Tobacco Act Draft Compliance Strategy

Cancer Council Australia

9 June 2026

About Cancer Council

Cancer Council is the peak, non-Government cancer control organisation in Australia. As the national body in a federation of eight state and territory member organisations, Cancer Council Australia works 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 cross sectorial stakeholders and consumers to set priorities; and;
- speaking as a trusted voice on cancer control in Australia.

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 for evidence-based interventions to reducing the prevalence of smoking in Australia.

Cancer Council acknowledge 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 other Aboriginal and Torres Strait Islander people.

This submission was authorised by:

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Overall approach

a. Do you consider that the Compliance Strategy provides a clear and appropriate framework to guide compliance and enforcement under the Tobacco Act?

Cancer Council welcomes the opportunity to provide feedback on the draft Tobacco Act Compliance Strategy (the Strategy). The introduction of the *Public Health (Tobacco and Other Products) Act 2023* (Cth) (the Tobacco Act) represented a major advancement in strengthening and modernising Australia's national tobacco control framework. The Tobacco Act remains a critical tool in the fight against the tobacco industry, to help reduce Australians' tobacco use and nicotine addiction, particularly in the context of a flourishing illicit tobacco and vape market. However, the impact of the Tobacco Act is dependent on robust enforcement of its provisions.

The Strategy is intended to set out at a broad level how the Department of Health, Disability and Ageing (the Department) intends to prioritise compliance and enforcement activity under the Tobacco Act. While we acknowledge that compliance and enforcement resources within the Department are finite, and that some degree of prioritisation is therefore unavoidable, it is important to appreciate that in a regulatory domain such as tobacco control, sustained, vigorous and properly resourced enforcement is critical to ensuring the objects of the Tobacco Act are upheld.

The tobacco industry has a well-documented history of strategically adapting its practices to exploit gaps or weaknesses in compliance oversight, particularly in the context of advertising and promotion of its products. Weakening of enforcement in any area is likely to be rapidly leveraged by industry actors in a manner that undermines public health objectives and ultimately diminishes the effectiveness of the Tobacco Act.

It is therefore essential that the Department receives sufficient and ongoing resourcing to enable it to effectively enforce <u>all</u> provisions of the Tobacco Act and the *Public Health (Tobacco and Other Products) Regulations 2024* (Cth) ('the Regulations'). While we broadly support the use of a Compliance Strategy to ensure consistency in the Department's approach to compliance and enforcement, we would be concerned by a prioritisation approach that has the effect of weakening enforcement in any of the areas covered by the Tobacco Act.

Regarding overall clarity of the Strategy, while it provides a useful high-level overview of the Department's 'focus priorities', it is otherwise quite general in its framing and would benefit from greater specificity in some areas. We appreciate that the Strategy is not intended to prescribe operational procedures or case-specific actions, however the provision of further detail in some areas is necessary to ensure the Strategy can be effectively applied in practice. Areas requiring greater specificity are highlighted throughout our responses to Questions 2 to 5 of the consultation.

We note that section 3.2 of the Strategy appropriately positions public health as the primary policy driver for compliance and enforcement activity under the Tobacco Act. We strongly support this approach. The positioning of public health in this way is particularly important when it comes to enforcement activity relating to illicit tobacco. Cancer Council responded to the targeted initial consultation to inform the development of the draft Compliance Strategy in March 2026. In our response, we identified that an additional priority should be considered for combatting the illicit tobacco and e-cigarette products, and we were pleased to see this included as one of the key priorities proposed in the Compliance Strategy. Further detail on this topic is provided in our responses to Question 4.

Maintaining a public health focus is essential to ensuring that enforcement responses aimed at addressing illicit trade remain aligned with the objects of the Tobacco Act and, more broadly, Australia's *National Tobacco Strategy 2023-2030* and obligations as a Party to the World Health Organization *Framework Convention on Tobacco Control* (WHO FCTC).

We recommend that the Strategy be amended to specifically highlight the importance of ensuring that all compliance and enforcement activities align with Article 5.3 of the WHO FCTC, and the 'Australian Government Guidance for Public Officials on Interacting with the Tobacco Industry.' It is crucial that regulatory and enforcement processes are protected from tobacco industry influence, and explicit reference to this within the Strategy would help to ensure Australia's obligations under Article 5.3 are kept firmly in view. At a recent parliamentary hearing for the Senate Inquiry into the illegal tobacco crisis in Australia, a major global tobacco company was granted a private, undisclosed appearance at the hearing. This undermines Australia's obligations under the WHO FCTC and demonstrates the importance of ongoing commitments to upholding these obligations and highlights the need for the Strategy to be explicit in its wording regarding compliance and enforcement activities.

