

**Submission
No 59**

INQUIRY INTO ILLEGAL TOBACCO TRADE

Organisation: NSW Small Business Commissioner

Date Received: 1 August 2025



The Hon. Robert Borsak
Chair – Portfolio Committee No. 5 - Justice and Communities
Inquiry into the illegal tobacco trade
Legislative Council
Parliament of NSW

By online submission: [Lodge a submission](#)

Dear Chair

Thank you for the opportunity to make a submission to Portfolio Committee No. 5 - Justice and Communities in relation to its Inquiry into the illegal tobacco trade, referred to the Committee by the Legislative Council on 7 May 2025.

The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy, and affordable dispute resolution services across NSW.

The Commission has received an increasing number of complaints from small businesses and their representatives regarding the sale and importation of illegal tobacco products, reflecting the scale and persistence of this issue in NSW. As the Committee would be well aware, NSW and arguably most Australian states and territories continue to face significant public health challenges with illegal vaping and e-cigarette products remaining readily accessible, particularly to minors.

Both the Commonwealth and State Governments have strengthened the regulatory environment to curb the availability of illicit tobacco and vaping products. Amendments to the NSW *Public Health (Tobacco) Act 2008* and its Regulation introduced a new licensing scheme for the sale of tobacco and non-tobacco smoking products, alongside increased penalties for existing tobacco-related offences. New laws now also restrict the supply of vaping products to pharmacies and medical practitioners only.

Although the NSW reforms are in the early stages of implementation, illicit tobacco and vape products remain widely available through tobacconists, convenience stores, gift shops, and even non-traditional retailers like gyms and takeaway food outlets. A report released in May 2024¹, along with media coverage², indicates that the illicit tobacco market has expanded compared to previous years.

The Commission acknowledges that enforcement is complex, particularly given the volume of businesses involved and the increasingly sophisticated methods used by some operators to evade detection. The involvement of organised crime groups, capitalising on the profitability of this market to fund broader criminal activity, highlights the need for sustained attention and resources. This illegal trade

¹ [A 2023 report by FTI Consulting](#) (commissioned by PMI) estimates that 28.6 per cent of all tobacco consumed in Australia that year was illicit, up from around 23 per cent in 2022.

² The SMH reported that almost 40 per cent of tobacco consumption across Australia was illicit in 2024 – Macken L and Walter R (19 May 2025), [60 tobacconists for every McDonald's: How Sydney's streets became consumed by smoke shops](#), Sydney Morning Herald, accessed 2 July 2025, SMH.com.au.

places significant pressure on compliant small businesses and undermines community viability, particularly in regional areas.

Feedback from Businesses

The Commission regularly surveys NSW small businesses on matters affecting their performance and operations. The Commission surveyed businesses across a range of industries and locations, including tobacco and non-tobacco businesses, to gather feedback on the prevalence and impact of illicit tobacco on their operations. The Commission received 772 responses to the survey which was conducted during June and July 2025.

Three in ten respondents (29 per cent) reported awareness of illegal tobacco being sold in their local area. Notably, 59 per cent of those with knowledge of such activity were located outside the Sydney metropolitan area.

Only a small percentage of respondents (4 per cent) reported direct or indirect impacts on their business. Of all those impacted, 26 per cent rated the impact as major or critical to their viability. A majority (56 per cent) described the impact as moderate and had implemented measures to manage the associated pressures. Commonly reported impacts included loss of revenue (56 per cent), pressure to compete with the pricing of illegal tobacco (26 per cent), and safety or security concerns, including threats or intimidation (22 per cent).

Lack of enforcement

A recurring concern, particularly from small businesses in regional communities such as the Northern Rivers and Southwest Slopes, is that current deterrents are not effective. In several instances, businesses selling illicit tobacco have reportedly reopened within days of enforcement action, suggesting that the existing penalties may not outweigh the profits of illegal trade.

Some operators appear to be avoiding penalties by structuring their businesses under overseas ownership. In many cases, employees are unaware of who their actual employers are, further complicating enforcement efforts.

NSW enforcement began with education before prosecution strategies and a likely hesitancy to penalise employees, especially those from culturally and linguistically diverse communities, who are involved in the sale of illegal tobacco but may not be fully informed. While there has been a deliberate shift toward stricter enforcement, there remains a need for broader education and outreach to raise awareness of the risks and penalties associated with the sale of illicit tobacco products in some sectors, and the broader harms of the illegal tobacco trade.

Competition impacts

The illicit tobacco trade disproportionately affects small, legitimate tobacco retailers who often operate on slim profit margins (as low as 5 per cent or less). The availability of significantly cheaper illegal products undermines their viability. One retailer reported a 95 per cent decline in sales, placing them on the brink of bankruptcy.

In addition to direct impacts, many legitimately operating retailers are experiencing reduced foot traffic. Consumers who previously purchased tobacco also bought other items. The loss of this trade further impacts legitimate retailers. Businesses are under growing pressure to cut costs in the current economic climate including staff, due to rising expenses such as insurance, electricity, and wages. Retailers who do not traditionally sell tobacco are reportedly selling these products to boost income. The Commission

acknowledges that this is an indication of the current challenges facing small business who are working to remain viable. These pressures are impacting owners' mental health and wellbeing, particularly for family-run enterprises, as businesses are working longer hours to remain viable.

Compounding this is the current low-risk, high-reward nature of selling illegal tobacco. For example, one sports retailer described illegal tobacco sellers also selling sports merchandise at discounted prices, which undercuts the sports retailer's legal offerings. The illicit tobacco retailers are able to offset losses on non-tobacco merchandise via profits made on illicit tobacco sales, distorting competition and creating an uneven playing field.

