Submission No 28

INQUIRY INTO ILLEGAL TOBACCO TRADE

Name: Professor Simon Chapman

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Submission to Portfolio Committee No. 5 - Justice and Communities inquiry into the illegal tobacco trade in New South Wales.

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My relevant career highlights, expertise and experience

- I am an Emeritus Professor in Public Health at the University of Sydney, from which I retired in February 2016.
- I worked in tobacco control since the late 1970s. I have the longest research and policy advocacy track record on tobacco control of any person in NSW, with only two people nationally having had slightly longer experience.
- I was deputy editor (1992-97), editor (1998-2008), and emeritus editor since 2009, of the British Medical Journal's *Tobacco Control*, the world's first peer-reviewed research journal devoted to tobacco control research. This gave me exposure to detailed research on all aspects of tobacco control from all over the world, including a large volume of research on the quantification of illicit trade in tobacco, and interventions to address it.

Among other honours, I have been awarded:

* Officer in the Order of Australia (AO) Jun 10, 2013 "for distinguished service to medical research as an academic and author, particularly in the area of public health policy, and to the community."

* American Cancer Society's Luther Terry Medal for outstanding Individual Leadership. 13th World Conference on Tobacco or Health, Helsinki, August 2003

• World Health Organization World No Tobacco Day Medal for tobacco control, 1997

• National Heart Foundation (Australia), President's Gold Medal, 1999

• NSW Premier's Award (medal and $50,000) Outstanding Cancer Researcher of the Year, 22 May 2008

- President's Award Thoracic Society of Australia, 2006

• Elected Honorary Fellow, Faculty of Public Health of Royal Colleges of Physicians of the United Kingdom March 2013

My submission is an edited, updated amalgam of three blogs I have published in recent months.

> Why Australia's illegal tobacco trade continues to flourish, and what should be done about it. WordPress 22 Jun, 2025
>
> South Australia is busting illegal tobacco traders big time. What's stopping the rest of the country? WordPress 26 May, 2025

If expensive cigarettes are driving the Australian black market, why do so many countries with much cheaper cigarettes have thriving black markets too? WordPress 12 Mar,2025

Terms of reference addressed

ToR G: the impact of prohibition on organisations that profit from illegal or over-regulated products

Right up front, I strongly question the wording of this ToR. Tobacco is not "prohibited" in any nation, so this term is inappropriate. Rather, tobacco is entirely appropriately subject to regulations explicitly designed to reduce the prevalence of smoking and the many diseases it causes. Along with 182 other nations, Australia is a party legally bound to the World Health Organization's Framework Convention of Tobacco Control, which sets out a template of evidence-based comprehensive policies and information campaigns most likely to achieve this goal.

Similarly, vapes are also not "prohibited". They are available through pharmacies, with vapes under 20mg/mL scheduled 3 (available OTC) and those over 20mg/mL accessible with a doctor's prescription. Calling this "prohibition" makes as much sense as calling any scheduled or prescribed drug as "prohibited" when some 335.8million scripts were filled in a recent year in a population of 26 million people.

The expression "over-regulated" is pre-emptive and indicates a value judgement by those who set out the Committee's terms of reference. Tobacco use currently kills some 7 million people a year globally, and is forecast to kill a billion people this century. It has often been said that if tobacco was invented tomorrow and we knew what death and suffering it would cause, no government anywhere would allow it to be sold. Tobacco is not over-regulated, it is *under*-regulated.

I address two other ToRs (C and D) in my submission below.

Summary of my submission

1. Most nations have significant and long-standing black markets in tobacco. There has been a non-trivial black market for tobacco in Australia for at least 25 years. Black markets exist in both high- and low-income nations and in those with high and low tobacco tax. If high tobacco tax caused large black markets, it needs to be explained why many nations with very low tobacco tax nevertheless have booming illicit tobacco trade.
2. As is the case with illicit drugs, no nation of which I am aware has *eliminated* its black market for tobacco. Realistic objectives seek to significantly *reduce* black markets.
3. There is a massive body of evidence that increasing the retail price of tobacco reduces smoking, with those on lower incomes (who have higher smoking prevalence) and children being more price sensitive than those on higher incomes. This is why the tobacco industry regularly engages in price discounting, and why cheap illegal tobacco sells well when it is not subject to adequate enforcement.

4. Those calling for tobacco tax to be stalled or reduced never name the size of the reduction they believe would make taxed cigarettes competitive with illegal untaxed cigarettes. In fact, tobacco tax would need to be completely scrapped to make duty-paid cigarettes competitive, with likelihood that even then, illicits would still be cheaper.
5. The widespread law-breaking seen with tobacco and vapes would not be tolerated in other domains (eg: ex-pharmacy sale of prescribed and S3 scheduled drugs, alcohol from unlicensed premises, firerams to unlicenced shooters) and cannot be allowed to continue—for the sake of public health, and for the precedent it sets and the consequent alarming erosion of public respect for rule of law
6. Tobacco retail licensing has now commenced in NSW. The just-announced substantial penalties for illegal trade are now comparable to those in Queensland, South Australia and Victoria. NSW should be capitalising on this legislative progress, looking carefully at what all eight but particularly those three state jurisdictions are doing and looking adopt best practice across all elements of licensing, compliance procedures and enforcement powers.
7. Consideration should be given to expanding the NSW Multi-Agency Strike Team (MAST) comprising Health, NSW Police, Australian Federal Police, Border Force and other crime-fighting agencies to include supermarket, real estate, insurance industry and public health expert representatives to oversee reduction in illegal tobacco trade.
8. The just-announced legislation's provisions for $1.5m maximum fines and 7 years imprisonment for commercial possession or sales, the closure order powers and the new offence for landlords who knowingly lease their premises to illicit tobacco and vape suppliers are weapons-grade controls. With illegal traders said to be sometimes paying up to 3 times market rentals, the financial incentives for landlords and real estate agents acting for them to continue leasing to illegal traders is high and needs to be broken. This package is fit for purpose.

