Submission No 42

INQUIRY INTO ILLEGAL TOBACCO TRADE

Organisation: Cancer Council NSW

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About Cancer Council NSW

Cancer Council NSW is the leading cancer charity in NSW dedicated to reducing the impact of cancer and ensuring programs and services reach communities throughout NSW. Our purpose is to change the path of cancer and make sure no one walks alone. To achieve this, Cancer Council NSW:

- Supports people affected by cancer by providing evidence-based information and resources about cancer
- Provides emotional and practical supportive care services including, financial guidance, information, and support, targeted financial assistance and our Transport to Treatment service, which provides a free transport to people with cancer who cannot access Community Transport Services or have other transport barriers
- Delivers 13 11 20, a dedicated confidential phone service where anyone can call to speak with an experienced health professional who can answer any questions about cancer
- Enables the community to reduce their cancer risk through programs, information and policy efforts in skin cancer prevention, nutrition, alcohol, tobacco control and cancer screening.
- Advocates and speaks up to achieve better cancer outcomes
- Conducts and funds world-class research to reduce the impact of cancer.

Cancer Council has long advocated for sustained legislative action to reduce tobacco smoking in Australia. Smoking remains the leading preventable cause of cancer in this country, and we must remain committed to strong action to reduce tobacco use.

Executive Summary

Cancer Council NSW welcomes the opportunity to provide input into the Legislative Council's Portfolio Committee No 5.- Justice and Communities inquiry into the illegal tobacco trade.

The sale of illegal tobacco undermines decades of public health progress. Two in three people who smoke will die from their addiction to tobacco products, which is why we must do everything in our power to drive down smoking rates and support people who smoke to quit. This includes stopping the illegal tobacco market from harming our communities. Reducing supply of illegal tobacco is particularly important to reduce socio-economic disparities in tobacco use and to discourage smoking uptake by young people.

Reducing illegal supply of tobacco requires a comprehensive, coordinated approach across all levels of government to strengthen regulation and enforcement, and reduce demand for tobacco products. Calls to remove or significantly reduce tobacco tax in Australia as a solution to supposedly solve the illegal tobacco issue are not based on evidence and are distracting legislators and the media from action that is urgently required to address gaps in current legislation and to step up monitoring and enforcement efforts.

International experience demonstrates that action is needed across the entire tobacco supply chain—from border enforcement, through distribution channels, to wholesalers, retailers and individuals that supply tobacco informally to consumers.[1] Our recommendations are informed by this evidence and are summarised below.

Table 1. Cancer Council NSW's recommendations

Cancer Council NSW's Recommendations
1. To safeguard the integrity of this Inquiry, the Committee: o adopts the best-practice application of a conflict-of-interest framework that is fully aligned with WHO FCTC Article 5.3 Guidelines, o requires everyone making a submission to complete a comprehensive disclosure statement. This should detail any financial or non-financial, direct or indirect support received from entities involved in the production, distribution, or sale of tobacco, nicotine, or vaping products, o disqualifies any companies, individuals or groups with links to such entities from appearing during public hearings.
2. The NSW Government collaborates with the Australian Government to introduce a national system that enables real-time verification of excise or customs duty payment on tobacco products at any point in the supply chain. This would enhance transparency, reduce fraud, and strengthen enforcement capabilities.
3. The NSW Government commits to sharing evaluations of both short and long-term impacts of tobacco control measures aimed at curbing illegal trade. This includes tracking reductions in illegal sales, compliance improvements, and enforcement outcomes - ensuring continuous learning and coordinated progress across jurisdictions.

Cancer Council NSW's Recommendations

4. The NSW Government supports the federal government in maintaining high tobacco prices through taxation, which remains an evidence-based and effective tool for reducing smoking prevalence.

5. NSW Health continue to lead the implementation of the NSW tobacco licensing scheme.

6. NSW Health develop a robust evaluation framework for assessing the impact of the licensing scheme, with an initial review 12 months after scheme implementation (including but not limited to impacts on illegal tobacco supply).

7. The NSW Government maintains a public register of all licensees.

8. The NSW Government introduces legislative amendments that:
    - enable prosecution of landlords who knowingly lease to retailers selling illegal products,
    - enable NSW Police to enter and search tobacco retail premises,
    - make it an offence for retailers or wholesalers to supply or possess any quantity of tobacco products non-compliant with federal product, packaging, customs or excise laws, including higher penalties for supply or possession of commercial quantities, and
    - require licence applicants to pass 'a fit and proper person' test.

9. The NSW Government sets a date to introduce a cap on licence numbers, to more rapidly reduce tobacco supply in the community.

10 The NSW Government promptly introduces legislative amendments (in line with public announcements) to:
    - significantly increase the penalties for the sale and commercial possession of illegal tobacco
    - grant substantial powers for inspectors to close premises found to be in breach of the new rules.

11 The NSW Government introduces an additional legislative amendment to increase the period a person convicted of selling illegal products is prohibited from engaging in tobacco retailing.

12 The NSW Government increases the compliance workforce and ramps up compliance monitoring.

13 The NSW Government pursues prosecutions for businesses caught selling illegal products at volumes that warrant legal action.

