fee for applications, renewals and transfers, and relocations and variations will incur 20 per cent of the reference fee.

Table 32: Option 1 Fee Schedule (presented as a range pending the final Victorian Budget outcome)

|  | Fee unit | | Base fee | | 15-year revenue | |
| --- | --- | --- | --- | --- | --- | --- |
| Lower-bound fee | Upper-bound fee | Lower-bound fee | Upper-bound fee | Lower-bound revenue | Upper-bound revenue |
| New application (and renewal) | 67.36 | 91.26 | $1,100 | $1,490 | $180.297m | $244.263m |
| Transfer | 67.36 | 91.26 | $1,100 | $1,490 | $26.449m | $35.832m |
| Relocation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| Variation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| **Total revenue** |  |  |  |  | **$210.260m** | **$284.856m** |

#### Option 2: Differentiated fee

This option introduces differentiation according to the type of activities associated with that business. In order to illustrate how this option might look, it is assumed that wholesalers would pay double the annual fee that retailers pay. It is expected that wholesalers would process a much larger number of tobacco sales than individual retail premises. The regulator may need to expend additional effort to monitor these sales and ensure that there is no illicit activity occurring. There is also much less visibility of the premises where wholesale tobacco is stored, requiring deeper investigations to identify potential illicit tobacco.

The design of this Option has considered other Australian jurisdictions where wholesalers incur a higher fee. The table below presents the multiplier of the retailer fee that is applied to wholesale licence fees in jurisdictions where there is a differentiated fee. It demonstrates that the proposed multiplier under this Option is consistent with other jurisdictions.

Table 33: Wholesaler licence fee multiplier in Australian Jurisdictions

| Jurisdiction | Retailers | Wholesalers | Multiplier |
| --- | --- | --- | --- |
| Queensland | $474.88 | $674.16 | 1.42 |
| South Australia | $340 | $650 | 1.91 |
| Western Australia | $327 (application)  $278 (renewal) | $797 (application)  $658 (renewal) | 2.44 (application)  2.37 (renewal) |
| **Average** |  |  | **2.03** |

The table below presents the base fee for retailers under Option 2.

Table 34: Option 2 Retailer Fee Schedule (presented as a range pending the final Victorian Budget outcome)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Fee unit | | Base fee | | 15-year revenue | |
| Lower-bound fee | Upper-bound fee | Lower-bound fee | Upper-bound fee | Lower-bound revenue | Upper-bound revenue |
| New application (and renewal) | 67.03 | 90.80 | $1,095 | $1,483 | $178.503m | $241.832m |
| Transfer | 67.03 | 90.80 | $1,095 | $1,483 | $26.186m | $35.476m |
| Relocation | 13.41 | 18.16 | $219 | $297 | $1.740m | $2.357m |
| Variation | 13.41 | 18.16 | $219 | $297 | $1.740m | $2.357m |
| **Total Revenue** |  |  |  |  | **$208.168m** | **$282.021m** |

The table below presents the base fee for wholesalers under Option 2.

Table 35: Option 2 Wholesaler Fee Schedule (presented as a range pending the final Victorian Budget outcome)

|  | Fee unit | | Base fee | | 15-year revenue | |
| --- | --- | --- | --- | --- | --- | --- |
| Lower-bound fee | Upper-bound fee | Lower-bound fee | Upper-bound fee | Lower-bound revenue | Upper-bound revenue |
| New application (and renewal) | 134.05 | 181.61 | $2,189 | $2,966 | $1.794m | $2.430m |
| Transfer | 134.05 | 181.61 | $2,189 | $2,966 | $0.263m | $0.357m |
| Relocation | 26.81 | 36.32 | $438 | $593 | $0.017m | $0.024m |
| Variation | 26.81 | 36.32 | $438 | $593 | $0.017m | $0.024m |
| **Total Revenue** |  |  |  |  | **$2.092m[[58]](#footnote-10)** | **$2.834m** |

#### Jurisdictional comparisons

This section explores the licence fees established by other Australian jurisdictions. Queensland, South Australia, and Western Australia have set differentiated fees for retailers and wholesalers.

The table below sets out the fees set by each jurisdiction, noting that the New South Wales scheme has yet to take effect and fees are not yet formally set. Where no wholesale fee is provided, the State or Territory does not differentiate between categories in its fees. That is, all tobacco supply businesses pay the same fee.

In most cases, the fees proposed in Victoria are higher than what has been set in other States and Territories. With the exceptions of Queensland (which has recently introduced its scheme), New South Wales (which has previously operated a notification scheme with no prescribed fees), and South Australia (which has recently uplifted its licensing scheme), these are long standing licensing schemes which may not be recovering establishment costs or may be operating below 100 per cent cost recovery. Additionally, longer-standing schemes benefit from increased information about the nature of the industry in that jurisdiction, as well as the corresponding regulatory effort required.

Table 36: Fee arrangements in Australian jurisdictions

| Jurisdiction | Retail fee | Wholesale fee | Comments |
| --- | --- | --- | --- |
| ACT | $638.90 | $638.90 |  |
| QLD | $474.88 | $674.16 | Separate licence for each premises |
| NSW | $1,100 | $1,100 | Licence fee has not yet been set finalised, however initial reports indicate it will be approximately $1,100[[59]](#footnote-11) for both retailers and wholesalers |
| NT | $282 | - | Additional $84 for a police history check |
| SA | $340 | $650 | Separate licence for each premises |
| TAS | $1,340.79 | $1,340.79 | Separate licence for each premises |
| WA | $327 (application)  $278 (renewal) | $797 (application)  $658 (renewal) | Separate licence for each premises |

### Multi-criteria analysis scoring summary

#### Effectiveness

**Base case: No fee**

There would be no unintended consequences associated with the base case.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Flat fee**

The fee level is not expected to lead to significant unintended consequences (see Chapter 6 for an exploration of how small businesses could absorb the licence fee). There is a small possibility that some retailers will not obtain a licence to avoid the fee, however they are likely to be discouraged by the threat of penalties for unlicensed selling. While not a direct objective of the business licensing scheme, there may be ancillary benefits associated with some licensees considering whether they continue to sell tobacco at all, thereby causing some reduction in the availability of tobacco and the associated negative health outcomes for the community.

*A score of* ***8*** *is assigned for this criterion*

**Option 2: Differentiated fee**

This fee structure has a small chance of introducing unintended consequences – whereby wholesalers falsely declare that they are retailers to incur the lower fee – but the regulator is expected to be able to swiftly identify where this has occurred due to the small number of wholesalers in Victoria. Providing false information would also be an offence, which would further deter this behaviour. This is not considered to be a significant risk. It is also presumed that a condition requiring retailers to only buy wholesale tobacco from licensed wholesale businesses would mitigate this risk (this is assessed earlier in this RIS in Section 5.3.4). Consistent with Option 1, there may be benefits associated with a fee that causes some businesses to discontinue the sale of tobacco and therefore reduce the availability of tobacco and the associated negative health outcomes for the community.