   Nearly all stores selling illegal tobacco and vapes are rented. Landlords knowingly allowing tenants to use a rented premises for illegal activity may void their insurance and possibly face complicity in criminal charges. The announced reform of allowing landlords to terminate leases with illegal retailers is strongly supported. But a far more pro-active approach is needed where the Health Department formally advises all relevant landlords about illegal trading penalties, especially but not only those with current tobacco retailing tenants
9. Local governments know the identity of all property owners in their area through annual local government rate collection databases. If all landowners with tobacco retailing tenants were formally individually notified of their legal responsibilities about not permitting illegal activity in their premises, momentum is likely.
10. All public health units should be required to conduct a foot leather census of all tobacconists in their areas which do not appear on the database of licensed tobacco retailers. Identifying other (non tobacconist) retailers who are selling tobacco or vapes could be greatly assisted by harnessing the extensive concern in communities about illegal tobacco trading. Using school communities (teachers, parents) for intelligence about illegal retailing as well as local Facebook community groups is recommended.

My submission

Australian states are experiencing a prolonged, wholesale disregard for laws that outlaw the sale of tobacco products where excise/customs duty has not been paid, and with vapes being sold in any circumstance other than through a registered pharmacy. It has been unambiguously illegal to sell duty-not-paid cigarettes since 1901 and to sell vapes outside a pharmacy setting since July 1, 2024. This proliferation and contempt for the law has become a common talking point in the community, with the overwhelming incredulous reaction being "why is the government letting this happen?" Major media attention has focussed on:

- the extent of this brazen contempt
- the involvement of criminals in its operation
- the major fall in government revenue as droves of smokers unsurprisingly choose to pay $10-$15 a pack for smuggled cigarettes instead of north of $40 and past $60 for cigarettes which are currently taxed at $1.40 per stick
- alleged objections from police about reluctance to get involved in "regulating a legal product"

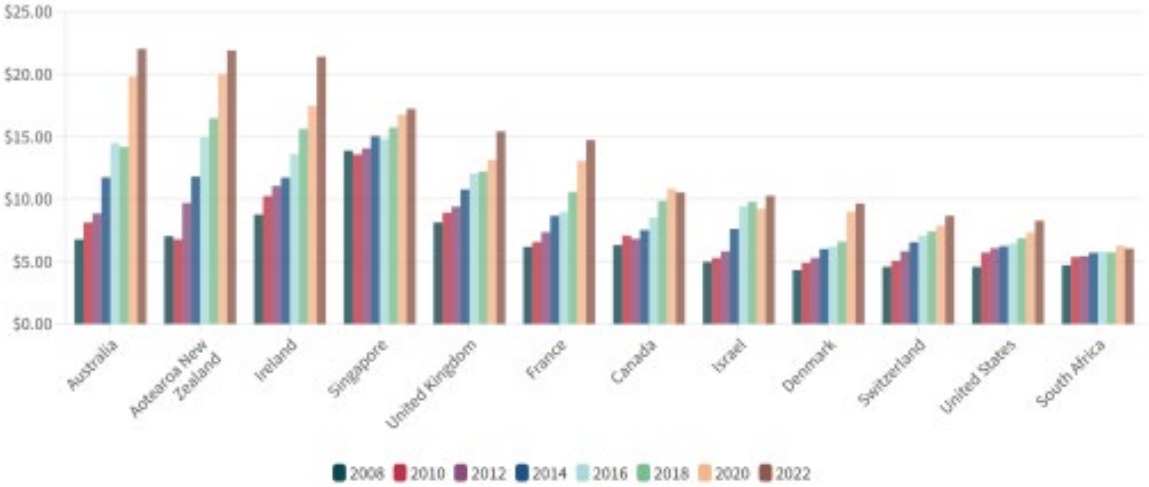
High excise is not the cause nor lowering it the solution to illicit tobacco

A most obvious question to ask about tobacco tax and illicit trade is "do nations with more affordable legal cigarettes, also have significant tobacco black markets?" If they do, it would be clear that criminals will continue to see large opportunities to sell illegal stock regardless of how high or low the prices of legal cigarettes are.

The populist wisdom on why all this has happened is that Australia, with the world's highest tobacco tax rate and third highest "affordability" rating (see graphs below), has foolishly brought this on itself. This claim is manifestly ignorant because how do we then even begin to explain that nearly every nation – including all those with much lower tobacco tax than Australia (especially in low income nations) – have long had extensive black markets for tobacco too? Black markets are booming today in (to name just a few) Malaysia and South Africa (both with 65% of all tobacco sold being illicit), Brazil (50%), Vietnam, Philippines and Senegal all which have lower tobacco tax than Australia. In March, Thai officials arrested 690 vendors in just one week allegedly breaking Thailand's laws on selling vapes.

Figure 13.9.1 Price of a pack of cigarettes, Australia compared to selected countries, 2008 to 2022 ($)

Price in international dollars* of 20 cigarettes from the most sold brand in each country



* Prices are expressed in international dollars (Purchasing Power Parity) to account for differences in the purchasing power across countries.
Selected countries includes countries that were among the ten most expensive cities in the world in 2023, as ranked by the Economist Intelligence Unit, and countries comparable to Australia.

