



New South Wales

Public Health (Tobacco) Amendment (Illicit Tobacco) Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Health (Tobacco) Act 2008* (*the Act*) to—

- (a) increase penalties for certain offences, and
- (b) provide for closure orders for illicit tobacco and vaping goods sales.

This Bill also makes related amendments to the following—

- (a) the *Public Health (Tobacco) Regulation 2022*,
- (b) the *Retail Leases Act 1994*,
- (c) the *Criminal Procedure Act 1986*,
- (d) the *Medicines, Poisons and Therapeutic Goods Act 2022*,
- (e) the *Small Business Commissioner Act 2013*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Public Health (Tobacco) Act 2008 No 94

Schedule 1[1] makes consequential amendments to the Act's definitions section.

Schedule 1[2]–[4] increase the maximum penalties for certain offences. **Schedule 1[13] and [14]** make consequential amendments.

Schedule 1[5] permits the Secretary of the Ministry of Health (the *Secretary*) to refuse to grant a retail licence or wholesale licence to sell tobacco products or non-tobacco smoking products (a *licence*) if a closure order has been made for premises connected to the applicant.

Schedule 1[6] permits the Secretary to refuse to renew a licence if a closure order has been made for premises connected to the applicant.

Schedule 1[7] permits the Secretary to revoke a licence if a closure order has been made for premises connected to the licence holder.

Schedule 1[8] and [9] provide for an inspector under the Act to seize tobacco products if the inspector believes, on reasonable grounds, that the products are in a person's possession, custody or control in the course of committing, or for the purpose of committing, an offence under proposed section 50E.

Schedule 1[10] provides for a court to order the forfeiture of seized tobacco products on the conviction of a person for the proposed offence of selling goods or providing services at premises subject to a closure order.

Schedule 1[12] inserts proposed Part 6, Division 2, which—

- (a) provides for the Secretary to order the closure of premises for up to 28 days if satisfied certain illicit tobacco or vaping goods sales have occurred or are likely to occur at the premises (a *short-term closure order*), and provides for the review of the orders, and
- (b) provides for the Local Court to order the closure of premises for up to 12 months if satisfied certain illicit tobacco or vaping goods sales have occurred or are likely to occur at the premises (a *long-term closure order*), and
- (c) prohibits the sale of goods and the provision of services at premises subject to a closure order, and
- (d) provides for applications for permission to operate at premises subject to a closure order, and
- (e) requires the Secretary to give certain information to owners of premises subject to a closure order, and provides that, in certain circumstances, owners who have been given the information are taken to have knowledge of later illicit tobacco and vaping goods sales, and
- (f) permits the Secretary to publish certain information about closure orders, and
- (g) prohibits an owner or person with management or control of premises, including a franchisor, from knowingly permitting another person to make certain illicit tobacco or vaping goods sales at the premises.

Schedule 1[11] makes a consequential amendment.

Schedule 2 Amendment of Public Health (Tobacco) Regulation 2022

Schedule 2 prescribes certain offences under the *Public Health (Tobacco) Act 2008* as penalty notice offences.

Schedule 3 Amendment of Retail Leases Act 1994 No 46

Schedule 3[1] makes a consequential amendment.

Schedule 3[2] inserts proposed section 45A, which—

- (a) provides for a lessor to terminate a retail shop lease if a closure order is in effect for the premises subject to the lease, and provides that the termination is taken to be a termination for breach of the lease by the lessee, and
- (b) requires a lessor to notify the Secretary if the lessor terminates the lease due to a closure order, and
- (c) enables a lessee to seek damages from the Secretary if the lessee's lease is terminated due to a short-term closure order that was issued in error.

Schedule 3[3] provides that a dispute about a lessor's decision to terminate a lease due to a closure order applying to the premises is not subject to mediation or review by the NSW Civil and Administrative Tribunal.

Schedule 4 Amendment of other Acts

Schedule 4.1 amends the *Criminal Procedure Act 1986* consequent to the increased proposed in Schedule 1[2]–[4].

Schedule 4.2 amends the *Medicines, Poisons and Therapeutic Goods Act 2022* consequent to Schedule 1[12].

Schedule 4.3 amends the *Small Business Commissioner Act 2013* to provide that the Small Business Commissioner must not deal with a complaint about a lessor's decision to terminate a lease due to a closure order.



