



Senate Legal and Constitutional Affairs Reference Committee Inquiry into the Illegal Tobacco Crisis in Australia

Cancer Council Australia

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Cancer Council Australia is the peak non-government cancer control organisation in Australia. As the national body in a federation of eight state and territory member organisations, we work to make a lasting impact on cancer outcomes by shaping and influencing policy and practice across the cancer control continuum; developing and disseminating evidence-based cancer information; convening and collaborating with stakeholders and consumers to set priorities across sectors; and speaking as a trusted voice on cancer control nationally.

Cancer Councils have a long and proud history in tobacco control policy and advocacy. We employ and collaborate with leading national and international tobacco control experts to address the harms of tobacco and advocate evidence-based interventions to reduce smoking prevalence in Australia.

Cancer Council Australia acknowledges the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all Aboriginal and Torres Strait Islander people.

Cancer Council Australia representatives are available to appear and give evidence before the Committee as part of this inquiry.

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1. Introduction

All tobacco products—whether sold legally or on the illicit market—are inherently harmful. Tobacco smoking causes the death of two out of every three people who use tobacco long-term.¹ It is the largest preventable cause of cancer; responsible for more cancer deaths in Australia than any other single factor and is also responsible for a high proportion of illness and deaths from heart² and lung diseases.^{3,4,5} Smoking affects not only the person who smokes, but also those around them.⁶ Tobacco control measures, such as increases in tobacco taxes, have been successful over the last four decades in reducing smoking both by encouraging people who already smoke to quit,⁷ and by deterring youth uptake.⁸ However, the recent surge of ‘pop-up’ tobacconists and convenience stores across Australia illegally selling untaxed tobacco products in brightly coloured packaging without required consumer health warnings has threatened these public health gains. The World Health Organization *Framework Convention on Tobacco Control* (WHO FCTC), of which Australia is a signatory, recognises that:

the elimination of all forms of illicit trade in tobacco products and implementation of related national law (...) are essential components of tobacco control.⁹

The Convention defines the illicit trade of tobacco as ‘any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity’.¹⁰ The World Bank has similarly described it as:

any practice related to distributing, selling, or buying tobacco products that is prohibited by law, including tax evasion (sale of tobacco products without payment of applicable taxes), counterfeiting, disguising the origin of products, and smuggling. Illicit trade can be undertaken both by illicit players who are not registered with relevant government agencies, as well as by legitimate entities whose business operations are contrary to applicable laws and regulations.¹¹

In Australia, “illicit tobacco” or “illegal tobacco” is generally understood to be tobacco or tobacco products non-compliant with federal product, packaging, excise or customs requirements. Illicit tobacco can include not just cigarettes but also cigars, waterpipe tobacco products and loose tobacco which may be in the form of highly processed, manufactured smoking tobacco products known as roll-your-own (RYO) tobacco and packaged in pouches. A long-standing form of illicit tobacco in Australia is roughly processed ‘chop-chop’ tobacco sold in bulk in plastic bags or other rudimentary packaging, either loose or pre-rolled into cigarettes. Illicit tobacco may be:

- grown, manufactured or produced domestically or smuggled into Australia without applicable customs or excise duties being paid to the Commonwealth,¹²
- in packages that are not compliant with Australian plain packaging requirements, and which omit mandatory graphic health warnings, health promotion inserts and on-product health messages, as required under the *Public Health (Tobacco & Other Products) Act 2023* (Cth),¹³

- produced in packaging that does comply with packaging requirements, but where taxes have not been paid. These products may be counterfeits of products produced by companies which hold trade marks or they may be produced specifically for the illicit market.¹⁴

Illicit tobacco is a problem in most countries in the world,¹⁵ contributing to numerous health, economic, governance and law enforcement challenges. Though the tobacco industry has traditionally exaggerated the scale of the illicit trade in order to discourage tobacco control policy action,¹⁶ there is no doubt it is a serious and increasing issue in Australia.¹⁷ The WHO states that if illicit trade in tobacco products were eliminated globally, a million premature deaths would be avoided every six years due to higher average cigarette prices and lower consumption.¹⁸ It is imperative that the illicit trade in tobacco in Australia be effectively addressed to prevent further harm to our communities.¹⁹ Businesses selling illicit tobacco have no place in the Australian market.

Cancer Council Australia supports the implementation of further evidence-based measures by the Commonwealth Government to minimise illicit trade in tobacco in Australia. As with all public policy issues, any decision about illicit tobacco must be based on current best practice and evidence drawn from local, national and international jurisdictions and which protects both public health and the rule of law. Where evidence is unclear, consensus among independent experts and authorities who hold no commercial stake in an outcome should be prioritised. Importantly, we call the Committee's attention to Australia's obligations under Article 6 of the WHO FCTC, in particular that:

The development, implementation and enforcement of tobacco tax and price policies as part of public health policies should be protected from commercial and other vested interests of the tobacco industry, including tactics of using the issue of smuggling in hindering implementation of tax and price policies, as required under Article 5.3 of the WHO FCTC and consistent with the guidelines for its implementation as well as from any other actual and potential conflicts of interests.²⁰

Cancer Council Australia also encourages the Committee to closely consider the lived experiences and perspectives of priority populations who may be disproportionately impacted by tobacco prevalence, including Aboriginal and Torres Strait Islander people, lower socio-economic status (SES) people and people living with mental illness. Targeted engagement with representatives of these communities may best ensure their interests are appropriately and meaningfully represented in any subsequent reforms recommended by the Committee. The perspective of young people should also be carefully considered in policy making to prevent nicotine addiction.²¹