Source: World Health Organization. WHO report on the global tobacco epidemic, 2023. Annex: Raise taxes on tobacco. Geneva: WHO, 2023. Available from: https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023.
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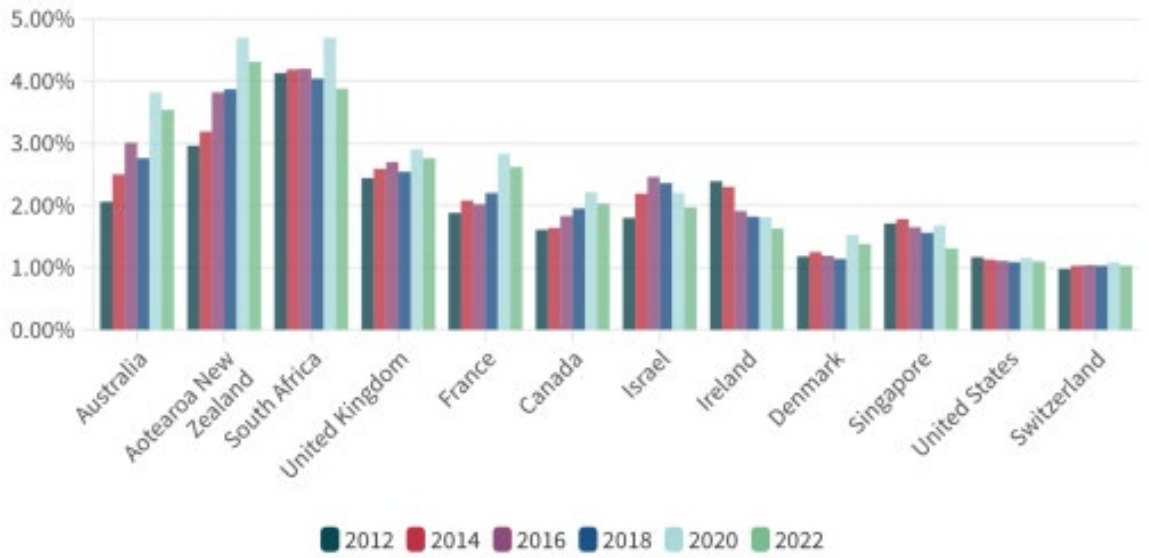
Tobacco in Australia
Facts & Issues

Figure 13.9.3 Cigarette affordability in Australia compared to selected countries, 2008 to 2022 (%)

Percentage of Gross Domestic Product required to purchase 2000 cigarettes from the most sold brand



Prices in international dollars (Purchasing Power Parity) to account for differences in the purchasing power across countries.
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Illicit tobacco trade: a very long history

Some commentators on illicit tobacco trade appear to have come down in the last shower. This is a global phenomenon which has a long history. Over 30 years ago in 1994, tracking of European tobacco export and import data found a 30.8% difference between the number of cigarettes officially exported and imported. The only plausible explanation for these missing cigarettes was smuggling, particularly of expensive premium brands moving from northern Europe into lower income eastern and southern European markets.

The tobacco industry was for many years actively engaged in supplying cigarettes to the illegal duty-not-paid trade at the same time that it was seeking to alarm governments about illicit trade in tobacco and vocally lobbying for reduced excise. The authors concluded that industry data on tobacco trade are not reliable and are intended to talk up the problem in the hope that governments would hobble policies like tax and plain packaging that have potential to reduce smoking.

There has been a long history of illegal retailing of cheap cigarettes in Australia, with reports of use of loose "chop chop" tobacco in Australia back to 2001. Prior to 1997, there was evidently substantial avoidance and evasion of state franchise fees through a variety of schemes – e.g., transferring product from Queensland where there were no fees or much lower fees for many years.Tobacco industry estimates of the proportion of tobacco use in Australia sourced illegally since 2012, ranged from 11.8-23.5%, substantially higher than independent estimates from the Australian Taxation Office's revenue gap analysis which estimates 5.4 to 14.3% between 2015-16 and 2022-23. The ATO estimates that approximately 18% of tobacco for sale is illicit.

Illicit trade in UK

The two graphs above show cigarettes today are cheaper and more affordable in Britain than in Australia. A 2024 report by the UK's HM Revenue and Customs concluded that the forgone value of the "illicit market in tobacco duty and related Value Added Tax was £2.8 billion in 2021 to 2022.The proceeds of this crime fund the smuggling of weapons, drugs, and even human beings across the globe. We must tackle the cancer of organised criminal groups as unwaveringly as we tackle the harms of smoking itself."

Years of effort by UK Border Force "have reduced the estimated duty gap for cigarettes by a third (from 16.9% in 2005 to 11% in 2021 to 2022) and for hand-rolling tobacco by a half (from 65.2% to 33.5% over the same period)."

From April 2015 to March 2023, this resulted in:

- £10 billion: tobacco duty receipts in 2022 to 2023
- 10.6 billion: non UK-duty paid cigarettes seized by HMRC and Border Force
- 1,600 tonnes: non UK-duty paid hand-rolling tobacco seized by HMRC and Border Force
- 1,571: people convicted of tobacco crime offences
- 8,000: assessments to recover unpaid excise duty

- 9,304: excise wrongdoing penalties issued for tobacco offences
- £298 million: value of penalties and assessments raised

Illicit tobacco trade in USA and Canada

The graphs above show both cigarette prices and affordability in the US are *much lower* than in Australia. In 2024, the average cost of a pack of 20 cigarettes was $US8 ($AUD12.71) compared with Australia at around $40-$50. Nonetheless, illicit traffic in the US is decidedly non-trivial.

The 2015 report from the US National Academies *Understanding the US illicit tobacco market* estimated the total market represented by illicit sales in the United States was between 8.5 percent and 21 percent of the total. It recommended that "research and data are needed about the individuals and criminal networks who traffic in illicit tobacco."

