

**Submission
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INQUIRY INTO ILLEGAL TOBACCO TRADE

Organisation: Retail and Trade Brands Advocacy

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Portfolio Committee No. 5
Justice and Communities
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Illicit Tobacco Trade.

Retail and Trade Brands Advocacy (RTBA) is a coalition of businesses, retailers and trademark holders working to minimise the impact of criminal conduct on the Asia-Pacific trading environment. We unite, mobilise and advocate for effective change with regard to regulatory, financial and taxation issues affecting the supply chain.

We have a specific focus on illicit items, counterfeit products and ensuring brand trademarks are upheld. This work directly supports a healthy retail industry, supporting retailers, small businesses and ensuring they get a fair go.

(a) current links between serious and organised crime syndicates and tobaccoists, and future trends in crime activities, practices, methods and their impact on society

The illicit tobacco trade is an issue that has had dire effects on grocery, liquor and retail business throughout Australia over the past decade and it continues to get more severe. Illicit tobacco trade throughout New South Wales (NSW) and Australia is causing major economic burdens on business and trade as well as harming the communities they operate in. We are seeing a sustained presence of organised crime in the retail sector either through front operations or intimidation. Retailers are not only having their financial wellbeing harmed as they face property and physical crime threats to themselves, their workers, families and the community are also at serious risk.

The recent FTI report into illicit tobacco in Australia reported that the current market for illicit products accounts for approximately 40 percent of the total tobacco market in Australia, likely higher, with some estimates putting the total approaching 50 percent. This is an alarming figure as it means that almost half of all cigarettes consumed in Australia are illicit. In the case of vapes, the Federal governments broken policy means this figure is around 95 percent of the market being illegal.

There is no doubt the NSW Premier is correct in calling out a lack of policing support by the Commonwealth and excise increases well beyond any sensible economic pivot point as described in the Laffer curve, which has driven this illegal trade. It is also notable that Premier Minns has been joined in his calls to look at excise by the Victorian Minister for Justice and Corrections along with the Queensland Health Minister.

Illegal tobacco consumption poses a significant threat to the livelihood of convenience and grocery stores in Australia and to the health of Australians. As indicated in government wastewater testing there has been an increase in nicotine, indicating consumption is increasing for the first time in years.

Money laundering because of this trade has also become a significant distortion to the real retail economy, where violent and property crime has also broken out in everything from barbers, restaurants and ice cream shops.

The Australian Criminal Intelligence Commission has estimated criminal gangs are making around \$13 million per day which amounts to \$5 billion a year. The Australian Border Force has said it stopped \$3.5 billion worth last year, and given they stop around 25 percent the Federal government is expected to lose vastly more than that amount to the crime gangs.ⁱ It would be fair to estimate NSW would make up over 30 percent of these figures.

(b) the utilisation of money laundering schemes by tobacconists, including the use of automated teller machines (ATMs)

This activity has been ongoing in many forms of contraband retail and hospitality trade where cash is used for everything from wages underpayment to counterfeit retail products. With consumers and legitimate retail taking up cashless transactions a means of transacting in an untraceable form is needed by those partaking in the black economy.ⁱⁱ

ATMs are not only popular because of they deal with consumers no longer carrying cash they also make the suppliers and illicit retailers' additional income through every transaction with private ATMs charging \$2 to \$3 per transaction.

According to an ABC investigative report, an ATM supply business allegedly had a deal to supply ATMs to businesses connected to a man who was the subject of proceeds of crime court action by the NSW Crime Commission, according to court records. He was allegedly stopped with over \$500,000 in cash in NSW in 2023.ⁱⁱⁱ

Only last month the Queensland Health Minister Tim Nicholls called on the Federal Government to use AUSTRAC to address the known use of these machines which support illicit trade. The shadow federal attorney-general, Julian Leeser, acknowledged AUSTRAC had flagged private ATMs as a risk for cash-intensive businesses in a 2024 money-laundering report.