*A score of* ***7*** *is assigned for this criterion*

#### Equity

**Base case: No fee**

Under the base case, tobacco supply businesses would not pay for their licences. The regulatory costs incurred would instead be recovered from the regulator’s budget. As such, under the base case, licensees who create the need for the regulatory services do not bear the cost themselves. Instead, the cost would be borne by Victorian taxpayers and the community.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Flat fee**

This option recovers the regulatory costs of the scheme and is therefore considered more equitable than the base case, under which the taxpayer and community would incur the costs. Compared to the base case, the option imposes some barriers to entry through a fee which may be prohibitive for some business to engage in tobacco sales. However, the equal application of fees across the industry offers some benefits in treating all participants equitably. It is important to note that under this option, fees are not linked to the ability-to-pay of different businesses, which may result in a more equitable outcome.

*A score of* ***7*** *is assigned for this criterion*

**Option 2: Differentiated fee**

Consistent with Option 1, this option imposes some barriers to entry through the imposition of a fee. This Option offers an opportunity to differentiate between tobacco supply businesses according to their risk profiles, characteristics, and the type of business they conduct. Currently, it is not possible to fairly assess the relative risks of wholesalers and retailers. At this stage, the fee multiplier would not be based on defensible risk information. Because of a lack of information on relative risks, there is the possibility that fees are not correctly associated with risks. This may have negative implications of the Option.

This Option may offer some benefits through the imposition of higher fees on wholesalers, which may have a greater ability to pay. However, on the assumption that wholesalers are riskier, the differentiation of fees offers very little benefit to tobacco retailing premises and imposes a greater burden on tobacco wholesaling premises. Due to the number of wholesalers assumed to be operating in Victoria, any differentiation of their fee contributes very little revenue to recover the overall costs of the scheme. For illustrative purposes, charging wholesalers twice the fee imposed on retailers would have the effect of reducing the annual application fee for a retailer by $5-$7 as compared to a scenario where there is no differentiation of fees. Meanwhile, the fee imposed on wholesalers would be $1,089-$1,475 higher. A $5-$7 reduction is unlikely to make a material difference to retail licensees, whereas wholesalers are likely to be impacted heavily by the much higher fee level. Under the inverse assumption, where retailers are assumed to be riskier, this would substantially increase their fee and may disproportionately impact small businesses (which are predominantly retail operators).

The implication of this option is also that businesses that require both a retail and wholesale licence would incur a substantially higher licensing expense under the differentiated fee option than under the flat fee option. In other words, this would be considered more unequitable than Option 1, which would impose a lower overall licensing expense on a business trying to conduct both types of tobacco supply.

*A score of* ***8*** *is assigned for this criterion*

#### Simplicity

**Base case: No fee**

The absence of any pricing schedule means that there would be no consideration for the simplicity of the system.

*A score of* ***0*** *is assigned for this criterion*

**Option 1: Flat fee**

There would be a small financial burden on the regulator to establish a flat fee structure, however this is considered a simple option. The regulator is not expected to require sophisticated forms or systems. Businesses should be able to clearly understand the cost of acquiring a licence. The impact of the option is considered to be slightly less simple than the base case.

*A score of* ***-1*** *is assigned for this criterion*

**Option 2: Differentiated fee**

There would be a marginally greater administrative burden on the regulator to establish a differentiated fee structure, however this is still considered a simple option. Given there are expected to be far fewer wholesaler applications, it is not anticipated that this categorisation will impose a significant burden on the regulator. The regulator is not expected to require sophisticated forms or systems. Businesses should be able to clearly understand the cost of acquiring a retail or wholesale licence.

A separate retailer and wholesaler licensing fee is consistent with several other Australian jurisdictions, making it simpler for businesses who operate across jurisdictions to understand. There is not expected to be any additional complexity associated with businesses supplying tobacco through both retailing and wholesaling premises to obtain both licences.

*A score of* ***-2*** *is assigned for this criterion*

#### Scoring summary

The table below presents the results of the multi-criteria analysis of the fee options. ***Option 1: Flat fee*** has emerged as the preferred option.

Table 37: Fee option multi-criteria analysis

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Weight | Base case | Option 1: Flat fee | Option 2: Differentiated fee |
| Effective | 33.33% | 0 | 8 | 7 |
| Equitable | 33.33% | 0 | 7 | 8 |
| Simple | 33.33% | 0 | -1 | -2 |
| **Weighted score** | **100%** | **0.00** | **4.67** | **4.33** |

### Cost recovery duration sensitivity analysis

There is some flexibility in relation to the timeframe over which the Government recovers the costs of the scheme. Typically, fees are set for the life of the Regulations, which would usually be ten years. That is, fees would be set until the Tobacco Regulations expire, at which point another RIS would be prepared to support the fee level for the new Regulations. Noting that the Amendment Act makes changes to the Tobacco Regulations which are due to expire in 2027 and that there is a legislated five-year review of the tobacco business licensing scheme, it has been determined that the fees should be set to recover the establishment costs over a 15-year duration. This means that the costs of the scheme can still be recovered (in line with the Treasurer’s guidance) while also ensuring that fees are not prohibitively high for businesses, which could be the case under a shorter cost recovery duration. Although the fees have been modelled over 15 years, there are review points within two and five years when the fee level could be reassessed (see Chapter 8 for the Evaluation approach).

The fee analysis conducted so far has used a 15-year cost recovery duration as the baseline assumption to assess the options. For completeness, the RIS has also considered the impact of recovering the costs over ten years to test the sensitivity of the fee level. In effect, reducing the cost recovery duration means that the establishment costs are smoothed over a shorter duration. Additionally, the fee would be recovering less ongoing operating costs of the scheme (decreasing the cost base from $284.854m to $196.209m in recognition of five fewer years of operating costs).

Noting that the cost base is presented as a range pending the budget outcome, the higher cost base scenario has been selected to demonstrate the sensitivity of the fee level to different cost recovery durations.

The table below presents the base fees for the preferred option under a ten-year and a 15-year option, demonstrating the sensitivity of fees to different cost recovery durations.

