



New South Wales

Tobacco Legislation (Closure Orders) Amendment Bill 2025

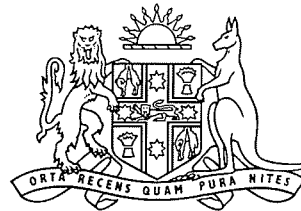
Contents

		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 other Acts	21

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

Tobacco Legislation (Closure Orders) Amendment Bill 2025

No , 2025

A Bill for

An Act to amend the *Public Health (Tobacco) Act 2008* to give the Secretary of the Ministry of Health and the Local Court power to order the closure of premises used in connection with offences, including the sale of illicit tobacco and illicit vaping goods; to provide for the seizure and disposal of illicit tobacco and illicit vaping goods; to increase penalties for offences; and for related purposes.

EXAMINED

Speaker

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

Legislative Council

Clerk of the Parliaments

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Tobacco Legislation (Closure Orders) Amendment Act 2025</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

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

[1] Section 4 Definitions

Omit section 4(1). Insert instead—

- (1) The dictionary in Schedule 2 defines words and expressions used in this Act.
Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

[2] Section 5 Meaning of “health warning”

Omit the section.

[3] Sections 6 and 6A

Omit section 6. Insert instead—

6 Certain sales prohibited

- (1) A person must not sell the following—
- (a) a tobacco product that is not in the package in which it was packed by the manufacturer,
 - (b) cigarettes as individual items or in a package containing fewer than 20 cigarettes,
 - (c) illicit tobacco.
- Maximum penalty—14,000 penalty units or imprisonment for 7 years, or both.
- (2) Tobacco is presumed to be for sale if more than the prescribed quantity of tobacco is on premises where tobacco products or other products are sold.
- (3) Subsection (1)(a) and (b) do not apply to the sale of single cigars.

6A Possession of commercial quantities of illicit tobacco

- (1) A person must not possess a quantity of illicit tobacco that is—
- (a) at least the commercial quantity, and
 - (b) less than 10 times the commercial quantity.
- Maximum penalty—2,800 penalty units or imprisonment for 2 years, or both.
- (2) A person must not possess a quantity of illicit tobacco that is—
- (a) at least 10 times the commercial quantity, and
 - (b) less than 50 times the commercial quantity.
- Maximum penalty—8,400 penalty units or imprisonment for 5 years, or both.
- (3) A person must not possess 50 times the commercial quantity or more of illicit tobacco.
- Maximum penalty—14,000 penalty units or imprisonment for 7 years, or both.
- (4) In this section—
commercial quantity means the following—
- (a) for cigarettes—2,500 cigarettes, or the larger amount prescribed by the regulations,
 - (b) otherwise—2.5kg of product, or the larger amount prescribed by the regulations.

[4] Section 7	1
Omit the section. Insert instead—	2
7 Packing of tobacco product without health warning prohibited	3
(1) A person must not pack a tobacco product into a package in which the product is to be sold unless the package is marked with a health warning.	4
Maximum penalty—14,000 penalty units or imprisonment for 7 years, or both.	5
(2) This section does not apply to single cigars.	6
[5] Section 7A Powers of inspector to seize and dispose of tobacco products exceeding prescribed amounts	7
Omit the section.	8
[6] Section 8 Prohibited words	9
Omit “, “harmless to man” and “harmless to woman”” from section 8(2)(a).	10
Insert instead “and “harmless””.	11
[7] Section 31 Definitions	12
Insert in alphabetical order—	13
<i>recipient</i> , of a closure order, means the following—	14
(a) the occupier of premises that are or have been subject to a closure order,	15
(b) the owner of premises that are or have been subject to a closure order.	16
[8] Section 31A	17
Insert after section 31—	18
31A Criminal intelligence	19
(1) The Secretary must not, without the written authorisation of the Commissioner of Police, disclose criminal intelligence—	20
(a) in a notice or other statement under this part, or	21
(b) in a statement under section 50G, or	22
(c) under section 50M.	23
(2) Despite subsection (1), the Secretary may disclose criminal intelligence if required to do so by law or by order of a court but must notify the Commissioner of Police—	24
(a) as soon as practicable after becoming aware of the required disclosure,	25
and	26
(b) before disclosing the criminal intelligence.	27
(3) If a notice or other statement under this Act would be inaccurate or misleading without the inclusion of criminal intelligence, the Secretary is not required to give the notice or statement.	28
[9] Sections 37(1) and (3) and 38(1) and (3)	29
Omit the penalties. Insert instead—	30
Maximum penalty—	31
(a) for an individual—6,000 penalty units, or	32
(b) otherwise—8,000 penalty units.	33

