

Tobacco licensing schemes

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Key points

- While tobacco smoking rates have been falling for many years in NSW, they have stabilised over the past 3 years.
- Illicit tobacco is tobacco that has been illegally imported or grown in Australia. It is generally sold in packaging that does not include mandatory public health warnings.
- Positive licensing schemes are one regulatory instrument that can be used to meet public health and illicit tobacco control objectives. They require a person to lodge an application and pay a fee to a relevant authority to hold a tobacco licence. The licence holder may be banned from selling tobacco products.
- All Australian jurisdictions except NSW and Victoria have a positive licensing scheme for tobacco retailers and 5 (ACT, Queensland, South Australia, Tasmania and Western Australia) have a positive licensing scheme for wholesalers. In NSW, which currently has a notification scheme, the government has legislation before parliament to introduce a positive scheme for retailers and wholesalers. Victoria has committed to introducing a positive scheme for retailers and wholesalers before the end of 2024.
- Positive licensing schemes enable the government to place limits on who can sell tobacco, make it easier for them to carry out compliance and enforcement activities, and improve their ability to meet public health and illicit tobacco control objectives.
- The disadvantages of positive licensing schemes include the administrative costs for government and businesses, and licence fees, which could have a disproportionate impact on small businesses.
- The proposed NSW scheme will allow the Secretary for Health to refuse to grant or renew a licence if the applicant has been found guilty of an offence relating to the sale of tobacco products anywhere in Australia. Other key features include the requirement of a licence for each retail outlet and establishment of a register of licences.
- Australian positive licensing schemes differ in many ways. The proposed NSW scheme does not include features found elsewhere such as a specific fit and proper person test and the capacity to disqualify a person from holding a licence. When it comes to penalties for offences like selling tobacco without a licence, selling illicit tobacco and selling tobacco to a minor, the proposed NSW penalties are significantly lower than those in South Australia, which are the highest of any jurisdiction.

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1. Introduction

Tobacco smoking remains the leading cause of premature death and disease in Australia and NSW.¹ While smoking rates in NSW have fallen from 18.9% in 2007 to 9.5% in 2022–23, according to HealthStats NSW, the decline in smoking appears to have plateaued over the 3 years 2021 to 2023.²

Illicit tobacco (otherwise known as illegal tobacco) is tobacco that has been illegally imported or grown in Australia and, as such, the required customs or excise duties have not been paid.³ As a result, these products generally do not include the mandatory public health warnings regarding the dangers of smoking.⁴ Illicit tobacco is an issue of concern to health agencies because it undermines tobacco control policies designed to reduce smoking. Law enforcement agencies are also concerned about it because organised criminal gangs are involved in its importation, manufacturing and distribution.⁵ There has been a recent increase in arson attacks on tobacco shops in NSW, Victoria and South Australia related to the sale of illicit tobacco.⁶ The illicit tobacco market in Australia appears to be growing as the price of legal tobacco increases.⁷ For example, the Australian Tax Office (ATO) estimates that the total amount of grown and imported illicit tobacco in Australia rose from 1,073 tonnes in 2016–17 to 3,834 tonnes in 2022–23.⁸

Key stakeholders such as the World Health Organisation have recommended the adoption of tobacco licensing schemes for several decades.⁹ These schemes are regulatory instruments that can meet both public health and illicit tobacco control objectives. They can take 4 different forms, the last of which is the most comprehensive: notification schemes, accreditation schemes, negative licensing schemes and positive licensing schemes. As at 8 November 2024, every jurisdiction in Australia has a positive licensing scheme for tobacco retailers except NSW and Victoria. Four jurisdictions have a positive licensing scheme for tobacco wholesalers (ACT, Queensland, Tasmania and Western Australia) and the South Australian Parliament has passed a Bill that will establish a scheme for wholesalers. NSW currently has a notification scheme for tobacco retailers only. Victoria currently has a negative licensing scheme, and the Victorian Government has committed to introducing a positive licensing scheme for retailers and wholesalers before the end of 2024. Licensing schemes are also

¹ HealthStats NSW, [Smoking and e-cigarette use](#), NSW Government, July 2024, accessed 6 November 2024; Department of Health and Aged Care, [Effects of smoking and tobacco](#), Australian Government, 8 May 2024, accessed 6 November 2024.