Table 38: Cost recovery duration sensitivity analysis

|  | 10-year cost recovery | | | | 15-year cost recovery | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Fee unit | Annual fee | Annual revenue | Revenue over 10-years | Fee unit | Annual fee | Annual revenue | Revenue over 15-years |
| Application (and renewals) | 101.50 | $1,657 | $16.570m | $168.586m | 91.26 | $1,490 | $14.900m | $244.263m |
| Transfer | 101.50 | $1,657 | $2.486m | $24.390m | 91.26 | $1,490 | $2.235m | $35.832m |
| Relocation | 20.30 | $331 | $0.166m | $1.617m | 18.25 | $298 | $0.149m | $2.381m |
| Variation | 20.30 | $331 | $0.166m | $1.617m | 18.25 | $298 | $0.149m | $2.381m |
| **Total revenue** |  |  | **$19.387m** | **$196.210m** |  |  | **$17.433m** | **$284.856m** |

Ultimately, the 15-year cost recovery duration presents an important opportunity to reduce the financial burden on businesses. This decision also brings the Victorian licensing fee closer to comparator jurisdictions such as Tasmania, which imposes a $1,340.79 fee for licences. It has been determined that the shorter cost-recovery duration would not be appropriate, noting the opportunity to reassess this decision in two and five years.

## Summary of the preferred option

The preferred options in this RIS address the residual problems of categories and fees, conditions and prescribed information requirements.

Through the MCA process, it was determined that ***Option 1: Basic categorisation*** (retailer and wholesaler categories) would provide the best combination of information for the regulator while not introducing burdens on the industry or the government. This option maintains administrative simplicity while providing the regulator with additional information about the types of businesses operating in the industry to support its regulatory approach and future decisions.

Regarding fees, it was determined that the preferred option for application fees would be a flat fee structure for wholesalers and retailers. The fees reflect the costs to the regulator to administer the scheme and oversee the retail and wholesale sectors. Any businesses that may fall into both categories would need to obtain a separate licence under each category. Fees for transferring licences would be on par with new applications (and renewals); while relocating and variations would incur lower fees. The preference for ***Option 1: Flat fee*** was driven by the fact that it does not introduce adverse outcomes, inequity, or undue complexity.

The preferred option for conditions is ***Option 2: Advanced Conditions***, which includes:

* strengthening controls to obstruct the flow of illicit tobacco by only allowing wholesale tobacco products to be sold between licensed retailers and licensed wholesalers (if products are purchased from a wholesaler in Victoria or another jurisdiction in Australia which has a licensing scheme requiring the supplier to be licensed)
* enhancing the Regulator’s ability to monitor the sales of tobacco through record-keeping and periodic sales reporting by licensees by requiring retailers and wholesalers to keep records of all tobacco product sales, and
* a minimum age that a person can sell tobacco products (18 years) from 1 January 2027.

Licensees will also be required to disclose prescribed information when applying for (and renewing), transferring, varying, or relocating a licence (section 4.4). This includes information beyond the requirements of the *Amendment Act*, including business documents (e.g., ASIC extracts), and identity verification documents. This requirement extends to natural person applicants, company directors, partners, and key business personnel.

The measurable costs associated with the advanced conditions and prescribed information requirements are summarised in the tables below.

Table 39 - Total cost of advanced condition scenario and the prescribed information requirements

| Industry | Average annual cost in NPV terms per business | Average annual cost to industry in NPV terms | 10-year net present value cost per business | 10-year net present value cost to industry |
| --- | --- | --- | --- | --- |
| Retail | $478 | $4,720,000 | $4,770 | $47,200,000 |
| Wholesale | $952 | $47,600 | $9,500 | $476,000 |

### Summary of fees

The fee level for the preferred option is presented below.

Table 40: Preferred Option Annual Fee Schedule (presented as a range pending the final Victorian Budget outcome)

|  | Fee unit | | Base fee | | 15-year revenue | |
| --- | --- | --- | --- | --- | --- | --- |
| New application (and renewal) | 67.36 | 91.26 | $1,100 | $1,490 | $180.297m | $244.263m |
| Transfer | 67.36 | 91.26 | $1,100 | $1,490 | $26.449m | $35.832m |
| Relocation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| Variation | 13.47 | 18.25 | $220 | $298 | $1.757m | $2.381m |
| **Total revenue** |  |  |  |  | **$210.260m** | **$284.856m** |

For any businesses that are currently supplying tobacco in Victoria, the first licence application fee will cover the first licence period of the business licensing scheme (expected to be from early 2026 until the end of June 2027). This is equivalent to 95.43 - 129.28 fee units, or approximately $1,558.33 - $2,111.20.

#### Other minor fee matters

While the Amendment Act provides for a fee to be prescribed for an application to suspend or cancel a tobacco business licence, it is not the intention to impose a fee for this application to the regulator. The regulator does not intend to disincentivise anyone, such as a landlord or a licensee, from suspending or cancelling a licence. It is anticipated that there will not be a high number of suspensions or cancellations each year (noting that the licence will require renewal each year anyway) and the burden on the regulator of processing these types of applications will be low.

The Amendment Act also provides for a fee to obtain a copy of a licence. Businesses will be provided with a copy of their licence when their application is granted and will need to display it. The ‘copy of licence’ fee would be for a copy of the original and will be marked ‘copy’. The intention is to impose a small administrative fee of 2.5 fee units (approximately $40) in the Regulations. This fee would recover the costs in retrieving and providing the copy to the licensee and is broadly consistent with the fee for such a request in other jurisdictions and comparable Victorian schemes. There is also expected to be a low volume of these requests. Licensees must display a copy of their licence in a conspicuous location at the licensed tobacco premises in a manner that invites public inspection, and it is therefore assumed to be unlikely to be misplaced.

## Proposed other amendments

A suite of other amendments to the Tobacco Regulations are proposed to support the operationalisation of the licensing scheme and the Amendment Act. It has been determined that these amendments do not need to be the subject of an options assessment under the RIS because they would generally not financially impact the industry or create significant behavioural change (except in cases where individuals or businesses do not comply with their obligations). However, they are briefly summarised below to accompany the preferred option decision.

### Infringement offences and penalties

Infringement offences and penalties are currently set out in the schedule to the Tobacco Act. The Amendment Act provides for the Schedule to be repealed and makes amendments to section 38 and 43 of the Tobacco Act to provide for infringement offences and penalties to prescribed in Regulations under the Tobacco Act.

Prescribing infringement offences and penalties in Regulations rather than legislation allows for greater flexibility and is considered the best practice approach.

The Amendment Regulations operationalise the ability for a police officer, inspector or licensing inspector to issue an infringement notice for various offences under the Tobacco Act as provided for in section 38 of that Act.

This allows for certain, more minor offences, to be dealt with in a more efficient, less burdensome, and less punitive manner – as compared with the base case – where all offences must be prosecuted through the courts and may be punishable by the maximum penalty under the Tobacco Act. With the flexibility brought by the infringement approach, the regulator will be able to exercise greater discretion in relation to serious matters that should be heard in Court and less serious matters which could be addressed through an infringement notice.

The infringement offences and penalties have been determined and set in accordance with the Attorney-General’s Guidelines to the*Infringement Act 2006.*

### Register of Licensed Tobacco Suppliers

Section 34ZV of the Amendment Act provides for the regulator to maintain and publish a register of licensed tobacco suppliers, which includes details of the business name, address and licence number of the tobacco supply business.

