

NSW Legislative Council
Portfolio Committee No. 5 – Justice and Communities
Inquiry into the illegal tobacco trade

Response to Supplementary Questions
20 February 2026

OPENING COMMENT

Thank you for your supplementary questions, which are answered below.

We remind the Committee that approximately 7,000 residents of NSW die each year as a result of the consumption of tobacco products, without discrimination as to whether the supply chain by which the products reach them is regulated or illegal. Many thousands more are already in the queue of addiction and disease to become next year's mortality statistics, and the years after, and so on, until the scourge of addiction can one day, hopefully, be broken.

Some days ago we wrote to the Committee secretariat indicating that we had become aware that identically styled supplementary questions have been sent to at least eight (8) public health organisations and experts.

The questions are unusually phrased and appear to have been drafted using a standardised template or automated drafting tool. The questions also do not appear to relate to any of the specific terms of reference for the inquiry, noting the final item of those terms is "any other related matter".

We asked the Committee secretariat to advise whether the questions were drafted:

- by the Committee secretariat, or
- by Members of the Committee, and if so, which member(s), or
- by any other person outside the Committee, and if so, whom?
- and, whether the questions were AI-generated.

We asked the Committee secretariat to confirm that whoever the author(s) of the questions may be, they are not actors involved in the tobacco or nicotine industries, or persons acting on behalf of, or at the prompting of, any such interests, noting the requirements of Article 5.3 of the WHO *Framework Convention on Tobacco Control*, to which Australia is a signatory. We asked that if the questions had been provided to the Committee by an external party, that the Committee advise whether they had required such external contributors to verify that they do not represent, or receive any financial or other support from, the tobacco industry, and if so, what response was received.

The Secretariat response to our enquiries, while professional, did not answer our questions, but accepted responsibility for the questions as sitting with the Committee members.

The questions are all framed around the concept of evidence, and whether public health experts have access to evidence that can *conclusively* answer policy questions in fields such as economics, taxation, and law enforcement. Some aspects of the questions are not the public health communities primary expertise. But it should also be clearly understood that there are many aspects of public health issues where final and conclusive

evidence is unavailable. The public health community is continuously involved in generating evidence within the resources available to research bodies. Nonetheless, incomplete evidence is not a basis for governments deciding to take no action to regulate proven harmful products in the public interest. The responsibility of governments is to take a precautionary approach and to give precedence to the protection of public health and safety.

It is clear from the framing of the supplementary questions that the Committee (or some of its members) may be placing disproportionate emphasis on the role of the Commonwealth excise* and customs duty regime on the state-level issues, responsibilities, and legislative competencies. This risks distracting from the Inquiry’s actual terms of reference.

The present problems arising from illegal activity among importers, wholesalers, and retailers of tobacco products located within NSW are the state’s domain of responsibility. The State Government and Parliament have already taken significant strides to improve the state regulatory regime, and enforce it with increasing vigour. The challenge of effective enforcement will be ongoing, and will require investment and resourcing of those tasked with this activity.

We hope that the Committee will produce a report which directly assists the state of New South Wales in carrying on the fight against clear and deliberate breaches of NSW and Commonwealth laws, and the undermining of vital national public health policies.

(*Note: some of the supplementary questions refer to “excise settings”. Australia has a dual tobacco taxation regime consisting of *excise duty* on domestic manufactures, and *customs duty* on imported products, both levied at the same rate. These are Commonwealth levies. However, there are no Australian-manufactured legal cigarette products at present, and as a result no excise duties are currently being collected. Customs duties are being collected from around 70 specifically registered importers of tobacco products. Those importers include a mix of international corporations – including tobacco corporations – as well as Australian import businesses.)

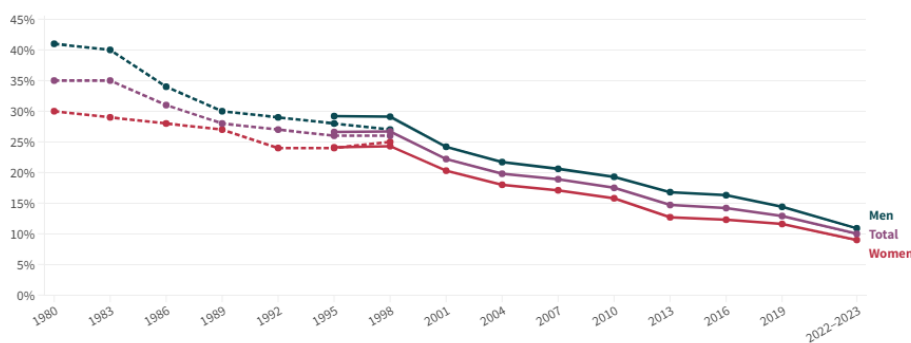
QUESTION 1: Does the evidence relied on in relation to increasing levels of smoking distinguish between increased smoking uptake and increased consumption among existing smokers?