² HealthStats NSW, [Smoking and e-cigarette use](#), NSW Government, July 2024, accessed 6 November 2024.

³ Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, pp iii.

⁴ R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), NSW Hansard, 24 October 2024.

⁵ Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020, p 1.

⁶ See for example: M Tillman et al., [Ballina tobacco shop destroyed by fire after suspected ram raid attack](#), ABC, 23 October 2024, accessed 8 November 2024; ABC, [Tobacco wars have spread from Victoria and New South Wales into South Australia and police are cracking down](#), ABC, 7 November 2024, accessed 8 November 2024.

⁷ See for example: Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 19.

⁸ Australian Tax Office, [Tobacco tax gap: Methodology](#), 31 October 2024, accessed 6 November 2024.

⁹ See for example: World Health Organization, [WHO Framework Convention on Tobacco Control](#), 2003.

found in many international jurisdictions including the majority of states in the United States, most Canadian provinces, France, Scotland and Ireland.¹⁰

Illicit tobacco and tobacco licensing has been the subject of recent parliamentary debate in NSW. In August 2024, the final report of an inquiry into e-cigarette regulation and compliance recommended that the NSW Government consider introducing a positive licensing scheme for tobacco retailers.¹¹ Several members have spoken on the growing impact of illicit tobacco across NSW in private members statements and in debate on the [Public Health \(Tobacco\) Amendment Bill 2024](#), which does not contain any reforms related to illicit tobacco.¹² On 24 October 2024, the Shadow Ministers for Health and Regional Health released a media statement calling for a parliamentary inquiry into the ‘illegal tobacco (“chop chop”)’ trade in NSW.¹³

On 24 October 2024, the NSW Government introduced the [Public Health \(Tobacco\) Amendment Bill \(No 2\) 2024](#) into the Legislative Assembly to replace the current notification scheme with a positive licensing scheme for tobacco retailers and wholesalers and increase penalties for particular offences. The Minister for Health, Ryan Park, noted in the Second Reading Speech that the proposed reforms would meet illicit tobacco control and public health objectives.

The purpose of this paper is to compare the proposed NSW scheme with all other Australian schemes to inform parliamentary debate. It provides a brief history of the schemes introduced in NSW in 1975 and 2008 and relevant NSW parliamentary developments before outlining the proposed NSW scheme. Recent policy and parliamentary developments at the national level and in Queensland, Victoria and South Australia are outlined before the key characteristics of all Australian schemes are compared. The paper finishes with a short section on the advantages and disadvantages of positive licensing schemes. While there is a connection between trade in illicit tobacco and e-cigarettes,¹⁴ vaping is outside the scope of this paper because recent Australian Government reforms mean that it is no longer subject to state and territory licensing schemes.¹⁵

¹⁰ E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

¹¹ NSW Legislative Assembly Committee on Law and Safety, [E-cigarette regulation and compliance in New South Wales](#), August 2024, p 16.

¹² J McGirr, [Illegal tobacco sales](#), *NSW Hansard*, 18 June 2024; J Clancy, [Tobacco licensing scheme](#), *NSW Hansard*, 13 August 2024; F Wilson, [Tobacco and e-cigarette retail](#), *NSW Hansard*, 18 October 2024; R Roberts, [Tobacco regulation](#), *NSW Hansard*, 23 October 2024; [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024; [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

¹³ K Sloane and G Singh, [Illegal tobacco inquiry](#) [media release], 24 October 2024, accessed 6 November 2024.