[10] Section 39A Deciding applications for licences	1
Insert after section 39A(2)(a)—	2
(a1) whether the applicant, or a relevant person for the applicant, has, for the relevant premises or other premises, been the recipient of a closure order,	3 4 5
[11] Section 39A(4)(d1)	6
Insert after section 39A(4)(d)—	7
(d1) the applicant, or a relevant person for the applicant, has, for the relevant premises or other premises, been the recipient of a closure order,	8 9
[12] Section 39C Deciding applications to renew licences	10
Insert after section 39C(2)(a)—	11
(a1) whether the applicant, or a relevant person for the applicant, has, for the relevant premises or other premises, been the recipient of a closure order,	12 13 14
[13] Section 39C(4)(d1)	15
Insert after section 39C(4)(d)—	16
(d1) the applicant, or a relevant person for the applicant, has, for the relevant premises or other premises, been the recipient of a closure order,	17 18
[14] Section 39G Grounds for revoking licences	19
Insert after section 39G(e)—	20
(e1) the licence holder, or a relevant person for the licence holder, has, for the relevant premises or other premises been the recipient of a closure order,	21 22 23
[15] Section 39L Offence of falsely claiming to be licensed	24
Omit the penalty. Insert instead—	25
Maximum penalty—8,000 penalty units.	26
[16] Part 5, Division 4	27
Omit the division.	28
[17] Section 44 Powers of inspectors to enter premises	29
Omit “accessories.” from section 44(4), definition of <i>regulated products</i> , paragraph (b).	30
Insert instead—	31
accessories,	32
(c) illicit vaping goods.	33
[18] Sections 45A–45D	34
Insert after section 45—	35
45A Authorised purposes	36
An inspector may exercise the functions conferred by this part for one or more of the following purposes—	37 38
(a) investigating, monitoring and enforcing compliance with the requirements imposed under this Act,	39 40

(b)	obtaining documents or other information for purposes connected with the administration of this Act.	1 2
45B	Power of inspectors to require documents	3
(1)	An inspector may direct a person to give a document to the inspector or another inspector.	4 5
	Note— The <i>Interpretation Act 1987</i> , Schedule 4 defines a document to mean any record of information, including maps, plans, drawings and photographs.	6 7
(2)	The direction may be given if the inspector requires the document for an authorised purpose.	8 9
(3)	The direction must be given by written order to the person.	10
(4)	The order must specify—	11
	(a) the way the document must be given, and	12
	(b) the form in which the document must be given, and	13
	(c) a reasonable date by which the document must be given.	14
(5)	The order may only require a person to give existing documents that—	15
	(a) are in the person’s possession, or	16
	(b) are within the person’s power to obtain lawfully.	17
(6)	An inspector may make copies of the documents.	18
45C	Power of inspectors to require answers	19
(1)	An inspector may direct a person to answer questions about a matter if the inspector—	20 21
	(a) reasonably suspects the person to have knowledge of the matter, and	22
	(b) reasonably requires information about the matter for an authorised purpose.	23 24
(2)	The direction may require the answers to be—	25
	(a) written, or	26
	(b) given verbally—	27
	(i) in person, or	28
	(ii) by audio link or audio visual link.	29
(3)	The inspector may direct a body corporate to nominate an individual to answer questions on behalf of the body corporate.	30 31
(4)	The nomination must be—	32
	(a) in writing, and	33
	(b) given to the authorised officer within the time required in the direction.	34
(5)	The individual must be a director or other officer of the body corporate.	35
(6)	Answers given by the individual bind the body corporate.	36
(7)	The inspector may direct the person or nominated individual to attend at a specified place and time to answer questions if—	37 38
	(a) the answers are to be given verbally, and	39
	(b) attendance at the place is reasonably required for the questions to be properly put and answered.	40 41
(8)	The place and time must be reasonable in the circumstances.	42

