

## INQUIRY INTO ILLEGAL TOBACCO TRADE

**Organisation:** The NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame

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31 July 2025

**Parliament of NSW Committee No. 5 – Justice and Communities  
Inquiry into Illegal Tobacco Trade**

Dear Members of the Legislative Council's Portfolio Committee No. 5,

**Re – Submission to the Inquiry into Illegal Tobacco Trade in New South Wales**

We would like to thank the Committee for the opportunity to provide input into the Legislative Council's Portfolio Committee No. 5 - Justice and Communities inquiry into the illegal tobacco trade. The recent growth in illicit tobacco trade in Australia is a concerning issue which necessitates a strong legislative and public health response from respective governments to protect the community from the harms caused by illicit tobacco trade.

We commend the New South Wales Government for commencing this inquiry into the illegal tobacco trade in New South Wales, and for taking steps to strengthen the existing tobacco control framework by introducing a tobacco retailer and wholesaler licensing scheme. This illegal activity undermines Australia's strong tobacco control policies that have reduced daily smoking to less than 10% of adults.(1) Addressing illicit tobacco trade is also consistent with Australia's obligations under Article 15 of the WHO Framework Convention on Tobacco Control (FCTC).(2)

**Key recommendations**

1. Invest in a strong monitoring and enforcement program with sufficient resources and staff to ensure adequate and proactive detection of and action against illicit tobacco trade, including covert controlled purchase operations to detect illicit tobacco trade in retail outlets.
2. Legislate substantial on-the-spot fines and closure orders for retailers and wholesalers involved in illicit tobacco trade, and power to recoup costs associated with storing and destroying seized tobacco and vaping products.
3. All Australian governments should work together to implement a system for verifying payment of excise or customs duty at all points in the supply chain.
4. Introduce tobacco retailer licensing with a cap on the number of tobacco retailer licences, and reduction over time. Retailers should also be supported to exit tobacco retailing.
5. Increase quit support for people who smoke, including access to free smoking cessation medicines.
6. Establish a monitoring and evaluation program to ascertain impact of measures to reduce illicit tobacco trade and implement improvements as indicated.

## **About the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame**

Established in November 2020, the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame (Tobacco Endgame CRE) conducts research on a wide range of interventions to reduce tobacco-related disease. Our research generates evidence on the feasibility, effectiveness and acceptability of tobacco endgame policies and interventions. We also conduct research on illicit tobacco trade and smoking cessation support.

The Tobacco Endgame CRE is led by a multidisciplinary team of international experts in health policy, behavioural science, epidemiology, biostatistics, law, environmental health, psychology, Aboriginal and Torres Strait Islander Health, and priority populations, from nine universities across Australia, New Zealand and Canada.

## **Current context**

Australia is considered a world leader in tobacco control, having achieved considerable reductions in tobacco smoking over the past five decades.<sup>(3)</sup> Australia is a Party to the WHO Framework Convention on Tobacco Control, an international treaty that requires Australia to implement effective measures to reduce tobacco use. All Australian governments share responsibility for tobacco control and achieving the goals of the National Tobacco Strategy 2023-2030 (NTS).<sup>(4)</sup> However, Australia's progress in reducing tobacco use is at risk of being undermined by the growing market for illicitly traded tobacco products.<sup>(5)</sup>

Data from the International Tobacco Control Policy Evaluation Project Australian Surveys,<sup>(6)</sup> National Drug Strategy Household Survey, Australian Taxation Office<sup>(7)</sup> and Australian Border Force suggest notable recent increases in illicitly traded tobacco in Australia. For example, on 29 July 2025, the Australian Border Force reported a 320% increase in the amount of illicitly traded tobacco seized in the 2024-25 financial year compared to the previous year.<sup>(8)</sup> This is a priority issue that requires a coordinated approach across all levels of government.

## **Recent data on use of illicitly traded tobacco products in Australia**

We recently analysed data from the 2016-2024 International Tobacco Control Policy Evaluation Project Surveys, which indicated an increasing trend in purchasing of illicitly traded tobacco in Australia, Canada and the United Kingdom, with a notable increase in Australia particularly since 2019, and a jump in use between 2022 and 2024. In November 2024, our team also administered a survey to a representative sample of 2,550 Australians who smoke tobacco at least weekly, to understand their patterns of use of illicitly traded tobacco. Similarly, in July 2025, our team

administered short surveys to 188 people observed smoking in public areas in 13 Brisbane suburbs of varying socio-economic status. This survey focused on patterns of tobacco use, including illicitly traded tobacco, and participants were asked to show their tobacco product, which was photographed. This survey has resulted in unique data on price paid, brands, source, use frequency and reasons for use. The findings from these studies have not yet undergone peer review, but we can make these preliminary findings available confidentially to the Committee upon request.