Comparing illicit trade in Australia with that is the US is difficult, because Australia does not have state taxes whereas the US has a variety of low and high taxing states. Illicit tobacco trade in the US is dominated by illegal movement of cigarettes from lower taxing states to those with higher taxes, including from Native American tax free zones. The US federal tobacco tax is $US1.01, with the lowest state tobacco tax an additional $US0.17 and the highest in New York state at $US5.35. These sorts of differences also occur in Canada.

So like Australia where nation-wide high tax and prices have attracted significant illicit trade, high tobacco taxing US and Canadian states also attract incoming illicit trade from lower taxing states. But the critical point to make here, is that even though cigarettes are considerably more affordable than in Australia, illicit traders still have major involvement in tobacco commerce.

These US and Canadian examples illustrate that for whatever reason, where you have high retail prices, criminals will seek to illegally undercut these, and it doesn't matter how low the prices are, they will still try to do it. New York's average pack price is $US14.55 ($A23.12) far less than Australia's ~$40+, and far more affordable than Australia's. And in very low income countries, even dirt-cheap legal cigarettes are still undercut by illicits.

Market research firm Circana estimates that in 2024 sales of unauthorised, flavoured disposable vapes in the US amounted to 35% of the $6.8 billion worth of e-cigarettes sold in tracked convenience stores and supermarkets. And this estimate does not include massive on-line sales or those from vape shops. The FDA puts the proportion of vapes being sold in the US which do not have a required FDA marketing order at 86.4%. Vapes are sold openly in most of the US, as they are in Canada and the UK.

Canada

Taxes and prices are also considerably lower and cigarettes considerably more affordable in Canada than in Australia. The Canadian convenience store industry recently stated low-cost tobacco products have become a "major selling feature" for well-known and established organized criminal groups such as the Hell's Angels. "It is absolutely organized crime at the highest level. It's a billion-dollar industry for (organized criminal groups). It involves all the

levels of violence, and extortion and gangsterism that comes along with it.") In Canada illegal sales outnumber legal sales in one province by 52% and 36-45% in three others.

The dramatic data above instantly repudiate claims that open access sales of vapes and cheaper, more affordable legal duty-paid cigarettes prevent or even reduce illegal supply and deter criminal involvement.

Commercially motivated calls for lower tobacco tax

The political buttons that advocates for lower tobacco tax are hoping to push are a wind back in tobacco excise, and scrapping of the pharmacy-only regulatory model of vape access. This would allow virtually any registered retailer to sell vapes, something many convenience stores have been doing illegally for years and continue to do . So a great idea -- let's reward them now for years of ignoring the law, as they clearly have built community trust as responsible retailers!

The main games here, under the cover of raising community alarm about criminality in tobacco and vape retailing, are to remove the exclusive sale of vapes from pharmacies in the forlorn hope that lowered tobacco tax will see mass criminal exit from selling cheap cigarettes. As I will argue below, this fantasy has all the integrity of a chocolate teapot.

The Australian Association of Convenience Stores (AACS) which has a long history of tobacco industry support is cheer-leading calls for lowering tobacco tax. Its chief executive Theo Foukkare who started his career with British American Tobacco, recently publicised AACS's latest commissioned report on illegal tobacco retailing. In a report in *The Australian*, Foukkare wanted the government to freeze excise on tobacco products for four years. A few days earlier, he went further "it is time for the Government to seriously consider lowering the excise on tobacco".

Two National Party MPs have also called for tobacco tax to be reduced in Australia to make legal, duty-paid cigarettes more competitive. The National Party receives financial support from British American Tobacco and Philip Morris International, which have lost every policy debate on tobacco control since the 1970s when the first pack health warnings appeared.

Tobacco industry estimates of the extent of black markets routinely exaggerate their size, as part of a decades-long global campaign to lobby governments to reduce tax, because cheaper retail prices are known to increase demand.

The basic arithmetical folly of lowering tobacco tax to reduce illicit trade

The retail price of legal tobacco comprises:

1. excise tax
2. manufacturers' share
3. retailers' share

Basic arithmetic shows this: the current tax of $1.40 per cigarette means $28 excise is already in the mix before the lucrative cuts for both cigarette manufacturers and retailers

combine to lift the cost of a pack of 20 at the very low budget brands end of the market to $40. Premium taxed brands can cost well over $50.

So let's imagine the Commonwealth government introduced the radical and globally unprecedented step of slashing excise by a huge 50%, a truly la-la land proposition. This would mean the tax component would fall to 70c a stick, or $14 a pack of 20s. No one, just *no one* is arguing that manufacturers and retailers would then follow suit and reduce their margins by a comparable percentage in a selfless noble gesture to assist smashing the black market.

This means that our hypothetical 50% reduction in tobacco tax would still mean a tax-paid budget brand would still cost $14 *in tax alone*, already nudging the high end ($15) of what black market packs cost today. So adding the retailer+manufacturer's combined current margin of $12 to the $14 taxed price component, our fantasy "reduced tax" pack would retail at $26. This would still be blown right out the water by comparable budget black market offerings of $10-$12 a pack.

So even halving tobacco tax *would do nothing* to make legal taxed cigarettes competitive with cheap smuggled smokes. Freezing tobacco tax or cutting it by even as much as 50% would be equally inconsequential. The "cut-the-tax" house of cards tumbles down in this basic first breeze of evidence.

Just as every nation has illegal trade in illicit drugs (even in nations where death penalties are given by courts), no regulatory plan will *eliminate* the tobacco black market. But there is a world of difference between neon-lit, 7 days a week, 18 hours a day high street illegal tobacco trading and what would remain if it were to be driven totally underground.

Failure to enforce the law -- the elephant in the room

There are challenges being faced in prosecuting illegal tobacco and vape sellers. Here are a few.