(9)	A direction under this section must be in writing.	1
45D	Recording of evidence	2
(1)	An inspector may record a person answering questions under this division if the authorised officer—	3
		4
(a)	informs the person the record will be made, and	5
(b)	a copy of the record is given to the person as soon as practicable after the record is made.	6
		7
(2)	The record may be made using—	8
(a)	sound recording apparatus, or	9
(b)	audio visual apparatus, or	10
(c)	another method decided by the inspector.	11
(3)	The record may be made despite the provisions of another law.	12
[19]	Section 46A	13
	Insert after section 46—	14
46A	Self-incrimination	15
(1)	A person is not excused from giving relevant information on the ground that the information may incriminate or make liable to a penalty—	16
		17
(a)	the person, or	18
(b)	another person, including a body corporate that has nominated the person to answer questions under section 45C.	19
		20
(2)	Relevant information given by an individual is not admissible in evidence in criminal or civil proceedings against the individual, except proceedings for an offence under this part, if—	21
		22
(a)	the individual objected at the time to doing so on the ground that it might incriminate the individual, or	23
		24
(b)	the individual was not warned on that occasion that the individual may object to giving the information or answer on the ground that it might incriminate the individual.	25
		26
		27
		28
(3)	Relevant information given by an individual may be admissible in evidence in criminal or civil proceedings against another person, including a body corporate that has nominated the individual to answer questions.	29
		30
		31
(4)	In this section—	32
	<i>give relevant information</i> means—	33
(a)	give a document under section 45B, or	34
(b)	answer a question under section 45C.	35
[20]	Parts 6A and 6B	36
	Insert after section 50—	37

Part 6A Closure of premises

Division 1 Preliminary

50A Definitions

In this part—

closed premises means premises subject to a closure order.

notifiable person, for premises, means the following—

- (a) the person apparently in charge of the premises,
- (b) the occupier of the premises,
- (c) if the premises are a licensed retail outlet—
 - (i) the licence holder, and
 - (ii) the nominated designated person under section 39(3)(e)(iii) for the retail licence for the premises, and
 - (iii) the relevant persons for the retail licence for the premises,
- (d) the owner of the premises.

relevant breach means the following—

- (a) the sale of illicit tobacco,
- (b) the retail sale of tobacco products or non-tobacco smoking products by a person who does not hold a retail licence that is in effect,
- (c) the wholesale sale of tobacco products or non-tobacco smoking products by a person who does not hold a wholesale licence that is in effect,
- (d) the sale of illicit vaping goods.

Division 2 Short-term closure orders

50B Secretary may make short-term closure order

- (1) The Secretary may by written order (a **short-term closure order**) direct that premises specified in the order are closed for the period, not longer than 90 days, specified in the order.
- (2) A short-term closure order may be made for premises if the Secretary reasonably suspects that a relevant breach has occurred, or is likely to occur, on the premises.
- (3) The Secretary may make a short-term closure order subject to exemptions.
- (4) The Secretary may vary or revoke a short-term closure order.
- (5) The Secretary must not vary a short-term closure order in a way that causes the order to apply for longer than 90 days.
- (6) In making, varying or revoking a short-term closure order, the Secretary is not required to give a person—
 - (a) prior notice of the Secretary's intention to make, vary or revoke the order, or
 - (b) an opportunity to be heard.
- (7) If the Secretary varies or revokes a short-term closure order, the Secretary must take reasonably practicable steps to give each notifiable person for the premises notice of the variation or revocation.

50C	Secretary may make further short-term closure orders	1
(1)	The Secretary may make one or more further short-term closure orders about the same premises.	2 3
(2)	A second or subsequent short-term closure order may only be made if the Secretary reasonably suspects a further relevant breach has occurred or is likely to occur after the making of the previous short-term closure order.	4 5 6
Division 3	Long-term closure orders	7
50D	Local Court may make long-term closure order	8
(1)	The Secretary may apply to the Local Court for an order (a <i>long-term closure order</i>) that the premises specified in the order are closed for a period of not more than 12 months.	9 10 11
(2)	A long-term closure order may be made for premises if the Local Court is satisfied that a relevant breach has occurred, or is likely to occur, on the premises.	12 13 14
(3)	The Local Court may make a long-term closure order subject to exemptions.	15
50E	Application by Secretary	16
(1)	The Secretary may apply for a long-term closure order whether or not a short-term closure order has been made or is in force for the relevant premises.	17 18
(2)	The Secretary must, if reasonably practicable, give the following persons a copy of an application for a long-term closure order and the persons may apply to the Local Court to be heard on the application—	19 20 21
(a)	the occupier of the premises,	22
(b)	the owner of the premises.	23
50F	Review of long-term closure order	24
(1)	The owner or occupier of premises that are subject to a long-term closure order may apply to the Local Court for a review of the order.	25 26
(2)	An application may be made only if—	27
(a)	there has been a substantial or material change in the circumstances surrounding the making of the long-term closure order, or	28 29
(b)	relevant information that was not available when the order was made has become available.	30 31
(3)	A person making an application for review of a long-term closure order must, within 2 business days after making the application, give a copy of the application to the Secretary.	32 33 34
(4)	The Secretary is entitled to be heard on the application.	35
(5)	After hearing a review application, the Local Court may—	36
(a)	confirm the order, or	37
(b)	vary the order, or	38
(c)	revoke the order.	39
(6)	If the Local Court varies or revokes a long-term closure order, the Secretary must take reasonably practicable steps to give each notifiable person for the premises notice of the variation or revocation.	40 41 42