The Australian population is not experiencing “increasing levels of smoking”.

Data on tobacco smoking in Australia is most consistently, comprehensively, and authoritatively provided every three years through the National Drug Strategy Household Survey that is conducted by the Australian Institute of Health and Welfare (AIHW; see Data Tables 2. Tobacco smoking).

Data collection for 2025 has only just been completed, but the most recently published data (collected in 2022 to mid-2023) show a *decline* (not an increase) in prevalence of current, regular, and daily smoking between 2019 and 2022–23.

Figure 1.3.1 Prevalence of Australians aged 18+ who regularly smoke* (%)
1980 to 1998 (ACCV data) and 1995 to 2022–23 (NDSHS data)



Notes: Anti-Cancer Council data includes those describing themselves as smoking any combination of cigarettes, pipes or cigars with no frequency specified; NDSHS data includes those reporting that they smoke any combination of cigarettes, pipes or cigars 'daily' or 'weekly'. Anti-Cancer Council data weighted to 2001 census population data, standardised by age and sex

Sources: Centre for Behavioural Research in Cancer, analysis of data from surveys conducted by the Anti-Cancer Council of Victoria from 1980–1998, and Tobacco in Australia: Facts & issues analysis of AIHW National Drug Strategy Household Surveys 1995 to 2022–2023. ADA Dataverse, 2024.

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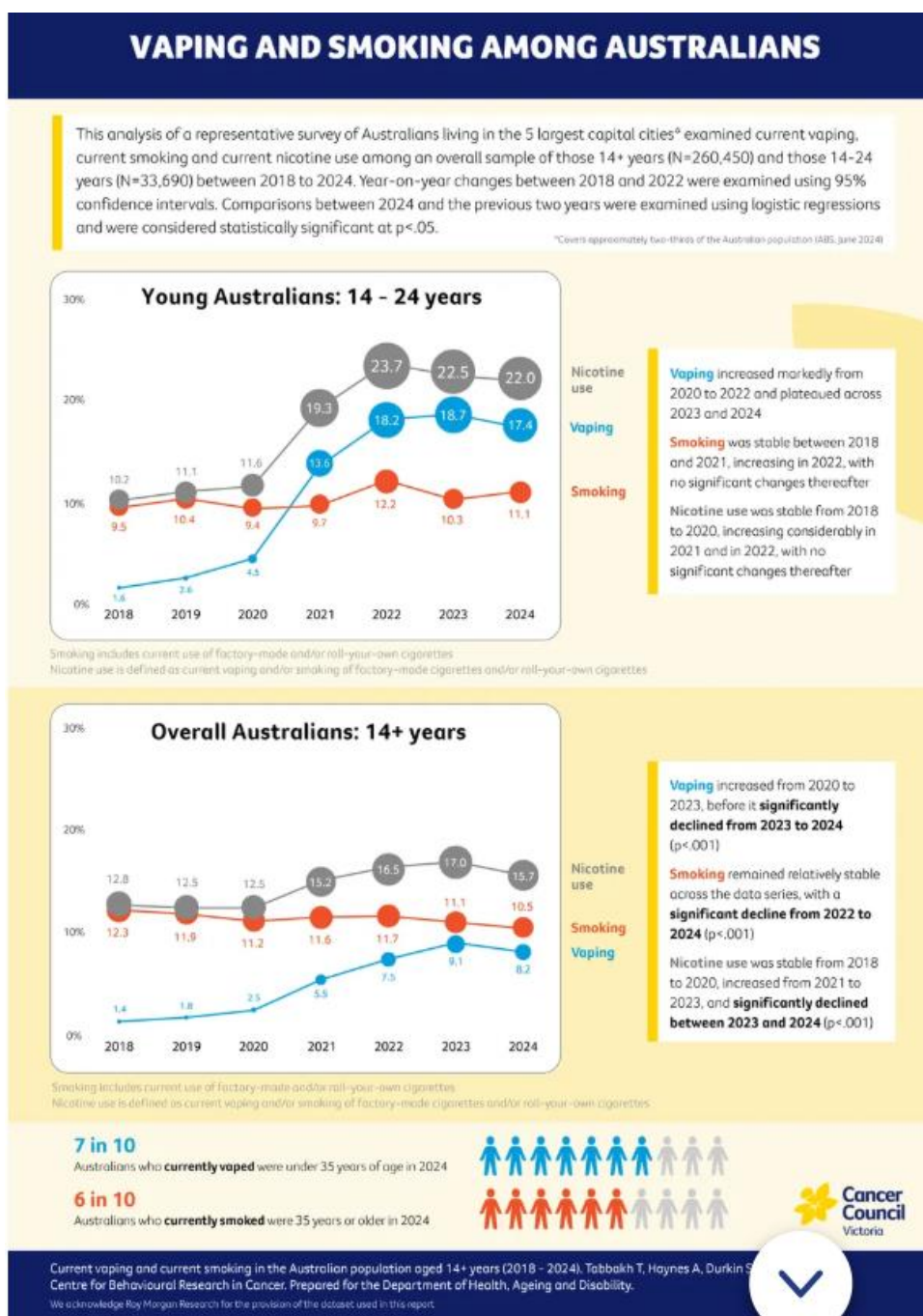
Tobacco in Australia
Facts & Issues

Made with Flourish • Create a chart

The data also show no evidence of an increase in the average number of cigarettes smoked each day, week or month by people who nominate that they currently regularly smoke.