### **Australian tobacco packaging laws are important to protect**

Illicit tobacco trade undermines Australia's strong plain packaging and graphic health warning label laws that reduce the attractiveness of tobacco products to young people at risk of experimenting with and becoming addicted to tobacco smoking. Furthermore, these tobacco product requirements warn consumers of the serious and fatal health risks associated with tobacco smoking. Many illicitly traded tobacco products are not packed in accordance with these requirements, and are instead often packed in attractively coloured branded packaging.(9) Removing these non-compliantly packed products from the supply chain in Australia should be treated as a priority public health issue.

### **High tobacco taxes are an important policy with positive health impacts for the community**

Australia is also a leader in tobacco taxation. Article 6 of the WHO FCTC requires Australia to implement tax policies on tobacco products to achieve the health objective of reducing tobacco use. Reducing the affordability of tobacco products is a priority action in the NTS.(4) The WHO recommend that taxes make up at least 75% of the retail price of tobacco products.(10) Hence, Australia's taxation policy is consistent with these international recommendations and obligations as a Party to the WHO FCTC. Increasing the price of tobacco products is an important measure for both encouraging people who currently smoke to stop smoking but also is particularly effective for reducing uptake of smoking among young people.(11)

A time-series analysis of data from a series of cross-sectional surveys in five major Australian cities also showed an immediate reduction in the prevalence of smoking any cigarettes after the 25% tax increase in Australia, with a corresponding increase in the prevalence of smoking roll-your-own (RYO) tobacco.(12) Despite this shift, the prevalence of both factory-made and RYO cigarette smoking declined during the subsequent annual 12.5% tax increases from 2013 to 2017, resulting in an overall reduction in smoking. Since 2013, cost has been the most nominated reason for changing smoking behaviour (e.g., quitting and cutting down) in Australia.(13) This confirms the important role of Australian tobacco taxation policy in reducing demand for tobacco and encouraging people to quit smoking. Illicitly traded tobacco products undermine this critical policy by making tobacco products

more affordable, including to young people and people on low incomes, thus reducing the motivational effects of high prices for smoking cessation and reducing government revenue.(9)

### **Reducing tobacco taxation will not solve the illicit trade problem**

Some commentators, particularly those with commercial tobacco manufacturing or retailing interests, have claimed that reducing the tobacco excise rate will be an effective way of controlling the illicit tobacco market. This claim lacks credibility and reducing the tobacco excise rate is unlikely to have any substantial impact on the illicit tobacco market. Our research suggests that the illicit tobacco trade has become established within the retail sector in Australia, particularly tobacconists and small mixed business retailers and is likely to require substantial law enforcement effort to bring it under control. Illicitly traded tobacco is sold at a wide range of prices in these retail shops, indicating substantial ability of these retailers to adjust their pricing to continue to undercut the price of taxed tobacco products. For example, we have observed prices as low as \$5 per pack of cigarettes.(9) Reducing the excise tax on tobacco to compete with this illegal trade would require a substantial reduction, which would increase the demand for tobacco products and likely lead to an increase in smoking, particularly among young people (hence leading to an unintended impact of growing the overall consumer market for tobacco products). To compensate for a reduced profit margin, those selling untaxed tobacco products may also respond by trying to more aggressively sell illicit products to more customers. It is well established that many countries with much lower tobacco taxes than Australia have much higher levels of illicit trade because other factors, such as governance and general control over the tobacco supply chain are more important than tax rate. Even in countries with very low rates of tobacco taxes, illicit tobacco trade is still problematic and these countries have the added challenge of less tax revenue available to fund monitoring and enforcement activity. Increases in monitoring enforcement are what is required to bring illicit tobacco under the same level of control already currently achieved with the illicit trade in other addictive substances. Maintaining low tobacco taxation simply reduces the government funds available to deal with the problem of illicit tobacco trade and to fund other tobacco control initiatives, such as mass media campaigns and smoking cessation support to reduce demand for tobacco products.