Staff in the shops are often instructed by their bosses to simply run out of the premises if visited by inspectors. Those who talk typically insist they have never met the owners and don't know their names. They are instructed to take their cash wages from the till on each payday, so presumably all staff are on untaxed cash arrangements. Most purchases are cash only, leaving no credit card trails, both facts that should be of considerable interest to the Australian Taxation Office.

With seizures being sometimes very substantial and so costly to the illegal sellers, many now limit their in-store tobacco and vape stock to only that required for a typical day's sales, with any needed extra stock being kept off-site in car boots parked near the shops. Commercial storage companies are also suspected of being used to store large quantities. Section 233 of the Customs Act 1901 Smuggling and unlawful importation and exportation states that it is illegal for anyone to "unlawfully convey or have in his or her possession any smuggled goods or prohibited imports or prohibited exports." So these storage facilities would be legally vulnerable if police were to tail deliveries picked up from them.

It's common to find shops which have had stock seized and staff put on notice today, open again tomorrow with new stock delivered overnight.

The strategy of holding small quantities in-store limits the cost of losses to the shops through seizures, but this is irrelevant to establishing a prosecution as even having a single vape or illegal pack of cigarettes can trigger a prosecution with no court likely to find it credible that a store operated with just a handful of stock.

In country towns in particular, some police claim they face real challenges in storing seized goods because of no storage facilities in typically small police stations. Seized goods must be kept as exhibits until prosecutions are finalised through the courts, which can take many months. But we don't hear the same lame concerns made about storage problems with recovered stolen vehicles, large scale hauls of goods recovered from break and enters, nor about illicit drug busts including whole fields or greenhouses of marihuana.

Derisorily low penalties – now in the past

Prior to July 1, 2024, penalties for illegal selling of vapes and duty-not-paid tobacco were ludicrously inadequate to act as a serious deterrent to retailers. Those blatantly selling would have reasoned that the probability of being visited, let alone being prosecuted was homeopathically small. The risks of such prosecution would have been rationalised as a mere petty cash disruption to running a lucrative business.

But with the much larger penalties now available and being increased as announced on 28 July, substantially different disincentives now exist. The package of legislation to raise maximum penalties for selling to $1.5m in NSW, with substantial jail sentences nd closure powers is a very welcome step.

However, these substantial penalties will pose empty threats if surveillance and compliance checks occur with low intensity and past practices of simply warning offenders that they *may* be prosecuted continue. It will be critically important that the new penalties are seen to be being pursued in courts and given widespread publicity.

Retailer perceptions of low probability of being inspected and charged

Retailer licensing, introduced from July 1, 2025 will need to be supported by high profile, publicised inspections of *all premises selling tobacco*. There are 1000s of current retailers, many of which are likely to still be unlicensed. Many running these stores would reason that there has been very low probability of any authorised inspections of their premises. Unless these perceptions are challenged by high profile publicity to unlicensed retailers being penalised, this situation may well continue.

Later in this submission, I make suggestions about how the public may play a vital role in reporting shops not displaying their tobacco retail licence.

Two states provide encouraging evidence of enforcement being taken very seriously.

Queensland and South Australia

Queensland and South Australia both offer examples of very encouraging progress.

Queensland has recently amended its legislation to empower significant on-the-spot fines in addition to subsequent prosecutions through the courts. South Australia has stepped up firmly to the enforcement plate with an illicit tobacco taskforce within its Consumer and Business Services in partnership with Health and SAPOL's [South Australian Police] running Operation Eclipse. The operation has seized millions of dollars' worth of illicit cigarettes, vapes and loose tobacco. More than 500 inspections have been conducted around the state with 20% of these taking place in regional South Australia. representing $4 million worth of the illicit products seized.

The Minister has also issued 33 short-term closure orders and successfully had two long term closure orders approved by the Magistrates Court. The SA government has also recently passed legislation to increase fines to up to $6.6 million for the supply and possession of commercial quantities of illicit tobacco and vapes.

Between 1 July 2024 and 31 May 2025, 819 penalty infringement notices were issued in Queensland for supply and commercial possession of illicit products, with a value of more than $10.7 million.

Queensland Health can also issue an interim closure order for up to 72 hours and up to six months under a court order where there is evidence of either unlicensed or continued illicit tobacco or vape supply. More than 121 interim closure orders have been issued since September 2024 when the commencement of powers for closures began.

Illegal sellers are often willing to pay rent well above the market rate (I have been told up to 3 times higher) because of their lucrative trade. This pull factor can make them very attractive to landlords. It is imperative that this temptation for landlords should be counterbalanced by knowledge that the Health Department is *actively engaged* in matching all tobacco retailers with their landlords and then formally advising these landlords that their tenants are conducting illegal activity on their rented premises.

In South Australia:

> A magistrate may, on application by the Minister, order a premises to close for a period up to 12 months (a long term closure order) if satisfied that prescribed products, tobacco products or e-cigarette products are being unlawfully sold at the premises.
>
> While a long term closure order is in effect for premises subject to a retail lease, the lessor or lessee may terminate the lease with 28 days' notice.
>
> In relation to a closure order, the Minister may make public information about:

(a) whether the order is an interim closure order or a long term closure order;

(b) a description of the premises to which the closure order relates (including the address of the location of the premises);

(c) the date on which the order was made;

(d) the period for which the closure order is to be in effect;

(e) a general description of the reason for the making of the closure order;

What explains the stand-off by health and police?

I have been told that there is high variability in the extent to which staff from the Department of Health's public health units have been engaged in surveillance and investigation of illegal tobacco and vape sales. Apparently health district administrators have considerable autonomy and discretion about which issues – tobacco control included – that they choose to actively pursue. This means that some areas have had far greater activity here than others.