Regulatory approach

a. Does the Compliance Strategy appropriately reflect a risk-based, proportionate, and outcomes-focused approach to regulation, including graduated enforcement and procedural fairness?

Overall, the Strategy appears to broadly reflect a risk-based, proportionate, and outcomes-focused approach to regulation. However, as noted in our response to Question 1a, the Strategy is relatively high-level, and greater specificity would be beneficial to clarify how this approach is intended to operate in practice.

We note, for instance, that section 4.2 of the Strategy refers to the Department's commitment to both procedural fairness and transparency. However, the document does not describe the specific practices or policy mechanisms through which this commitment is to be given effect. Regarding transparency, for example, the Strategy could be improved by describing how, in practice, the Department intends to provide 'appropriate information' about regulatory activities and outcomes (i.e. the nature of the information the Department intends to provide, as well as the manner and frequency with which it intends to provide it).

Section 4.2 of the Strategy refers to the application of a graduated enforcement approach, noting that enforcement responses may escalate or de-escalate depending on a number of factors, including the nature and severity of the conduct as well as the compliance history and behaviour of the entity involved. While we acknowledge that a graduated enforcement approach is generally appropriate, in the context of tobacco control it is important to recognise the potential cumulative impact of repeated, seemingly minor breaches of the law. In some circumstances, failure to take strong and decisive action against conduct that appears relatively 'low-risk' in isolation could create opportunities for coordinated non-compliance among ostensibly unconnected offenders.

For example, the practice of engaging 'micro' and 'nano' influencers to promote products online is increasingly being adopted as a preferred promotional strategy by the industry.[1] Micro and nano influencers are those with far fewer followers than traditional 'celebrity' influencers (10,000–50,000 followers for micro influencers, and 1000–10,000 for nano influencers). Endorsement by influencers can be highly effective, as they are often viewed as more authentic and credible than other forms of promotion.[2] Caution should therefore be exercised when applying a graduated enforcement approach to ensure that seemingly minor, isolated breaches of the Tobacco Act are properly investigated, and any systemic patterns of industry-driven non-compliance are not overlooked.

Furthermore, we recommend avoiding use of the phrase "*voluntary compliance*" in the Strategy (see page iii and Figure 2 on page 20). While we appreciate this may be an accepted term in the Department, preferred terminology would be "mandatory compliance" or "proactive compliance" to appropriately recognise that the Tobacco Act and Regulations confer legal requirements that must be adhered to. In comparison, the phrase "voluntary compliance" may be better suited to soft obligations that are not, for example, attached to offence provisions.

Additionally, Figure 2 on page 20 refers to the objective of "targeted information-gathering" as being to "refine compliance assessment without *physical intrusion*." The phrase "physical intrusion" could unintentionally imply that on-site enforcement activity by the Department is overreach, when it is not. An alternative option could be to state the objective as "refine compliance assessment through desktop information gathering" or "refine desktop compliance assessment".

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[1] Exposing marketing tactics and strategies driving the global growth of nicotine pouches. Geneva: World Health Organization; 2026. Licence: CC BY-NC-SA 3.0 IGO. Available from: https://www.who.int/publications/i/item/9789240114920. See, in particular, pages 82-91.

[2] De Veirman M, Hudders L and Nelson MR (2019) What Is Influencer Marketing and How Does It Target Children? A Review and Direction for Future Research. Front. Psychol. 10:2685. doi: 10.3389/fpsyg.2019.02685. Available from: https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2019.02685/full?trk=pu

b. Are there any aspects of the regulatory approach that require clarification or refinement?

As indicated in our response to Question 2a, the Strategy could be improved by providing further clarification regarding how the Department intends to give effect to the Strategy's commitment to transparency and procedural fairness.

Further, we note that Figures 1 and 2 in the Strategy illustrate the Department's risk based and graduated regulatory approach. It is unclear what is meant by the term 'known or lawful entities' in Figures 1 and 2. We recommend this term be clarified.

Additional areas of the Strategy that would benefit from further detail are outlined in our responses to Questions 3-6.

Compliance and enforcement priorities

a. Do you consider that the priorities identify the areas of greatest compliance risk and public health impact? Please provide any additional comments on the priorities, including whether any should be refined, added, or removed.

We agree that the focus priorities identified in section 6 of the Strategy broadly reflect the areas of greatest compliance risk and potential public health impact, and we support their inclusion in the Strategy. The prioritisation of these areas is appropriately directed toward the types of conduct most likely to undermine the objectives of the Tobacco Act. However, we reiterate that it is crucial to ensure the Department receives sufficient and ongoing resourcing to enable it to effectively enforce all provisions of the Act (as outlined in our response to Question 1).

