

Illegal tobacco inquiry – Supplementary questions

Mr Bernard Smith

- 2. Are there documented instances where businesses have relocated or ceased trading due to amenity or safety concerns associated with illicit tobacco activity, rather than as a result of State enforcement action?**

A local fish and chip shop business that was trading well closed down as a result of amenity and safety concerns associated with illicit tobacco activity.

- 3. What practical capacity would small regional councils have to resource ongoing compliance monitoring under a planning-based framework?**

Small regional councils have extremely limited capacity to resource ongoing compliance monitoring under a planning-based framework. For example, Glen Innes Council employs a single Environmental Health and Compliance Officer who handles a broad range of duties. Assigning regular monitoring of illicit tobacco would place significant pressure on resourcing, workloads and work health and safety. Past compliance actions—such as attempting to enforce signage requirements on illegal tobacco businesses—have demonstrated the practical challenges faced: long and difficult process of locating business owners through real estate agents reluctant to provide information, repeated negotiations, and ongoing non-compliance (opaque curtains substituted for removed signage). One business even indicated it would rather incur fines than comply. The compliance officer position is now vacant and hard to fill. Council simply lacks the ongoing capacity and expertise to continually monitor and enforce against entities that clearly do not want to comply.

4. What risks could council staff face when engaging with premises suspected of illicit tobacco activity, and what would be required to manage those risks?

- **Risk of assault or intimidation**— both verbal and physical — from individuals involved in illicit tobacco operations.
- **Occupational health and safety risks** due to confrontational compliance interactions without specialised training or backup.
- **No statutory authority to enforce tobacco licensing**, meaning officers are exposed to resistance without strong legal backing.

To manage these risks effectively, councils would require:

- State enforcement officer level training in risk assessment, conflict de-escalation, safety procedures and legal enforcement.
- Financial support and resourcing from the State Government to enable proper staffing, training and safety equipment.
- Clear legislative authority and support structures — for example, alignment with State-level compliance systems — to ensure officers can enforce obligations safely and lawfully.

Without these supports, councils bear disproportionate risk in confronting illicit or noncompliant operators.

5. How would planning controls assist where illicit tobacco sales occur covertly within otherwise lawful businesses?

Planning controls could assist in addressing illicit tobacco sales occurring covertly within otherwise lawful businesses by requiring new tobacco retailers to obtain council approval before commencing operation. Currently, tobacco retailers fall within the land-use definition of Retail Premises and, where a site is already approved for retail use, no additional approval is required. This limits Council's ability to identify, assess or intervene early. Introducing a requirement for new operators to apply, together with a mechanism to retrospectively capture existing businesses and require them to demonstrate legitimacy, could improve oversight.

However, for small regional councils, resourcing presents a significant barrier. Council currently relies on a single consultant town planner, having been unable to recruit a full-time planner despite advertising the role three times in the past year. As such, additional planning and compliance responsibilities would place further strain on already limited capacity. In this context, planning controls would be most effective if implemented in concert with a state-led licensing and enforcement model, such as Victoria's (see below for further context), where specialist compliance, enforcement powers and resourcing sit at the state level rather than with local councils.

Victoria's approach to managing this problem (as an alternative model)

It is interesting to note that Victoria has recently introduced a statewide tobacco licensing and enforcement framework designed to regulate all tobacco retailers and wholesalers. Key elements of Victoria's model include:

- **Mandatory tobacco licensing** for all retailers and wholesalers from 1 February 2026. Businesses must apply for a licence to sell tobacco products and comply with strict conditions, including record-keeping and display requirements.
- **Tobacco Licensing Victoria (TLV)** – a dedicated state regulator – conducts compliance checks, issues fines, improvement notices, show-cause notices, licence suspensions and prosecutions.
- Penalties for illicit tobacco offences in Victoria are understood to be among the strongest in Australia, with fines (and potential imprisonment) for possession or sale of illicit tobacco and penalties for non-compliance with licensing conditions.
- **Victoria Police and TLV inspectors** work collaboratively, with inspectors ensuring retail compliance under the Tobacco Act 1987 (Vic).
- Victoria's reforms also include a public register of licensed tobacco retailers, and the ability to report suspicious activity via the TLV system.
- Importantly, under this model, local councils are not primarily responsible for enforcement of the tobacco licensing scheme – the state regulator and police hold these duties – meaning the compliance burden does not fall on councils without training, funding and legal authority.