2. Options for reform (term of reference (f))

To eliminate the illicit trade in Australia, Cancer Council Australia recommends the following measures:

Recommendation 1

The Commonwealth Government ensure effective government control of all points of the tobacco supply chain by strengthening Australian Government licensing and permit requirements for importers, warehouse, transporters and distributors of tobacco, tobacco products and tobacco manufacturing equipment, including by:

- (a) Introducing controls in the *Customs (Prohibited Imports) Regulations 1956* (Cth) to prohibit the import of tobacco manufacturing equipment and making it a federal offence to import tobacco manufacturing equipment unless the importer holds a valid tobacco manufacturing licence.
- (b) Making it a condition of an import permit to import tobacco products for commercial purposes and/or of an import declaration for the release of imported tobacco products into the commerce of Australia, that:
 - (i) where the tobacco products are imported for supply by the importer to tobacco wholesalers and/or retailers, the importer must check, before supplying the imported goods to the wholesaler or retailer, that the wholesaler or retailer is licensed under applicable state and territory laws in the relevant jurisdiction(s) where the imported goods will be sold;
 - (ii) where the tobacco products are imported for sale by the importer direct to consumers, the importer must be licensed under applicable state and territory laws in the relevant jurisdiction(s) where they intend to sell the imported goods.
- (c) Requiring that an application for permission to import tobacco, tobacco products or tobacco manufacturing equipment for commercial purposes be accompanied by:
 - (i) a declaration about the criminal record of the applicant (importer) and associates of the applicant
 - (ii) verified details of all bank accounts used in business by the applicant, as relevant
 - (iii) where the applicant intends to sell imported tobacco or tobacco products direct to the public, verified details that the applicant holds a valid retail or wholesale licence in the relevant jurisdiction(s) where they intend to sell the imported goods
 - (iv) a detailed description of the intended use and market for the sale of the products
 - (v) a detailed description of stock management and accounting systems and processes in place to ensure the applicant can comply with reporting requirements

(vi) a detailed description of governance processes in place to ensure that all staff within the business entity will comply with all security measures and due diligence requirements.

- (d) Considering whether the Australian Taxation Office should be authorised to have access to federal electronic surveillance powers exclusively for the purpose of investigating serious illicit tobacco-related offences in breach of Commonwealth taxation laws.

Recommendation 2

The Commonwealth Government consider implementing laws to prohibit or restrict the installation and use of private automated teller machines (ATMs) at tobacco retailing premises, to prevent the use of these machines to facilitate money laundering by criminal syndicates and encouraging cash-only purchases of illicitly traded products. This could include applying the anti-money laundering framework to private ATM suppliers who provide machines to tobacco retailing premises, such as extending the current conditions imposed by the Australian Transaction Reports and Analysis Centre (AUSTRAC) on cryptocurrency ATM providers.

Recommendation 3

The Commonwealth Government strongly encourage states and territories to establish and exceed nationally agreed minimum standards for licensing of tobacco wholesalers and retailers and to adopt increasingly stringent requirements to ensure that all licensing authorities across the country are equipped with robust compliance monitoring, regulatory and enforcement powers (including closure orders, landlord offences and high penalties for non-compliance). The Commonwealth Government should ensure states and territories have sufficient and sustained funding for a well-resourced inspection workforce.

Recommendation 4

The Commonwealth Government reduce demand for tobacco products by improving cessation supports by:

- (a) Investing in public education to increase awareness of the serious health risks of smoking, prevent uptake, motivate quitting and to promote greater use of evidence-based services across all population groups.
- (b) Increasing investment in Quitline services to extend the range and type of services available, including the provision of free nicotine replacement therapy (NRT) for highly disadvantaged people in Australia attempting to quit.
- (c) Requiring routine identification and treatment (for nicotine dependence) of people who smoke as an indicator of quality of care and a condition of all federally funded health care services and programs.
- (d) Extending Pharmaceutical Benefits Scheme (PBS) conditions, for example, subsidy of fast-acting NRT forms, subsidy of combination NRT (slow-acting combined with fast-acting), and removal of the requirement for nicotine to be used as a monotherapy.

- (e) Including in the Ministerial and Departmental communications with the public on the illicit trade in tobacco (e.g. media releases from the Department of Health, Disability and Ageing, Australian Border Force, the Therapeutic Goods Administration and the Australian Taxation Office) a statement on the health impacts of tobacco and of where people can get help to quit smoking.

Recommendation 5

The Commonwealth Government address the illegal retail sale of non-therapeutic vaping goods and oral nicotine pouches, by:

- (a) Introducing controls in the *Customs (Prohibited Imports) Regulations 1956* (Cth) to prohibit the import of oral nicotine pouches, in line with the designation for tobacco and vaping goods.
- (b) Closing access to oral nicotine pouches under the Personal Importation Scheme, as was implemented for vaping goods.
- (c) The Secretary of the Department of Health, Disability and Ageing authorising or delegating enforcement powers under the *Therapeutic Goods Act 1989* (Cth) and *Public Health (Tobacco and Other Products) Act 2023* (Cth) to the inspection workforces of state and territory licensing authorities, as appropriate, in order to ensure that state and territory inspectors have the necessary jurisdiction and authority to enforce these federal laws on-site at tobacco retail premises.