We note that the distinction between 'focus priorities' and 'ongoing monitoring priorities' supports a flexible and pragmatic regulatory approach. However, it would be helpful for the Strategy to specifically clarify that all obligations under the Tobacco Act remain subject to compliance oversight and potential enforcement action, regardless of whether they are considered a 'focus priority'.

Further, it is critical that the focus priorities be subject to regular review, in order to maintain the Strategy's responsiveness to evolving industry practices. The tobacco industry is highly adaptive, particularly in relation to marketing and promotion practices, and exploitation of regulatory loopholes. Ongoing reassessment of enforcement priorities will be necessary to ensure the Strategy remains sufficiently agile and capable of responding quickly and effectively to changes in industry behaviour.

We note that section 8.2 of the document does contain a commitment by the Department to review the Strategy 'periodically.' However, the Strategy could be strengthened by stipulating the minimum interval by which the Department intends to review the document e.g. at least every 12 months. Inclusion of a more specific review timeframe would provide greater assurance that the focus priorities will remain responsive to emerging risks and changes to the broader regulatory environment.

Cancer Council encourages the Department to consider the experiences and perspective of Aboriginal and Torres Strait Islander peoples, as an identified priority population, who are disproportionately impacted by tobacco prevalence and experience higher rates of harm. Reducing tobacco use among Aboriginal and Torres Strait Islander peoples (First Nations people) has been identified as a priority area in the National Tobacco Strategy, [3] and this should be reflected more formally in the draft Strategy.

Illicit trade in tobacco and regulatory coordination

a. Does the Compliance Strategy clearly and appropriately reflect the risks associated with illicit trade tobacco and e-cigarettes?

Cancer Council commends the Department for including illicit trade as a central and prominent theme throughout the Strategy. The document appropriately identifies the risks of illicitly traded tobacco and vaping products in undermining existing tobacco control policy measures.

One area that could be further developed in the Strategy is the Department's intended approach to regulating digital environments, including where online retailers advertise illicitly traded products such as flavoured, disposable vapes for sale. From a jurisdictional perspective, we anticipate there may be legal complexities in taking enforcement action against online-only retailers. This may include where websites are targeted at Australian consumers but hosted on offshore servers, are based on the "dark web" and/or have been registered using false information. The Strategy does not provide information on these challenges, including whether the Department engages with, for example, social media companies or if the Department has the authority to shut down non-compliant websites for serious breaches.

Quit has to-date reported to the Department at least four instances where online conduct appears to breach the Tobacco Act and Regulations. While the Department has acknowledged receipt of these reports and has advised that its practice is not to release information to the public about specific enforcement activities, we note the various websites remain operational and the breaches are still evident, indicating no rectification action has been taken. Cancer Council recommends that the Strategy includes clear guidance as to how the Department processes reports of non-compliance

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[3] Department of Health and Aged Care. National Tobacco Strategy 2023-2030. Commonwealth of Australia; 2023.

submitted by the public, with response timeframes and service standards included, as well as including whether matters that are outside the Department's remit are, for example, referred on to other agencies (where appropriate).

b. Does the Compliance Strategy clearly and appropriately reflect the Department's role in taking compliance and enforcement action under the Tobacco Act where products or conduct associated with illicit trade also breach Tobacco Act requirements?

The Strategy makes repeated reference to the responsibilities of "other regulators" with regard to addressing the illicit trade, and notes that these may overlap with the Department's remit. There are approximately 10 separate references to this sentiment throughout the Strategy. While it is important to acknowledge the broader context within which the Department operates, the repeated use of this qualifying statement could be read as detracting from or diminishing the Department's distinct role under the Tobacco Act and Regulations. We suggest reducing this duplication.

Notwithstanding, the Strategy itself provides limited information on how the Department intends to navigate enforcement activity where another regulator or law enforcement agency may have already taken action against a person for the same conduct. In such circumstances, it is unclear whether the Department will defer to the entity that has already engaged in the enforcement action, consider complementary measures or take no further action. Moreover, it is unclear how the Department's triaging and decision-making process will have regard to limitations set within the regulatory framework itself. In particular, the application of section 7(4)-(5) of the Tobacco Act which prevents the "*doubling up of liabilities*". The Strategy would benefit from further explaining these practical and technical complexities, particularly if the Department may be prevented from acting in response to non-compliance. This clarification is important given that most illicitly traded tobacco products in the Australian market breach the requirements of the Tobacco Act and Regulations.

c. Are there any aspects of coordination or delineation of roles that would benefit from further clarification?

Strong coordination across Commonwealth, state, and territory regulators is critical to properly addressing the illicit trade, online environments and cross-jurisdictional supply chains. The Strategy appropriately recognises the importance of coordination, information sharing, referral pathways and complementary regulatory action across jurisdictions and legislative frameworks.