Results of the 2025 National Drug Strategy Household Survey for both Australia as a whole and NSW specifically are expected to be released in the second half of 2026.

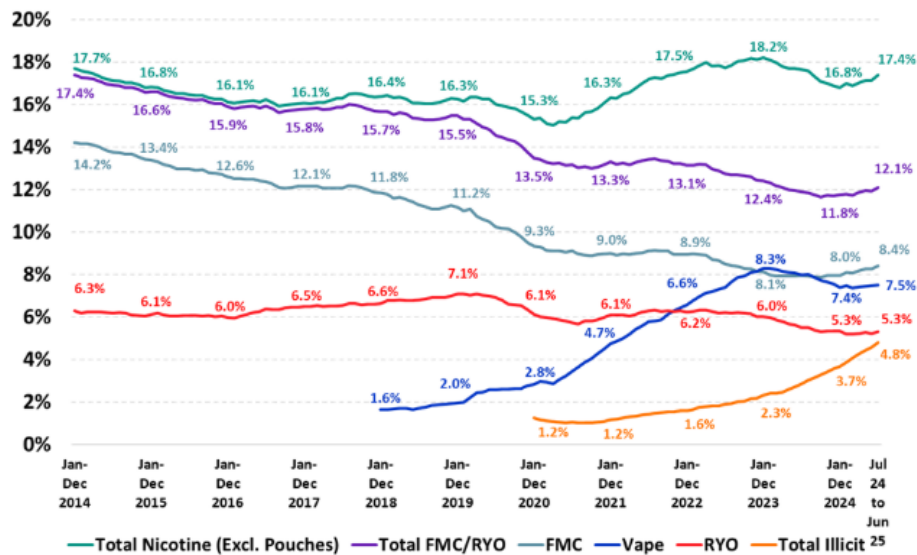
In contrast to the three-yearly data collected by the AIHW in its National Drug Strategy Household Survey, data are collected on an ongoing rolling basis each month by the Roy Morgan Research Company. While we can see little change between 2023 and 2024, corresponding to the NDSHS data which shows a clear decline between 2019 and 2022–23 the Roy Morgan data up to the end of 2024 show a statistically significant decline in smoking between 2022 and 2024 among those Australians 14 years and over who live in the biggest five capital cities.



Source: <https://newsroom.quit.org.au/news/cautious-optimism-and-calls-for-sustained-efforts-on-nicotine-addiction-as-vaping-rise-halts-among-young-people>

Even more recent data for Australians aged 18+ up to the end of June 2025 published directly by Roy Morgan Research (and including data for the whole of Australia) likewise shows no clear increase in smoking in the population overall, with the prevalence of smoking among those 18+ not significantly higher in the period July 2024 to June 2025 than it was in the period Jan to Dec 2024, and lower in July 2024 to June 2025 than it was in January to December 2023.

Trended Smoking Incidence - Australians 18+



Source: Roy Morgan Single Source Australia: January 2014 – June 2025.

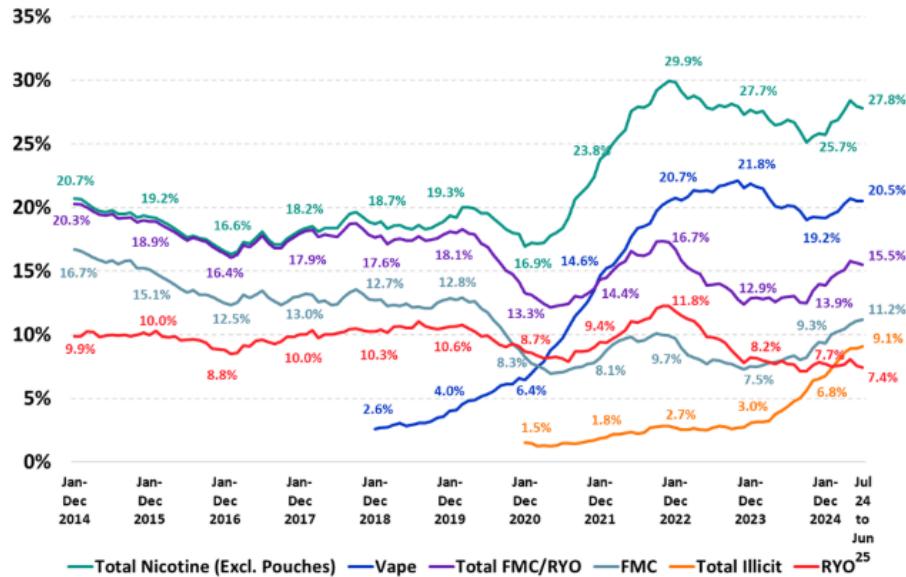
Base: Australians aged 18+, n = approx. 60,000 for a 12m period. FMC = Factory Made Cigarettes. RYO = Roll Your Own. Total Nicotine includes FMC, RYO, vapes (from Feb 2018), pipe & cigar. Total Illicit = Illicit FMC & illicit loose tobacco. Note: minor modifications to our vaping/e-cigarette question were made to reflect the changing landscape in Feb 2020 and Aug 2023.