3. Scale and nature of Australia's illicit trade (term of reference (a))

Measuring the illicit trade in tobacco is very challenging, with different survey methods and surveys yielding widely varying estimates. While manufacturers and importers of tobacco products supplied in Australia must report in detail on tobacco product volumes at the end of each financial year,²² illicit traders operate outside the bounds of these legislative requirements. Unfortunately, no one method provides a definitive estimate of the scale of the market, and several forms of monitoring are needed over time to allow triangulation of estimates. Margins of error should always be reported alongside estimates of the size of the market. Progress in reducing illicit tobacco cannot be reliably assessed without high quality surveys and other studies conducted in a consistent manner over a long period of time. Funding of *ad hoc* surveys conducted by parties with strong ideological pre-conceptions or commercial interests affected by responses to the findings, should be avoided.

The role of the Commonwealth Illicit Tobacco and E-Cigarette (ITEC) Commissioner, established on 1 July 2024, requires annual reporting on the prevalence and consequences of Australia's illicit trade.²³ The ITEC Commissioner's inaugural 2024–25 Annual Report estimates that, at current tobacco consumption trends, the illicit tobacco market comprises 55% of the total domestic tobacco market in Australia, with a market value of \$5.6 billion.²⁴ The estimated volume of illicit tobacco imported in 2024–25 was between 3,312 and 5,397 tonnes, and a further 575 tonnes was produced domestically.²⁵ The absolute weight of tobacco illegally sold is

the most important of the three measures reported on. This is because the dollar value of the illicit market may change as levels of excise duty change, and the percentage that illicit trade makes up of the total tobacco market might increase not because more illicit tobacco is being used, but rather because people are smoking less and fewer people are smoking at all. This would be an indication of policy success not failure.

4. Public health implications (terms of reference (b) and (d))

The accessibility and use of illicitly traded tobacco products is an important public health issue. Public health interventions, including tobacco taxes, have been successful in driving down smoking rates and preventing the uptake of smoking by younger generations.²⁶ Harms to public health attributable to the illicit trade are difficult to quantify based on existing data sets.²⁷ Notwithstanding, the recent rapid growth in ‘pop-up’ tobacconists and convenience shops across Australian malls and shopping strips is undoubtedly undermining public health interventions, with research showing that efforts to quit and success in quitting fall alongside increased tobacco retail availability.²⁸ The current over-supply of tobacconists is flooding the market with cheap untaxed tobacco and greatly increasing incentives for convenience stores and other small retailers to also become involved in the illicit trade. The ready supply from “High St” shops against a backdrop of inflation and other cost-of-living pressures are making illicit tobacco more widely accessible, attractive and socially acceptable to people who smoke. Until recently, failure of authorities to act against such retailers may have exacerbated the normalisation of the selling and buying of such tobacco. Emerging evidence from Generation Vape research highlights the extent to which the widespread availability and visibility of illicit nicotine products is undermining youth protection and public health objectives. Findings indicate that young people are regularly exposed to vaping products sold illegally through retail outlets and informal channels, normalising nicotine use and increasing the risk of addiction and dual use. This reinforces the need for decisive action to disrupt illicit supply and retail environments that place young people at risk.²⁹

Australia has implemented a suite of world-leading, evidence-based tobacco control efforts. These include price measures, bans on certain ingredients and flavours (such as menthol), and standardised retail packaging, including plain packaging, mandated cigarette dimensions and pack size, graphic health warnings, health promotion inserts and on-product health messages.³⁰ By contrast, illicitly traded tobacco products are sold at cheaper prices and do not comply with these specifications. As a result, these vital product and packaging features which help discourage smoking by reducing the appeal of tobacco products and increasing consumer awareness of the associated health harms,³¹ are negated when people who smoke use illicitly traded tobacco products.

The illicit trade also exacerbates current social inequity and contributes to the intergenerational transfer of poverty.³² People from disadvantaged backgrounds who smoke are disproportionately impacted by the health, social and financial costs of tobacco use, including

higher rates of premature death.³³ As illicit cigarettes generally sell for considerably less than their tax-paid equivalents, these products inflict the greatest harm to the most price-sensitive population groups. By reducing prices and encouraging consumption by those with low incomes, illicit tobacco reduces the effectiveness of tax increases to encourage disadvantaged Australians to cut consumption or quit altogether. Enforcement of illicit tobacco laws is therefore critical to reducing the prevalence of smoking in Australia by ensuring that people who smoke remain subject to the full range of tobacco control interventions at the federal, state and territory level. Efforts to reduce the supply of illicitly traded tobacco must be complemented by initiatives to decrease demand for such products, including by improving access to cessation supports for Australians attempting to quit smoking.