¹⁴ [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

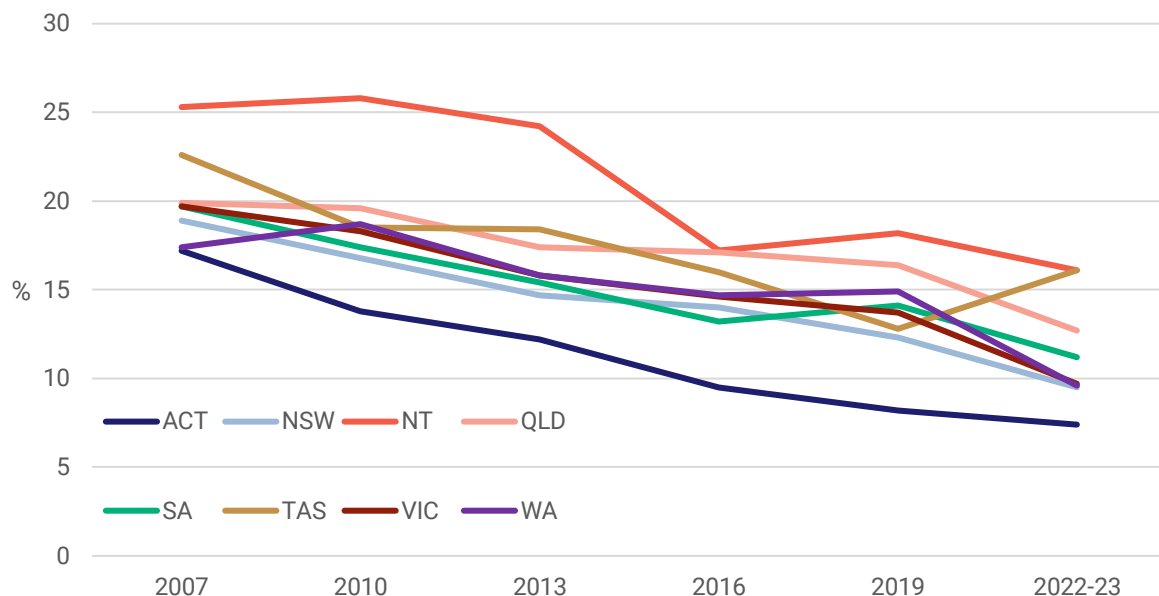
¹⁵ Therapeutic Goods Administration, [Changes to the regulation of vapes](#), Australian Department of Health and Aged Care, 1 October 2024, accessed 31 October 2024.

2. Public health and tobacco data

2.1 Tobacco smoking rates in all jurisdictions have fallen

Between 2007 and 2022–23 tobacco smoking rates decreased across all Australian states and territories (Figure 1). In NSW, the smoking rate declined from 18.9% in 2007 to 9.5% in 2022–23. ACT had the lowest smoking rate of all jurisdictions (7.4%), followed by NSW (9.5%), Western Australia (9.6%), and Victoria (9.7%). According to HealthStats NSW, the decline in smoking in NSW appears to have plateaued over the 3 years 2021 to 2023.¹⁶ In NSW, the prevalence of smoking is higher in outer regional and remote areas (11.7%) compared with major cities (7.3%) and in the most disadvantaged areas (13.1%) compared with the least disadvantaged areas (4.3%).¹⁷

Figure 1: Daily and occasional tobacco smoking, people aged 14 and over, by state and territory (%)



Source: AIHW, [National Drug Strategy Household Survey 2022-23](#), February 2024, Table 9b.5.

2.2 There is a shortage of publicly available data on the tobacco industry in Australia

According to industry market research, the value of retail sales of tobacco products in Australia was \$17.3 billion in 2017.¹⁸ No more recent estimates appear to be available. The Research Service did not identify any authoritative data on the number of tobacco retailers in Australia. A recent media article noted the number of stores selling tobacco in NSW ‘has increased from 14,500 to 19,500 in the

¹⁶ HealthStats NSW, [Smoking and e-cigarette use](#), NSW Government, July 2024, accessed 6 November 2024; HealthStats NSW, [Current smoking in adults](#), NSW Government, 2024, accessed 7 November 2024.

¹⁷ HealthStats NSW, [Smoking and e-cigarette use](#), NSW Government, July 2024, accessed 6 November 2024.

¹⁸ M Scollo and M Bayly, [10.6 Retail value and volume of the Australian tobacco market](#), In M Scollo and M Winstanley [editors], *Tobacco in Australia: Facts and issues*, Cancer Council Victoria, 2020.

space of four years.¹⁹ These figures 'only include the retailers that have registered and do not account for stores that have closed.'