The Jul 24 – Jun 25 time period includes overlapping data with Jan – Dec 24 time period.

Source: <https://www.roymorgan.com/findings/9937-cigarette-smoking-in-australia-press-release>

The proportion of young Australians who smoke tobacco (either or both factory-made or RYO cigarettes – the purple line in graph below) *may* have increased over the last 12 months of the survey.

Trended Smoking Incidence - Australians 18-24



Source: Roy Morgan Single Source Australia: January 2014 – June 2025.

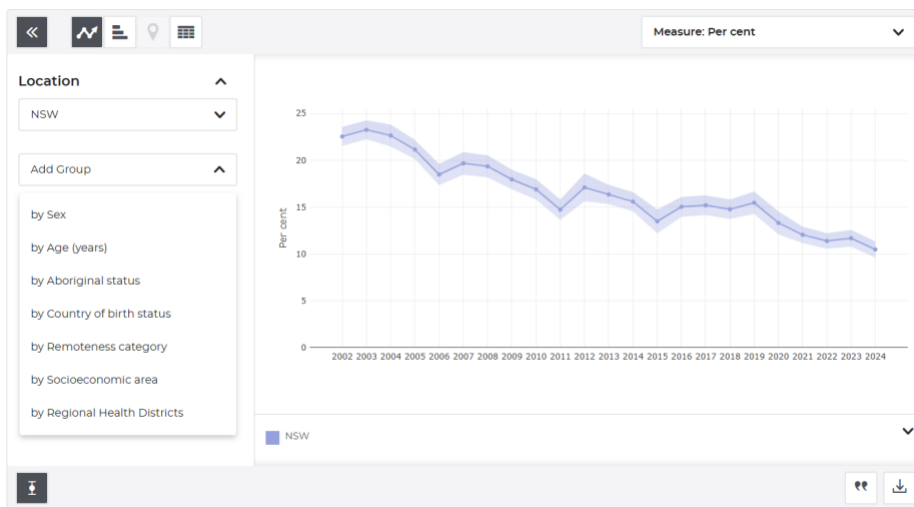
Base: Australians aged 18-24, n = approx. 5,000 for 12m period. FMC = Factory Made Cigarettes. RYO = Roll Your Own. Total Nicotine includes FMC, RYO, vapes (from Feb 2018), pipe & cigar. Total Illicit = Illicit FMC & illicit loose tobacco. Note: minor modifications to our vaping/e-cigarette question were made to reflect the changing landscape in Feb 2020 and Aug 2023.

The Jul 24 – Jun 25 time period includes overlapping data with Jan – Dec 24 time period.

Data collected in this survey have not been published by Roy Morgan Research separately for each state or territory. However, committee members can look to slightly less recent data from the NSW Government for trends in smoking and vaping in different age groups in NSW.

Data from the NSW Government survey show a resumption of the downward trend in smoking in the overall NSW population between 2023 and 2024.

Smoking rates (daily or occasional)