* + - 1. *The Regulator must keep a Register of Licenced Tobacco Suppliers.*
      2. *The Regulator must cause the following information to be included in the Register in relation to each licence:*
         1. *the business name under which the licensee sells tobacco products;*
         2. *the address of the licenced tobacco premises;*
         3. *the licensee's licence number;*
         4. *any prescribed information.*
      3. *The Regulator must cause the Register to be published on the Regulator's website.*

The cost associated to Government of creating and maintaining the Register is included in Table 9 in section 5.1.2.

The Amendment Act allows for additional information that must be included on the register to be prescribed under the regulations (section 34ZV(2)(d)). With respect to Register of Licensed Tobacco Suppliers, the proposed regulations require that any name other than the licensee’s name that is or will be displayed on the premises or used by the licensee for the purpose of identifying or drawing attention to the licensee’s tobacco supply business at the premises is to be included in the Register.

It is understood that businesses may have a name displayed on the shop or premises to identify that store, which is not their name or their business or company name (as applicable).

This inclusion is intended to assist members of the public to identify the relevant licensed premises where the licensee’s name (individual, business or company) may not be displayed or otherwise obviously linked to the premises.

### Definition of illicit tobacco

A provision is proposed to be included that adds to the existing definition of illicit tobacco within the Tobacco Act. The additional elements to be added expand the definition of illicit tobacco to be a tobacco product that does not comply with a requirement of a law of the Commonwealth prescribed by the Regulations. Following consultation with the Commonwealth and other states and territories, it is proposed to prescribe the following Commonwealth legislation in the definition of illicit tobacco:

* *Customs Act 1901* (Cth); and
* *Excise Act* (Cth).

This is not expected to have any regulatory burden on the industry or members of the public, because compliance the regulatory requirements of the Customs Act and the Excise Act is already required.

### Illicit tobacco offences

The Amendment Act amends the existing illicit tobacco offences in section 11A of the Tobacco Act to provide for tiered possession and supply offences, which attract a higher penalty when a commercial quantity of illicit tobacco is involved. The offences provide for the amount which constitutes a commercial quantity to be prescribed in Regulations. The relevant offences in Victoria have very substantial penalties (up to 15 years imprisonment) and in the case of sections 11A(3) and (4) of the Tobacco Act, which apply to any person, not only to a person carrying on a tobacco supply business.

This approach is consistent with other jurisdictions, which impose a higher penalty for offending which involves a specified quantity of illicit tobacco (or greater).

While there is variation across other jurisdictions, most have prescribed 50 grams/50 cigarettes as the applicable commercial quantity. It is proposed to prescribe the following commercial quantity of illicit tobacco to achieve consistency with the Commonwealth and other Australian jurisdictions, as being a quantity of at least:

* 50 grams of loose tobacco; or
* 50 cigarettes.

### Entry with consent of owner or occupier

It is proposed to prescribe a form for entry with consent of an owner or occupier. This is intended to obtain the consent of the licensee for entry and for seizure of anything that may be used in evidence in proceedings in the absence of a warrant. In the absence of such a form, it would be presumed that the owner or occupier did not consent to the entry or seizure of anything.

The intention is to replicate the existing inspector consent form, based on, for example, Form 1 in Schedule 7 of the existing Regulations. These forms are for use by licensing inspectors; therefore, no regulatory burden is expected on members of the public.

### Repeal of e-cigarette provisions

Due to changes to Commonwealth legislation governing e-cigarettes (vapes), the Amendment Act repeals provisions relating to vapes from the Tobacco Act. Corresponding Regulations are proposed to be removed as they will be redundant following the commencement of the Amendment Act.

### Repeal of specialist tobacconist provisions

It is proposed to remove references to specialist tobacconists, following repeal of those provisions from the Tobacco Act.

# Small Business Impact and Competition Assessments

## Small business impacts

The introduction of the tobacco business licensing scheme may cause an impact on small businesses, principally due to financial costs. This could include direct costs from the administrative and compliance burden from the licensing scheme, as well as indirect costs based on how the licensing scheme changes consumer purchasing behaviour.

Overall, the impact on small businesses will likely be small. The Victorian tobacco business licence scheme is also broadly consistent with other Australian jurisdictions and recent reforms which have commenced in QLD and announced in NSW.

### Direct costs to business

The cost of the licensing fee, the advanced conditions and the prescribed information is expected to impact businesses differently across the industry. The impacts on large and medium sized retailers are expected to be relatively less given that many are likely to operate in jurisdictions with existing licensing schemes in place. Larger businesses also have a greater ability to pay as the licence fee represents a smaller proportion of their revenue. In contrast, the impacts on smaller retailers would be larger.

Pending the outcome of the 2025-26 Victorian Budget, licensing application fees will be set at 67.36 - 91.26 units (approximately $1,100 - $1,490) to recover costs. However, small businesses will have to pay the same fees as large businesses. This would likely disproportionately impact smaller businesses, given they have a lower ability to pay. Although the costs of the licence fees will likely place a small impost on small businesses (as a proportion of revenue).

Small businesses may also be disproportionately impacted as they face the same conditions and prescribed information requirements as large businesses. Larger businesses may already meet these conditions and information requirements, whereas small businesses may not have these reflected in their current practices. Small businesses may also not have the legal or finance capability to comply as easily with the requirements as larger business. Sections 5.3.3 and 5.4.3 outlined the administrative costs of following the basic conditions and the prescribed information requirements.

The condition to enforce a minimum age requirement may also be more costly for small businesses. This requirement could impact staff rostering and increase the labour costs of businesses due to having adult employees rostered on. Smaller businesses would likely have less flexibility to change rostering requirements as they have fewer staff. However, this condition will not be enforced until 1 January 2027, which should give businesses time to adjust.

Further, it is expected that any cost of the licensing scheme would be minimised in the following ways.

* **Increased legitimacy** – previous consultations with industry participants suggested that increased regulation and compliance would cause a behavioural shift in the market. Retailers that have participated or that intend to participate in illegal sales may be deterred from doing so. This may increase the market share of businesses that are compliant. Simultaneously, compliant businesses may benefit from an improved public perception relative to non-compliant businesses, diverting sales from non-compliant to compliant businesses of legitimate products.
* **Financial impacts on sellers of legal tobacco** – In the consultations held during the development of the Illicit Tobacco Review, an independent supermarket noted that roughly 80 per cent of their supermarkets were operating near stores selling illicit tobacco and that they were unable to compete with the lower prices of illegal products.[[60]](#endnote-51) In the same report, a public health stakeholder proposed that, if one additional pack-a-day cigarette consumer attended a legitimate retailer instead of an illicit tobacco retailer, the cost of the licence would be recovered.[[61]](#endnote-52) As such, the cost of the licence fee will be mitigated by an increase in business for legal tobacco businesses. It is recognised that this places some of the burden of the scheme on to individuals who switch from illicit to licit tobacco, however, this is considered an important step in ensuring that all Victorians comply with the law and pay any excises and duties that have been applied to goods.
* **Transfer to consumers** – The impact of the licensing scheme is expected to be relatively small because businesses should be able to pass on the cost through the sale of tobacco and other products. The ability for a business to transfer costs will depend on the relative market power of retailers and consumers. The price elasticity of demand for smoking products is estimated to be between -0.2 and -0.6, which indicates relatively inelastic demand.[[62]](#endnote-53) Therefore, consumers respond to price changes but are not highly sensitive to them. Given the relative market power that retailers have over consumers, this price change would have a very small effect on the demand and the resulting business profit from tobacco products. Furthermore, some retailers may sell other products in addition to tobacco products, allowing them to spread the cost of the licensing scheme across a variety of the products.