Annual revenue for the tobacco wholesaling industry has been falling since a peak of \$4.4 billion in 2016 to reach \$1.8 billion in 2024.²⁰

2.3 The illicit tobacco market has grown significantly between 2016–17 and 2022–23

Illicit tobacco is tobacco that has been illegally imported or grown in Australia. The required customs or excise duties have not been paid on these products and they generally do not include mandatory public health warnings.²¹ There are 2 general types of illicit tobacco products: loose leaf tobacco, colloquially known as 'chop chop' or 'molasses tobacco', and pre-rolled cigarettes that have been illegally manufactured (counterfeit tobacco) or legitimately manufactured but illegally imported (contraband tobacco).²²

There have been several attempts to estimate the size of Australia's illicit tobacco market with very different results.²³ A recent report by the Australian Tax Office (ATO) estimated there were 1,656 tonnes of illicit tobacco undetected in the Australian market in 2022–23, representing 18% of the total tobacco market (legal and illicit).²⁴ The amount of lost excise revenue from this illicit tobacco was estimated at \$2.7 billion in 2022–23, compared with \$621 million in 2016–17. The ATO also estimates that the total amount of illicit tobacco either imported into Australia or grown in Australia has increased from 1,073 tonnes in 2016–17 (worth \$805 million) to 3,834 tonnes in 2022–23 (worth \$6.3 billion).²⁵

In 2023–24, NSW Health conducted over 2,300 retail inspections and seized over 425,000 nicotine vapes, 8.3 million illicit cigarettes and 2,600 kilograms of other illicit tobacco products with a street value of over \$23.5 million.²⁶ In the 3 months from 1 July 2024 to 30 September 2024, NSW Health conducted 565 targeted retail inspections, seizing more than 3.2 million cigarettes and over 600kg of other illicit tobacco products, with an estimated value of over \$3.7 million.²⁷

¹⁹ J Norman, '[Excessively high' cigarette taxes 'fuelling' black market, as retailers fear expansion of tobacco wars](#), ABC News, 21 July 2024, accessed 4 November 2024.

²⁰ M Reeves, [F3606B – Tobacco product wholesaling in Australia](#), IBISWorld, October 2024.

²¹ Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, pp iii; R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), NSW Hansard, 24 October 2024.

²² Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020, p 7.

²³ C Puljević, M King, I Meciar, C Gartner, [Smoking out Australia's growing illicit tobacco market: Current trends and future challenges](#), *International Journal of Drug Policy*, 2024, 127, 104424. See also Parliament of Australia Joint Committee on Law Enforcement, [Illicit Tobacco](#), Parliament of Australia, 2020, Ch 2.

²⁴ Australian Taxation Office, [Tobacco tax gap - latest estimates and findings](#), 31 October 2024.

²⁵ Australian Taxation Office, [Tobacco tax gap: methodology](#), 31 October 2024, accessed 7 November 2024.

²⁶ H McDermott, [Public Health \(Tobacco\) Amendment Bill 2024](#), NSW Hansard, 15 October 2024.

²⁷ R Park, [Strengthening enforcement to tackle illegal tobacco](#) [media release], NSW Government, 24 October 2024.

3. Tobacco licensing schemes

3.1 Types of licensing schemes

There are 4 types of licensing schemes which could be used for the retail or wholesale sale of tobacco products (Table 1):

1. A positive licensing scheme requires an application and fee to a relevant authority to hold a tobacco licence. The licence holder may be banned from selling tobacco products.
2. A negative licensing scheme does not require an application or fee, or notification of intent to sell tobacco products. The licence holder may be banned from selling tobacco products.
3. A notification scheme does not require an application or fee. The person or corporation must notify the relevant authority of their intent to sell tobacco. The licence holder may be banned from selling tobacco products.
4. An accreditation scheme is non-mandatory. Entry to the scheme requires prior approval and compliance with standards, and accreditation can be withdrawn for failing to meet the standards.²⁸

Positive licensing, negative licensing, and notification schemes are currently in use in Australia.