### **Consider additional complementary policies to control the retail price of tobacco products and identify products sold without taxes paid**

In addition to maintaining a high rate of tobacco taxation, there may also be a role for additional price controls on tobacco products, such as implementing a standardised price or a minimum and maximum legal retail price.(14,15) There are several potential benefits to combining tobacco taxation with price controls on tobacco products. In the context of illegal trade, a minimum legal price would be clearer to consumers, retail staff and enforcement officers when tobacco products are being sold

illegally.<sup>1</sup> Currently, offences in retail settings related to illegal trade in tobacco products are generally determined by non-compliance with Australian plain packaging and health warning requirements. However, our research is already finding examples of products that are sold at prices lower than the tax payable on the product but packed to appear compliant with packaging requirements. Hence, to future-proof against possible attempts to thwart State and Territory laws by repacking untaxed products into compliant packaging, we recommend implementing additional measures to detect and take action on illicitly traded tobacco products.

We also recognise that setting a maximum sales price (or maximum wholesale price) is also desirable. Hence, we recommend that Australian governments consider a policy of setting both a minimum and a maximum sales price or a single standardised price that tobacco products are sold at. Similar to standardised packaging, standardised pack sizes and standardised cigarette appearance, standardised pricing can remove this powerful marketing tactic that can mislead consumers into thinking that some tobacco products may be lower risk due to paying a premium price for 'better quality'. Price controls may be able to be implemented through state legislation, or as a tobacco retailer licence condition.

We also recommend a national system be developed to enable real-time verification of payment of excise or customs duty on all tobacco products at all points in the supply chain using covert markings on tobacco products and a live database. This will enable checking whether all required excise has been paid. Secondly, setting a minimum sales price that ensures products are not sold for less than the value of the tax due on the product will also increase transparency for consumers, retail staff and assist with detection of illicitly traded products.

### **Capping the number of tobacco retailer licences**

Tobacco is one of the most widely retailed products in Australia. This widespread retail availability is inconsistent with public health objectives of supporting people to live a healthy life. The ease of purchasing tobacco products and the ubiquity of these products within retail environments is a constant trigger for purchasing them, making quitting smoking difficult and increasing the risk of relapse among people who have recently quit smoking. Even with tobacco products out of sight in retail shops, their availability still results in unplanned purchasing.(16,17) The NTS also supports reducing the retail availability of tobacco because research shows that a high density of and close proximity to tobacco retailers is associated with higher smoking prevalence.

An international scan of tobacco retailing policies found that Australia lags behind many countries on regulation of tobacco retailing.(18) Other countries have implemented caps on the number of tobacco

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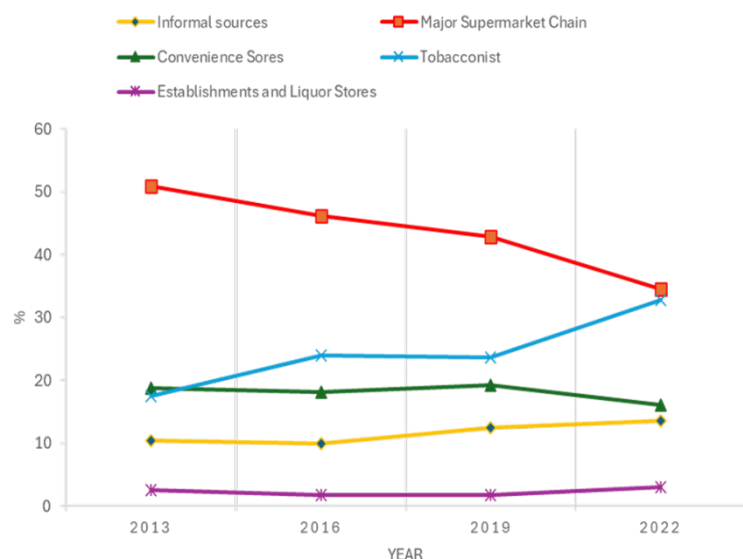
<sup>1</sup> This is considered in more detail below see The adequacy of existing legislation and the allocation of departmental responsibility for enforcement, including in other jurisdictions

retail licences and some have reduced the number of tobacco retailers by more than 80% (e.g., Hungary). In the United States, examples of capped tobacco retailer numbers include Philadelphia, which set a cap of 1 retailer per 1,000 residents and no new licences to be issued for retailers within 500 feet of a school. Bloomington, Indiana has passed a policy to reduce the number of tobacco retailers through attrition; no new retailer licences will be issued and as retail outlets close, the licence is permanently deleted. The Netherlands and Belgium have banned some types of retailers from selling tobacco. Some local governments in the United States have even taken the step of ending all tobacco retailing in their area. Other examples include no tobacco retailers within a set distance from schools and/or healthcare facilities.