New South Wales

Public Health (Tobacco) Amendment (Illicit Tobacco) Bill 2025

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Public Health (Tobacco) Act 2008 No 94	3
Schedule 2	Amendment of Public Health (Tobacco) Regulation 2022	9
Schedule 3	Amendment of Retail Leases Act 1994 No 46	10
Schedule 4	Amendment of other Acts	11

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Public Health (Tobacco) Amendment (Illicit Tobacco) Bill 2025

No. _____, 2025

A Bill for

An Act to amend the *Public Health (Tobacco) Act 2008* to provide for closure orders for illicit tobacco and vape sales and increase penalties for certain offences; and for related purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Public Health (Tobacco) Amendment (Illicit Tobacco) Act 2025*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

[5] Section 39A Deciding applications for licences	1
Insert after section 39A(4)(d)—	2
(d1) a closure order has been made for premises owned, leased or managed by, or under the control of, the applicant,	3 4
[6] Section 39C Deciding applications to renew licences	5
Insert after section 39C(4)(d)—	6
(d1) a closure order has been made for premises owned, leased or managed by, or under the control of, the applicant,	7 8
[7] Section 39G Grounds for revoking licences	9
Insert after section 39G(e)—	10
(e1) a closure order has been made for premises owned, leased or managed by, or under the control of, the licence holder,	11 12
[8] Section 40, heading	13
Omit “ contravention of retailing prohibition ”. Insert instead “ contraventions ”.	14
[9] Section 40(1)	15
Insert “or section 50E” after “part”.	16
[10] Section 41 Forfeiture of tobacco on conviction	17
Insert “or section 50E” after “Division 2” in section 41(1).	18
[11] Part 6, Division 1, heading	19
Insert before section 43A—	20
Division 1 Enforcement generally	21
[12] Part 6, Division 2	22
Insert after section 50—	23
Division 2 Closure orders	24
50A Definitions	25
In this division—	26
<i>closure order</i> means a short-term closure order or a long-term closure order.	27
<i>illicit tobacco</i> means a tobacco product that—	28
(a) does not comply with a tobacco product requirement that applies to the product, or	29 30
(b) does not comply with a requirement prescribed by the regulations.	31
<i>long-term closure order</i> means an order made under section 50D.	32
<i>person with management or control</i> , of premises, includes a franchisor under a franchising agreement involving the premises.	33 34
<i>retail shop lease</i> means a retail shop lease, within the meaning of the <i>Retail Leases Act 1994</i> , to which that Act applies.	35 36
<i>short-term closure order</i> means an order made under section 50B.	37
<i>tobacco product requirement</i> has the same meaning as in the <i>Public Health (Tobacco and Other Products) Act 2023</i> of the Commonwealth.	38 39

50B	Short-term closure orders	1
(1)	The Secretary may order the closure of premises for a specified period of no longer than 28 days if the Secretary is satisfied—	2
		3
(a)	illicit tobacco has been or is likely to be sold on the premises, or	4
(b)	vaping goods have been or are likely to be sold on the premises in contravention of the <i>Poisons and Therapeutic Goods Act 1966</i> , Part 3A, or	5
		6
		7
(c)	tobacco products have been or are likely to be sold on the premises in contravention of section 6, or	8
		9
(d)	tobacco products or non-tobacco smoking products have been or are likely to be sold on the premises in contravention of section 37 or 38.	10
		11
(2)	The Secretary must—	12
(a)	serve the order on the person apparently in charge of the premises, or	13
(b)	post the order in a conspicuous place at the entrance to the premises.	14
(3)	The Secretary may vary or revoke an order.	15
(4)	However, the Secretary may not vary an order to require the closure of the premises for longer than 28 days.	16
		17
(5)	The Secretary may not order the closure of the same premises under this section more than once within a 2-month period.	18
		19
50C	Review of short-term closure orders	20
(1)	An owner or person with management or control of premises subject to a short-term closure order may apply to the Secretary for a review of the decision to make the order within 7 days after the order is served or posted in accordance with section 50B(2).	21
		22
		23
		24
(2)	An application must be made in writing and in the form approved by the Secretary.	25
		26
(3)	The Secretary must, within 7 days after receiving an application, determine the application by—	27
		28
(a)	confirming the order, or	29
(b)	varying the order, or	30
(c)	revoking the order.	31
(4)	The Secretary must give written notice of the Secretary's decision to the applicant.	32
		33
50D	Long-term closure orders	34
(1)	The Local Court may, on application by the Secretary, order the closure of premises for a specified period of no longer than 12 months if the Court is satisfied—	35
		36
		37
(a)	illicit tobacco has been or is likely to be sold on the premises, or	38
(b)	vaping goods have been or are likely to be sold on the premises in contravention of the <i>Poisons and Therapeutic Goods Act 1966</i> , Part 3A, or	39
		40
		41
(c)	tobacco products have been or are likely to be sold on the premises in contravention of section 6, or	42
		43