5. Tobacco customs and excise duty (terms of reference (b) and (d))

The current and previous Australian Governments have relied heavily on tobacco taxes to discourage smoking over the past decade. Substantial increases to the price of fully taxed tobacco products are associated with a major decline in consumption and smoking—from 15.9% of adults smoking daily in 2010 to 11.6% in 2019 and 8.8% in 2022–23.³⁴ A high proportion of the decline in federal excise and customs duty being reported in the media is due, at least until 2022–23, to declines in consumption of tobacco more broadly, rather than due to the increasing use of illicit tobacco. Notwithstanding, there remains ongoing debate, particularly as a tactic engaged by the tobacco industry, that increases to tobacco taxes has resulted in a price difference that incentivises illicit trade such as to warrant cuts to the federal excise and customs duty. This idea, however, greatly oversimplifies the relationship between illicit trade and tobacco prices when, in reality, illicit trade is primarily facilitated by weak tax administration and a lack of enforcement.³⁵

Federal authorities have recognised there are several drivers of the illicit trade market beyond tax evasion. The CEO of the Australian Criminal Intelligence Commission (ACIC) has stated that organised crime syndicates are drawn to the illicit trade due to a multitude of factors, including a lower risk of law enforcement attention and penalties, the ability to operate from offshore, the use of technological advances such as encrypted communications and cryptocurrencies, and the contracting out of criminal conduct (such as extortion) to lower-level members.³⁶ Similarly, the ITEC Commissioner has described factors driving the illicit trade as including:

- Lack of consumer awareness about the links to organised crime and why this is a problem.
- Increasing consumer demand for illicit alternatives across demographics.
- Ease of consumer access to illicit tobacco and e-cigarettes through retail and online channels which are not subject to age checks or other regulatory barriers.
- Criminal syndicates leveraging established smuggling methods and routes used for other illicit commodities.
- Insufficient deterrence due to lower offence penalties as compared to other illicit commodities.³⁷

Extensive research on the relationship between tax and illicit tobacco across different countries has found little correlation between tax and illicit trade—countries with higher taxes have typically had lower illicit trade.³⁸ During a previous inquiry into illicit tobacco undertaken by the Parliamentary Joint Committee on Law Enforcement, a representative of the tobacco industry was requested to provide evidence of the link between taxation increases on licit tobacco products with increases in the illicit tobacco market.³⁹ No such evidence was received by the Committee.⁴⁰ While there have been numerous claims, Cancer Council Australia is aware of no evidence supporting the assertion that a policy decision to decrease the federal tobacco tax would eliminate or significantly reduce the size of Australia's illicit trade market.

As such, cutting tobacco taxes is a simplistic proposal that addresses only one single component of one half of the numerous supply/demand forces operating in this market. Even if the Australian Government were to reduce the tobacco excise to close to zero (which does not seem like a realistic scenario), illicitly traded tobacco products would still be substantially cheaper, with little stopping organised criminal networks from reducing prices even further while still maintaining profits. People still smoking legally sold tobacco would likely smoke more and be less likely to successfully quit. The measures most likely to successfully reduce illicit trade in tobacco would both:

1. Reduce the supply and increase the costliness of illicit tobacco—by enforcing existing tobacco tax laws and improving tax administration, introducing licensing systems for retail, importation, distribution, and manufacture of tobacco products.
2. Reduce demand for tobacco products overall by investing in public education and affordable and accessible cessation supports to help Australians quit smoking.

Apart from requiring a multi-pronged and comprehensive approach rather than a knee-jerk 'quick fix', the Government's response to the illicit tobacco issue must uphold the rule of law. The Government wouldn't cut income tax or GST if people were evading it; rather, the Australian Taxation Office (ATO) would step up anti-tax-avoidance measures. The same principle applies here.

6. Adequacy of law enforcement and regulatory responses (term of reference (c))

All levels of government have a responsibility to end the illicit trade. Federal regulation of tobacco, e-cigarettes (vapes) and other nicotine products sits across various ministerial portfolios, government departments, regulatory bodies and law enforcement agencies. The relevant legal and regulatory frameworks consist of several primary Acts, including the *Excise Act 1901* (Cth), *Taxation Administration Act 1953* (Cth), *Customs Act 1901* (Cth), *Public Health (Tobacco and Other Products) Act 2023* (Cth) and *Therapeutic Goods Act 1989* (Cth), as well as subordinate legislation such as regulations, ministerial orders, authorisation and delegation instruments and gazetted notices. To be effective, a high level of interdepartmental coordination, cooperation and leadership, both nationally and at the state and territory level, is

required. Notwithstanding, the current government systems involved in addressing the illicit trade are multi-faceted, decentralised and complex.

The ATO, for example, has responsibility for assessing, issuing and enforcing compliance with excise licences for the domestic production of tobacco and manufacture of tobacco products (noting, that currently no such licences have been authorised by the ATO).⁴¹ As tobacco is as an excise equivalent good (EEG), the ATO is also responsible for processing applications for warehouse licences under customs legislation⁴² while the Australian Border Force (ABF) is responsible for issuing permits for the import and export of tobacco, which is a prohibited import under customs regulations, and for receiving payment of related customs duties and taxes to the Commonwealth.⁴³ The Department of Health, Disability and Ageing (DoHDA), on the other hand, is responsible for administering the *Public Health (Tobacco and Other Products) Act 2023* (Cth), including enforcing compliance with tobacco product and packaging requirements as well as the prohibition on tobacco advertising and sponsorships.⁴⁴ States and territories are responsible for administering tobacco retail and wholesale licensing schemes and for enforcing and prosecuting their respective criminal laws.

In the context of existing policy and fiscal commitments, the federal, state and territory governments must adopt a comprehensive evidence-based approach to address the illicit trade. This should include legislative measures as well as supporting research, public education campaigns, community engagement, prevention programs and cessation support services.