Research in Queensland has found that the number of specialist tobacco retailers (or tobacco and vape retailers) increased by 14.3% from July 2022 to June 2023 from 624 to 713, equivalent to a mean of 7.4 new tobacco or vape retailers per month.(19) This is highly concerning for several reasons. Firstly, it is counter to the NTS policy goal of reducing availability of tobacco products and makes tobacco purchasing more convenient and tobacco products more visible (since tobacconists are permitted to display signage indicating they are tobacco retailers) and difficult to avoid in retail settings. Given the longstanding downwards trend in tobacco smoking, this growth in the tobacconist sector does not make good business sense. Hence, it is likely an indication of the growth in stores that are selling untaxed tobacco products. Interviews our team conducted with tobacco retailers in Queensland have also confirmed the increase in tobacconist stores, particularly independent tobacco stores, has had substantial disruption to the tobacco retailing sector, leading to a rapid loss of profits and increased incentivisation to

participate in the illicit trade to retain customers.(20) Interviewees described the increase in illicit trade and number of new independent tobacco shops opening as occurring very rapidly leading to many existing tobacconists, including those who owned franchises, also turning to selling untaxed products to keep their business financially viable due to the competition from new stores selling untaxed products. Our team's analysis of the National Drug Strategy

Household Survey data also indicates a trend of consumers increasingly purchasing tobacco products from tobacconists and a decrease in purchasing from major supermarkets, with an increase particularly noted between 2019 and 2022.(21)



**Figure 1: Trends in Trends in Tobacco Product Purchases by Retail Outlet in Australia (NDSHS Data).**

Together these findings support the need to cap the number of tobacco licences that are issued. Policies to reduce the number of tobacco retailer licences over time should also be given strong consideration. This would be consistent with the NTS goal of reducing the availability of tobacco in Australia but would also assist by constraining the number of tobacco retailers that require careful monitoring and allow fast action to be taken against new unlicensed tobacco retailers that may appear. We recommend, at a minimum, that no new tobacco retail licences are issued, such as the 'zero cap' policy implemented in Bloomington, Indiana, which sunsets all tobacco retail licences that are not renewed and does not issue any new licences. Such a policy will prevent crime groups from simply obtaining a new licence under a different name when one of their licenced retail outlets is closed for illicit tobacco trade offences. There is no public benefit in allowing new entrants into the tobacco retailing sector. The NSW government should also consider programs to encourage and support retailers, including tobacconists, to cease tobacco sales. This may include programs to help them transition their businesses to other products and services.

### **Increase access to free quit smoking support to reduce the customer base for illicitly traded tobacco products**

The only people who purchase illicit tobacco products are people who smoke and young people experimenting with smoking. Most people who smoke regret ever starting and most would like to quit smoking.(22) Data from the International Tobacco Control Policy Evaluation Project found that 71% of adults in Australia who smoke would like to stop smoking within the next two years.(23) Informal discussions with consumers who smoke illicitly purchased tobacco products, including cases presented in the media, suggest that people who purchase illicit tobacco products also would like to stop smoking altogether but some find the cost of quit support products, such as nicotine replacement therapy (NRT), a barrier to them achieving this goal.(24) NRT is a proven aid for smoking cessation(25) and is available at a reduced cost with a prescription through the Pharmaceutical Benefits Scheme (PBS) for eligible Australians, such as concession card holders. However, the cost of NRT, combined with additional expense of a doctor's consultation to obtain a prescription, can be a barrier for many, especially price-sensitive individuals who smoke. Furthermore, only monotherapy in the form of patches is available as a PBS-subsidised medicine, which may be inadequate for people with high nicotine dependence, who would benefit from combination NRT. Currently, Queensland is the only state that offers an intensive quit support program with 12 weeks of free NRT to people who smoke and call the Quitline. Evaluation of a regional health promotion program that promoted the Queensland Quitline's intensive quit support program found good uptake of the program, demonstrating the demand for such support when people are made aware of such support.(26,27) Offering and encouraging people to take up free quit support should be implemented alongside supply side measures to reduce demand for all tobacco products. Elsewhere, many individuals who smoke continue to face out-of-pocket costs that may make smoking, particularly the use of cheap illicitly traded tobacco, appear more financially attractive.

Our research indicates that people who purchase illicit tobacco products have greater nicotine dependence and lower confidence in their ability to quit smoking compared to people who do not purchase these products.(28) We also found that when they try to quit smoking they have less success. These findings suggest that providing more smoking cessation assistance to these consumers may help them to stop smoking (and hence stop purchasing illicitly traded tobacco products). Free NRT has the potential to remove an important barrier to people accessing medicines that can improve their quitting outcomes. In addition to the Queensland Quitline example, other jurisdictions have also noted a positive impact from increasing access to free NRT combined with behavioural counselling. In February 2023, Ireland expanded its tobacco free Ireland programme to provide fully subsidised NRT to all clients of smoking cessation services.(29) This policy led to a significant increase in NRT uptake and was associated with smoking cessation at 12 weeks among services users. Similar investment across Australia could enhance the impact of broader population-level measures, such as tobacco tax increases, by making evidence-based cessation support more accessible and financially appealing, particularly for those with low incomes.