One senior administrator told me that concerns for staff safety when interacting with criminal involvements in illegal retailing was a major factor responsible for giving tobacco retailing investigation low priority. He was adamant that far more joint investigations with police should occur rather than only involving police when investigations turned problematic, uncooperative or potentially violent.

Police 'don't want to be regulators"

This reported police complaint points to a wider issue of some often anonymous police media commentators feeling that illicit tobacco selling does not deserve the attention of serious police work. I'm old enough to remember police indifference and even hostility to getting involved in random breath testing, preventive domestic violence intervention, white collar and cybercrime, all of which today are routine police work.

I've heard threats of police being taken off the beat chasing hardened criminals and of resultant understaffing to attend to domestic violence should policing illegal tobacco step up. But police attend outdoor music festivals in droves with 75% of attendees surveyed saying they had experienced police in relation to their drug use at such festivals.

The Australian Federal Police actively police counterfeit imported luxury good knock-offs on sale in Australia as part of their work investigating breaches of intellectual property. With the significant excise tax losses to the Commonwealth from black market tobacco, it is difficult to understand why sleuthing fake Channel perfume or Louis Vuitton handbag vendors could be of higher priority than systematically busting a trade costing the government billions of dollars a year and putting the brakes on smoking when higher retail prices are dramatically eroded, slowing progress in reducing more than 20,000 deaths a year.

One argument with its hand up is that tobacco is a "legal product", with some police believing they should have no part in ensuring that its sale is within the law. Alcohol, firearms, gambling and motor vehicles are also legal products, yet police have long histories both of issuing defect notices on cars and doing firearm licence and home safe storage compliance checks: two examples of legal goods and services being used under illegal circumstances. Just as with the present situation on illegal "legal" tobacco.

Police have also long played a significant role in investigating illegal trade in alcohol. Here are all the offences and penalties that go with illegal of serving liquor in NSW. Police are active in investigating and enforcing the ban on selling alcohol to minors.

Food

State governments are well used to regulating businesses, with there being no better example than the way food safety laws are enforced. Food standards are enforced by Australian state and territory food regulatory agencies, the Australian Government's Department of Agriculture and Fisheries and Forestry. In NSW, the government's NSW Food Authority is responsible for monitoring and regulating food safety across the entire food industry supply chain from paddock to plate. Importantly, it maintains a public online "name and shame" register where there are currently 901 businesses listed which since December 2022 have been fined for breaches.

Again, food is a "legal product" with preparing this legal food in unhygienic and unsafe ways being illegal.

But police *are* being cooperative

Despite these media claims, I'm advised by current public health colleagues that in fact, NSW police have often been very cooperative when asked to join in inspections of known illegal tobacco retailers. There has been good cooperation between Health, Border Force, and the Commonwealth's Therapeutic Goods Administration (when illegal vapes are of interest). All this suggests other agendas such as industrial jostling for greater funding may be at work when "not our bailiwick" comments are reported.

ToR C: introduction of legal protections for landlords who lease to tobacconists

Solutions – breaking the weakest link

With the evasive template described above, cooperative agency tactics could include ensuring inspections see all entrances to shops guarded prior to raids. Surveillance of deliveries, with tracing of vehicles after drop-offs to locate storage premises and those working in them and pro-active warning to commercial self-storage businesses that failure to ensure illicit tobacco and vapes are not being stored will have major consequences.

But the very weakest link in all of this is that cheap tobacco premises are very rarely owned by those trading in them. The shops are invariably rented. While shop assistants may well be ignorant of the identities of those above them, those owning the premises and collecting

rent are legally obliged to have the names, contact details and typically banking details of the parties who are paying them rent.

Illegal retailing of tobacco products is unambiguously an example of illegal tenant activity. If evidence is provided to these landlords that their renters are conducting illegal trade on their premises, this should be grounds for termination of a lease and for prosecution of the landlord should the illegal trade continue. This has been emphasised in the new announced reforms.

I am intrigued by the wording of ToR C – that landlords who lease to tobacconists ought to be somehow legally protected. Clearly, law-abiding tobacco retailers are legitimate commercial tenants. But those who break the law and landlords or real estate agents acting on their behalf who are knowing parties to this deserve no legal protection.

Property owners typically use real estate agents to rent out their properties to reduce difficulties and risks associated with direct contact with tenants. The names and business addresses of tenants are on lease agreements. But owners may not know that tobacco is being illegally traded in their property unless informed about suspected activity. It is critical that high priority be given to Health NSW informing any landlord who has a tobacco retailing tenant about evidence of illegal retailing.

For this reason alone, the proposed closure powers in the new legislation are absolutely vital. Such powers exist now within the NSW Department of Primary Industries for biosecurity and food hygiene concerns.

Voiding insurance

Huge publicity including via ABC Four Corners and a series of large pieces in the Sydney Morning Herald has been given to arson attacks and standover tactics by criminals intent on forcing legal tobacco retailers to stock illegal tobacco and vapes that they supply. The insurance industry has reacted to this by raising premiums to stratospheric levels making it almost impossible for tobacconists to buy insurance. Landlords currently face massive risks by renting to uninsurable illegally trading tobacco businesses. Should an arson fire spread to adjoining premises causing extensive property damage or death and injury to people, landlords' liability would be immense.

So what actions could state governments take to quickly reduce risks and costs in the retail property sector and resultant risks to public safety?

If all states were to adopt a public "name and shame" strategy modelled on that used with food safety breaches in concert with substantial on-the-spot fines and court action, landlords and insurers could routinely search the database for the names of applicants for tenancy or insurance. Such fines should immediately result in inclusion on the register. Establishing such a register could be implemented at virtually no cost in a matter of weeks.