Notably, the WHO FCTC requires Australia to:

Article	Measure
15.4(b)	Enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes.
15.4(c)	Take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally friendly methods where feasible, or disposed of in accordance with national law.
15.4(d)	Adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction.
15.4(e)	Adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.
15.6	Promote co-operation between national agencies.
15.7	Endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

Additionally, Australia's *National Tobacco Strategy 2023-2030*⁴⁵ calls on government action to:

Action	Measure
8.1	Continue to monitor and enforce all tobacco control legislation applicable at the retail level, including legislation prohibiting the sale of tobacco to minors.
8.6	Explore options to further regulate where tobacco products are retailed, including regulatory approaches to control or restrict the number, type and location of tobacco outlets.
8.8	Continue to engage in international cooperation relating to tobacco taxation and addressing illicit trade in tobacco products, including through the WHO FCTC.
8.9	Continue to monitor the supply and use of illicit tobacco in Australia; continue enforcement efforts to prevent the illegal importation, supply and cultivation of tobacco; and enhance technology and staff capability to identify and respond to illicit trade in tobacco.
9.8	Continue to monitor the supply and use of illicit e-cigarettes and other novel and emerging products in Australia; continue enforcement efforts to prevent illegal importation and supply; and enhance technology and staff capability to identify and respond to illicit trade.

6.1 Commonwealth response

The Australian Government has taken several important steps to address the illicit trade, announcing in March 2025 funding of \$156.7 million over two years from 2025–26 to strengthen compliance and enforcement action,⁴⁶ including:

- \$49.4m to expand the Australian Federal Police (AFP)-led Criminal Assets Confiscation Taskforce and enhance actions to disrupt illicit tobacco profits by targeting criminal groups involved in the trade
- \$7m to support the ABF to utilise emerging technology to screen and detect more illicit tobacco at the border, stop it at the source and disrupt the international market
- \$19.9m in increased funding for the Office of the ITEC Commissioner to continue delivering the Commissioner's work, including national collaboration in support of current compliance and enforcement arrangements
- \$1.4m to establish a new international collaboration for a regional assessment of illicit tobacco markets, in partnership with international experts, to better understand criminal network behaviours at the production and overseas distribution stages of the supply chain.⁴⁷

The \$156.7 million approved in the 2025 Budget also includes funding to the DoHDA to support the broader response to the harms of illicit tobacco and non-therapeutic nicotine products:

- \$40m to support states and territories to establish local level capability to swiftly respond to compliance and enforcement challenges and strengthen regulatory authorities' cross-jurisdictional tactical partnerships for enforcement capacity

- \$31.6m to strengthen compliance and enforcement functions under the *Public Health (Tobacco and Other Products) Act 2023* (Cth) and *Therapeutic Goods Act 1989* (Cth) and \$3.3m for the Commonwealth Director of Public Prosecutions (CDPP) to prosecute contraventions
- \$4m to extend the National Tobacco and E-cigarette public health campaign to target the motivations and behaviours of people who use illicit tobacco.⁴⁸

Since 1 July 2025, only tobacco products complying with the *Public Health (Tobacco & Other Products) Act 2023* (Cth) can be sold by retail, with strict penalties of up to \$6.6 million for supplying tobacco products non-compliant with mandatory product and packaging requirements.⁴⁹ Under this legislation, the Government also instituted transparency requirements with tobacco manufacturers and importers required to report annually on tobacco product sales.⁵⁰ The Act also established the Office of the ITEC Commissioner who works closely with federal, state and territory agencies to improve enforcement.⁵¹

On 19 October 2025, the Government announced the establishment of the ‘Illicit Tobacco National Disruption Group’ comprising the AFP, ACIC, AUSTRAC, Home Affairs, DoHDA (including the Therapeutic Goods Administration (TGA)), ATO, Department of Agriculture, Fisheries and Forestry, Office of the ITEC Commissioner, Services Australia and state and territory law enforcement agencies and regulators.⁵² The Disruption Group will utilise the full range of government capabilities – legislative, regulatory, intelligence and enforcement – to target mid-level criminals and enablers operating within small business, intermediaries and sole traders who import, distribute or sell illicit tobacco and vapes. Its first operations undertaken in February 2026 led to the arrest of a foreign national; the seizure of millions of cigarettes, hundreds of kilograms of chop-chop, several thousand vapes, and millions in cash and illicit property; issuing of closure orders for 25 retail premises; the identification of 70 persons of interest and the thwarting of \$5 million in estimated duty evaded.⁵³

Cancer Council Australia welcomes and supports the Government’s recent reforms; however, we note that products are still being illegally traded across the tobacco market in Australia with large volumes making their way to Australian consumers for purchase. Although the ATO has not issued any excise licences permitting the lawful domestic production and manufacture of tobacco or tobacco products in Australia, organised crime syndicates continue to set up and run growing operations in disregard of legal requirements.⁵⁴ Recently, the ABF seized from a Sydney property a machine capable of illicitly manufacturing up to 3.6 million cigarettes per day.⁵⁵ While it is an offence to possess equipment for use in the illegal manufacture or production of tobacco,⁵⁶ the Government could implement further restrictions to prohibit the importation of such equipment into Australia as well as making it an offence to possess such equipment (irrespective of whether it is used in the illegal manufacture of tobacco products). Organised crime groups are also exploiting the use of on-site ATMs at tobacco shops to facilitate cash-only purchases of illicitly traded tobacco products by customers and, in the process, to launder the proceeds of crime.⁵⁷ The Commonwealth Government should consider whether the existing

anti-money laundering framework can be applied to private ATMs supplied to tobacco retailing sites.