We recommend that both the NSW Government and the Commonwealth substantially increase the amount of support that is available to assist people to quit smoking, including making combination nicotine replacement therapy free.(30)

### **Introduction of legal protections for landlords who lease to tobaccoists**

We strongly support the implementation of lease termination powers for landlords where a closure order is in place. This aligns with the approach taken in the United Kingdom, where measures have been adopted that actively involve landlords in efforts to curb the illicit tobacco trade. Under its new illicit tobacco strategy, the UK government aims to work with landlords to close down outlets found to be selling illicitly traded tobacco and to encourage the early termination of leases where such activity occurs, supporting the enforcement of tougher tobacco sanctions.(31) However, the UK approach does not allow for legal protections for landlords who knowingly allow their premises to be used for the sale of illicit tobacco; instead, these landlords face the risk of criminal prosecution.

A similar approach was recently implemented in South Australia, and landlords or persons exercising management or control over a premises commit an offence if they knowingly permit prohibited conduct on the premises which includes illicit tobacco offences.<sup>2</sup> Queensland has also proposed new laws to give termination of lease powers to landlords to end lease agreements with tenants who engage in illicit tobacco trade on the premises. However, landlords who are complicit in such sales by turning a blind eye to this activity would be liable for large fines and possible jail times.(32) We

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<sup>2</sup> *Tobacco and E-Cigarette Products Act 1997* (SA). Sect. ss 45B, 31-33, 45A(1), 45A(2), sch A1.

recommend that NSW also adopts this approach as part of its suite of measures targeting the retail sale of illicitly traded tobacco products.

### **The adequacy of existing legislation and the allocation of departmental responsibility for enforcement, including in other jurisdictions.**

Article 16 (Prosecutions and Sanctions) of the World Health Organization's *Framework Convention on Tobacco Control Protocol to Eliminate Illicit Trade in Tobacco Products*(33) – a key international treaty aimed at combating the global illicit tobacco trade – encourages nations to adopt measures that subject offenders to “*effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions*”. While Australia is not currently a Party to this treaty, it is a Party to the WHO FCTC, and implementing a robust regulatory framework to prosecute offenders and deter others from engaging in the illicit tobacco trade would strengthen the State's commitment to mitigating the trade in illicit tobacco products.

The growth in illicit tobacco trade throughout Australia is concerning and has become an area of focus for Governments in several jurisdictions across Australia, particularly Victoria, South Australia and Queensland. Tobacco control, including targeting illicit tobacco trade via insertion of illicit tobacco offences, is an area of shared responsibility between Commonwealth and State/Territory governments. However, there is a lack of consistency between Commonwealth, and State and Territory laws concerning the legislative approach to illicit tobacco trade which can undermine efforts to curtail illicit tobacco trade. We recommend that all jurisdictions implement the strongest penalties and provisions that facilitate swift and adequate enforcement.

#### ***Public Health (Tobacco) Act 1987 (NSW) – Proposed Amendments to Sections 5 and 7***

Several Australian jurisdictions have enacted illicit tobacco offences,<sup>3</sup> however, there is no consistent definition of illicit tobacco, although many States and Territories have largely settled on a health-related definition of illicit tobacco.<sup>4</sup> For example, in Victoria and Queensland Illicit tobacco is defined as a tobacco product that does not comply with a tobacco product requirement under the *Public Health (Tobacco and Other Products) Act 2023* (Cth).<sup>5</sup> South Australia, and more recently, Western Australia, similarly define illicit tobacco, although the term ‘illicit tobacco’ is not adopted in these jurisdictions.<sup>6</sup>

<sup>3</sup> See *Tobacco and Other Smoking Products Act 1998* (Qld) s 161; *Tobacco and E-Cigarette Products Act 1997* (SA) ss 30(1)(b), 33, 45A(1), (2).

<sup>4</sup> This is opposed to it being defined as a fraud or excise offence against the *Customs Act 1901* (Cth) or the *Taxation Administration Act 1953* (Cth).

<sup>5</sup> Pt 3.3. Queensland also defines illicit tobacco as a tobacco product that does not comply with a health warning requirement as the health warning requirements; however, the health warning requirements form part of the broader tobacco product requirements.