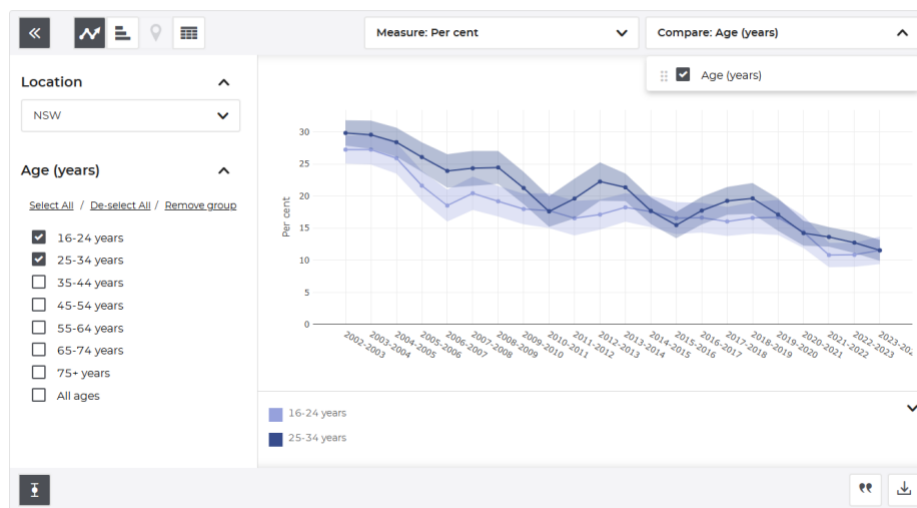


Source: NSW Population Health Survey (SAPHaRI), Centre for Epidemiology and Evidence, NSW Ministry of Health.

Relatively small sample sizes and the short period of time between the two annual surveys preclude definitive conclusions. However, it is possible that the downward trend evident in the total NSW population (including in the 25–34-year-old age group), depicted in the blue line in the graph below, may not be occurring in the youngest age cohort (those 16-24, depicted in the mauve line in the graph below).

Smoking rates (daily or occasional)

by Age (years)



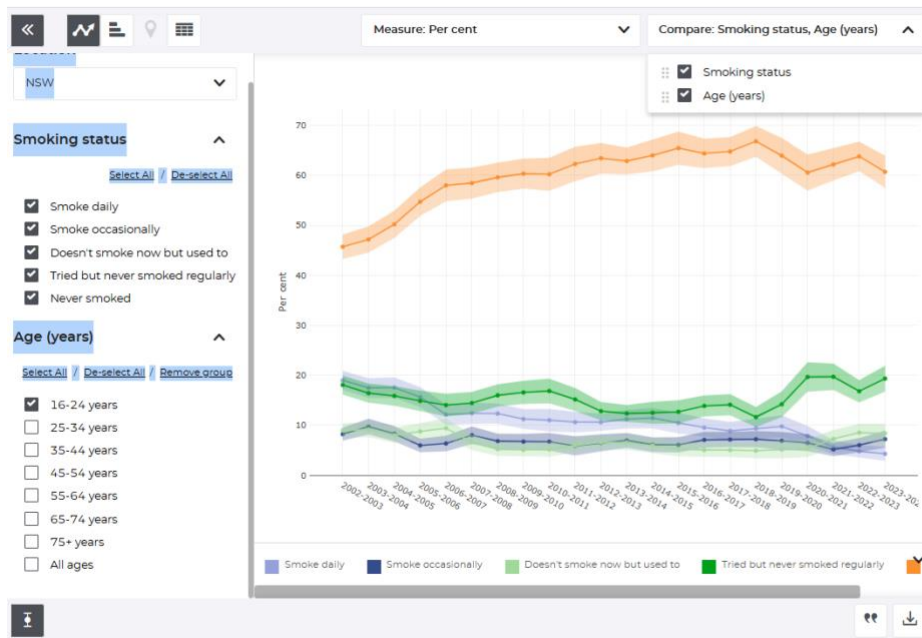
Source: NSW Population Health Survey (SAPHaRI), Centre for Epidemiology and Evidence, NSW Ministry of Health.

More detailed data on smoking status by age shows that the slowing of the decline in smoking among young people in NSW appears to be driven by both a decline in never smoking and an increase in occasional (as opposed to daily) smoking.

Taken together, these data indicate that recent fluctuations in smoking trends are more consistent with variation in initiation and patterns of occasional use than with any sustained increase in overall consumption. This distinction is important when interpreting claims that population smoking has increased.

Smoking status by category

by Smoking status for 16-24 years



Source:
NSW Population Health Survey (SAPHaRI), Centre for Epidemiology and Evidence, NSW Ministry of Health.
Data updated: May 2025

QUESTION 2: In assessing public health outcomes, what evidence distinguishes a reduction in tobacco consumption from a substitution of legal tobacco purchases with illegal supply in NSW?

Quantifying the total amount of tobacco used by the population is a difficult process, and estimating the amount of that tobacco that was *illegally sold* is even more difficult.

The Roy Morgan data presented above shows an increasing proportion of Australian admitting to using illicit tobacco (with the orange lines in the graphs above relating to any use in the previous month), but most of these people also use some legally sold tobacco as well. While it has the advantage of being collected on a continuous basis so that it can be presented as annual estimates, the Roy Morgan surveys do not ask about the numbers of cigarettes used per day.

The AIHW's three-yearly National Drug Strategy Household survey by contrast asks detailed questions about numbers of cigarettes smoked. It also asks questions about frequency of purchase of at least two major forms of illicit tobacco. By putting together...