Table 1: Properties associated with various forms of licensing

	Notification	Accreditation	Negative licensing	Positive licensing
Notification: provision of information to the regulatory authority	✓	✓		✓
Prior approval: approval from regulatory authority required prior to sale of tobacco		✓		✓
Standards: minimum standards must be met to obtain and/or retain licence	Optional	✓	✓	✓
Enforcement or compulsion: standards are enforceable and their contravention may lead to suspension or revocation of permission to sell	✓		✓	✓

Source: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p 14.

3.2 Overview of Australian tobacco licensing schemes

As at 8 November 2024, all Australian states and territories except NSW and Victoria had a positive licensing scheme for tobacco retailers (Table 2). The Queensland scheme came into effect on 1

²⁸ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 56; The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002, p 36.

September 2024,²⁹ prior to which there was a negative licensing scheme.³⁰ Victoria has had a negative licensing scheme since 2000.³¹ While some sources have described NSW as also having a negative licensing scheme, it is more accurate to describe it as a notification scheme in light of the typology set out in Table 1 and because it differs from the Queensland and Victorian schemes.³²

Table 2: Australian licensing schemes including the proposed NSW positive licensing scheme

	Scheme type	Agency in charge of administration
ACT	Positive (retail and wholesale)	Access Canberra (Chief Minister, Treasury and Economic Development Directorate)
NSW	Positive (retail and wholesale) (proposed scheme)	NSW Health
Northern Territory	Positive (retail only)	NT Health
Queensland	Positive (retail and wholesale)	Queensland Health
South Australia	Positive (retail) (a Bill to introduce a wholesale scheme passed parliament on 30 Oct 2024 but had not received assent by 8 November 2024)	Consumer and Business Services (Attorney-General's Department)
Tasmania	Positive (retail and wholesale)	Department of Health
Victoria	Negative	Delegated to councils by Department of Health
Western Australia	Positive (retail and wholesale)	Department of Health

Sources for Tables 2 and 3: [Tobacco and Other Smoking Products \(Fees\) Determination 2023 \(No 1\)](#) (ACT); [Tobacco and Other Smoking Products Act 1927](#) (ACT); Access Canberra, [Tobacco licences and smoking areas](#), ACT Government, n.d., accessed 29 October 2024; [Public Health \(Tobacco\) Act 2008](#); [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#); Northern Territory Government, [Tobacco licences](#), 2024, accessed 29 October 2024; [Tobacco Control Act 2002](#) (NT); Business Queensland, [Smoking product supplier licensing scheme](#), Queensland Government, 28 August 2024, accessed 29 October 2024; [Tobacco and Other Smoking Products Act 1998](#) (Qld); South Australian Government, [Apply for a retail tobacco licence](#), 1 July 2024, accessed 29 October 2024; [Tobacco and E-Cigarette Products Act 1997](#) (SA); Consumer and Business Services, [Tobacco licensing and enforcement in SA](#), South Australian Government, 2023, accessed 29 October 2024; [Public Health \(Smoking Product Licence\) Regulations 2019](#) (Tas); Department of Health, [Smoking product legislation](#), Tasmanian Government, 1 October 2024, accessed 30 October 2024; [Public Health Act 1997](#) (Tas); Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024; [Tobacco Products Control Regulations 2006](#) (WA), as at 1 July 2024; [Tobacco Products Control Act 2006](#) (WA); Department of Health, [Tobacco sellers licensing](#), Government of Western Australia, 31 October 2023, accessed 30 October 2024.

²⁹ Business Queensland, [Smoking product supplier licensing scheme](#), Queensland Government, 28 August 2024, accessed 28 October 2024.

³⁰ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Queensland Parliament, April 2016, Chapter 4; Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 57.

³¹ J Thwaites, [Tobacco \(Amendment\) Bill](#), *Victorian Hansard*, 4 May 2000, p 1,310. The 2024 Victorian parliamentary inquiry into vaping and tobacco controls reported that Victoria did not have a licensing scheme. However, it appears to be more accurate to say that it has a negative licensing scheme because retailers can be banned from selling tobacco for a period of up to 5 years, depending on the offence, under section 15D of the [Tobacco Act 1987](#) (Vic). See also: E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

³² For example, the NSW statutory review of the [Public Health \(Tobacco\) Act 2008](#) described the NSW scheme as a negative licensing scheme: NSW Health, [NSW Taskforce on Tobacco Retailing: Final Report and Recommendations](#), NSW Government, 2014, p 10.