Division 4 Giving notice of closure order

50G Secretary must give public notice of closure order

- (1) The Secretary must give public notice of the making of a closure order by posting a copy of the order—
 - (a) on the front of the premises subject to the order, or
 - (b) if it is not reasonably practicable to attach the notice to the front of the premises—in a reasonably conspicuous public place near the front of the premises.
- (2) The Secretary may also make the following information about a closure order available on the Ministry's website—
 - (a) a copy of the order,
 - (b) a description of the premises to which the order relates,
 - (c) a summary of the reasons for making the order,
 - (d) the date the order takes effect and the duration of the order,
 - (e) other information prescribed by the regulations.
- (3) The Secretary must take reasonably practicable steps to give each notifiable person for the premises a copy of the closure order and a statement explaining the following—
 - (a) the effect of the order,
 - (b) the reasons for making the order,
 - (c) the lessor's ability to terminate the lease under section 50J.
- (4) A person must not interfere with a copy of a closure order posted in accordance with subsection (1).
Maximum penalty—100 penalty units.
- (5) In this section—
closure order includes a closure order that has been varied.

Division 5 Effect of closure order

50H Persons must not enter closed premises

- (1) A person must not enter closed premises without reasonable excuse.
Maximum penalty—
 - (a) for a first offence—750 penalty units, or
 - (b) for second and subsequent offences—1,250 penalty units.
- (2) 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 the premises were closed premises.
- (3) This section does not apply to the following—
 - (a) a police officer, inspector or emergency services worker who enters closed premises to exercise functions under this Act or another law,
 - (b) a person who passes through closed premises while accessing neighbouring premises,
 - (c) a person who enters closed premises in accordance with—
 - (i) an exemption granted by the Secretary under section 50B(3), or

- (ii) an exemption granted by the Local Court under section 50D(3),
or
- (iii) an exemption notice issued by the Secretary under section 50I,
- (d) a person, or a member of a class of persons, prescribed by the regulations.

50I Exemption notice

- (1) The Secretary may by written notice (an **exemption notice**) permit one or more named persons, or a member of a class of persons, to enter closed premises.
- (2) An exemption notice may be given—
 - (a) for a single entry to the closed premises, or for multiple entries, and
 - (b) subject to conditions.
- (3) An exemption notice must specify the following—
 - (a) the closed premises to which the notice applies,
 - (b) the persons or class of persons to whom the notice applies,
 - (c) the date or the period for which the notice is in effect,
 - (d) the conditions to which the notice is subject.
- (4) The Secretary may revoke a notice given under this section.

50J Termination of certain leases and licences

- (1) If a closure order is in effect for a premises, the lease or licence for the premises is taken to include a provision allowing the lessor or licensor to terminate the lease or licence because of the making of the order by giving not less than 28 days written notice to the lessee or licensee.
- (2) If a lessor relies on this section to terminate a lease, the termination is taken to be for repudiation of the lease by the tenant.
- (3) A lessee or licensee is not entitled to bring proceedings against a lessor or licensor because of the termination of a lease or licence under this section.
- (4) To avoid doubt—
 - (a) the following do not apply in relation to the termination of a lease or licence under this section—
 - (i) the *Real Property Act 1900*, Parts 13 and 14,
 - (ii) the *Retail Leases Act 1994*, Part 8,
 - (iii) the *Small Business Commissioner Act 2013*, Part 2, Division 2, and
 - (b) a lessee or licensee is not prevented from bringing proceedings on grounds unrelated to the termination of a lease under this section, and
Example— a claim by the lessee or licensee arising from a breach of the lease or licence, prior to the termination, by the lessor or licensor
 - (c) a lessor or licensor is not liable for damages or compensation to any person because of the termination of a lease or licence under this section, and
 - (d) this section does not limit or affect another power of a lessor or licensor to terminate a lease or licence.
- (5) In this section—