	Cancer Council NSW's Recommendations
14	The NSW Government expands the scope of the licensing scheme to apply to retailers illegally supplying non-therapeutic nicotine products, including vapes and pouches.
15	The NSW Government establishes an Interagency Taskforce to enable greater enforcement capability and coordination across agencies including Health (lead agency), Police, Liquor and Gaming, Fair Trading, Communities and Justice and Local Government.
16	The NSW Government ensures that all member agencies and individuals of the Interagency Taskforce comply with WHO FCTC Article 5.3 to ensure that there are no interactions with the tobacco industry or their vested interests and allies that can influence, or be perceived to influence, policy decisions.
17	The NSW Government ensures that the Interagency Taskforce consults with tobacco control experts (that declare no conflicts of interest), from both university and non-government sectors.
18	The NSW Government advocates for illegal tobacco to be a standing agenda item at the National Health Ministers Meeting.
19	The NSW Government continues to invest in evidence-based, culturally appropriate smoking cessation services.
20	The NSW Government continues to invest in campaigns that educate the community about the harms of tobacco smoking and the benefits of quitting.
21	The NSW Government considers the potential of the NGO sector to bolster provision of smoking cessation support to priority populations.

Contents

Introduction

Cancer Council has long advocated for sustained legislative action to reduce smoking in Australia. Smoking remains the leading preventable cause of cancer in this country, and we must remain committed to strong action to reduce tobacco use.

The sale of illegal tobacco undermines decades of public health progress. Two in three people who smoke will die from their addiction to tobacco products, which is why we must do everything in our power to drive down smoking rates and support people who smoke to quit, including stopping the illegal tobacco market from harming our communities.

Tobacco use is the leading cause of cancer

In 2024, 11% of people aged 16 years and over in NSW reported daily or occasional smoking, [2] indicating that tobacco use is at historically low levels. Despite this, tobacco smoking is still the leading cause of preventable death in NSW, causing at least 16 types of cancer and around 3,330 cancer deaths in NSW per year.[3] Two out of every three tobacco users will die prematurely because of smoking if they do not quit. Maintaining comprehensive tobacco control measures is vital to driving down smoking prevalence towards the national target of 5% by 2030.

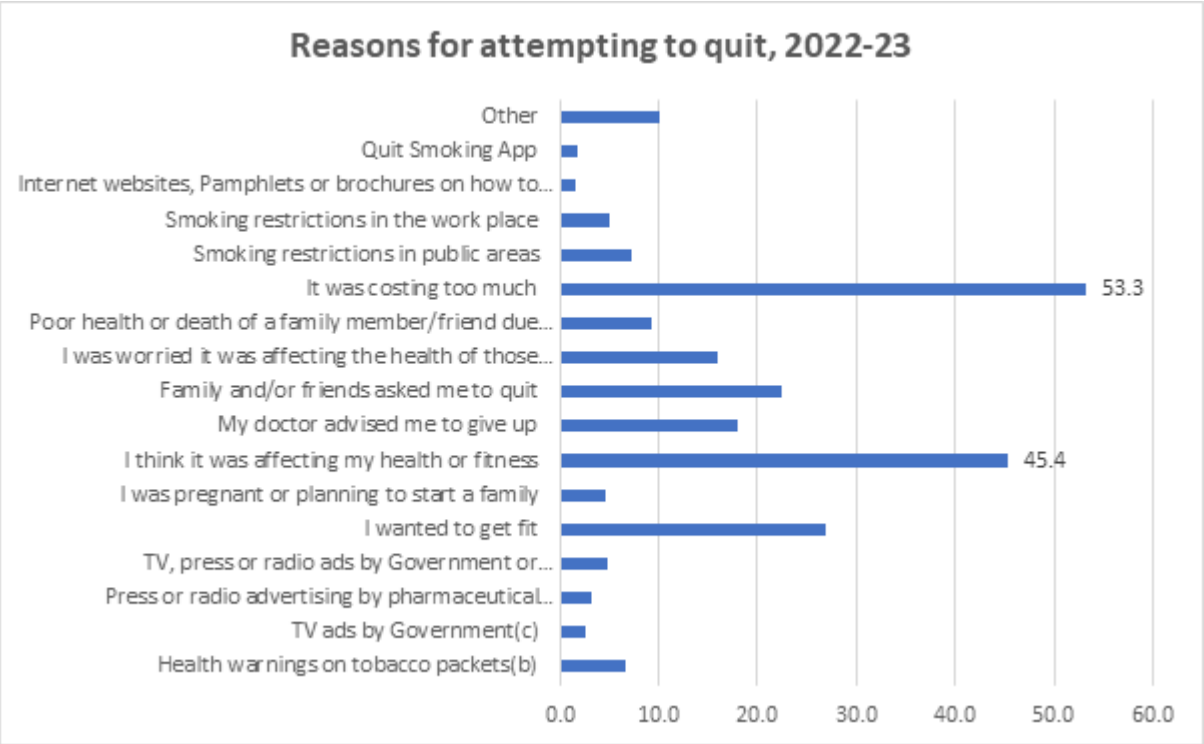
There are clear disparities in smoking rates between population groups, with 16.8% of people living in the most disadvantaged areas reporting regular tobacco use compared with 6.6% in the least disadvantaged areas.[4] All tobacco products- illegal and regulated- are harmful to our health. This is why we need a suite of measures that discourage people from starting to smoke as well as supporting people to quit all tobacco products, which will ultimately reduce *both* the legal and illegal tobacco trade.