Insurance and property market risks

Illegal tobacco operations are creating serious insurance and property risks. Some insurers are withdrawing from buildings that house tobacconists, forcing property owners (landlords) to obtain costly international policies. High-risk tenants, such as tobacconists, are contributing to denied coverage or unaffordable premiums. One landlord reported a ten-fold increase in property insurance due to leasing to a tobacconist. In another cases, entire strata complexes or small shopping centres have lost coverage because of a single high-risk tenant. Insurers report that premium hikes are being driven by the increase in claims linked to tobacconist-related incidents.

Small businesses also report challenges in exiting the legitimate tobacco market. Retail leases typically allow lease assignment to a new tenant, but only with the landlord's consent and applying the process prescribed in the *Retail Leases Act 1994* (NSW). Some landlords are refusing to allow assignment to new tenants by changing the "permitted use" in the lease (e.g. redefining what type of business can operate there) to reduce insurance premiums. This practice effectively blocks small business owners from assigning the lease to another tobacco retailer and prevents them from exiting the tobacco trade smoothly, leading to disputes and, at times, legal proceedings.

Many landlords appear unable or unwilling to act against known illegal activity on their premises, which may be a result of fearing retaliation or a lack of legal protections. In some instances, landlords are allegedly tolerating illegal activity in exchange for above-market rents, contributing to rent inflation and making commercial property less accessible to compliant small businesses.

Regulatory challenges in vape access

Retailers note ongoing gaps in the regulation of tobacco and e-cigarette promotion online (via social media). Despite bans, illegal products are still promoted and delivered, often without identity checks, undermining youth protection efforts.

Social media platforms claim to restrict e-cigarette content, but enforcement is inconsistent, unclear and not legally binding. Marketing tactics exploit regulatory grey areas, with supplier circumventing definitions of advertising. Research from the *Tobacco Vape Research Collective*³ shows regular breaches, indicating self-regulation is insufficient.

Retailers have also raised concerns about restricting vape sales to pharmacies. Many pharmacies choose not to stock these products due to ethical concerns and compliance burdens including costs

³ Tobacco Vape Research Collective (January 2024), [Policy Brief: E-cigarette content flooding social media](#), Tobacco Vape Research Collective, Accessed 18 July 2025.

associated with training requirements. The Pharmacy Guild has strongly opposed this policy, noting the lack of Therapeutic Goods Administration approval for these products.⁴

Limited access to legal vape products has allowed the illegal market to flourish. Feedback suggests this is exacerbating nicotine addiction, particularly among minors, and harming the reputations of legal tobacconists, who face abuse and compliance scrutiny despite following the law. Many small businesses also perceive that enforcement efforts are unequal, with legitimate tobacconists feeling they bare the brunt of compliance checks, while retailers openly selling illicit tobacco and vaping products appear to operate with little consequence.

Criminal syndicates and safety concerns

Retailers have reported intimidation, verbal abuse, firebombing threats, and growing concerns about the infiltration of organised crime in the illicit tobacco market. Family-run businesses are particularly vulnerable, with some choosing not to allow family members to work in-store for safety reasons further highlighting the disproportionate impact on small, family run enterprises and the emotional and psychological toll of operating in such an environment.

Fear of reprisal is a major barrier to reporting illegal conduct. While NSW Health provides a reporting mechanism, businesses worry about personal exposure. There is strong support for a fully anonymous reporting channel to safely report unlawful activity without fear of retaliation.

Planning and zoning issues

Retailers are concerned about the over-saturation of tobacconists in certain areas. Local councils and certifiers report limited legal grounds to deny approvals, even near schools.⁵ In some suburbs, the number of tobacconists far exceeds that of other retailer-types, highlighting the need for stronger development controls. Tobacconists are often able to operate via simple change-of-use applications. Stronger development controls and planning reforms are needed.

Review and Reform

There is merit in the reviewing relevant Acts to ensure responsiveness to community concerns. The Commission welcomes this inquiry as a valuable first step.

The Commission makes several suggestions to help address the impact of illicit tobacco sales in this submission. Additionally, it encourages the Committee to consider measures from other jurisdictions, such as prison penalties, enhanced cross-agency enforcement, closure orders, and statutory lease termination rights (e.g. South Australia and Queensland proposals).

Innovative enforcement mechanisms may also be considered. For example, Victoria Police, councils, and insurers issued joint letters to landlords warning that renting to illegal tobacco vendors could void insurance, particularly in cases of arson or extortion. This cost-effective approach encouraged landlord vigilance without legislative change.

⁴ The Pharmacy Guild of Australia (9 October 2024), News and Events, [Vapes officially available in community pharmacy, but not everyone's on board](#), Pharmacy Guild of Australia, accessed 21 July 2025, guild.org.au.

⁵ Macken L and Walter R (19 May 2025), [60 tobacconists for every McDonald's: How Sydney's streets became consumed by smoke shops](#), Sydney Morning Herald, accessed 2 July 2025, SMH.com.au.

Educational campaigns could also reinforce the consequences of employment in illegal trade, including the right to summarily dismiss employees who knowingly sell illicit tobacco.

Finally, planning reforms that require local authorities to more closely consider the social impacts of the location of tobacconists in order to assess cumulative harm and local business and community concerns more effectively in development approval processes.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer at either _____ or _____.

Yours sincerely

Catherine Ellis
Acting Commissioner
NSW Small Business Commission

Date: 01/08/25