	<i>lease</i> means an agreement under which a person grants another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop.	1 2 3
	<i>lessor</i> has the same meaning as in the <i>Retail Leases Act 1994</i> .	4
	<i>licence</i> means an agreement under which a person gives another person permission to occupy or use premises as a retail shop without exclusive possession of the premises.	5 6 7
50K	Licence cancelled by long-term closure order	8
	(1) If a long-term closure order is made for premises, a retail licence or wholesale licence relating to the premises is cancelled.	9 10
	(2) If a licence is cancelled under this section, no compensation or refund is payable to any person, including the person who held the cancelled licence.	11 12
50L	Offence to sell tobacco, smoking products or vaping goods from closed premises	13 14
	(1) A person must not sell tobacco products, non-tobacco smoking products or vaping goods from closed premises.	15 16
	Maximum penalty—	17
	(a) for an individual—	18
	(i) for a first offence—1,250 penalty units or imprisonment for 6 months, or both, or	19 20
	(ii) for second and subsequent offences—2,500 penalty units or imprisonment for 12 months, or both, or	21 22
	(b) otherwise—	23
	(i) for a first offence—6,250 penalty units, or	24
	(ii) for second and subsequent offences—12,500 penalty units.	25
	(2) A person must not sell a product that is not a tobacco product, a non-tobacco smoking product or vaping goods from closed premises.	26 27
	Maximum penalty—	28
	(a) for an individual—	29
	(i) for a first offence—1,000 penalty units, or	30
	(ii) for second and subsequent offences—1,750 penalty units, or	31
	(b) otherwise—	32
	(i) for a first offence—3,750 penalty units, or	33
	(ii) for second and subsequent offences—6,250 penalty units.	34
	(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 the premises were closed premises.	35 36 37
	(4) Subsection (2) does not apply to the sale of a product the person is permitted to sell from the premises in accordance with—	38 39
	(a) an exemption granted by the Secretary under section 50B(3), or	40
	(b) an exemption granted by the Local Court under section 50D(3).	41

Division 6 Information sharing

50M Secretary may disclose information

- (1) The Secretary may disclose information obtained in exercising a function under this part to the following—
 - (a) the Australian Border Force,
 - (b) the Australian Federal Police,
 - (c) the Australian Taxation Office,
 - (d) the Commissioner of Police,
 - (e) Revenue NSW,
 - (f) a person, or class of persons, prescribed by the regulations,
- (2) The Secretary may disclose information about closed premises to the owner of the premises.

Part 6B Seizure and disposal

50N Definitions

In this part—

dispose of includes destroy.

illicit goods means—

- (a) illicit tobacco, or
- (b) illicit vaping goods.

50O Seizure

- (1) An inspector may seize the following products if the inspector reasonably believes the products are in a person's possession, custody or control in the course of committing, or for the purposes of committing, an offence under this Act—
 - (a) tobacco products,
 - (b) non-tobacco smoking products,
 - (c) illicit vaping goods.
- (2) A product seized under this section may, at the option of the inspector who made the seizure or of another inspector—
 - (a) be detained in the premises where the product was found, or
 - (b) be moved to other premises and detained at those premises.
- (3) If the product is to be detained in the premises where the product was found, the inspector may secure the product in the premises and take reasonable steps to prevent access to the product.
- (4) A person must not, for a product seized under this section—
 - (a) resist or attempt to prevent the seizure, or
 - (b) retake or attempt to retake the product, or
 - (c) move or interfere with the product.Maximum penalty—
 - (a) for an individual—
 - (i) for a first offence—1,250 penalty units, or

(ii)	for a second or subsequent offence—2,500 penalty units, or	1
(b)	otherwise—	2
(i)	for a first offence—6,250 penalty units, or	3
(ii)	for a second or subsequent offence—12,500 penalty units.	4
(5)	An inspector under the <i>Poisons and Therapeutic Goods Act 1966</i> may exercise a function under this section if the inspector is on the premises in accordance with that Act.	5 6 7
(6)	In this section—	8
	<i>premises</i> includes a vehicle.	9
50P	Certificate evidence	10
(1)	For a product seized under this part, the Secretary must obtain a certificate, in the form approved by the Secretary, setting out the following—	11 12
(a)	the identity of the seized product,	13
(b)	the quantity of the seized product,	14
(c)	other matters prescribed by the regulations.	15
(2)	In legal proceedings under this Act, the certificate is prima facie evidence of the matters stated in the certificate.	16 17
(3)	The certificate may be given by the following—	18
(a)	an inspector,	19
(b)	a person, or a member of a class of persons, prescribed by the regulations.	20 21
(4)	In this section—	22
	<i>identity</i> , of a seized product, includes the following—	23
(a)	whether the product is—	24
(i)	a tobacco product other than illicit tobacco, or	25
(ii)	a non-tobacco smoking product, or	26
(iii)	illicit tobacco, or	27
(iv)	an illicit vaping good,	28
(b)	the brand name of the product,	29
(c)	other matters the person making the certificate considers identify the product.	30 31
50Q	Disposal of illicit tobacco and illicit vaping goods	32
(1)	The Secretary may dispose of illicit goods seized under this part.	33
(2)	The Secretary may keep a sample of the illicit goods until any proceedings relating to the illicit goods are finally determined.	34 35
(3)	The Secretary must not dispose of the illicit goods unless—	36
(a)	28 days have passed after the goods were seized, and	37
(b)	the Secretary has complied with the requirements of the regulations.	38
(4)	The regulations may provide for procedures that must be followed when keeping a sample of illicit goods.	39 40

