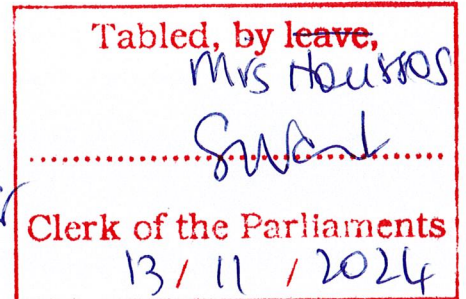


Statement of Public Interest
Legislative Council: Standing Order 143

Public Health (Tobacco) Amendment Bill (No.2) 2024



Statement 1: Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill proposes to amend the Public Health (Tobacco) Act 2008 (Tobacco Act) to create a licensing scheme for the retail sale and wholesale of tobacco products, and create offences for the sale of tobacco without a licence. The Bill also increases the penalties for existing offences in the Tobacco Act relating to the sale of tobacco to minors and to the sale of illicit tobacco.

The policy need for this Bill is to increase compliance with tobacco retailing laws, to deter the selling of tobacco products to minors and to stop the sale of illicit tobacco, which has increased in recent years. This will bring NSW into line with other states and territories.

Government agencies such as the Department of Customer Service and NSW Police have provided input to the development of the scheme and its proposed implementation. External stakeholders were consulted during development of a Better Regulation Statement.

Statement 2: Objectives: What is the policy's objective couched in terms of the public interest?

The objective of the increases to existing penalties is to bring them into line with community expectations, reflecting the serious nature of selling illicit tobacco or sales to minors, and other breaches of the Public Health (Tobacco) Act.

The objectives of the licensing scheme are to ensure there are greater powers to address illicit tobacco, and other non-compliance with Australia's tobacco and vaping laws. Sale of illicit tobacco, and other breaches of the requirements of the Public Health (Tobacco) Act undermine public health efforts to minimise the harms of smoking.

Statement 3: Options: What alternative policies and mechanisms were considered in advance of the bill?

Consideration was given to retaining the existing tobacco retail notification scheme.

Statement 4: Analysis: What were the pros/cons and benefits/costs of each option considered?

If NSW does not introduce a tobacco licensing scheme, inspectors will continue to have powers to enforce the sale of illicit tobacco, and sale of tobacco to minors. Tobacco retailers would still be required to notify the Secretary of the fact they are selling tobacco. However, enforcement powers will be more limited, and not sufficiently robust to exclude illicit tobacco retailers from continuing to trade.

The tobacco licensing scheme provides more options to prohibit the sale of tobacco by both retailers and wholesalers where a retailer or wholesaler has been convicted of a tobacco or vaping good related offence under any state, territory or Commonwealth legislation. The scheme will also provide reliable information on tobacco retailers and wholesalers, which will better equip NSW Health to undertake inspections and carry out compliance and enforcement activities.

Statement 5: Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The amendments relating to the increase of existing penalties will commence on assent.

The amendments regarding the new tobacco licensing scheme will commence on proclamation. This is intended to be around 1 July 2025, depending on the timing of the passage of the Bill through Parliament. Implementation of the licensing scheme will likely be phased. The Bill will contain transitional arrangements to ensure that applicants can apply for a licence before the commencement of the scheme. The Ministry will be responsible for administering the scheme, with the Department of Customer Service hosting the licence registry.

Statement 6: Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The NSW Government has listened to public health advocates and non-government organisations who have advocated for a tobacco licensing scheme in NSW.

The Legislative Assembly Committee on Law and Safety also considered this issue in its recent inquiry on e-cigarette regulation and compliance in New South Wales and recommended a tobacco licensing scheme be introduced in NSW.

A Better Regulation Statement was developed for the proposed licensing scheme, and targeted external consultation was conducted. There was broad support from retailers, the hospitality industry, public health organisations and health peak bodies for the introduction of the tobacco licensing scheme.

All stakeholders consulted on the Better Regulation Statement agreed that maintaining the existing regulatory arrangements is not an appropriate option as it does not facilitate effective and efficient monitoring and enforcement of tobacco retailing laws in NSW.

Retailers' representatives noted that, while businesses would need to allocate time and resources to familiarise themselves with the new requirements and comply with them, the long-term benefits of the scheme (such as a safer retail environment and the reduction of criminal activity) would outweigh these initial costs.

Stakeholders consulted included the Cancer Council NSW, Lung Foundation Australia, Heart Foundation Australia, Australian Medical Association (AMA) (NSW Branch), Royal Australian College of General Practitioners (NSW), Australian Association of Convenience Stores, Australian Retailers Association, General Council of Small Business Australia, Master Grocers Australia, National Retail Association, Newsagent Association of NSW, Service Stations Association, Australian Hotels Association, ClubsNSW.