Four jurisdictions also have a positive licensing scheme for tobacco wholesalers: ACT, Queensland, Tasmania and Western Australia. A Bill to establish a wholesale licensing scheme in South Australia passed both Houses of Parliament in October 2024 but had not received assent by 8 November 2024. The Victorian Government has committed to introducing legislation to establish a retail and wholesale licensing scheme before the end of 2024.³³

Across the Australian jurisdictions, the cost of an annual retail licence ranges from \$282 in the Northern Territory to \$1,340.79 in Tasmania (Table 3). A retail licence is required for each retail outlet, and in some cases each online outlet, in every jurisdiction except the ACT and South Australia. Online retail sale of tobacco products is prohibited in South Australia.³⁴ The price of a wholesale licence ranges from \$617.30 in the ACT to \$1,340.79 in Tasmania.

Table 3: Australian licensing schemes including the proposed NSW positive licensing scheme: retail and wholesale licence costs

	Retail licence application	Retail licence cost	Wholesale licence cost
ACT	1 licence can apply to multiple outlets	\$617.30 (annual)	\$617.30 (annual)
NSW (Proposed scheme)	1 per shop or online outlet	N/A	N/A
Northern Territory	1 per shop	\$282 (1 year) \$846 (3 years) \$1,410 (5 years)	N/A
Queensland	1 per shop or online outlet, unless they are connected in which case 1 licence can apply to both	\$474.88 (annual)	\$674.16 (annual)
South Australia	1 licence can apply to multiple outlets Retail sale by online outlet is prohibited	\$340 (annual)	N/A
Tasmania	1 per shop	\$1,340.79 (annual)	\$1,340.79 (annual)
Victoria	N/A	N/A	N/A
Western Australia	1 per shop or online outlet ³⁵	\$327 (annual)	\$797 (annual)

Sources: See Table 2 note.

³³ R Willingham, [Victorian Premier Jacinta Allan says government will roll out tobacco shop licensing by end of year](#), ABC News, 28 March 2024, accessed 29 October 2024. See also: Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 58.

³⁴ Online sales pose a risk of allowing for the sale of tobacco to minors and illicit tobacco. Better Regulation Victoria recommended that the Victorian Government should consider following South Australia's example. Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, p 21.

³⁵ The Western Australian licensing scheme includes licences for retailers, wholesalers and 'indirect sellers', who sell tobacco 'by way of internet, electronic mail, telephone, facsimile or mail order' (Glossary, [Tobacco Products Control Act 2006](#) (WA)).

Tobacco licensing schemes are regulated by the health department in every jurisdiction except the ACT and South Australia. The Victorian health department delegates its authority to enforce its scheme to local councils, which is undertaken by environmental health officers.³⁶ The South Australian health department oversaw the licensing scheme until 1 July 2024, at which point oversight of offences relating to illicit products, sales to minors, advertising, promotion, display, and packaging of tobacco and e-cigarette products was transferred to Consumer and Business Services (CBS) in the Attorney-General's Department.³⁷ This was done because the 'tougher compliance approach' being adopted by the government to tackle the 'criminal activities' that were occurring in the state was more closely aligned with the compliance work undertaken by CBS (see [section 6.4](#)).³⁸ The 2020 Commonwealth Parliamentary inquiry into illicit tobacco and the 2024 Victorian Parliamentary inquiry into vaping and tobacco controls both recommended that tobacco enforcement should be transferred from health departments to a law enforcement framework.³⁹

The current and proposed tobacco licensing schemes across Australia differ in many other ways. Characteristics found in only some of the jurisdictions include the requirement for a fit and proper person test to be applied before a licence may be granted or renewed, the capacity to ban a person from holding a licence, and a prohibition on minors selling tobacco products. Key differences between schemes are covered in depth in [section 7](#). [Sections 4](#) and [5](#) set out developments in NSW and [section 6](#) sets out developments in other Australian jurisdictions, identifying relevant findings and recommendations from parliamentary inquiries and summarising the policy objectives of recent reforms.