The scheme is expected to disproportionately affect illicit tobacco suppliers, who are predominantly small businesses. DJCS has been advised that businesses that engage in illicit tobacco trade often do not also sell legal tobacco. Therefore, given one of the primary objectives of the scheme is to stop the flow of illicit tobacco, placing costs to these non-compliant small businesses would help the scheme achieve its objectives.

### Indirect costs to business

The long-term success of the licensing scheme is expected to support a reduction in the smoking rate in Victoria.

A reduction in the smoking rate would reduce the profit for businesses retailing or selling tobacco, which could disproportionately affect smaller businesses. This is because smaller business may not be able to absorb a loss in sales from a reduction in the smoking rate relative to larger businesses. However, such an indirect cost should be perceived as a positive public health outcome. For reference, a quantitative estimate for annual profit lost is provided in the paragraph below.

Based on data from the 2019 National Drug Strategy Household Survey, there are approximately 600,000 daily smokers and 200,000 occasional smokers in Victoria.[[63]](#endnote-54) A daily smoker consumes, on average, 11.8 cigarettes per day.[[64]](#endnote-55) The impact that occasional smokers may have on the lost profits was considered but, ultimately, accounted for an immaterial proportion. Using a sample of seven cigarette packets (Winfield 25s, Peter Jackson 30s, Benson & Hedges 25s, Longbeach 40s, Horizon 50s, Holiday 50s, and JPS 25s), the average price of a single cigarette stick is $2.10.[[65]](#endnote-56) Considering a six per cent profit margin on cigarettes,[[66]](#endnote-57) it is estimated that the average profit per cigarette is $0.13. In practice, every daily smoker who quits completely would reduce retailer profit by approximately $560 each year, or approximately $4,700 over ten years.

Another related impact of a reduction in the smoking rate is that a reduction in foot traffic might see a reduction in sales of other goods and that this effect may be more acute for smaller retailers. However, this was not the finding of a study conducted in the UK, which suggested that although the prevailing view amongst retailers is that tobacco is responsible for other sales, the vast majority of sales baskets do not include tobacco.[[67]](#endnote-58)

## Competition

Any regulatory proposal needs to assess whether it may have an adverse impact on the ability of firms or individuals to enter and participate in the market. It is fundamental that any new legislation (both primary and subordinate) will not restrict competition unless it can be demonstrated that:

* the benefits of the restriction outweigh the costs, and
* the objectives of the legislation can only be achieved by restricting competition.

The proposed Regulations may restrict competition in several ways. The licensing scheme may impose restrictions on businesses from entering the market. The cost of the scheme may also restrict the ability of certain firms to compete within the market.

#### Restricting businesses from entering the market

The implementation of a licensing scheme could act as a barrier to entry by making it too costly for businesses to enter the market. However, this would likely disproportionately act as a barrier to entry for businesses engaging in illicit products. This is because the cost of compliance for illicit retailers would include a loss in revenue from the sale of illicit products should they cease to sell these illegal products.

The cost of compliance may prompt certain behavioural responses from business owners who may be unwilling to meet the requirements or conditions of a licensing scheme, including: continuing to operate in breach of the legislation; continuing to operate in non-tobacco markets; selling the business to an operator who can meet the requirements (which is considered a transaction cost); or completely exiting the market.

To the extent the licensing scheme acts as a barrier to entry for illicit tobacco businesses, this would be a positive outcome and align with the objectives of the licensing scheme to impose a burden on non-compliant businesses.

#### Restricting businesses from competing in the market

The cost of the licensing scheme may reduce the ability of some businesses to compete within the tobacco retail market. This is particularly true for smaller to medium size businesses, as their ability to absorb the costs of the licensing scheme could be lower.

In saying this, the introduction of a licensing scheme has been broadly supported by industry stakeholders, who view it as a positive mechanism for increasing competition in the industry. Tobacco sellers expressed that they were unable to compete with the cheaper illicit tobacco being sold.

As discussed above, the impact of the licence fee is expected to be relatively small because of the market power that exists in tobacco retail markets. Businesses should be able to pass on the cost through the sale of tobacco products. Some retailers may also sell other products besides tobacco products, allowing them to spread the cost of the licensing scheme across their product range.

# Implementation plan

This section outlines the key activities that will be associated with implementing the preferred option (Section 6).

## What needs to be done?

To establish the tobacco business licensing scheme, the following activities will be undertaken.

* **Establishing a regulatory and licensing framework** – this would include the development and deployment of the licensing framework, processes, and Regulations, and the establishment of systems and processes to manage licence applications.
* **Stakeholder engagement and communications** – education and communication strategies for stakeholders to help them understand and comply with the new license scheme.
* **Technology** – implement the technology necessary to support the licensing processes.
* **Evaluation framework** – set up a framework to assess the scheme against its intended objectives. This is discussed in Section 8.
* **Enforcement and compliance** – set up a framework for enforcing the scheme.

### Establish the regulatory and license framework

Establishing a regulatory and licensing framework will require the following:

* **Draft and finalise the Regulations for the tobacco licensing scheme.**
* **Establish the regulator** – this will include, among other things, developing policies and guidelines that the regulator will follow, recruiting staff and creating a governance framework.
* **Develop the functions and processes of the tobacco business licensing scheme** – these functions and processes encompass a range of activities designed to ensure the effective, transparent, and compliant administration of licensing operations. These activities include the development of policies, procedures, and training to support application determinations, internal reviews, and information sharing. Additionally, the creation of training materials for licensing officers are critical to maintaining consistent practices, improving decision-making, and fostering accountability.

### Stakeholder engagement and communications

Stakeholders will be engaged throughout the implementation of the tobacco business licensing scheme. This will include engaging with tobacco retailers, wholesalers, local councils, and enforcement agencies including the regulator and Victoria Police.

Stakeholder engagement is important for identifying any issues in the implementation of the tobacco business licensing scheme. Stakeholder communication campaigns will also ensure awareness and understanding about the scheme, and the obligations and requirements for different stakeholder groups.