An ongoing ABC investigation appears to suggest at least one ATM provider connected with a major financial institution is undertaking moves to remove the machines from some tobacconists to protect that institutions reputation, not all of these machines have connections to those who care about reputation.^{iv}

NSW and its policing authorities will need to insist the Commonwealth undertakes immediate action on ATMs. An alternative approach could be the NSW government looks at its own measures in this area.

As already mentioned, laundering of illegal income is now distorting the broader retail economy. Some of the most obvious instances have been seen in attacks and firebombing of cash intensive businesses in Victoria who operate as fronts for organised crime. Legitimate business can become targets for refusing to work with gangs in these activities.

(c) introduction of legal protections for landlords who lease to tobacconists

RTBA welcomes the NSW initial moves to address closures of illicit retailers.

Landlords being able to remove tenants undertaking illegal activities is a core piece which must be addressed. We are aware that for many legitimate landlords, insurance is becoming increasingly difficult to obtain, or may not apply, depending on the type on circumstances. These landlords need the ability to remove tenants because of the risks their properties face due to the expanding tobacco wars.

While this is a good first move, as has been seen in other states, the NSW Government will need to follow the South Australian and Queensland government moves in this area to keep up with organised criminals.

Premier Minns and the State Opposition have realised what is happening in their communities and are acting, we would call on the NSW Government to move further in line with Opposition suggestions which would keep pace with other states.

This is a national criminal activity. If NSW do not move in line with, or ahead of, other states criminals will seek the weakest link to run their trade. We have seen this in Victoria and know those very same groups are now working with or moving in on NSW based criminal groups.

Proposals are needed that target the premises enabling illicit tobacco/nicotine trade, the commercial premises and the role of lessors (landlords) who control those premises. Illegal tobacco sellers often operate out of rented shops in strip malls or shopping centres.

In many cases the landlord is unaware of the illicit activity, in others, the landlord may suspect or even know what is happening but has little incentive to act.

There have been instances of rogue landlords wilfully renting to illicit operators (attracted by above-market rent paid in cash) or ignoring obvious signs of illegal trade. There are also cases where criminal groups may even own the premises. All these issues must be addressed.

Power to close a business for up to six months, or longer, will help prevent organised crime groups simply restocking products and continuing to trade, under new ABNs and rebirthing. Landlords will also need the right to cancel a lease if they find out that a tenant is undertaking criminal activities under permitted use provisions.

The government also needs provisions for undertaking action against landlords who are proven to be involved in or are aware of illegal activity however do not action cancelation of the leasing agreement.

(d) the adequacy of existing legislation and the allocation of departmental responsibility for enforcement, including in other jurisdictions

(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

We have combined terms of reference d and e as many areas cross over.

In 2020 the Federal Government Parliamentary Joint Committee on Law Enforcement reported after an extensive inquiry into the then growing trade in illicit tobacco.^v

One of the key recommendations was made to –

“Recommendation 3

3.83 The committee recommends that all aspects of illicit tobacco enforcement be removed from the portfolio responsibility of the Department of Health and transferred to the Department of Home Affairs.”

In essence the report and policing experts all come to the same conclusion – Police and Justice are the only organisations equipped with the tools, authority and connections to effectively deal with illicit nicotine organised crime.

RTBA also fully understands the resourcing pressure existing policing activities are under, we appreciate Premier Minns statements concerning support for policing and how the Commonwealth must assist. There will always be a role for Health agencies, however, to expect a Health inspector to raid, undertake the necessary investigative work, even more importantly put themselves at risk is not only impractical it is dangerous for the individual involved.

Currently South Australia is the only jurisdiction to have a dedicated nicotine enforcement authority which lives under Justice. It would be reasonable to see NSW Licencing take on the role as it does for gambling and liquor, with access to all the tools of police as needed.

One of the biggest needs will be to improve regulations and legislation on the move as other states have. As the tobacco wars have extended from South Australia to Queensland and NSW, particularly South Australia and Queensland have shown they have been willing to change licencing and legal requirements on the move.