Ultimately, there is clearly a need for further action to ensure effective government control of all points of the tobacco supply chain. This could be achieved by the Commonwealth Government strengthening federal licensing requirements for importers, warehouse, transporters and distributors of tobacco, tobacco products and tobacco manufacturing equipment; by ensuring continued interdepartmental cooperation and coordination across all aspects of the Government's enforcement operations, and by strongly encouraging the highest standards for state/territory licensing at the wholesale and retail levels.

6.2 State and territory responses

Licensing is an important measure to control and regulate the distribution of tobacco products, including as a mechanism to prevent illicit trade. All states and territories have positive licensing schemes in place for tobacco retailers and in all jurisdictions, except the Northern Territory, licences are also required for tobacco wholesalers. Several features are consistent across all state and territory licensing schemes.

- It is an offence to sell tobacco products without a licence⁵⁸ and to fail to display the licence.⁵⁹
- Licence applicants are subject to a 'fit and proper person' assessment by the licensing authority, including the checking of any prior criminal history.⁶⁰
- Inspectors of the licensing authority can enter and inspect the retail premises of tobacco supply businesses during business hours, with the owner's permission or under a court-issued search warrant to assess compliance with licensing laws⁶¹ and can issue infringement notices (on-the-spot fines).⁶²
- The licensing authority and/or a court has the power to suspend and cancel licences.⁶³
- The licensing authority maintains a public, searchable register of all licences issued (except in Tasmania).⁶⁴

Over the past year, most states and territories have strengthened legislative controls in response to the burgeoning illicit trade, introducing "illicit tobacco" offences to prohibit the sale of tobacco products non-compliant with federal packaging, product, customs or excise requirements.⁶⁵ Depending on the jurisdiction and nature of offending, the maximum penalty amount set for such offences can range from thousands of dollars to several millions of dollars and, in some instances, periods of imprisonment up to 15 years, or potentially both a pecuniary and imprisonment penalty.⁶⁶ These penalties can only be instituted by a court of law following the successful prosecution of an offender, often involving a protracted criminal justice process. It is thus essential that licensing authorities can take adequate administrative action against individuals, escalated as appropriate, to rectify non-compliance and address illegal activity in addition to and aside from pursuing formal criminal charges. This is the enforcement model

adopted by various federal regulatory authorities, including the TGA which takes action commensurate with the level of compliance risk.⁶⁷

Divergences in the scope and administration of each tobacco licensing scheme has meant that some states have been more proactive and effective in their compliance and enforcement efforts than others. **New South Wales, Queensland and South Australia** have, in particular, enacted or proposed legislative measures to broaden the enforcement powers of licensing authorities and increase penalties for non-compliance, including:

- the ability for licensing authorities to:
 - close, or seek an order from a court to close, premises engaged in illicit trade for periods of up to 12 months (closure orders)⁶⁸ (also enacted in WA,⁶⁹ currently under consideration in Tasmania⁷⁰ and to be proposed in Victoria⁷¹)
 - make public information about issued closure orders (NSW and SA only,⁷² enacted in WA⁷³ and currently under consideration in Tasmania)⁷⁴
 - conduct covert controlled purchase operations (Queensland, SA and WA only)⁷⁵
 - confiscate licit (legal) tobacco products from illicit traders (Queensland only)⁷⁶
 - destroy without procedures that entail costly long-term storage seized illicit vaping goods (Queensland and SA only⁷⁷) and seized illicit tobacco products (under consideration in Queensland and to be proposed in Victoria)⁷⁸
- the ability for landlords to terminate the lease of retail premises engaged in illicit trade⁷⁹ (to be proposed in Victoria)⁸⁰
- making it an offence, with significant penalties, for:
 - a landlord to knowingly permit the use of their retail premises for illicit trade (Queensland and SA only,⁸¹ currently proposed in NSW⁸² and to be proposed in Victoria⁸³)
 - a person to trade from premises that are subject to a closure order (enacted in WA,⁸⁴ currently under consideration in Tasmania)⁸⁵
 - a person to supply illicit vapes (enacted in WA,⁸⁶ also adopted in the ACT and Tasmania),⁸⁷
 - a person to supply illicit nicotine pouches⁸⁸
- a court may order a person convicted of illicit trade offences to repay the associated regulatory and enforcement costs incurred by the government (Queensland only)⁸⁹
- police can carry out general drug detection, weapons and explosives searches and use detection dogs at retail premises suspected of illicit trade (SA only).⁹⁰

The full-time equivalent (FTE) enforcement workforce of each licensing authority also varies considerably across jurisdictions. According to reported figures, Queensland Health has 200 authorised persons,⁹¹ NSW Department of Health has 78 inspectors,⁹² SA Consumer and Business Services has 45 authorised officers,⁹³ WA Department of Health has 40 investigators,⁹⁴ while Tobacco Licensing Victoria has just 14 licensing inspectors.⁹⁵ Since relevant powers took effect in each jurisdiction, at the time of writing at least 195 closure orders have been issued in

Queensland,⁹⁶ 100 in SA⁹⁷ and 77 in NSW,⁹⁸ which are intended to stop illicit traders from operating by closing retail premises. When jurisdictions have enacted stronger compliance monitoring and enforcement measures, reports indicate that illicit traders have changed or adapted their supply behaviours in response,⁹⁹ suggesting that increases in enforcement activity and the adoption of legal reforms which strengthen licensing schemes have a tangible impact on disrupting the illegal market.