50R Forfeiture on conviction

- (1) A court that convicts a person for an offence under Part 5, Division 2 may order that a product seized under this part in connection with the offence is forfeited to the Crown.
- (2) The Secretary must dispose of all products forfeited under this section.
- (3) The person convicted of the offence is liable to pay the Secretary the reasonable costs of disposal.
- (4) The costs may be recovered by the Secretary in a court of competent jurisdiction as a debt due to the Crown.
- (5) In proceedings for recovery of the costs, a certificate signed by the Secretary certifying the amount of the costs and the way the costs were incurred is evidence of the matters certified.

50S Return of seized tobacco

- (1) Tobacco products and non-tobacco smoking products seized under this part must be returned if—
 - (a) proceedings for an offence under Part 5, Division 2 have not been commenced against the person from whom the products were seized within 42 days after seizure, or
 - (b) the court that disposes of proceedings for an offence under Part 5, Division 2 does not make an order for forfeiture and destruction of the products, or
 - (c) the Secretary is satisfied that the products were incorrectly seized.
- (2) Tobacco products and non-tobacco smoking products returned under this section must be returned to the person from whom they were seized, or to another person who appears to the Secretary to be the owner of the products
- (3) This section does not apply to illicit tobacco.

50T Disposal of illicit tobacco and illicit vaping goods seized by police

- (1) The Commissioner of Police may dispose of illicit goods seized by a police officer under another law.
- (2) The Commissioner of Police may keep a sample of the illicit goods until any proceedings relating to the illicit goods are finally determined.
- (3) The Commissioner of Police must not dispose of the illicit goods unless—
 - (a) 28 days have passed after the goods were seized, and
 - (b) the Commissioner has complied with the requirements of the regulations.
- (4) Before the illicit goods are disposed of, the Commissioner of Police must obtain a certificate in the form approved by the Commissioner setting out the following—
 - (a) the identity of the illicit good,
 - (b) the quantity of the illicit good,
 - (c) other matters prescribed by the regulations.
- (5) In legal proceedings, the certificate is prima facie evidence of the matters stated in the certificate.

(6)	A certificate under this section may be given by a person, or a member of a class of persons, prescribed by the regulations.	1 2
(7)	The regulations may provide for procedures that must be followed when keeping a sample of illicit goods.	3 4
(8)	In this section— <i>identity</i> , of an illicit good, includes the following—	5 6
(a)	whether the illicit good is—	7
(i)	illicit tobacco, or	8
(ii)	an illicit vaping good,	9
(b)	the brand name of the illicit good,	10
(c)	other matters that identify the illicit good.	11
50U	No liability for seizure and disposal	12
	The seizure, forfeiture or disposal of a thing under this part does not subject the following to an action, liability, claim or demand—	13 14
(a)	the Commissioner of Police,	15
(b)	an inspector,	16
(c)	the Minister,	17
(d)	a police officer,	18
(e)	the Secretary,	19
(f)	the State,	20
(g)	another person exercising functions under this Act.	21
50V	Regulations	22
	The regulations may make provision for the following—	23
(a)	matters that must be, or may be, included in or attached to a certificate under section 50P or 50T(4),	24 25
(b)	the disposal of illicit goods under section 50Q, 50R or 50T,	26
(c)	amounts that may be recovered by the Secretary under section 50R.	27
[21]	Section 53A	28
	Insert after section 53—	29
53A	Licence holder liable for act of agent	30
(1)	If an agent of a licence holder commits an offence under this Act or the regulations, the licence holder is guilty of the offence and liable to the penalty specified for the contravention.	31 32 33
(2)	In this section— <i>agent</i> , of a licence holder, includes—	34 35
(a)	an employee of the licence holder, and	36
(b)	a person acting, or purporting to act, on behalf of the licence holder.	37
[22]	Section 54 Proceedings for offences	38
	Insert after section 54(3)—	39
(4)	Subsection (1) does not apply to an offence under section 6(1), 6A(2) or (3) or 7(1).	40 41