(f) the impact of the tobacco trade on small businesses and communities in regional New South Wales

With NSW Police already struggling for resourcing particularly in regional areas along with lower incomes and higher smoking rates, we have seen disproportionate reports of widespread trade in illegal tobacco and vapes.

Retailers who obey the law are being punished by those who do not. In some circumstances it has led to formally law-abiding retailers participating in illegal trade to keep their doors open. In the worst circumstances, many traders have been threatened physically or their property if they do not take up the trade.

We now operate under a semi prohibited environment, where around 95% of vapes are being supplied via the illegal trade. In the case of tobacco, price has introduced prohibition to many consumers and driven them to the illegal market.

Consumers lose respect for the law and authority when they see openly operating illicit cigarette vendors left unchecked.

(g) the impact of prohibition on organisations that profit from illegal or over-regulated products

We have seen some call for more restrictions on tobacco sales although we can currently see what occurs when we have partial prohibition. There is a reason why gambling and alcohol are regulated at a sensible level, it is to keep crime out although there is some indication that we are seeing a growing trade on contraband alcohol due to similar policy overreach.

The way to solve illegal trade is not through policing alone. The former Commissioner of the ABF at Senate Estimates made the call that at best around 25 percent of all illicit product was seized at border. In the case of tobacco, it is also grown illegally domestically. Based on this alone, the NSW government needs to understand the scale of what they are facing in stopping the illegal trade in vapes and tobacco unless a real harm reduction stance is taken.

There is now ample evidence we are seeing growing rates of nicotine consumption in this country after decades long decline. This is what our policy settings have caused.

(h) communities and groups that are disproportionately impacted by changes in the supply and regulation of products

All evidence shows the highest consumers of these products are in regional, disadvantaged and indigenous communities. We would encourage NSW authorities to look at the Commonwealth water testing

programme undertaken by the Australian Criminal Intelligence Commission to better understand rates of nicotine consumption and where this may be increasing likely due to illicit trade.

Conclusion

RTBA's primary concern is ensuring NSW is not further impacted by contraband products and illicit markets. We note the government has recently taken a pro-active stance on this issue, we would encourage the NSW Government to pursue the Federal government in financial support for policing these issues, indeed the Federal Government's current policy setting are the cause of both the illicit tobacco and vape markets. We would further encourage the NSW Government to insist the Federal Government change their failed policy settings.

This trade should not be tolerated in an advanced economy like Australia. For example, we would not allow such high volumes of moonshine in the alcohol market, faked paintings in the art world, or openly sold fake fashion products. This would be hugely embarrassing to Australia because of the impact on legitimate businesses and our legal reputation. Yet Federal government policy has inadvertently led to this growth of illegal products in the tobacco and vape categories.

Advice from senior experienced former Federal Police who operated in this area is it will take a big resource push early on and if/when that shows success, continued pressure to stop the explosion in this trade. The NSW government, opposition and crossbench have realised the problem is worse than first thought, do not be surprised if it is harder to tackle than thought. Legislation and regulations will need to be further enhanced to deal with unforeseen developments.

Legislation should require an enforcement agency to publish a quarterly, six monthly, or annual reports on how many inspections, closures, seizures, charges laid etc is a necessary indication of effectiveness. The risk being it is sometimes easy to highlight that 100 shops have been raided however what happened to the product, operators and has there been a tangible impact on supply?

The NSW government and Parliament should be congratulated for continuing to take the initiative on enforcement of a problem not caused by it.

Kind regards,

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https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/estimate/26893/&sid=0003

ⁱⁱ <https://treasury.gov.au/review/black-economy-taskforce/final-report>

ⁱⁱⁱ <https://www.abc.net.au/news/2025-06-18/macquarie-group-next-atm-illegal-tobacco-trade/105399234>

^{iv} <https://www.abc.net.au/news/2025-07-24/next-payments-removing-atms-suspected-illegal-tobacco-stores/105562702>

^v https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/IllicitTobacco46th/Report