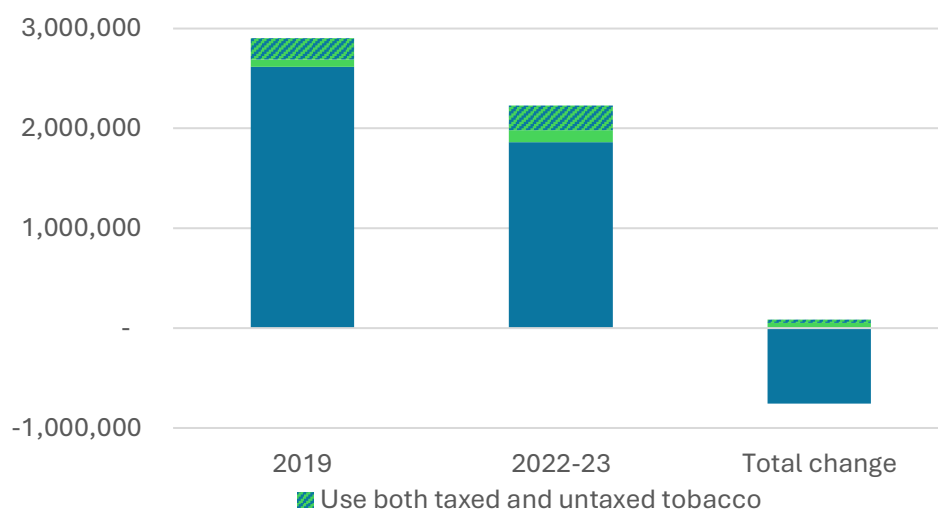
- Estimates of the number of people smoking any form of tobacco and the number of cigarettes they estimate they smoke each day, and
- Estimates of the number of people who are and are not using any form of illicit tobacco, and the number of cigarette equivalents they use

...it would theoretically be possible to create estimates of the total amount of tobacco reported being used in Australia and the total amount of illicit tobacco being used in Australia, and how these two things have changed over time. However, to our knowledge no such estimates have been created either for Australia or specifically for NSW.

Preliminary analysis along these lines undertaken by our colleagues at Cancer Council Victoria has shown that about one-tenth of the decline between 2019 and 2022–23 in the number of people only purchasing legally sold tobacco in Australia resulted from the increase in the number of people purchasing *any* illicit tobacco.

These findings suggest that while some substitution to illicit tobacco occurs, at least until 2023 it does not account for the majority of changes in tobacco consumption at the population level. At least until this time, reductions in smoking prevalence and consumption greatly exceeded any offset attributable to illicit supply.

The following figure shows the total number of people who smoke among Australians aged 14+, the number who report any use of un-taxed tobacco, and change in numbers from 2019 to 2022-23



Sources: Australian Institute of Health and Welfare. National Drug Strategy Household Survey, 2019. ADA Dataverse, 2020. Available from: <https://doi.org/10.26193/WRHDUL>; Australian Institute of Health and Welfare. National Drug Strategy Household Survey, 2022-2023. ADA Dataverse, 2024. Available from: <https://doi.org/10.26193/U6LY7H>

This exercise will need to be repeated for 2025 taking into account more recent estimates of population numbers, reports of reported consumption and exposures to illicit tobacco.

Claims that illicit tobacco supply is a primary driver of changes in *total* consumption should therefore be interpreted cautiously unless supported by population-level evidence.

QUESTION 3: What evidence demonstrates that increasing tobacco excise settings remain effective as a public health intervention over time, in the context of expanding illegal tobacco markets?

It is clear that price-impacting taxation policies are effective as a public health intervention. As recently as 2023, the majority of Australians who reported attempting to quit or cut down on smoking at some time in the previous year nominated price increases as the major motivating factor (AIHW 2024, Table 2.35, below).

Price remains one of the most effective public health interventions because it influences initiation, consumption, and cessation simultaneously. The persistence of illicit tobacco trade does not diminish this effect, but highlights the importance of preventing access to low-priced products across regulated and illegal markets.