<sup>6</sup> See *Tobacco Product Control Amendment Regulations 2025* (WA) r 5; *Tobacco Act* (SA) s 4 (definition of ‘prescribed packaging requirements’); *Public Health (Tobacco and Other Products) Act 2023* (Cth) pt 3.3.

The *Public Health (Tobacco) Act 2008* (NSW) ('*Tobacco Act* (NSW)') makes it an offence to sell or possess tobacco products that do not comply with the Commonwealth's health warning requirements.<sup>7</sup> However, reference to the health warning requirements<sup>8</sup> is outdated as the *Competition and Consumer (Tobacco) Information Standard 2011* has been repealed and the health warning requirements are now included under the broader tobacco product requirements.<sup>9</sup>

Reference to the Federal tobacco product requirements would broaden the scope of s 7(2) *Tobacco Act* (NSW) by making it an offence to *sell or possess* (in commercial quantities and/or as part of operation of a business) a tobacco product that does not comply with the detailed labelling, packaging and product requirements stipulated under the Federal Act. However, we strongly recommend that a personal use exception/defence be inserted into the legislation, so that individuals possessing a prescribed quantity of illicit tobacco for personal use are not targeted under the law.<sup>10</sup>

We recommend that the current meaning of 'health warning requirement' under the *Tobacco Act* (NSW) be repealed and replaced with 'tobacco product requirement', consistent with the approach taken in Queensland, South Australia, Victoria and Western Australia. Furthermore, we recommend that NSW consider inserting under s 5 of the Act, a legislative definition of illicit tobacco similar to the approach adopted in Queensland and Victoria.

Incidentally, s 8(1)(b) of the *Tobacco Act* (NSW) should be repealed as the tobacco product requirements already prohibit the use of certain words on retail packaging, and this offence would fall under the operation of s 7(2).

### **Introduction of Offences for Selling/Possessing Illicit Tobacco where Customs or Excise Duty not Paid**

Under Commonwealth law, illicit tobacco is also treated as a customs or excise offence.<sup>11</sup> South Australia ('SA') and Western Australia ('WA') are the only jurisdictions outside the Federal sphere to also make it an offence to sell/supply (SA only) or possess a tobacco product that is either a prohibited good under the *Customs Act 1901* (Cth),<sup>12</sup> or an excisable good as defined under the *Excise Act 1901* (Cth) for which excise has not been paid.<sup>13</sup>

Tobacco products, including unmanufactured tobacco and tobacco refuse, are prohibited goods for the purpose of the *Customs Act 1901* (Cth) as they require permission to be imported into Australia.<sup>14</sup>

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<sup>7</sup> Sections 7(2), 4 (definition of 'sell').

<sup>8</sup> *Public Health (Tobacco) Act 2008* (NSW) s 5.

<sup>9</sup> *Public Health (Tobacco and Other Products) Act 2023* (Cth) pt 3.3; *Public Health (Tobacco and Other Products) Regulations 2024* (Cth) ch 3.

<sup>10</sup> See *Tobacco and Other Products Act 1998* (Qld) s 161(4)—(6); *Tobacco and Other Products Act 2021* (Qld) s 15A.

<sup>11</sup> *Customs Act 1901* (Cth) s 233BABAD; *Taxation Administration Act 1953* (Cth) ss 295–75, 308–10 – 308–50

<sup>12</sup> *Tobacco Control Act 2006* (WA) s 105; *Tobacco and E-Cigarette Products Act 1997* (SA) ss 32(a), 33, 45A.

<sup>13</sup> *Tobacco Control Act 2006* (WA) s 105; *Tobacco and E-Cigarette Products Act 1997* (SA) s 32(b).

<sup>14</sup> *Customs Act 1901* (Cth) ss 4 (definition of 'prohibited goods'), 233BABAE(2); see also *Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019* (Cth) Sch 1; *Customs Regulations 1956* (Cth) s 4D.

Excisable goods are domestically manufactured or produced goods that are subject to an excise duty that has been imposed by the Commonwealth Parliament and includes Excise Tariffs and proposed tariff alterations.<sup>15</sup> In Australia, tobacco cultivation and manufacturing requires a licence.<sup>16</sup> Australia ceased domestically cultivating and manufacturing tobacco in 2006,<sup>17</sup> therefore, all tobacco produced domestically is illicitly produced tobacco.

Illicit tobacco is a lucrative industry, estimated to be worth 2.7 billion dollars in 2022-23.<sup>18</sup> Currently, most illicit tobacco products are easily detectable as they rarely comply with Australia's plain packaging requirements. However, increased government regulation and enforcement in this space is likely to result in organised crime syndicates adopting sophisticated measures to ensure their products are not easily detectable by packaging illicit tobacco products in compliant retail packaging. There is a high risk of illicit tobacco products being sold in compliant retail packaging infiltrating the Australian market. However, illicit tobacco products are sold at a substantially lower price than legitimate tobacco products due to excise avoidance, and this is an indication that a product is illicit.