We need urgent action to control illegal tobacco

Despite a lack of transparent real-time data, reliable data sources do show an increasing trend in illegal tobacco use, which risks undermining decades of public health progress. While estimates vary, reliable data from the National Drug Strategy Household Survey (NDSHS) indicates that the **proportion** of Australians using illegal (untaxed) tobacco increased markedly between 2019 and 2022 from 9.9% to 16.5%.[5] It is important to note however that only 10 per cent of Australians smoke tobacco[6], so in absolute terms the increase is modest. In the same survey, 12% of NSW tobacco users reported purchasing branded (illegal) cigarette packs in the three months before the survey, a significant increase from the 2019 survey. While the tobacco industry has successfully exploited the failure to clamp down on illegal supply, we know industry also conflates the size of the illegal market to suit its own narrative, including calling for simplistic solutions that will merely increase its profits.[7] (see Section 7 for further information).

Reducing access to Illegal tobacco is particularly important to reduce socio-economic disparities in tobacco use and discourage smoking uptake by young people. Young people and those in the most disadvantaged areas are more sensitive to tobacco price increases, so access to cheaper (tax not paid) illegal products undermines the important role of tobacco excise in reducing tobacco uptake, use and encouraging quit attempts. Data from the 2024 National Drug Strategy Household Survey (Figure 1) indicates the cost of cigarettes is the most often cited reason for wanting to quit smoking (53.3%), followed by health impacts (45.4%).

Figure 1. Reasons for attempting to Quit smoking 2022-23



Source: Australian Institute of Health and Welfare, 2024, National Drug Strategy Household Survey

Evidence clearly indicates that reducing illegal tobacco requires a comprehensive, coordinated approach that strengthens regulation, enforcement, and demand reduction. This includes effective action across the entire supply chain—from border enforcement, through distribution channels, to wholesalers, retailers and individuals that supply tobacco informally to consumers.[8] Our recommendations in this submission are informed by this evidence.

Response to the Inquiry

1. Reminder for engaging with the tobacco and vaping industries and affiliates

Recommendation:

To safeguard the integrity of this inquiry and to uphold Australia's obligations as a signatory to the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC), we recommend:

- The Committee adopts the best-practice application of a conflict-of-interest framework that is fully aligned with WHO FCTC Article 5.3 Guidelines.
- The Committee requires everyone making a submission to complete a comprehensive disclosure statement. This should detail any financial or non-financial, direct or indirect support received from entities involved in the production, distribution, or sale of tobacco, nicotine, or vaping products.
- The Committee disqualifies any companies, individuals or groups with links to such entities from appearing during public hearings.

Rationale:

There is a long and well-documented history of interference by the tobacco industry and its retail allies against stronger government regulation and policies, including tobacco taxes.[9]

To safeguard the integrity of the inquiry, it is crucial that Australia's obligations under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control[10] (FCTC) are upheld throughout the inquiry process. Article 5.3 of the WHO FCTC mandates that Parties protect public health policies from the commercial and other vested interests of the tobacco (and vaping) industry, across all branches and levels of government: national, state, and local. In Australia, these obligations are implemented via the Department of Health's Guidance for Public Officials on Interacting with the Tobacco Industry (2019). [11]

Accordingly, we recommend the committee adopts the best-practice application of a conflict-of-interest framework that is fully aligned with Article 5.3 Guidelines, including:

- Mandatory disclosure of all funding sources (both direct and indirect) by individuals or organisations making submissions or giving evidence, including support from tobacco, vaping, or nicotine companies or their affiliates.
- Declaration of any direct or in-direct industry support, partnership, or consultancy received within the past five years. This includes support for services such as lobbying, advertising, surveys, submission writing, research, and membership fees.
- Establishment and publication of a real-time public register of submissions and witness affiliations to ensure public transparency and accountability.
- Exclusion of industry-funded actors (direct or indirectly funded through third parties/allies) from participating in or influencing public health policy processes, including parliamentary inquiries and advisory roles.

These measures are consistent with best practices outlined in the WHO FCTC Article 5.3 Guidelines[12] and Australia's own public sector guidance. Transparency in industry ties is essential to prevent interference, such as through front groups or retail alliances, that undermines and/or is in direct conflict with tobacco control policies, public health and the human right to health.

2. Federal Context

Recommendations:

- The NSW Government collaborates with the Australian Government to introduce a national system that enables real-time verification of excise or customs duty payment on tobacco products at any point in the supply chain. This would enhance transparency, reduce fraud, and strengthen enforcement capabilities.

- The NSW Government commits to sharing evaluations of both short and long-term impacts of tobacco control measures aimed at curbing illicit trade. This includes tracking reductions in illegal sales, compliance improvements, and enforcement outcomes - ensuring continuous learning and coordinated progress across jurisdictions.

Rationale:

The Australian Government has made significant strides in addressing illicit tobacco trade through a combination of legislative reform, strategic leadership, and targeted funding.

- **Legislative Action**: The *Public Health (Tobacco & Other Products) Act 2023 (Cth)* introduced robust penalties of up to **$6.6 million** for the supply of tobacco products that do not comply with Australia's strict product and packaging regulations. The Act also mandates comprehensive reporting on tobacco sales, reinforcing transparency and accountability across the supply chain.

- **Leadership and Coordination**: The appointment of an **Illicit Tobacco and E-cigarette Commissioner** marks a critical step in strengthening enforcement. This role is designed to facilitate collaboration between federal, state, and territory law enforcement agencies, ensuring a unified and strategic approach to tackling illicit trade.

- **Funding and Enforcement**: The Government has committed **$188.5 million to the Australian Border Force** to lead a coordinated, multi-agency response to illicit tobacco. This funding supports enhanced surveillance, border control, and intelligence-sharing efforts. Additionally, the **Australian Taxation Office** received further funding in the 2024–25 MYEFO to combat tax evasion linked to illicit tobacco, reinforcing the financial and regulatory dimensions of enforcement.

