



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.