(d)	tobacco products or non-tobacco smoking products have been or are likely to be sold on the premises in contravention of section 37 or 38.	1 2
(2)	The Secretary must serve a copy of the application on the person apparently in charge of the premises, unless it is not reasonably practicable to do so.	3 4
(3)	The Court may make an order subject to conditions or exemptions.	5
(4)	The Secretary must—	6
(a)	serve the order on the person apparently in charge of the premises, or	7
(b)	post the order in a conspicuous place at the entrance to the premises.	8
(5)	The Local Court may, if the Court considers it appropriate, vary or revoke an order on application by—	9 10
(a)	an owner or person with management or control of the premises subject to the order, or	11 12
(b)	the Secretary.	13
(6)	A short-term closure order that is in effect when the Local Court determines an application under this section is revoked on the making of the determination.	14 15 16
50E	Selling goods or providing services at closed premises	17
(1)	A person must not, while a closure order is in effect for particular premises, sell goods at the premises or provide services at the premises for a fee or other consideration.	18 19 20
	Maximum penalty—	21
(a)	for an individual—1,400 penalty units, or	22
(b)	otherwise—7,000 penalty units.	23
(2)	A person does not commit an offence under this section if the person has the written permission of the Secretary to sell goods or provide services at the premises.	24 25 26
(3)	It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that a closure order was in force for the premises.	27 28 29
50F	Permission to operate at closed premises	30
(1)	A person may apply to the Secretary for permission to sell goods or provide services for a fee or other consideration at premises to which a closure order applies.	31 32 33
(2)	An application must be made in writing and in the form approved by the Secretary.	34 35
(3)	The Secretary must, within 14 days after receiving an application, determine the application by—	36 37
(a)	granting permission by written notice to the applicant, or	38
(b)	refusing the application.	39
(4)	If the Secretary refuses the application, the Secretary must give the applicant written notice of the refusal, including the reasons for the refusal.	40 41

50G	Secretary must give certain information to owners about closure orders	1
	The Secretary must take reasonable steps to give the following to the owner of premises to which a closure order applies—	2
		3
	(a) a copy of the closure order,	4
	(b) information about the right to terminate a retail shop lease in accordance with the <i>Retail Leases Act 1994</i> ,	5
		6
	(c) information about the offences under sections 50E and 50I.	7
50H	Secretary may publish certain information about closure orders	8
	The Secretary may publish the following information about a closure order on a NSW Government website—	9
		10
	(a) a copy of the closure order,	11
	(b) the reasons for making the order,	12
	(c) other information prescribed by the regulations.	13
50I	Owners and others must not knowingly permit certain sales at premises	14
(1)	An owner or person with management or control of premises must not knowingly permit another person to—	15
		16
	(a) sell illicit tobacco on the premises, or	17
	(b) sell vaping goods on the premises in contravention of the <i>Poisons and Therapeutic Goods Act 1966</i> , Part 3A, or	18
		19
	(c) sell tobacco products on the premises in contravention of section 6, or	20
	(d) sell tobacco products or non-tobacco smoking products on the premises in contravention of section 37 or 38.	21
		22
	Maximum penalty—	23
	(a) for an individual—1,400 penalty units, or	24
	(b) otherwise—7,000 penalty units.	25
(2)	In proceedings for an offence against this section, the accused bears the onus of proving the accused did not have knowledge of the sale if the accused—	26
		27
	(a) is the owner of the premises, and	28
	(b) was notified about a closure order applying to the premises resulting from an earlier sale by—	29
		30
	(i) the person alleged to have made the sale, or	31
	(ii) a person acting at the direction of the person alleged to have made the sale, and	32
		33
	(c) if the accused is the lessor of the premises under a retail shop lease—	34
	did not terminate the retail shop lease within 30 days after being notified of the closure order.	35
		36
(3)	In this section—	37
	<i>lessor</i> has the same meaning as in the <i>Retail Leases Act 1994</i> .	38
[13]	Section 54 Proceedings for offences	39
	Insert after section 54(1)—	40
(1A)	Subsection (1) does not apply in relation to proceedings for a second or subsequent offence against section 6, 7 or 8.	41
		42