Together, these measures reflect a growing commitment at a federal level to disrupt the illicit tobacco market and protect public health. However, further action is needed to close gaps in the supply chain and ensure consistent enforcement nationwide.

Despite intercepting an estimated 60% of illicit tobacco at the border, further action is needed across the supply chain. Recommended measures across all states and territories and at a federal level are outlined below, noting that recommendations for the NSW Government are detailed further in this submission.

1. **Comprehensive Licensing Across Jurisdictions**
   To close regulatory gaps, all jurisdictions should require wholesale tobacco licences—particularly the Northern Territory, which currently lacks this requirement. States such as Western Australia, South Australia, and Tasmania should follow the lead of ACT, NSW, Victoria and Queensland by prohibiting wholesalers from selling to unlicensed retailers. It should also be an offence for retailers to purchase from wholesalers that are required to be licensed in their jurisdictions, reinforcing accountability throughout the supply chain.
2. **Fit-and-Proper Person Criteria for Licensing**
   Licensing frameworks should include rigorous eligibility standards, ensuring that only individuals or entities deemed 'fit and proper'—with a demonstrated ability to comply with all licence conditions—are granted licences. This would help prevent bad actors from entering or remaining in the legal tobacco market and reduce tobacco tax evasion throughout the retail sector.
3. **Sustainable Funding Through Licence Fees**
   Licence fees should be set at levels sufficient to fund robust compliance monitoring and enforcement activities. This ensures that regulatory bodies have the resources needed to conduct inspections, investigate breaches, and maintain oversight of the legal tobacco trade.
4. **Excise Verification Technology**
   The NSW Government should work with the Australian Government to look at the introduction of a national system that enables real-time verification of whether excise or customs duty has been paid on tobacco products at any point in the supply chain. This technology would enhance transparency, reduce fraud, and support enforcement agencies in identifying illicit products more efficiently.
5. **Evaluation of Impact and Effectiveness**
   The NSW Government should commit to sharing with the federal government the evaluation of the immediate and long-term effects of all tobacco control policy measures implemented which aim to control illegal tobacco trade. This includes changes/reductions in illegal sales, improvements in compliance, and the overall effectiveness of enforcement strategies. Regular evaluation will help refine approaches and ensure continuous improvement in tackling the illegal tobacco trade across the country.

3. Demand Reduction and Tobacco Excise

Recommendation:

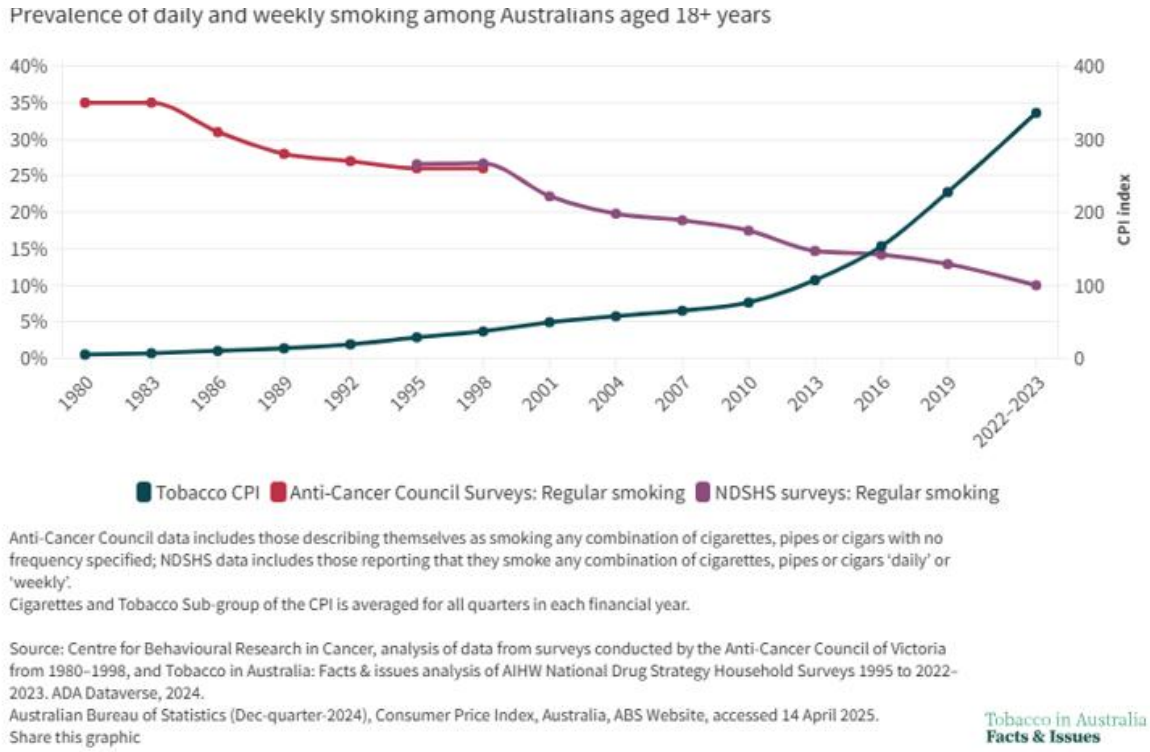
- The NSW Government supports the federal government in maintaining high tobacco prices through taxation, which remains one of the most effective tools for reducing smoking prevalence.