ToR d: the adequacy of existing legislation and the allocation of departmental responsibility for enforcement, including in other jurisdictions and ToR e: review of the resourcing, administrative arrangements and staffing for enforcement in metropolitan and

regional New South Wales, including the adequacy of cross-jurisdictional databases to meet current and future needs

The South Australian government has invested $16m in a new taskforce within Consumer and Business Services (CBS) to tackle the illicit trade. South Australian Police (SAPOL) and the Health Department are also jointly involved. NSW has established a cross-agency NSW Illicit Tobacco Taskforce, with senior representatives from NSW Health, NSW Police, the Department of Customer Service, the Department of Creative Industries, Tourism, Hospitality and Sport, and the Department of Communities and Justice.

Health has for decades been the lead agency for tobacco control, with other agencies supplementing intelligence and taking responsibility for particular tasks within their purview. As I state below, Australia has an enviable record in reducing tobacco use to the lowest levels since prevalence surveys began.

Accordingly, it would be sensible to give Health the lead and convening role in the Task Force.

The Shopping Centre Council of Australia the insurance industry and representatives from the real estate industry should also be consulted, given their known interest in public safety, crime and property destruction with this issue, or inside knowledge of how to reduce rentals being made to parties with high risk of illegal trading.

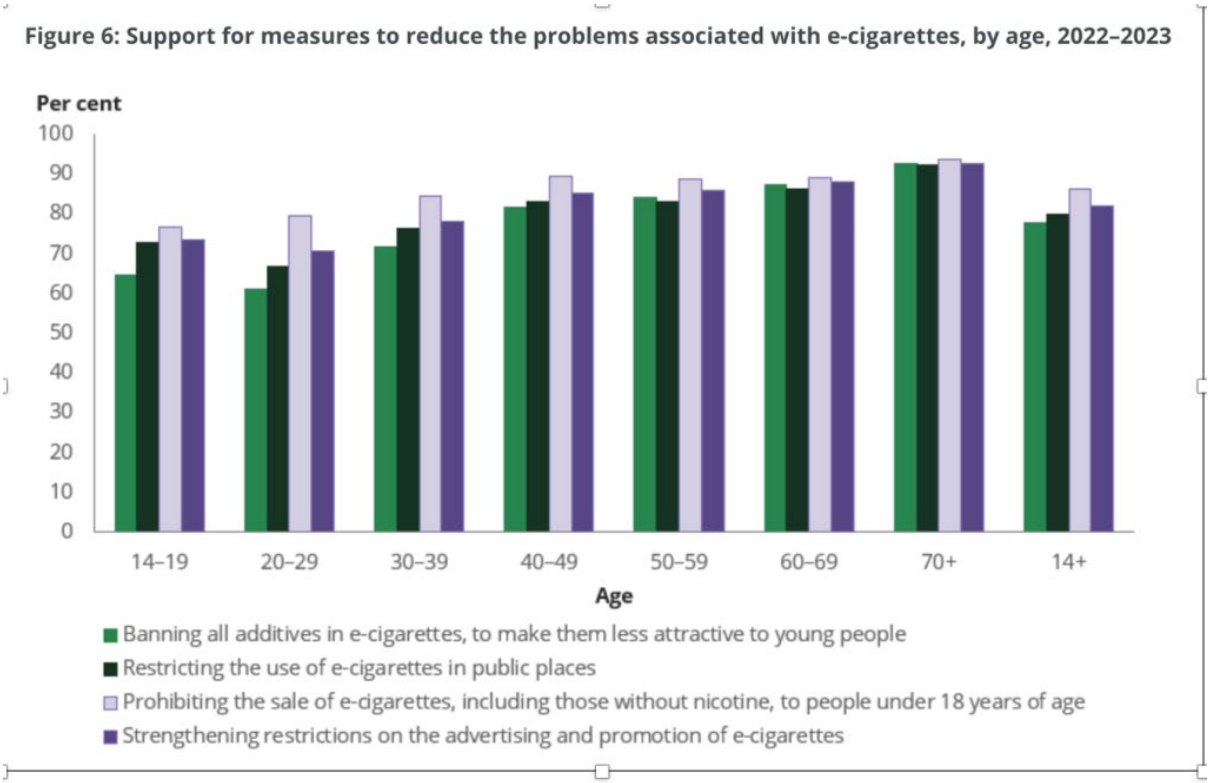
Supermarkets are Australia's largest retailers of tobacco and over the years have had an exemplary record in not selling tobacco products to children, not selling illegal products and in compliance with advertising prohibitions and display requirements. Understanding more about their experience in establishing internal processes for ensuring probity, staff training and compliance with health and tax laws and with provision of detailed reporting of sales to Government agencies such as the ABS would provide valuable intelligence.

Huge public support and current online reporting disincentives

I have heard from citizens who have lodged on-line reports about illegal tobacco or vape sales on the Department of Health's on-line reporting page. A common complaint is that the complainants hear nothing at all about the outcome of their report. They typically live or work near the shops they have reported and daily can see that the trade continues.

The Health Department's view is apparently that providing any information back to complainants might jeopardise the integrity of an investigation. But the upshot of this is that few complainants are ever likely to report further cases, suspecting that "nothing happens" when they see the retailers continuing to sell illegally for many months afterwards. This is a huge missed opportunity to have citizens (eg: parents, local schools who have intelligence about shops which sell to children) actively engage in community public health.

The latest official national data on smoking and vaping in Australia include remarkable findings on the massive support across the community for tough controls on the promotion and supply of vapes (see chart below).



The data were collected between 2022 and May 2023 from some 21,500 people across Australia by the Roy Morgan company, on contract from the Australian Institute of Health and Welfare to conduct the latest in the National Drug Household Survey (NDHS) series, run since 1985.