However, the Strategy does not address the role of authorised officers, who are responsible for enforcing the Tobacco Act. We understand that the Secretary of the Department may appoint public servants within state and territory health departments as authorised officers under section 150(1)(c) of the Act. Where this is the case, it is unclear how states and territories are expected to apply the Strategy and, more broadly, perform the role of authorised officers in enforcing federal legislation.

This aspect of the regulatory framework is particularly relevant in those jurisdictions which currently lack appropriate state-based offence provisions, including with respect to the illicit trade of tobacco products, as is the case in the NT, or non-therapeutic vaping goods, as is the case in Victoria, and instead may primarily rely on applicable Commonwealth laws. Other jurisdictions such as NSW, SA, and WA have incorporated federal tobacco product and packaging requirements within definitions of "*illicit tobacco*" in state-based tobacco control legislation.

Implementation and application

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a. Does the Compliance Strategy provide sufficient strategic guidance on how the department will apply its compliance and enforcement approach, including how it will: use priorities to guide regulatory focus; apply a risk-based and proportionate approach; consider available regulatory tools and responses; use data and intelligence to inform decision-making; coordinate with other regulators, including through lawful information sharing; and review and update the Strategy over time?

As indicated in our response to Question 1, the guidance provided by the Strategy is quite high-level and general in its framing. The broad framing of the strategy makes it difficult for stakeholders to clearly ascertain how the Department intends to translate the Strategy into day-to-day implementation. The areas of the Strategy that would benefit the most from more detail have been outlined in our responses to each Consultation Question.

Additional feedback

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a. Are there any other comments or suggestions to improve the clarity, effectiveness, accessibility, or usability of the Compliance Strategy?

The opening 'Summary' section of the Strategy should clarify who the intended audience of the document is - for example, if it is primarily for internal use by Departmental staff, other regulators, tobacco wholesalers and retailers, for the general public, or another audience.

Throughout, the Strategy uses an umbrella term of "other regulators" to describe entities that have separate and/or complementary tobacco control-related enforcement responsibilities, particularly with respect to addressing the illicit trade. While some of these entities are regulators e.g. the Therapeutic Goods Administration, state and territory health departments and tobacco licensing authorities, law enforcement agencies e.g. Australian Federal Police, Australian Border Force and state and territory police forces are not regulators. As such, a more representative term could be "other regulators and law enforcement agencies".

We suggest removing the reference to the ITEC from Table 1 on page 4 of the Strategy. While the ITEC Office is situated within the ABF, it is a separate and distinct role which consists primarily of national coordination and statutory reporting, not enforcement.

In section 5.3 on the "Drivers of non-compliance", we suggest reframing the last bullet point to more accurately reflect a lack of enforcement as the actual driver, with a lowered willingness to comply as the symptom. Accordingly, we recommend revising the wording as follows "*A lack of enforcement, compliance outcomes, or other deterrents create a reduced willingness to comply, including ambivalence to requirements due to a perceived low risk of penalty."*

We suggest adding a caveat to the 'Rationale' column of row 2, Table 4 on page 15 to reflect the ban on online sales in SA. The wording could be revised as follows: "*While tobacco products may be sold online except in South Australia*,".

Section 9 of the Strategy, dealing with "Relationship to supporting documents", would be strengthened by listing with hyperlinks; specific relevant supporting documents where they are already publicly available. This could include, for example, the Department's online tobacco complaint form, the *Guide to advertising and sponsorship prohibitions* and the *Guide to online point-of-sale advertising requirements*.

We note that the term 'harm minimisation' is used throughout the Strategy (see, for example, page ii and 8). We don't recommend use of this term in the context of tobacco policy given that it has increasingly been co-opted by the industry in a way that undermines public health objectives.

We note that the Table of Contents in the Strategy has omitted Section 6, 'Compliance and enforcement priorities' and we recommend that this be amended.

In the Glossary, we recommend that the term 'priority populations' is further expanded, to clarify which communities are classified as priority populations. The Strategy could refer to the priory populations addressed in the National Tobacco Strategy, which includes Aboriginal and Torres Strait Islander peoples, people living with mental illness, LGBTIQ+ communities, people living with mental illness and people from socioeconomically disadvantaged areas.[3]

Cancer Council would like to thank the Department for this opportunity to respond to the Draft Compliance Strategy, and once again acknowledge the critical role of the Tobacco Act in ensuring that Australia continues to be a world-leader in tobacco control, thereby reducing the incidence of cancer and related mortality for Australians. The Compliance Strategy will act as an essential lever to ensure the Tobacco Act is appropriately enforced and we commend the Department's ongoing consultation to ensure the Strategy is fit for purpose.