Rationale:

We are concerned that calls to remove or significantly reduce tobacco tax in Australia as a solution to supposedly solve the illegal tobacco issue are not based on evidence or logic and are distracting legislators and the media from action that is urgently required to address gaps in current legislation and to step up monitoring and enforcement efforts.

Tobacco excise has played an important role in the historic declines in smoking prevalence in Australia, as illustrated in Figure 2. Substantial, real increases in the price of tobacco products in Australia have been followed by an acceleration of the decline in both apparent and reported tobacco consumption. [13]

Figure 2: Prevalence of regular smoking versus the Tobacco Consumer Price Sub-Index, Australia, 1980 to 2022-23



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'.
Cigarettes and Tobacco Sub-group of the CPI is averaged for all quarters in each financial year.

Source: 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.
Australian Bureau of Statistics (Dec-quarter-2024), Consumer Price Index, Australia, ABS Website, accessed 14 April 2025.
Share this graphic

Tobacco in Australia
Facts & Issues

International experience suggests that cutting tobacco taxes invariably *increases* smoking rates and does little to curb illegal trade once a market is already established. Reducing the excise at a level required to compete with the price of illegal products (as low as $10-$15/packet) in Australia is clearly impractical. Cuts to tobacco taxes would not just fail to reduce sales of illegal tobacco: they would almost certainly lead to increased numbers of people using tobacco, including more children and young people. This would increase cancer incidence and the prevalence of other diseases caused by smoking.

Extensive research on the relationship between tax and illegal tobacco across countries finds little correlation between tax levels and illegal trade in tobacco. In fact, countries with higher taxes have typically had lower illegal trade.[14] [15] We can learn from the experience of Canada and Sweden, who previously reduced taxes in response to illegal trade and saw revenue go down, tobacco use increase overall, with no clear or direct impact on reducing illegal trade.

The tobacco industry and their allies have been calling for tobacco excise to be lowered as they know this would likely increase their sales and profits. Even if excise was lowered against public health evidence, based on past behaviour, it is highly likely that the tobacco industry would not fully pass on the lower prices to consumers, the result being increased sales margins and profits for the industry. Therefore, calls for excise to be lowered is playing into the tobacco industry's hands.

Evidence-based actions for reducing illegal tobacco trade (fundamentally a tax-avoidance issue) require comprehensive and sustained policy, administrative and enforcement measures[16], including:

- enforcing existing tobacco tax laws,
- improving tax administration,
- implementing technological solutions (e.g. track and trace systems; ongoing surveillance and data analysis)
- introducing systems that allow verification of excise/customs duty and GST payment at any point in the supply chain,
- introducing robust licensing systems for retail, importation, distribution, and manufacture, and
- reducing demand for tobacco products overall.

Over the past three months, Parliaments in South Australia and Queensland have significantly strengthened their legislation on illegal tobacco in several areas. We commend the NSW Government for proposing legislative amendments designed to crack down on illegal tobacco and vape sales. We encourage the NSW Government to go even further, with recommendations outlined in sections 4 and 5 below that would bring NSW in line with national best practice.[17]

4. Licensing and Oversight:

Recommendations

- NSW Health continue to lead the implementation of the NSW tobacco licensing scheme.
- NSW Health develop a robust evaluation framework for assessing the impact of the scheme, with an initial review 12 months after scheme implementation (including but not limited to impacts on illegal tobacco supply).
- The NSW Government maintains a public register of all licensees.
- The NSW Government introduces legislative amendments that:
  - enable prosecution of landlords who knowingly lease to retailers selling illegal products,
  - enable NSW Police to enter and search tobacco retail premises,
  - make it an offence for licensees to possess any quantity of tobacco products non-compliant with federal product and packaging laws,
  - make it an offence for retailers who supply or possess commercial quantities of tobacco products non-compliant with federal customs and excise laws, and
  - require licence applicants to pass 'a fit and proper person' test.
- The NSW Government sets a date to introduce a cap on licence numbers, to more rapidly reduce tobacco supply in the community.

Rationale:

Licensing is required for all players in the tobacco supply chain—including wholesalers, retailers, importers, and manufacturers. NSW's new licensing scheme is a strong step forward, improving oversight, deterring illegal operators, and funding extra enforcement through licence fees. Evaluation of its implementation impact should be a government priority.

To maintain a strong public health focus, the scheme should continue to be administered by NSW Health, with the cooperation of other agencies that have a role in supporting administration and/or enforcement (e.g. Service NSW, NSW Police).

While licensing alone won't solve the illegal tobacco issue, it *will greatly help* by providing the NSW Government with:

- a more accurate record (including names and addresses) of all licensed wholesalers and retailers,
- additional funding from licence fees for ramping up retailer education, monitoring and enforcement of retailing laws,
- a powerful framework for administrative enforcement options (e.g., imposing licence conditions, licence withdrawal) which are less costly and more rapidly administered than legal action through the courts,
- substantially increased fines to act as a deterrent to illegal activity.