To stamp out illicit trade occurring at tobacco retailing sites, states and territories must engage (and have the capacity to engage) in enforcement activity commensurate with the scale of the problem in their respective jurisdictions. Licensing authorities must focus not only on regulating licensed retailers, but also on targeting unlicensed operators engaged in illicit sales activity with significant penalties for illegal conduct. Consequences for businesses engaged in the sale of illicit tobacco must be severe and well publicised in order to act as a deterrent and denormalise the use of illicit tobacco in our communities. Cancer Council Australia recommends the Commonwealth Government strongly encourage and incentivise all state and territory governments to ensure that licensing authorities are equipped with the resources and statutory powers required to appropriately respond to the evolving nature of the illicit trade in each jurisdiction.

For a comprehensive description of each state and territory tobacco licensing scheme, see Table 11B.1 in *Tobacco in Australia: Facts and Issues* at <https://www.tobaccoinaustralia.org.au/downloads/chapters/Table-11B.1.pdf>.

For a comprehensive overview of illicit trade-specific measures implemented by each state and territory, see Tables 13A.9.1 and 13A.9.2 in *Tobacco in Australia – Facts and Issues* at <https://www.tobaccoinaustralia.org.au/chapter-13-taxation/indepth-13a-avoidance-and-evasion-of-taxes-on-tobacco-products/13a-9-measures-to-strengthen-the-current-regulatory-settings-to-address-illicit-tobacco-trade>.

7. Additional matters (term of reference (g))

7.1 Illicit trade of non-therapeutic nicotine products

The TGA is responsible for administering Australia's therapeutic goods framework under the *Therapeutic Goods Act 1989* (Cth) and associated legislation, including regulating vaping goods and other nicotine products for human use (such as oral nicotine pouches). DoHDA is responsible for administering the *Public Health (Tobacco & Other Products) Act 2023* (Cth), which among other things prohibits the advertising of e-cigarettes. Under these laws, the retail sale of non-therapeutic vaping goods and non-therapeutic nicotine products by tobacco retailers is prohibited. Complementary reforms have also been adopted, or are in progress, in several states and territories. Despite this, non-therapeutic nicotine products are readily available 'under the counter' alongside un-taxed tobacco products from bricks-and-mortar retailers such as tobacconists and convenience stores.

Many players involved in the illicit trade of tobacco products are also involved in the illegal importation, commercial possession, advertisement and supply of disposable nicotine vapes and oral nicotine pouches.¹⁰⁰ These widely available products in brightly coloured packaging and which contain sweeteners and fruit-flavoured additives are attractive to children, teenagers and young adults and are highly addictive, with evidence showing nicotine can have adverse impacts on adolescent brain development.¹⁰¹ While therapeutic vapes can be used as a smoking cessation tool, vaping is being taken up by young people who likely had never smoked tobacco products, a percentage of whom will go on to take up smoking as well (dual use). Recently published data from the Royal Children's Hospital *National Child Health Poll* reveals that in Australia, 74% of teens using nicotine products show signs of nicotine dependence and 53% of all teens who are using a nicotine product would like to quit or cut down.¹⁰² Generation Vape research further demonstrates that these illegal retail environments are shaping young people's attitudes, access and use of nicotine products. The findings show high levels of exposure to vaping products among adolescents, widespread availability through retail and social channels, and limited awareness of health risks, reinforcing concerns that illicit supply is fuelling early nicotine addiction and increasing the likelihood of long-term harm.¹⁰³

Worryingly, manufacturers have taken to producing and marketing products containing the nicotine analogue 6-methyl nicotine in order to circumvent regulatory requirements. Research has shown, however, that 6-methyl nicotine when inhaled can produce behavioural and physiological effects very similar to those produced by nicotine.¹⁰⁴ In addition to nicotine, illegal vapes seized by Australian law enforcement have been found to contain nitazene (which is potentially lethal and hundreds of times more potent than heroin), formaldehyde and antifreeze.¹⁰⁵ Moreover, disposable flavoured vapes and oral nicotine pouches are being sold from retail shops with store fronts advertising items that are popular with children and young people, including 'American candy' and novelty toys such as the viral 'Labubu'.¹⁰⁶

It is imperative therefore that state and territory tobacco licensing inspectors have the necessary authority to take enforcement action against retailers engaged not only in the illicit trade of tobacco but also in the illegal supply of non-therapeutic nicotine products. Such steps have already been taken by Queensland and South Australia, with both jurisdictions incorporating offence provisions under their respective tobacco licensing schemes to prohibit the retail sale of these products.¹⁰⁷ While non-therapeutic nicotine products may be outside the scope of this inquiry, Cancer Council Australia underlines the important opportunity presented to the Committee to consider and recommend reforms to address this aspect of Australia's illicit trade, which continues to perpetuate harmful nicotine addiction particularly among young people.