[23] Sections 56A and 56B	1
Insert after section 56—	2
56A Commissioner of police may give Secretary information	3
Without limiting another Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner may give the Secretary information relevant to the administration or enforcement of this Act.	4 5 6 7
56B Exclusion of liability of State and others	8
(1) This section applies to civil proceedings for damages or other compensation brought against the State, or an authority of the State, to the extent the claim is based on alleged—	9 10 11
(a) negligence, or	12
(b) defamation, or	13
(c) breach of duty, including a statutory duty.	14
(2) Damages or other compensation is not payable in civil proceedings to which this section applies for damage or harm arising from the exercise in good faith of, or failure in good faith to exercise, a function under this Act.	15 16 17
(3) This section does not affect an entitlement to compensation expressly conferred by this Act.	18 19
[24] Section 61 Review of certain provisions	20
Omit section 61(4), definition of <i>reviewable provisions</i> . Insert instead—	21
<i>reviewable provisions</i> means—	22
(a) the provisions inserted into Part 5 by the <i>Public Health (Tobacco) Amendment Act (No 2) 2024</i> , and	23 24
(b) section 31A, and	25
(c) Part 6A.	26
[25] Schedule 1 Savings, transitional and other provisions	27
Insert at the end of the schedule, with appropriate part and clause numbering—	28
Part Provision consequent on enactment of Tobacco Legislation (Closure Orders) Amendment Act 2025	29 30
Termination of certain leases and licences	31
(1) Section 50J applies to a lease or licence whether entered into before or after the commencement of that section.	32 33
(2) In this section—	34
<i>lease</i> means an agreement under which a person grants another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop.	35 36 37
<i>licence</i> means an agreement under which a person gives another person permission to occupy or use premises as a retail shop without exclusive possession of the premises.	38 39 40

[26] Schedule 2

Insert after Schedule 1—

Schedule 2 Dictionary

section 4(1)

- approved form*, for Part 5—see section 31.
- brand name* includes a part of a brand name.
- certificate of authority*, for an inspector, means the certificate of authority issued to the inspector under section 43A(3).
- closed premises*, for Part 6A—see section 50A.
- closure order* means the following—
- (a) a short-term closure order,
 - (b) a long-term closure order.
- criminal intelligence* has the same meaning as in the *Liquor Act 2007*.
- display*, in relation to a tobacco advertisement, includes cause or permit to be displayed.
- dispose of*, for Part 6B—see section 50N.
- exercise* a function includes perform a duty.
- function* includes a power, authority or duty.
- health warning* means a health warning under the *Public Health (Tobacco and Other Products) Act 2023* of the Commonwealth.
- illicit goods*, for Part 6B—see section 50N.
- illicit tobacco* means a tobacco product that does not comply with all of the following that apply to the product—
- (a) a tobacco product requirement,
 - (b) a requirement to include a health warning,
 - (c) a requirement prescribed by the regulations.
- illicit vaping goods* means vaping goods other than vaping goods being sold in accordance with the *Poisons and Therapeutic Goods Act 1966*, Part 3A.
- inspector* means an inspector appointed under section 43A.
- law enforcement agency* means the following—
- (a) the NSW Police Force,
 - (b) a police force of another State or Territory,
 - (c) the Australian Federal Police,
 - (d) another authority or person responsible for the enforcement of the laws of the Commonwealth, the State or another State or Territory.
- licence* means a retail licence or a wholesale licence.
- licensed online retail shop*, for Part 5—see section 31.
- licensed retail outlet*, for Part 5—see section 31.
- licensed retailer* means a person who holds a retail licence.
- licensed wholesaler* means a person who holds a wholesale licence.
- long-term closure order*—see section 50D(1).
- Ministry* means the Ministry of Health.

non-tobacco smoking product means a product, other than a tobacco product, that is intended for smoking, and includes a product known or described as herbal cigarettes.

notifiable person, for Part 6A—see section 50A.

occupier, in relation to premises or a part of premises, including premises or a part that are vacant, means—

- (a) a person who has the right to occupy the premises or part of the premises to the exclusion of the owner, or
- (b) if there is no person with a right to occupy the premises or part of the premises to the exclusion of the owner—the owner of the premises or part of the premises.

pack includes cause or permit to be packed.

package includes—

- (a) a box, carton, cylinder, packet, pouch or tin, or
- (b) a wrapping other than a transparent outer wrapping.

premises means—

- (a) a building or other structure on land, or
- (b) vacant land, or
- (c) a vessel, or
- (d) an aircraft.

public place means premises open to use by the public or a section of the public, whether or not on payment of a fee or by virtue of being a member.

recipient, for Part 5—see section 31.

relevant breach, for Part 6A—see section 50A.

relevant person, for Part 5—see section 31.

retail licence—see section 32(a).

retail premises, for Part 5—see section 31.