To further address illegal supply, we believe the licensing scheme could be enhanced with the inclusion of:

- powers to prosecute landlords who knowingly lease to retailers selling illegal products,
- powers for NSW Police to enter and search tobacco retail premises,
- provisions making it an offence for retailers or wholesalers to supply or possess any quantity of tobacco products non-compliant with federal product, packaging, customs or excise laws, including higher penalties for supply or possession of commercial quantities. (The NSW *Public Health (Tobacco) Act 2008 No 94* currently prohibits the sale of tobacco products in packaging without health warnings, but not the possession of such products),
- a 'fit and proper person test' for those applying for a licence,
- a cap on licence numbers,
- a requirement that tobacco wholesale licence holders provide NSW Health with details on sales volumes of each product they supply to retailers- to assist in the detection of supply chain 'leaks'.[18]

We appreciate the new licensing scheme does need time and resources for full implementation to impact tobacco supply. We strongly endorse a thorough evaluation of the scheme, with an initial review after 12 months, and are willing to work with the NSW Government to examine the public health impacts. This review should consider whether the bar for licence restrictions should be lifted to include a 'fit and proper persons' test to ensure licences are not given to people unsuitable to hold them.

The power of licensing also lies in the ability (with appropriate regulations) to control the number and geographic distribution of how licences are issued. Tobacco is far too easily available, and Australians' tobacco purchasing behaviours have changed over the past 10 years, with one study showing a significant shift from supermarkets to tobacconists (from 17.5% in 2013 to 33.1% in 2022/23[19])

Capping licence numbers and placing more controls on where tobacco can be sold would reduce the availability of both legal and illegal tobacco products in the community. This would position NSW as a leader in reducing the total number of tobacco retail outlets and would also lessen the enforcement burden on the NSW Government. Most importantly it would help more current users quit smoking[20] and further reduce uptake among young people[21], reducing the burden on our health system from tobacco related illness.

5. Compliance and Enforcement

Recommendations:

That the NSW Government:

- Promptly introduces legislative amendments (in line with public announcements) to:
  - significantly increase the penalties for the sale and commercial possession of illegal tobacco
  - grant substantial powers for inspectors to close premises found to be in breach of the new rules.
- Introduces an additional amendment to increase the period a person convicted of selling illegal products is prohibited from engaging in tobacco retailing.
- Increases the compliance workforce and ramps up compliance monitoring.
- Pursues prosecutions for businesses caught selling illegal products at volumes that warrant legal action.
- Expands the scope of the licensing scheme to apply to retailers illegally supplying non-therapeutic nicotine products, including vapes and pouches.
- Establishes an interagency Taskforce to enable greater enforcement capability and coordination across agencies including Health (lead agency), Police, Liquor and Gaming, Fair Trading, Communities and Justice and Local Government.
- Ensures that all member agencies and individuals of the Interagency Taskforce comply with WHO FCTC Article 5.3 to ensure that there are no interactions with the tobacco industry or their vested interests and allies that can influence, or be perceived to influence, policy decisions.
- Ensures that the Interagency Taskforce consults with tobacco control experts (that declare no conflicts of interest), from both university and non-government sectors.
- Advocates for Illegal Tobacco to be a standing agenda item at the National Health Ministers Meeting.

Rationale:

Well-resourced, sustained and effective compliance and enforcement activity is critical to the success of the new tobacco licensing scheme in NSW. Until this point, retailers have been able to openly sell illegal products with little repercussion.

We strongly support the Government's intention to introduce amendments[22] to the Public Health (Tobacco) Act 2008 to significantly increase the penalties for the sale and commercial possession of illegal tobacco and grant substantial powers for inspectors to close premises found to be in breach of the new rules. The introduction of short-term (up to 90 days) and long-term (up to 12 months) closure orders for premises selling illegal tobacco, illegal vaping goods, or selling tobacco without a licence are particularly welcomed, with lease termination powers for landlords where a closure order is in place. These new provisions, once passed, need to be supported with increased compliance monitoring and timely prosecutions, where warranted. Increasing the period a person convicted of selling illegal products is prohibited from engaging in tobacco retailing would also act as a further deterrent.

There is clearly an urgent need for a coordinated multi-agency approach to enforcement, with legislative powers that enable timely searches and seizures of illegal products by all NSW agencies with a role in compliance monitoring of premises. More widespread and effective enforcement will also address community safety and economic implications of illegal trade and deter criminals from exploiting nicotine addiction for profit.

We understand the NSW Government's intends to establish an interagency Taskforce to help combat illegal tobacco[23] and we suggest the Office of Local Government is also included. We strongly believe enforcement should continue to be led by NSW Health, as tobacco use is foremostly a public health issue. All member agencies and individuals of the Interagency Taskforce must comply with WHO FCTC Article 5.3 to ensure that there are no interactions with the tobacco industry or their vested interests and allies that can influence, or be perceived to influence, policy decisions. Any interactions must be limited to implementation issues and these interactions must be detailed and made available on the public record in real time.

The new tobacco licensing scheme provides both a mechanism and additional resources to strengthen compliance and enforcement, and we compel the NSW Government to increase the compliance workforce as a priority, in line with public announcements. We acknowledge that additional federal funding for enforcement is also needed, along with coordinated action and joint compliance initiatives between NSW and federal agencies.

We hope the recent appointment of the new federal Illicit Tobacco and E-cigarette (ITEC) Commissioner will accelerate a unified, coordinated national response to tackling illegal tobacco (and e-cigarettes) across multiple points in the supply chain. Key tobacco product changes that became mandatory from 1 July 2025 also make legal Australian tobacco products very different to most illegal tobacco in circulation. For example, standardised packaging, health promotion inserts, health warnings on individual cigarettes and updated graphic health warnings do make it easier to distinguish between legal and (most) illegal tobacco products.