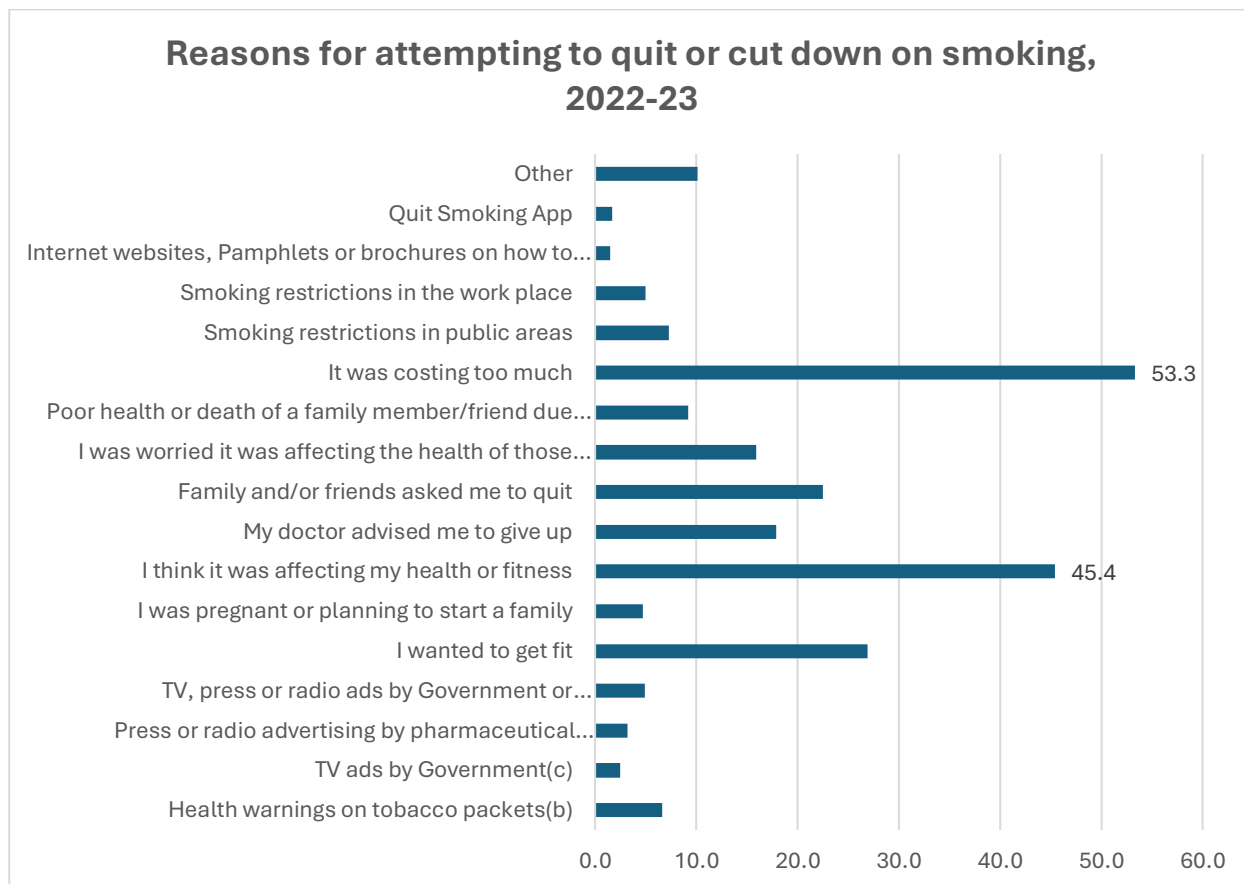
The importance of price as a motivator to quit is precisely why people will turn to illicit tobacco if it is readily available, and precisely why it is so important to make sure that tobacco is not being sold at very low prices.

The continuing decline in smoking prevalence, driven in particular by the historically very low rates of youth uptake of smoking, is evidence of the success of the Australian national tobacco policy framework.

Policies which strive to prevent supply of low-cost tobacco, whether in the regulated market (through customs duties) or the illegal market (through enforcement) are a key part of that framework. It is difficult to attribute to specific parts of the total framework – even key elements such as excise and customs duty policy – specific

causal responsibility for overall outcomes. What can be said with high confidence is that the overall Australian policy regime has been having powerfully positive public health impacts for many years.

Results of the 2025 National Drug Strategy Household Survey to be released in the second half of 2026 will indicate the extent to which the strategy has continued to drive change since 2023, providing an estimate of prevalence of tobacco smoking for the 10 months to December 2025 during which time the NDSHS was in the field.



Source: AIHW National Drug Strategy Household Survey, Table 2.35.

QUESTION 4: What counterfactual evidence compares current public health outcomes in NSW with outcomes under lower excise settings and reduced illegal tobacco availability?

To our knowledge, no NSW-specific (or even Australian) counterfactual public health study comparing alternative excise and customs duty scenarios with simultaneous changes in illicit supply has been undertaken. In the absence of such studies, policy assessment relies on longitudinal population trends, international evidence, and established economic relationships between price and tobacco use.

Note that the prevalence of daily smoking, and the prevalence of any smoking, has declined steadily (and ‘never smoking’ has increased markedly) during the period when the prices of tobacco products were increasing in line with increases in excise and customs duty (2010, and from 2013 to 2020).

Apart from the recently increasing availability and use of low-priced illegally sold tobacco, we are now seeing a new generation of young people (born after about 2005) with high levels of exposure to nicotine from experimental and rapidly escalated dependent patterns of use of nicotine-containing vapes. International evidence suggests a high proportion of young people who vape take up smoking as well. In Australia this corresponded with the sudden increase in availability of cheap, flavoured disposable nicotine vapes from about 2020. However, since 2023 the Commonwealth, state, and territory governments have made substantial legislative and policy interventions to stem the uptake of vape nicotine addiction.