I've tried, but I cannot find any contemporary social issue where there is anything surpassing the overwhelming support for vaping controls shown in the chart above. For example, the 2017 national plebiscite on marriage equality saw 61.7% vote yes. Two-thirds of Australians want the government to do more on climate change. In 2022, two in three believed junk food advertising in children's viewing times should be banned and 70% believe that gambling ads on TV should be banned. But support for tough restrictions on promotion and sale of vaping products is running between 78% and 86%.

These data should be salutary to every member of the NSW Parliament: a large proportion of the community is noticing the neglect of this issue and that governments are being played by an ever-emboldened criminal sector. Major action would undoubtedly be strongly applauded.

It would be interesting to speculate what the highly publicised Crime Stoppers reporting system would do if a sustained project of citizens reporting all local shops in their suburb obviously selling illegal tobacco were to commence.

Building a statewide database

The recent introduction of tobacco retail licensing in NSW will be being supported by a database of all licensed retailers. It is essential that this database is supplemented with a census of all tobacco and vape retailers in the state so that unlicensed retailers can be identified and penalised for being unlicensed.

Each public health unit should be required to undertake a foot leather census of all tobacco retailers by systematically visiting all possible outlets selling tobacco, after first checking off all those outlets as legitimate which have registered as tobacco retailers.

It seems likely that retailers which have not obtained a licence have not done so in ignorance but deliberately, with a high probability that illegal sales are also taking place.

Shops signed as tobacconists and which are known to be unlicensed should have high priority in the census , but mixed businesses, petrol stations, barbers and others have all sold tobacco over the years in the conduct of a census.

With the latter, intelligence here obtained from community members will be important in targeted visits.

Harnessing strong community concern With the very high levels of public support for action against illegal tobacco and vape sales, serious consideration should be given to active encouragement of the public (and especially local school communities) to assist in these public health unit staff visits. School communities via staff and parent information about shops know to be selling illegally to kids present opportunities for cooperation with public health units.

Many towns and suburbs have active and extensive Facebook community pages. Public Health Units should consider posting requests for information about illegal tobacco and vape retailers in the towns or suburbs. If informants used direct messaging, concerns about privacy in relaying the information could be allayed.

Legacy of the neglect

The loss of tobacco tax to the Treasury being caused by the current tobacco black market is a public finance issue. And money channelled to criminals is a significant concern for the community.

But easy access to cheap tobacco is *most definitely is also a public health issue,* A huge body of evidence links tobacco tax and prices rises to reduced smoking through quitting and reducing the number of cigarettes smoked as well as powerfully dissuading uptake in non-smokers. Smoking rates in both adults and teenagers are now the lowest ever recorded in Australia. It would be a tragedy if that record was trashed by a continuing failure to enforce the law.

Criminals who have now for many months sold illegal tobacco with impunity might well think that they would experience a similar dream run if they opened up a river of shops

where, unlicensed, they brazenly sold cheap duty-not-paid alcohol to anyone who anyone who wanted it, or counterfeit prescription only drugs to walk-in customers.

Tobacco control—including tax policy – has driven smoking to its lowest ever level

Both *60 Minutes* and *Four Corners* featured ex-Australian Federal Police and former Border Force Tobacco Strike Team head Rohan Pike. Pike was described by *60 Minutes* as someone "who now advises the retail sector" and by *Four Corners* as "a lobbyist for retailers". But neither program asked Pike whether he was advising the convenience store industry out of the goodness of his heart, or whether he had any financial relationship with them.

In the *60 Minutes* program, veteran organised crime observer John Sylvester stated "putting heavy tax on smoking was done for two quite legitimate reasons: to raise revenue and secondly to discourage people from smoking. So governments and authorities would look and go, 'Wow, our excise is down, that means people aren't smoking.'"

Well, no. Only the most inexperienced analysts of tobacco and nicotine use in Australia would *ever* exclaim that a fall in total excise receipts could only be due to a fall in smoking. People moving to illicit duty-not-paid cigarettes would clearly reduce total excise revenue but this would not allow any sensible conclusion about whether smoking was falling or rising. The proportion of people who buy their cigarettes from illegal supplies is an entirely different question from the proportion of people who smoke. Smoking prevalence is not about *how or where* you get your cigarettes, it's about *whether* you use them at all.

In a recent blog I showed that data on smoking prevalence from the National Drug Strategy Household Survey collected since 1991, shows smoking is now lower than it's ever been, with the most recent fall being the largest seen since surveys began. Smoking by kids is heading toward extinction. The giant Achilles heel of rampant illegal retailing of cheap, duty-not-paid cigarettes in Australia is its sheer blatancy. Every shop selling them and every on-line ad for courier delivered vapes reaches out to its customers with often unmistakable signage and none too cryptic on-line language (eg: fruit, many varieties). "Here we are, come on in, or txt us a meeting point where we'll deliver the vapes". It could hardly be more in-your-face. I recently counted 22 cheap smokes shops in just two adjacent Sydney suburbs.

If ordinary citizens can locate these outlets with absolute ease, it is obvious that so can those charged with investigating and enforcing the laws. So why are the shops proliferating and prosecutions occurring at dismal rates? Many of the public are asking this question.

Those selling illegal recreational drugs do not open shops with signs like "Cheap meth, heroin, ecstasy here". The government has for many decades "banned" all retailers other than pharmacies from selling prescribed drugs, but criminal gangs have not set up high street shops all over the country with signs "Get your medicines here – no prescription needed!" Neither do we see every second corner shop without a liquor licence selling alcohol. In both cases, law enforcement agencies would come down very fast and hard.

It is long overdue for blatant illegal tobacco and vape retailers to experience the same fate.