We recommend the regulations around licence restrictions be reviewed 12 months after the NSW licensing scheme has been in effect, as part of ongoing evaluation. Compliance can also be strengthened by providing greater enforcement powers across agencies in the newly established Taskforce and by incorporating successful elements from other jurisdictions, further outlined below. Given the public health impacts and importance of national cooperation and coordination across the tobacco supply chain, illegal tobacco should be a standing agenda item on the National Health Ministers Meeting.

Insights from other Australian jurisdictions

Both Queensland and South Australia have closure order provisions in their tobacco legislation, and in the case of South Australia, the power to terminate a lease after a closure order is issued (which is also proposed in Queensland but not enacted at the time of writing). These provisions can prevent a store simply re-stocking illegal products and continuing to trade after product seizures, without requiring a lengthy and costly criminal prosecution.

Importantly, Queensland and South Australia have taken steps to incorporate within their licensing schemes, the ability to regulate licensees engaged in the illegal possession and supply of other non-therapeutic nicotine products, including vapes and nicotine pouches.[24] Retailers found to be selling these products are thus subject to the same licensing enforcement powers as applies to tobacco products. These regulatory tools are complementary to existing powers under medicines, poisons and controlled substances laws and give the state greater flexibility in responding to retailers engaged in illicit trade of various illegal products.

In June 2025, South Australia introduced greater police powers, longer closure orders, new offences and harsher penalties for South Australian premises suspected of selling illegal

tobacco and vapes.[25] South Australia now has the largest penalties of any Australian jurisdiction, with fines of up to $1.5million for individuals caught selling illegal tobacco/vapes and up to $6.6 million for supply and possession of commercial quantities.

South Australia has also established a taskforce within its Consumer and Business Services department and has ramped up inspections. Both Police and Consumer and Business Services have powers to enforce penalties and restrict licensing. Joint operations have led to significant illegal product seizures and more than 30 short term closure orders issued by the relevant Minister. Two long term closure orders have also been issued.[26]

In the first application of Queensland's new closure powers (enacted September 2024), Queensland Health has sought a court order for a six-month shut down of six tobacco stores alleged to be involved in selling illegal tobacco.[27] Recent amendments to the *Tobacco and Other Smoking Products Act 1998* (Qld) also permit Queensland Health to promptly forfeit and destroy vaping goods upon seizure and empower courts to order persons convicted of offences under the Act to pay the Queensland government for reasonable costs incurred as a result of the offence.[28]

Under new laws proposed by the Queensland government, interim immediate closure orders for those caught selling illegal products would be extended to three months (from three days), landlords given powers to terminate leases and a new offence introduced for landlords who knowingly lease their premises for illegal trade. The bill also proposes the seizure and destruction of legal tobacco products sold alongside illegal tobacco and vapes.[29]

We note the NSW Government intends to introduce legislative amendments that would grant inspectors the power to issue temporary closure orders for businesses caught operating without a licence and/or selling illegal tobacco and vapes; and enable landlords to quickly terminate leases under such circumstances. We also note the Government's intention to commence a targeted consultation on a new offence for landlords who knowingly lease their premises to illicit tobacco and vape suppliers.[30]

Cancer Council NSW supports reforms that would equip Government regulators to act quickly and effectively to enforce tobacco laws. A comparison of relevant tobacco retailing laws across states and territories[31] indicates that legislative gaps remain. We strongly believe NSW should strive to implement a licensing and enforcement regime that sets the standard for other Australian states and territories.

6. Investment in Cessation Support

Recommendations:

- The NSW Government continues to invest in evidence-based, culturally appropriate smoking cessation services.
- The NSW Government continues to invest in campaigns that educate the community about the harms of tobacco smoking and the benefits of quitting.
- The NSW Government consider the potential of the NGO sector to bolster provision of smoking cessation support to priority populations.

Rationale

Most people who use tobacco wish to stop smoking. Smoking cessation and subsequent reductions in tobacco related morbidity and mortality results in immediate and long-term health benefits and cost savings. In addition to reducing the health and productivity related costs of tobacco use, increased investment in cessation would also reduce demand for illegally sold tobacco products.

Embedding evidence-based and effective cessation support at a systems level across NSW strengthens the implementation of tobacco excise as part of a comprehensive approach to tobacco control. Smoking cessation supports including Quitline, pharmacotherapies and interventions embedded within health and community systems are highly cost-effective. Systems-level approaches to the provision of cessation support include ensuring patients are provided with brief advice to quit, referral to Quitline and other cessation services in every encounter with a health care provider. We recommend NSW Government continue to invest in embedding smoking cessation support throughout the NSW Health system.

Broadening systems-level cessation support capacity in the non-government sector, including community service organisations and Aboriginal Community Controlled Health Services, ensures an equitable approach to increasing smoking cessation. Programs delivered through this sector can maximise the effectiveness of tobacco excise increases on priority populations by enhancing accessibility of effective smoking cessation support for people from low socioeconomic backgrounds.

There are examples of effective interventions that increase the delivery and uptake of evidence-based, safe and approved smoking cessation support within not-for-profit, non-government services. Partnering with the NGO sector also has the potential to reduce the overall burden on the health system; however, the sector requires additional support to embed provision of smoking cessation support within routine practice. For example, Cancer Council's Tackling Tobacco program is a feasible, acceptable and effective intervention for systematically embedding smoking cessation support within routine practice of not-for-profit, non-government services. To expand the integration of smoking cessation support, we recommend the NSW Government explore the feasibility of mandating smoking cessation support within government funded NGO programs as a condition of funding.