[14] Section 54(2)

Insert “for an offence against this Act or the regulations” after “proceedings”.

1

2

**Schedule 2 Amendment of Public Health (Tobacco)
 Regulation 2022**

1

2

Schedule 2 Penalty notice offences

3

Insert in appropriate order in the table under the heading **Offences under the Act**—

4

Section 6	\$4,400	\$22,000
Section 7	\$4,400	\$22,000
Section 8(1)	\$4,400	\$22,000
Section 50E(1)	\$4,400	\$22,000
Section 50I(1)	\$4,400	\$22,000

Schedule 3	Amendment of Retail Leases Act 1994 No 46	1
[1] Section 3 Definitions		2
	Omit section 3(1), definition of <i>Secretary</i> . Insert instead—	3
	<i>Secretary</i> —	4
	(a) for section 45A—see section 45A(5), or	5
	(b) otherwise—means the Secretary of the Department.	6
[2] Section 45A		7
	Insert after section 45—	8
45A Termination if closure order made under the Public Health (Tobacco) Act 2008		9
(1)	If a closure order is in effect for premises to which a retail shop lease applies, the lessor may terminate the lease by giving not less than 14 days written notice to the lessee.	10 11 12
(2)	Termination of a lease in accordance with this section is taken to be a termination for breach of the lease by the lessee.	13 14
(3)	A lessor that terminates a retail shop lease in accordance with this section must notify the Secretary.	15 16
(4)	A lessee or former lessee who suffers loss or damage as a result of a termination in accordance with this section due to a short-term closure order that was issued in error may commence proceedings against the Secretary in the Supreme Court for the recovery of damages.	17 18 19 20
(5)	In this section—	21
	<i>closure order</i> has the same meaning as in the <i>Public Health (Tobacco) Act 2008</i> , Part 6, Division 2.	22 23
	<i>Secretary</i> has the same meaning as in the <i>Public Health (Tobacco) Act 2008</i> .	24
	<i>short-term closure order</i> has the same meaning as in the <i>Public Health (Tobacco) Act 2008</i> , Part 6, Division 2.	25 26
[3] Section 63 Interpretation		27
	Insert “or a dispute about a lessor’s decision to terminate a lease in accordance with section 45A” after “shop)” in section 63(1), definition of <i>retail tenancy dispute</i> .	28 29

Schedule 4	Amendment of other Acts	1
4.1	Criminal Procedure Act 1986 No 209	2
	Schedule 1 Indictable offences triable summarily	3
	Insert after Table 2, item 31—	4
	32 Public Health (Tobacco) Act 2008	5
	A second or subsequent offence under the <i>Public Health (Tobacco) Act 2008</i> , section 6, 7 or 8.	6 7
4.2	Medicines, Poisons and Therapeutic Goods Act 2022 No 73	8
	Schedule 5.27 Public Health (Tobacco) Act 2008 No 94	9
	Insert at the end of the subschedule, with appropriate amendment numbering—	10
	Sections 50B(1)(b), 50D(1)(b) and 50I(1)(b)	11
	Omit “ <i>Poisons and Therapeutic Goods Act 1966</i> , Part 3A” wherever occurring.	12
	Insert instead “ <i>Medicines, Poisons and Therapeutic Goods Act 2022</i> , Chapter 3A”.	13
4.3	Small Business Commissioner Act 2013 No 22	14
	Section 15 Decision to deal with complaint	15
	Insert after section 15(2)—	16
	(2A) Despite subsection (1), the Commissioner must not deal with a complaint about a lessor’s decision to terminate a lease in accordance with the <i>Retail Leases Act 1994</i> , section 45A.	17 18 19