Stakeholders have had a range of opportunities to provide feedback during the development of the scheme. During the development of the proposed Regulations, DJCS has consulted with a range of state, Commonwealth and local government stakeholders, as well as health stakeholders.

There will be further communication with stakeholders in the lead up to the commencement of the scheme. There will also be further communication in relation to the compliance and enforcement phase of the scheme (early 2026), and ongoing communication to ensure the Regulations are meeting their objectives and to identify any changes that might be required.

Different mediums will be used to communicate with stakeholders. These include:

* planned information sessions with industry associations and key industry contacts
* a website, which includes an option to sign up to a mailing list to stay up to date
* sending out targeted communications through mailing list and other stakeholder databases
* an advertisement campaign to raise awareness
* working with local councils in relation to help push out communications to retailers, and
* a media release about the commencement of the tobacco business licence scheme with links to the web content.

### Technology

Technology is critical for establishing the tobacco business licensing scheme. There are two key technology streams of work.

* **Front-end system** – technology that will be used by tobacco businesses to apply for one or more licences through an online application form. This will be in place by 1 July 2025 to enable applications to be made from the commencement of the scheme.
* **Back-end systems** – technology used by the regulator to process and manage licences, including a call centre, website, and public register of licensed tobacco suppliers (which is likely to be accessible on the website).

### Enforcement and compliance

Establishing an enforcement and compliance framework would include implementing an approach for establishing and operationalising licensing offences, inspection, and enforcement powers. These factors are addressed under Division 3 of Part 3AAB of the Act (to come into operation before 1 July 2026).

## Who will be doing it and who will be monitoring it?

DJCS has set up an implementation team with governance arrangements to oversee the commencement of the tobacco business licensing scheme. There is also an interdepartmental Tobacco Regulation Project Implementation Steering Committee, which was established to support the operational planning and implementation of the licensing scheme and regulatory function.

### Operationalisation activities by other entities

#### Victoria Police

To ensure a robust licensing scheme, the Amendment Act allows for Victoria Police to assist in the assessment of licence applications and also allows for the necessary flow of information between the regulator and Victoria Police to combat threats associated with the infiltration of serious and organised crime into the illicit tobacco trade.

DJCS is working with Victoria Police to support the operationalisation of its role under the licensing scheme.

#### Victorian Civil and Administrative Tribunal

The Victorian Civil and Administrative Tribunal (VCAT) will serve as an independent review body for decisions made by the regulator, ensuring fairness, transparency, and accountability in the administration of the tobacco licensing scheme for tobacco retailers and wholesalers.

DJCS is working with VCAT to support the operationalisation of its role under the licensing scheme.

VCAT operates a user pays system, where their role will be funded by the regulator under an Memorandum of Understanding arrangement. The cost to establish VCAT functions under the scheme, and cost for VCAT to finalise matters is built into the regulator’s cost base assessed in this RIS. This is consistent with VCAT’s funding arrangements for their role in similar schemes, such as liquor licensing.

## When will it be done by?

The table below details the key milestones, timelines and dependencies to deliver the tobacco business licensing scheme by July 2025.

Table 41 – Key milestones, timeline and dependencies

|  |  |  |
| --- | --- | --- |
| **Milestone** | **Description** | **Target Date** |
| Passage of the Amendment Act | Enactment and Royal Assent of the Amendment Act. | Nov 24 |
| RIS drafting | Time taken to develop this RIS | Jan 25 – Mar 25 |
| Consultation period for the Regulation and the RIS | Consultation with key stakeholders on the design elements of the Regulations | Mar 25 – Apr 25 |
| Feedback consideration | Consider feedback on the Regulations and this RIS | Mar 25 – Apr 25 |
| Regulations | Finalisation and approval of Regulations for the business licensing scheme. | May 25 |
| Establish a functional licensing scheme | Implement relevant activities before the start of the scheme: establish a regulatory and licensing framework; implement the relevant technology; and establish an evaluation framework. | 1 Jul 25 |
| Licensing scheme commencement | Business licensing scheme commences. | 1 Jul 25 |
| Enforcement and compliance | Establish an enforcement and compliance framework and commence enforcement. | By 1 Jul 26, expected early 2026 |

# Evaluation strategy

Evaluation of the preferred option (section 5.6) will be critical to ensure the tobacco business licensing scheme is meeting its long-term objectives. It would also support the effective administration of the scheme over time.

This section outlines the various approaches to evaluating the tobacco business licensing scheme – the legislated five-year Statutory Review of the scheme, the opportunity to evaluate the regulatory elements of the scheme as part of the sunsetting provision in the Tobacco Regulations and the ongoing approach to evaluating the operations of the tobacco business licensing scheme.

## Five-year legislated review

Section 42C of the Amendment Act, requires that the tobacco business licensing scheme be reviewed after five years of operation.[[68]](#endnote-59) The Amendment Act sets out that the Statutory Review should not take more than 12 months after it has begun, with the Minister presenting the Review to each House of Parliament within 7 sitting days after the Review is completed.

The objective of the Statutory Review is to facilitate transparent reporting on the licensing scheme’s effectiveness, as recommended by the PAEC Inquiry.[[69]](#endnote-60) The Review is critical as the scheme would have been in place long enough to begin to achieve its primary objectives, such as reducing the flow of illicit tobacco. The Review is in line with the Victorian Guide to Regulation which recommends a mid-term evaluation for higher-impact proposals.[[70]](#endnote-61)

## Sunsetting provision review

The Tobacco Regulationswill sunset in July 2027.[[71]](#endnote-62) This will trigger a review of the Regulations, which will include the regulatory elements introduced to support the tobacco business licensing scheme which are the subject of this RIS.

This review process should address whether the regulation is still required and, if it is, how it might be improved to better achieve the desired benefits and/or reduce the cost it imposes.[[72]](#endnote-63) This review will take place in the form of a RIS which should be completed in line with the Victorian Guide to Regulation.[[73]](#endnote-64) A RIS for sunsetting Regulations seeks to analyse the problems that would occur if the Regulations were no longer in place.[[74]](#endnote-65) While this can be challenging to do in practice, the RIS can draw on an evaluation of the existing Regulations, consultation, and other research, such as looking at the experience of other jurisdictions.[[75]](#endnote-66)

The review would provide an opportunity to undertake an early evaluation of the elements prescribed in the Regulations. While two years is not enough time to assess the scheme against its core objectives, the review could provide an opportunity to test some of the assumptions made in this RIS and make smaller regulatory changes to the scheme. For example, as the scheme takes effect, more will be known about the number of applications for licences, transfers, relocations, and variations. The review could use this information to inform any necessary changes to the fee level.