7.2 Protecting tobacco control policy making from industry interference

In Australia, despite the prohibition on tobacco sponsorship, the tobacco industry can provide political donations and electoral expenditure to parliamentarians, election candidates and

political parties.¹⁰⁸ Data from the Australian Electoral Commission shows that Philip Morris Ltd and British American Tobacco (BAT) Australia Ltd continue to make donations to Australian political parties.¹⁰⁹

Notwithstanding, Article 5.3 of the WHO FCTC makes clear Australia's obligation to protect public health policy from tobacco industry interference:

In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

Cancer Council Australia supports an open and transparent democracy and appreciates that it is the Committee who holds ultimate authority in deciding which witnesses to invite or summon to appear and give evidence for this inquiry.¹¹⁰ However, in light of Australia's obligations under Article 5.3 of the Convention, Cancer Council Australia calls on the Committee to require that before giving evidence to this inquiry, participants disclose the nature of any commercial and/or other interests in the tobacco and vaping industries. This could be achieved by the Committee requiring that a mandatory declaration of interests be completed and attached to written submissions and/or included as part of the short form witnesses must complete with their personal information when appearing before the Committee.

Cancer Council Australia representatives are available to appear and give evidence before the Committee as part of this inquiry.

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⁶¹ See, for example, *Tobacco and Other Smoking Products Act 1927* (ACT) ss 35(1), 36, 37, 39, 40; *Public Health (Tobacco) Act 2008* (NSW) ss 44, 45, 48, 50O(1); *Tobacco Control Act 2002* (NT) ss 47(2)(a)–(b), 50(1)–(2); *Tobacco and Other Smoking Products Act 1998* (Qld) ss 181(1)–(2), 184, 185, 187, 191, 192, 193, 197, 198; *Tobacco and E-Cigarette Products Act 1997* (SA) ss 66(1), 66AA; *Public Health Act 1997* (Tas) ss 30(1), 32(1)–(2), 33, 34(a)–(b), 35, 36; *Tobacco Act 1987* (Vic) ss 35C, 35F, 35H, 35I, 35K, 35L; *Tobacco Products Control Act 2006* (WA) ss 83, 84, 86, 87, 89, 93.

⁶² See, for example, *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010* (ACT) sch 1; *Public Health (Tobacco) Act 2008* (NSW) s 50; *Tobacco Control Regulations 2002* (NT) reg 27; *State Penalties Enforcement Regulation 2014* (Qld) sch 1 (entry for the *Tobacco and Other Smoking Products Act 1998* (Qld)); *Tobacco and E-Cigarette Products Act 1997* (SA) s 87(2)(f)–(g); *Public Health Act 1997* (Tas) s 169; *Tobacco Act 1987* (Vic) s 38; *Tobacco Products Control Regulations 2006* (WA) regs 60(1), 61(1).

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⁶⁵ See, for example, *Tobacco and Other Smoking Products (Vaping Goods) Amendment Act 2025* (ACT); *Tobacco and Other Smoking Products Amendment Act 2025* (ACT); *Public Health (Tobacco) Amendment Act (No 2) 2024* No 87 [NSW]; *Public Health (Tobacco) Amendment Act 2024* No 94 [NSW]; *Public Health (Tobacco) Amendment (Tobacco Licensing Scheme) Regulation 2025* [NSW]; *Tobacco Legislation (Closure Orders) Amendment Act 2025* No 51 [NSW]; *Public Health (Tobacco) Amendment (Landlord Offences) Bill 2025* [NSW]; *Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2025* (Qld); *Health Legislation Amendment Act 2025* (Qld); *Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Act 2025* (Qld); *Statutes Amendment (Tobacco and E-Cigarette Products—Closure Orders and Offences) Act 2025* (SA); *Public Health Amendment (Vaping) Act 2025* (Tas); *Public Health Amendment (Prohibited Tobacco and Other Products) Bill 2026* (Tas); *Tobacco Amendment (Tobacco Retailer and Wholesaler Licensing Scheme) Act 2024* (Vic); *Tobacco Amendment (Retailer and Wholesaler Licensing Scheme) Regulations 2025* (Vic); *Tobacco Products Control Amendment Regulations 2025* (WA); *Tobacco Products Control Amendment Act 2026* (WA).

⁶⁶ See, for example, *Tobacco and Other Smoking Products Act 1927* (ACT) s 22; *Public Health (Tobacco) Act 2008* (NSW) s 6(1); *Tobacco Control Act 2002* (NT) s 12(1); *Tobacco and Other Smoking Products Act 1998* (Qld) s 161(1); *Tobacco*

and E-Cigarette Products Act 1997 (SA) s 32; Public Health Act 1997 (Tas) s 74I; Tobacco Act 1987 (Vic) s 11A(3); Tobacco Products Control Amendment Act 2026 (WA) s 34.

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⁷⁵ Tobacco and Other Smoking Products Act 1998 (Qld) pt 11, div 4AA; Tobacco and E-Cigarette Products Act 1997 (SA) pt 6; Tobacco Products Control Act 2006 (WA) pt 6 div 4.

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⁸⁶ Tobacco Products Control Amendment Act 2026 (WA) s 34.

⁸⁷ Tobacco and Other Smoking Products Act 1927 (ACT) ss 3D(1)(a), 22; Public Health (Tobacco) Act 2008 (NSW) ss 50A (definition of 'relevant breach'), 50N (definition of 'illicit goods'), 50L, 50Q, 50S, sch 2 (definition of 'illicit vaping goods'); Tobacco and Other Smoking Products Act 1998 (Qld) ss 161A(1), 161B(2); Tobacco and E-Cigarette Products Act 1997 (SA) ss 39A(1), 45A(1)-(3); Public Health Act 1997 (Tas) ss 74B(2), 74C(2)(ab), 74F(3A), 74I, 74HA(1).

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