There are some recent indications of a *levelling off* of the *rate of decline* in *uptake* of smoking in NSW. All of the developments mentioned above, combined with a drop-off of government investment in hard-hitting anti-smoking campaigns, may have contributed to such a result, should it be confirmed.

Taken together, these trends are more consistent with continued effectiveness of comprehensive tobacco control than with policy failure attributable to illicit supply.

QUESTION 5: What evidence is used to determine when a public health policy requires recalibration in response to market adaptation, such as the growth of illegal supply?

Any policy reconsideration should be guided by population health indicators and evidence of the outcomes of past and present policy interventions. Relevant indicators include smoking prevalence, youth initiation, quit behaviours, equity trends, retailer density, compliance with licensing frameworks, tracking and traceability requirements, and evidence of industry or supply-chain adaptation that increases availability, including strategic shifts across product categories, distribution models, retail environments, and supply channels.

The most robust surveys suggest that the overall national policy framework is steadily achieving its public health goals. There is no evidence that weakening core elements of the framework would improve public health outcomes.

Taking the excise and customs duty settings specifically, there is no evidence that any downward change in duty levels would have a positive public health benefit.

There is somewhat relevant evidence from other jurisdictions that such a policy change would have *adverse* public health impacts (i.e. increased smoking prevalence and consumption). International evidence on the impact of price changes on smoking behaviour suggests numerous mechanisms by which the widespread availability of illicit tobacco is likely to increase tobacco use, and the resulting social and economic costs of smoking to the Australian community. The same mechanisms would apply if the costs of all tobacco products across the legal market were substantially reduced (by cutting excise and customs duties), namely:

- Young people experimenting with cigarettes would find it easier to afford to buy cigarettes from local stores, thus accelerating their transition from experimental to more regular, dependent and long-term patterns of smoking.
- Without frequent price increases like those that have occurred over the past 15 years, many fewer people who smoke would be prompted at regular intervals to make a quit attempt.
- By making it easier to afford to buy a greater number of cigarettes each day, many people who currently smoke would become more nicotine dependent, and a higher proportion of those making quit attempts would fail.
- More affordable cigarettes and more people smoking would likely increase relapse and resumption of smoking among those who have quit recently or stopped smoking years or decades ago.

Reducing federal excise and customs duties will neither return consumers to legally sold products (because legally sold products will never be cheap enough to compete with illicit prices), nor would it assist with sustaining the decline in the prevalence of smoking in Australia.

A scenario of falling tobacco product prices would cause a reduction in the urgency of tobacco users' quit motivation. It is important to remember that most Australians who smoke do wish to quit, and most would like to quit smoking within a relatively short time frame (within 1-2 years). The NSW Government should do much more to assist these people to quit smoking to reduce the overall customer base for both the legal and illegal tobacco markets. Quit success is also enhanced by promoting access to quit supports. For instance, provision of free combination NRT, through the Quitline, and Aboriginal Health Services.

Overall, the evidence is clear that tax increases have been a major driver of declining prevalence over the past 15 years.

The recent growth in availability of illicit tobacco strengthens, rather than weakens, the case for maintaining price-based measures while simultaneously reducing access to low-priced supply through regulatory and enforcement responses.

The expansion of the Australian illicit tobacco market – which threatens the gains of national policy – represents a serious and evolving challenge that requires coordinated action across enforcement, regulatory, and public health domains. However, the continued decline in smoking prevalence demonstrates that Australia’s overall tobacco control framework remains effective, despite nicotine industry adaptation.

Alternative policy responses to reductions in tax settings are available. Addressing the illicit tobacco market requires rapid and dramatic action to reduce supply, availability and affordability of tobacco products on which customs duty has not been paid. The appropriate policy response is to strengthen supply-side governance and reduce availability, rather than to weaken measures that are demonstrably improving population health and wellbeing outcomes.

The Committee, the NSW Parliament and the NSW Government should consider intensifying existing policies, and review and revise policies regularly in response to nicotine industry adaptation. This is how the continued decline in smoking has been maintained in Australia. For example, new restrictions on the number, location and type of tobacco retailers, in addition to strengthening the monitoring and enforcement regime for illicit trade, could help accelerate the decline in smoking in NSW.

Stronger supply-side interventions are likely to be much more successful if accompanied by equally vigorous action to reduce demand. This can be achieved by reviving hard-hitting campaigns to remind people why they want to quit by promoting immediate action (for example to call Quitline or speak to their doctor). Note in the graph on page 6 above the very low proportion of people mentioning TV ads as a motivator of recent quit attempts (2.5% in 2022-23, compared to 9.3% in 2013).

Adj/Prof Terry Slevin
Chief Executive Officer