## Ongoing evaluation and monitoring of the tobacco license scheme

The PAEC Inquiry recommended that an evaluation framework should be embedded in Victoria's new tobacco licensing scheme and the framework should include targets and timeframes to facilitate transparent reporting on its effectiveness in controlling the harm caused by tobacco products – both legal and illicit.[[76]](#endnote-67)

### Who will run the evaluation process?

The evaluation process, including data collection, storage and analysis will be carried out by the responsible team administering the scheme in DJCS.

### What will be evaluated and how will it be evaluated?

The following steps outline the stages in developing an evaluation framework for the Regulations that could be taken.

#### Establish the defined objectives

The evaluation would seek to assess the effectiveness of the scheme in achieving its key objectives. The key objectives for the licensing scheme are outlined in section 3.3.

#### Develop measures for the objectives

To evaluate the success of the scheme against its key objectives, clear and measurable indicators should be identified. These indicators should be clearly linked to the key objectives. The indicators should also allow the measurable change to be traced throughout the evaluation timeframe.

#### Establish a clear and measurable base case

The base case is the current business-as-usual scenario, where the sale of tobacco products in Victoria remains an unlicensed activity bound by the existing legislation. The key objectives of the scheme would be measured against the base case. An initial collection of data prior to the implementation of the scheme (baseline data) should be undertaken to properly define the current state and provide a rigorous baseline for comparison over the course of the scheme.

#### Undertake the collection of data

Data should be collected to measure progress against the indicators on an ongoing basis. This data could be sourced and supplemented by:

* data collected from the licensing scheme, such as the number of licensees and sales record data
* data collected by other Victorian Government agencies, including Victorian health agencies, which can be shared with the scheme and evaluators
* publicly available sources, such as ABS, and other relevant sources, and
* consultation with the sector (retailers, wholesalers and peak bodies) in the lead-up to, and during, evaluation of the scheme.

#### Evaluate impacts and outcomes

The evidence base developed from the collected data could be used to evaluate the achievement of the defined objectives of the scheme and any unintended consequences. The evidence would then be used to determine whether any further legislative or other changes are needed to improve the effectiveness of the scheme or to mitigate perverse outcomes caused by the operation of the scheme.

The table below illustrates an evaluation framework for assessing the key policy objectives of the tobacco licensing scheme. The table emphasises the key criteria to assess, and potential indicators and data sources that could be used to assess these key criteria.

In undertaking evaluation activities, DJCS will also engage with other coregulatory bodies such as the DH and Victoria Police to ensure that evaluation of the broader objects of the scheme is considered.

Table 42: A framework to evaluate the Victorian tobacco license scheme

| **Objectives** | **Indicator** | **Potential data sources** |
| --- | --- | --- |
| **Efficient and effective operationalisation of the tobacco business licensing scheme within the timeframes** | * Prevalence of tobacco supply from unlicensed premises * Number of breaches of Tobacco Act * Reduced sale of illicit tobacco products in Victoria * Decreased impact on the Victorian community of criminal activity funded by the sale of illicit tobacco products * Improved understanding of the composition of the tobacco industry | * Number of offences for unlicensed supply of tobacco (estimates from Victoria Police) * Number of offences against the Tobacco Act committed * Number of enforcement actions brought against sellers of illicit tobacco for sale of illicit tobacco, broken down into categories (e.g. infringement notices, fines, disqualifications, licence cancellations or suspensions) (data collected from the tobacco licensing scheme) * Reports of organised criminal activity * Number of licensed tobacco premises in Victoria, by location, records and data collected relating to sales of tobacco products by licensees, including number and type of tobacco products sold (this data will be collected from the tobacco licence scheme) |
| **Minimise burden on the industry** | * The industry experiences limited barriers (financial or otherwise) in complying with any changes to legislation and Regulations * Financial costs imposed on industry are proportionate to the effort associated with these regulatory activities | * Ongoing feedback from industry collected via consultations or surveys * Total value of licence revenue collected per annum (data collected from the tobacco licence scheme) * Total value of fees as a proportion of revenue |
| **Minimise burden on government** | * The costs of regulatory activities are appropriately recovered from industry * The costs from running the scheme are not materially high. | * Annual scheme costs (budgeted and actual) (data collected from the tobacco licence scheme) * Total value of licence revenue collected per annum (data collected from the tobacco licence scheme) |

### When will the evaluation occur?

The evaluation framework could be used to support the five-year Statutory Review of the licensing scheme as well as the sunsetting review in 2027. In addition, the evaluation framework would inform the ongoing evaluation and monitoring to support the operationalisation of the scheme.

# Appendix A – PAEC Inquiry and Illicit Tobacco Review Terms of Reference

The terms of reference for the PAEC Inquiry were to inquire into, consider and report on:

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

The Illicit Tobacco Review terms of reference were to report on:

* The current regulatory framework for tobacco in Victoria, with a focus on regulation of illicit tobacco (this includes the licensing, compliance and regulatory powers relevant to sales of all tobacco)
* The regulatory frameworks applying in other relevant jurisdictions
* The recommendations for improvement, having regard to the nature of illicit tobacco sales and the parties involved
* Possible pathways to implement these recommendations, including whether new legislation and/or regulation is required
* The costs and benefits of the preferred approach, and
* Funding considerations including possible sources of funds that may be available to assist regulation of tobacco production and sales.

# Appendix B – Victorian Government *Pricing for Value* guide

In implementing a tobacco business licensing scheme for tobacco retailers and wholesalers in Victoria, a fee setting process must be adhered to. In line with the direction from the Treasurer and Department of Treasury and Finance, the Victorian Government’s *Pricing for Value* principles must be considered when setting fees.

The *Pricing for Value* guide sets out 12 pricing principles that extend beyond mere cost recovery, offering a rigorous framework for government entities to use when evaluating, creating, and reviewing user charges and regulatory fees. This guide aims to ensure that cost recovery practices in Victoria are transparent, efficient, effective, and comply with legislative requirements and government policy.

Within this framework, cost recovery is just one of a comprehensive set of principles. These principles cover various scenarios where it may be appropriate to set prices for individual regulatory activities at, above, or below their actual costs, such as setting prices above cost to signal higher risks to regulated parties or below cost to prevent barriers to entry or other unintended negative consequences (including barriers to entry).

The *Pricing for Value* Pricing Principles are intentionally flexible, allowing them to be applied across a variety of scenarios, including the State's provision of services and industry-managed co-regulatory schemes. For the purposes of this RIS, the table below offers a summary of the key pricing principles and their interpretation in the context of setting the fees for this tobacco business licensing scheme. These principles have guided DJCS's fee setting process and will be incorporated into the analysis of options in this RIS.