We strongly recommend that the NSW Government introduce offences for selling, supplying or possessing tobacco products that are considered a prohibited good under the *Customs Act 1901* (Cth), or an excisable good under the *Excise Act 1901* (Cth) for which no excise has been paid, similar to the position adopted in South Australia. Inserting these offences into State legislation is desirable as licensing inspectors and authorised officers under the Act are better positioned to investigate and enforce instances of non-compliance. This would further strengthen the legislative framework targeting illicit tobacco trade in NSW. Implementing a real-time database that allows verification of whether excise has been paid for any tobacco product in the supply chain would assist in identification of products, which have not had excise paid. We suggest that also setting a minimum retail price would also provide a way to determine that a tobacco product is likely being sold without the tobacco excise paid. The public and retailers can also be encouraged to report retailers who are selling tobacco products that are less than the value of tobacco excise and/or in non-compliant packaging.

### **Penalties for Engaging in Illicit Tobacco Trade**

Several jurisdictions in Australia have recently increased maximum penalties for engaging in illicit tobacco trade. However, there is significant variation in the maximum penalties under Commonwealth and State/Territory law, ranging from hefty fines to imprisonment.<sup>19</sup> Queensland and Victoria are

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<sup>15</sup> *Excise Act 1901* (Cth) s 4 definition of 'excisable goods'

<sup>16</sup> *Excise Act 1901* (Cth) Pt 3, Div 1 ss 25, 26.

<sup>17</sup> See Michael King, 'Policing the Illicit Trade of Tobacco in Australia' (2019) 26(1) *Journal of Financial Crime* 146.

<sup>18</sup> Department of Health, Disability and Ageing, 'National Tobacco Strategy 2023—2030', *Commonwealth of Australia* (Pdf, 19 December 2023) 16 < <https://www.health.gov.au/our-work/national-tobacco-strategy> >.

<sup>19</sup> See *Tobacco and Other Products Act 1998* (Qld) s 161(1), 161(2); *Tobacco Act 1987* (Vic) s 11A(2), 11A(4); *Public Health (Tobacco and Other Products) Act 2023* (Cth) s 93.

currently the only States to authorise the courts to impose a term of imprisonment in lieu of, or in addition to,<sup>20</sup> a pecuniary penalty, which is reserved for serious cases.<sup>21</sup>

Contrastingly, SA recently inserted additional offences into the *Tobacco and E-Cigarette Products Act 1997* (SA), making it an offence to possess or supply to another person a commercial quantity or large commercial quantity of a prescribed product.<sup>22</sup> Prescribed product is defined as a tobacco product that does not comply with the prescribed packaging requirements under Commonwealth law or is a prohibited good under the *Customs Act 1901* (Cth).<sup>23</sup> Possession of a commercial quantity by an individual is punishable by a maximum penalty of \$1, 050, 000 for a first offence,<sup>24</sup> and possession of a large commercial quantity by an individual is punishable by a maximum penalty of \$2, 100, 000.<sup>25</sup>

Maximum penalties for committing an illicit tobacco offence should be sufficiently high to reflect the seriousness of the offending and to deter other from engaging in similar conduct. We recommend that the Government consider introducing imprisonment, as an alternative or in addition to, a pecuniary penalty for persons who commit a serious illicit tobacco offence. Additionally, we also recommend that the Government consider introducing tiered offences so that serious cases of illicit tobacco trade attract a higher penalty, similar to the position adopted in SA and Victoria. Queensland has also included large on-the-spot penalties that can be imposed for some illicit tobacco trade offences and we recommend that similarly substantive on-the-spot penalties be available to enforcement officers in NSW, along with closure orders to be able to take swift action when offences are detected.<sup>(34)</sup>

Tobacco retailer licensing schemes should include 'fit and proper' persons criteria with the ability to permanently ban anyone involved in illicit tobacco trade from holding a tobacco retail or wholesale licence or working in a tobacco retailing or wholesaling business.

### **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 strongly support the recommendation to ensure that law enforcement and public health agencies are adequately funded to effectively address the illicit tobacco trade. Key priorities include maintaining sufficient staffing levels to conduct regular compliance monitoring of retailers, as insufficient resourcing allows non-compliant retailers to re-open and continue selling illicit products with little risk of timely inspection. Public health officers need significantly more resources to frequently inspect illicit

<sup>20</sup> This is only applicable in Queensland: see *Tobacco and Other Products Act 1998* (Qld) s 161(1), 161(2).