7. Addressing misleading information about illegal tobacco

There is considerable misinformation about illegal tobacco in the media and from the tobacco industry and other sources. It is highly likely that Committee members will hear some of these arguments through submissions and Inquiry hearings.

The tobacco industry routinely constructs the 'illicit trade' narrative to oppose public health regulation, obscure its own role, and redirect attention from commercial harm.[32] In doing so, the industry attempts to shift blame onto people who smoke, including marginalised populations. Consistent with international public health guidance, the tobacco and nicotine industry must be recognised not as a stakeholder, but as the architect of both licit and illicit harms. Engagement with industry-aligned actors constitutes a form of interference and risks undermining public health outcomes.[33]

Table 2. outlines a range of myths and clarifies the facts of each matter, supported by evidence.

Table 2: Dispelling misinformation about illegal tobacco.

Myth	The Facts
Tobacco excise unfairly targets people on low incomes and increases socioeconomic disparities	Tobacco use *perpetuates* cycles of socioeconomic disadvantage. People from the lowest socioeconomic backgrounds see the greatest economic benefits from quitting smoking. In Australia, tobacco excise *reduces* socioeconomic disparities in smoking prevalence given households with lower incomes are more sensitive to price increases.[34] The tobacco industry *deliberately targets* disadvantaged groups through pricing and other marketing strategies to undermine the effect of tobacco excise increases.[35] Measuring the equity impacts of tobacco excise through short term indicators fails to capture broader, longer-term benefits people from lower socioeconomic backgrounds experience after quitting smoking. Any assessment of the equity impacts of tobacco excise must consider the medium to long term indirect effects of such price increases, namely the reduced social costs including workplace costs, healthcare, premature morbidity and mortality.[36] While increases in tobacco excise reduce smoking rates among socioeconomically disadvantaged populations, a proportion of this group who continue to smoke will also increase their household expenditure on tobacco as prices rise. Increases in tobacco excise may increase household expenditure among people in priority populations who continue to smoke. However, large increases are usually avoided by cutting down the amounts purchased. Plus, if tax increases prompt people to quit altogether even a few years earlier than they otherwise would, then lifetime expenditure on tobacco will be greatly reduced. This process can be accelerated through targeted and tailored cessation interventions. For example, Cancer Council NSW's Tackling Tobacco program is a feasible, acceptable and effective intervention that increases access to evidence based smoking cessation support to socioeconomically disadvantaged communities through partnership with the community service sector. Tobacco excise forms just one part of a comprehensive tobacco control response, and when multiple supply and demand policies (i.e. tailored smoking cessation programs; additional strategies to standardise/limit pack sizes etc).[37]

Myth	The Facts
Convenience stores, tobacconists and petrol station retailers are losing money to the illegal market, with some forced to cut wages, lay off staff or shut down. Part of this impact includes losing foot traffic sales of other food products.	Retail tobacco sales have been in decline for years due to decreasing smoking rates even before recent surge in illegal market activity.[38] Regarding impact on foot traffic sales, recent figures from grocery wholesaler Metcash (who part own and supply tobacco products to IGA supermarkets), show that despite a 20% drop in tobacco sales in the year to 30 April 2025, that the company still achieved an increase of 11% revenue in its food business.[39]
Convenience store retailers and tobacconist chains are responsible retailers "doing the right thing" and are victims of organised crime.	Despite tobacco retailers often claiming organised crime is solely responsible for the illegal trade, government seizures and media reports also clearly show that many tobacconist franchisees and convenience retailers have been openly breaking the law themselves to sell illegal tobacco and vape products.[40]
Illegal tobacco is more dangerous than legal tobacco.	There is no such thing as 'better quality' or 'safer' tobacco. As Dr Michelle Scollo told a Federal Senate committee in November 2023, the difference in using "illicit tobacco is like jumping off the 21st floor of a building rather than the 20th floor of a building," given that "two out of three people that use tobacco long term will die because of their use of these products. The important thing is to reduce tobacco use overall."[41]
Illegal tobacco is a law enforcement issue so responsibility for enforcement needs to be moved from the Health Department.	Tobacco use is foremostly a public health issue, and NSW Health already works closely with law enforcement agencies. We note the promising announcement by the Minns Government to create a new multi-agency unit to combat illicit trade with representatives from Police, Health, Fair Trading, Liquor and Gaming and the Department of Communities and Justice. We suggest the Office of Local Government is another key agency for inclusion.
Relaxing laws on vaping retail sales like New Zealand will help reduce the sales of illegal tobacco in Australia.	There is no evidence to support this argument, and these unsubstantiated claims are being made by those who would benefit from relaxed regulation – the tobacco industry, vaping industry, their allies or those whose policy preferences are aligned with them.

Conclusion

Cancer Council NSW is committed to decreasing the burden of illegal tobacco and simultaneously protecting public health. Despite world leading gains in tobacco control, Australia has not done enough to control where and how tobacco is sold. We support NSW Government efforts to tackle *both legal and illega*l tobacco use and protect the community from the harms of smoking. Government regulators must be equipped to act quickly and effectively so they can do their jobs and keep communities safe.

Ultimately, we believe the most effective way to combat the illegal tobacco market is to reduce tobacco use altogether. By preventing people from starting smoking and supporting those who want to quit, we can stop the illegal market from profiting from addiction and protect our communities from the harm tobacco causes.

We commend the Committee's work on this important issue and are available to answer questions or provide further information as required.

For further information please contact Naomi Graham, Government Relations and Advocacy Lead on

Yours Sincerely

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