Table 43: Victorian Government Pricing for Value Pricing Principles

| Principle | | Application to this RIS | |
| --- | --- | --- | --- |
| 1 | Agencies should aim to recover the full costs of service provision to promote efficient consumption | *The fee pricing should reflect the costs of delivering the associated regulatory services. Doing so ensures that the value of resources required to administer the scheme are known. It also ensures that costs are only borne by those who engage in or interact with the industry.* | ü |
| 2 | The cost of service provision should be borne by those who benefit from the service | *Only those wishing to engage in tobacco supply should be required to pay for the cost of the licensing scheme.* | ü |
| 3 | Services creating broad benefits for the community should be priced to support efficient consumption | *While there is a public benefit to more participants in the licensing scheme, this benefit would be outweighed if the scheme wasn’t fully cost recovered. There is* ***insufficient*** *public benefit associated with providing licences to tobacco supply businesses below cost recovery.* | û |
| 4 | The cost of interagency services should be borne by the user agency | *There is* ***not*** *expected to be a risk of overuse of the services by the industry or other Government agencies, noting that licences must only be obtained annually and there is no benefit to more frequent engagement with the Regulator.* | û |
| 5 | The price of services should not limit access to those with a lower ability to pay | *Businesses of different sizes participate in the tobacco market and, as such, the Regulator should minimise risks associated with barriers to entry and inequity.* | ü |
| 6 | Users should pay for differentiated service based on the value created by that differentiation | *There is* ***not*** *expected to be different services for licensees who have a higher willingness to pay (such as for expedited licence review or reduced conditions).* | û |
| 7 | The public should share in the value generated by pricing based on user differentiation | *There could be differentiation of pricing based on factors such as ability to pay, risk profile, or other relevant characteristics of the business, noting that the fee cannot be considered a tax.* | ü |
| 8 | Pricing should support positive behaviours | *Similar Regulators, such as Liquor Control Victoria, administer risk-based liquor licensing fees which encourage licensees to adopt practices to reduce their level of risk, a practice that could be applied to tobacco licensing.* | ü |
| 9 | Pricing should ensure sustainable usage of public services and reflect the value of natural resources | *The scheme does* ***not*** *impact on the consumption of natural resources. The proposed Regulations do not introduce a cap to the number of licences, and there is not expected to be competition between licensees.* | û |
| 10 | Where services are in competition with the private sector, pricing should be relative to market prices | *The scheme is* ***not*** *being provided on a commercial or discretionary basis and is not in competition with the private sector. There are no requirements for competitive neutrality.* | û |
| 11 | Pricing structures should be easy to understand and simple to administer | *The licensing fee structure should be straightforward for users to comprehend and easy for the regulator to manage. Whenever possible, the Regulator should adopt simple and clear schedules of fee types to reduce complexity and minimise the time required for application processing.* | ü |
| 12 | Pricing arrangements should be monitored annually and reviewed periodically | *The periodic review of fees is defined in the legislation and will* ***not*** *be used to differentiate between the fee options.* | û |

# Appendix C – Costing assumptions used in the RIS

## Prescribed information costing assumptions

The median weekly earnings in the Retail and Wholesale trade industries were used to proxy the value of a retail or wholesale worker’s time. The median earnings were chosen over the average earnings, because the average earnings can be positively skewed by high income earners. These costs were then converted into hourly estimates by dividing the weekly earnings by 37.5. This is presented in in the table below.

Table 44 - Value of a retail or wholesale worker's time

|  |  |  |
| --- | --- | --- |
| Industry | Weekly | Hourly |
| Retail median earnings | $1,334[[77]](#endnote-68) | $35.57 |
| Wholesale median earnings | $1,610[[78]](#endnote-69) | $42.93 |

Although the aggregate Retail and Wholesale trade industries might not completely represent the tobacco industry, they should provide a good proxy to assess the compliance burden impacts from the prescribed information requirements. There is also a lack of data on the tobacco industry earnings which would allow a more complete analysis, however businesses that exclusively sell tobacco are expected to be a relatively small proportion of the total market for tobacco in Victoria.

It is assumed that the cost of a National Police Check (NPC) will be $86.50 and that it will take approximately 30 minutes to complete a police check. These assumptions are based off guidelines from the Victoria Police website.

It is assumed that the cost to undertake an ASIC extract will be $20 based off the ASIC website. It is also assumed that the ASIC extract will take 30 minutes, based on the time to navigate the website and apply for the extract. This is presented in the table below.

Table 45 - Assumptions used for prescribed information requirements

|  |  |
| --- | --- |
| Requirements | Assumptions |
| Time taken to apply for National Police Check | 30 minutes[[79]](#endnote-70) |
| Standard fee for National Police Check | $86.50[[80]](#endnote-71) |
| Time taken to apply for ASIC extract | 30 minutes |
| Fee for current and historical company extract | $20.00[[81]](#endnote-72) |

Whilst individuals would only be required to obtain a new NPC if they had committed an offence since their previous check, the assumption used in this RIS is that each individual would require a new NPC in the first year and only require an NPC in following years if they transfer their licence. It is also assumed that there would be four individuals requiring an NPC in each business. This is because this information requirement extends to natural person applicants, company directors, executive committee members, partners, and key business personnel. This is presented in the table below.

Finally, it is assumed that each business would only require one ASIC extract per year.

Table 46 - Assumptions used for prescribed information requirements

|  |  |  |
| --- | --- | --- |
| Requirements | Base frequency (p.a) | Number per business |
| National Police Check | 1 | 4 |
| ASIC Extract | 1 | 1 |

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25. ***Associate*** is defined in the Amendment Act as a person who has or will have a relevant financial interest, or is or will be entitled to exercise a relevant power (whether in right of the person or on behalf of any other person) in the tobacco supply business carried on, or proposed to be carried on, under the licence; by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management of that business; a person who holds or will hold any relevant position (whether in right of the person or on behalf of another person) in the tobacco supply business carried on, or proposed to be carried on, under the licence; if the primary person is a body corporate, a relative of any director of the primary person; if the primary person is a natural person who holds or will hold the licence on the primary person's own account, a relative of the primary person; if the primary person is a natural person who holds or will hold the licence on behalf of a partnership, a relative of any partner in the partnership; or a person who is prescribed as an associate of the primary person. [↑](#footnote-ref-4)
26. ***Suitability offence*** means any of the following offences: an offence of selling tobacco products without a licence (whether in Victoria or elsewhere); any other offence against the Tobacco Act or the Regulations; an indictable offence relating to fraud, dishonesty, or tax or customs evasion (whether in Victoria or elsewhere); an offence under the *Therapeutic Goods Act 1989* of the Commonwealth relating to vaping goods or vaping devices; or an offence against a corresponding law. [↑](#footnote-ref-5)
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29. The proposed regulations require applicants to provide information to the regulator about the tobacco supply business to be carried on under the licence, including the nature and scope of the tobacco supply business (for example, wholesale distribution centre, tobacconist, convenience store, supermarket), and information about the proposed manner of sale (for example, online or vending machine). [↑](#footnote-ref-6)
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