<sup>21</sup> See *Tobacco and Other Products Act 1998* (Qld) s 161(1), 161(2); *Tobacco Act 1987* (Vic) s 11A(2), 11A(4).

<sup>22</sup> *Tobacco and E-Cigarette Products Act 1997* (SA) s 45A(1), (2).

<sup>23</sup> See *Tobacco and E-Cigarette Products Act 1997* (SA) ss 33(2), 45A(3) (definition (b) of 'prescribed product'). For discussion of prohibited goods under the *Customs Act 1901* (Cth) see above, page 9.

<sup>24</sup> *Tobacco and E-Cigarette Products Act 1997* (SA) s 45A(1).

<sup>25</sup> *Tobacco and E-Cigarette Products Act 1997* (SA) s 45A(2).

traders, often with police support, and then continue to follow prosecutions through sometimes lengthy court processes. Some public health officers in Queensland estimate that in the last five years illicit tobacco has gone from taking up '2%' of their time to now over 80%.<sup>(20)</sup> The situation in NSW will be similar, therefore, with more widespread illicit tobacco and associated criminal involvement. Hence, increasing the workforce available to investigate and take action against those involved in illicit tobacco trade in the retail sector is needed. In addition to reactively responding to complaints and tip-offs about illicit tobacco trade, proactive monitoring is an essential component, including regular audits of documentation of tobacco products throughout the supply chain to identify when retail sales do not match wholesale quantities. Cash sales and payment of retail staff in cash should also be targeted.

Additionally, adequate funding is required to ensure that Border Force has the resources necessary to thoroughly inspect shipments entering NSW that may contain illicit tobacco products. In terms of monitoring and enforcement, we also recommend the use of covert controlled purchase operations as part of the compliance monitoring programs for both underage sales and supply of illicitly traded tobacco products, which is considered best practice.<sup>26</sup> We also recommend that NSW follow Queensland in terms of cost recovery related to the costs of storage and destruction of tobacco and vaping products seized as part of enforcement activities.

### **The impact of the tobacco trade on small businesses and communities in regional New South Wales**

While we do not have data specifically on small businesses and communities in regional NSW, our research previously mentioned in this submission indicates that the illicit tobacco trade is having adverse impacts on tobacco retailers in Queensland. Informal discussions with consumers also indicate that people operating businesses located in close proximity to tobacconists are concerned about the impacts from criminal activity occurring at these premises and the risks to their businesses due to arson and other violence. As previously described, we also note that the widespread availability of tobacco (via both legal and illegal sales) has negative impacts on communities by making quitting smoking difficult, encouraging the uptake of smoking among youth and also increasing the risk of relapse among people who formally smoked. Supporting retailers to exit tobacco retailing,<sup>(35)</sup> implementing caps on the number of retailers operating in communities and taking strong proactive measures against retailers who sell tobacco products illicitly is needed to reduce these harmful impacts.

The legal and illegal tobacco markets disproportionately impact people on low incomes. Individuals with nicotine dependence who cannot afford to pay the high prices of legally sold tobacco or smoking

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<sup>26</sup> <https://www1.health.gov.au/internet/publications/publishing.nsf/Content/tobacco-res-access-minors~tobacco-res-access-minors-appendixc~tobacco-res-access-minors-appendixc-ikkeyelements>

cessation support, such as nicotine replacement therapy, often turn to illicit products rather than quitting smoking.(36–38) This dynamic perpetuates tobacco use and thus worsens health inequities, further highlighting the importance of new and improved measures aimed at curbing Australia’s growing illicit tobacco trade. Beyond intensive mass media campaigns and investment in cessation support, targeted strategies are needed to reach people on low incomes, including investment in subsidised cessation aids (e.g., various forms of nicotine replacement therapy considered acceptable by their target population), tailored community-based programs promoting cessation, broader access to cessation support through trusted services frequented by people on low incomes, and incentive-based approaches to promote smoking cessation.

An International study using data from the International Tobacco Control Policy Four Country Smoking and Vaping (ITC 4CV) survey, conducted between 2016 and 2022 in Canada, the United States, England and Australia, identified some groups, such as young adults, those with low income, or financial stress, those who smoked at high intensity, and those intending to quit in next 6 months, as being more likely to purchase illicit tobacco (smuggled, lacking health warning labels, or without full taxes paid) in the last 30 days among those who smoked daily. This finding highlights the need for robust interventions to support quitting.(28)

Yours sincerely

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