Secretary means the Secretary of the Ministry.

sell includes—

- (a) barter or exchange, or
- (b) offer or expose for sale, barter or exchange, or
- (c) keep for sale or have in possession for sale, or
- (d) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit, or
- (e) supply, or offer to supply, gratuitously, but with a view to gaining or maintaining custom or otherwise with a view to commercial gain.

short-term closure order—see section 50B(1).

show cause notice, for Part 5, Division 2, Subdivision 5—see section 39H(1).

show cause period, for Part 5, Division 2, Subdivision 5—see section 39H(2).

smoking accessory includes the following—

- (a) cigarette papers,
- (b) pipes,
- (c) cigarette holders,
- (d) hookahs,
- (e) water pipes,

(f) another smoking implement.	1
tobacco advertisement means writing, or a still or moving picture, sign,	2
symbol or other visual image or message or audible message, or a combination	3
of 2 or more of these, that gives publicity to, or otherwise promotes or is	4
intended to promote—	5
(a) the purchase or use of a tobacco product, or	6
(b) the trademark or brand name, or part of a trademark or brand name, of	7
a tobacco product.	8
tobacco product means tobacco, or a cigarette or cigar, or another product	9
containing tobacco and designed for human consumption or use.	10
tobacco product requirement means a tobacco product requirement under the	11
<i>Public Health (Tobacco and Other Products) Act 2023</i> of the Commonwealth.	12
tobacco vending machine means a machine, device or contrivance from	13
which tobacco products or non-tobacco smoking products can be obtained by	14
an operation that involves inserting money, or a token or object, into the	15
machine, device or contrivance, whether or not another action is required to	16
activate the machine.	17
trademark includes a part of a trademark.	18
vaping goods has the same meaning as in the <i>Therapeutic Goods Act 1989</i> of	19
the Commonwealth.	20
vending machine token means a token designed to be inserted into a tobacco	21
vending machine to enable the purchase or supply of tobacco products or	22
non-tobacco smoking products.	23
wholesale licence —see section 32(b).	24
word includes symbol.	25

Schedule 2	Amendment of other Acts	1
2.1	Criminal Procedure Act 1986 No 209	2
[1]	Section 268 Maximum penalties for Table 2 offences	3
	Insert after section 268(2)(f)—	4
	(g) for an offence under the <i>Public Health (Tobacco) Act 2008</i> , section 6(1), 6A(2) or (3) or 7(1)—2,000 penalty units,	5 6
[2]	Schedule 1 Indictable offences triable summarily	7
	Insert after Table 2, section 31—	8
	32 Public Health (Tobacco) Act 2008	9
	An offence under the <i>Public Health (Tobacco) Act 2008</i> , section 6(1), 6A(2) or (3) or 7(1).	10 11
2.2	Medicines, Poisons and Therapeutic Goods Act 2022 No 73	12
[1]	Section 85C Prohibition on possession of vaping goods—commercial quantities	13
	Omit “4 years” from section 85C(3), penalty. Insert instead “5 years”.	14
[2]	Schedule 5 Amendment of other legislation	15
	Omit Schedule 5.27[1A], heading. Insert instead—	16
	[1A] Sections 21A(8)(a), 40(6)(a) and 50O(5)	17
[3]	Schedule 5 Amendment of other legislation	18
	Insert after Schedule 5.27[2]—	19
	[3] Schedule 2 Dictionary	20
	Omit “ <i>Poisons and Therapeutic Goods Act 1966</i> , Part 3A” from the definition of <i>illicit vaping goods</i> .	21 22
	Insert instead “ <i>Medicines, Poisons and Therapeutic Goods Act 2022</i> , Chapter 3A”.	23
2.3	Poisons and Therapeutic Goods Act 1966 No 31	24
	Section 21 Prohibition on possession of vaping goods—commercial quantities	25
	Omit “4 years” from section 21(3), penalty. Insert instead “5 years”.	26

2.4 Uncollected Goods Act 1995 No 68	1
Section 5 When goods uncollected for purposes of Act	2
Insert after section 5(2)(e1)—	3
(e2) a lessor or licensor reasonably believes the goods have been abandoned	4
or left behind by a lessee or licensee after termination, under the <i>Public</i>	5
<i>Health (Tobacco) Act 2008</i> , section 50J, of a lease or licence, or	6