³⁶ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 41.

³⁷ SA Health, [Retail tobacco and e-cigarette licence](#), South Australian Government, 2024, accessed 29 October 2024.

³⁸ P Malinauskas, [Major enforcement clampdown on illegal tobacco and vapes in SA](#) [media release], South Australian Government, 29 May 2024, accessed 1 November 2024.

³⁹ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 65.

4. Key developments in NSW between 1975 and 2014

A tobacco licensing scheme was first introduced in NSW in 1975. The scheme was introduced for revenue raising purposes and abolished in 1997 following a High Court case that found it to be unconstitutional. Legislation to introduce a negative licensing scheme in 1999 did not pass the NSW parliament. In 2008, NSW reintroduced a licensing scheme in the form of the Tobacco Retailer Notification (TRN) scheme under the [Public Health \(Tobacco\) Act 2008](#) (PHT Act). In 2014, a statutory review of the Act concluded that the TRN scheme was appropriate and enabled NSW Health to ensure retailer compliance with the PHT Act.

4.1 A wholesale and retail licensing scheme was introduced for revenue raising purposes (1975 to 1997)

In 1975, a licensing scheme for tobacco wholesalers and retailers was introduced in NSW under the [Business Franchise Licences \(Tobacco\) Act 1975](#) for revenue raising purposes. According to the First Reading of the Business Franchise Licences (Tobacco) Bill 1975, licensing tobacco sales was one of the 'few areas open to the State which offer[ed] the scope to obtain substantial additional revenues'⁴⁰ to address an 'extremely difficult budgetary situation.'⁴¹ The Bill was modelled on legislation introduced in Victoria and South Australia in 1974.⁴² Under the Act, wholesalers paid a flat fee of \$100 plus 10% of the value of tobacco sold in the financial year. Retailers paid a flat fee of \$10 plus 10% of the value of tobacco sold in the financial year that was not purchased from a licensed wholesaler.⁴³

In 1987–88, tobacco licence revenue was worth \$170.5 million or 2.1% of all tax, fees and fines revenue.⁴⁴ By 1996–97, the last full year that the state received tobacco licence revenue, it was worth \$940 million or 7.9% of all tax, fees and fines revenue.⁴⁵

On 5 August 1997, the High Court handed down its decision on two cases: *Ha & anor v NSW*, and *Walter Hammond & Associates v NSW & ors (Ha & Hammond)*.⁴⁶ The High Court declared NSW Government licence fees on tobacco (and liquor and petrol) to be unconstitutional, finding them to be an 'excise' and therefore invalid under section 90 of the Australian Constitution.⁴⁷ The initial response from the Australian Government was to introduce new national taxes on tobacco, liquor and petrol with the proceeds returned to the states to fill the gap in their revenue base.⁴⁸ On 9 December 1997,

⁴⁰ M Ruddock, [Business Franchise Licences \(Tobacco\) Bill](#), *NSW Hansard*, 9 October 1975, p 1,678.

⁴¹ M Ruddock, [Business Franchise Licences \(Tobacco\) Bill](#), *NSW Hansard*, 9 October 1975, p 1,679.

⁴² W Coleman, [Business Franchise Licences \(Tobacco\) Bill](#), *NSW Hansard*, 14 October 1975 p 1,758.

⁴³ Section 12, [Business Franchise Licences \(Tobacco\) Act 1975](#).

⁴⁴ NSW Government, [Budget Paper 2: Budget Information](#), 1988-89 Budget, 1988, p 133. Total tax, fees and fines revenue for 1987-88 was calculated by adding the relevant figures from Table 4.2 of the budget paper. This was done to provide a comparable percentage to the 1996-97 data.

⁴⁵ NSW Government, [Budget Paper 2: Budget Information](#), 1997-98 Budget, 1987, p 3-13.

⁴⁶ NSW Government, [Budget Paper 2: Budget Information](#), 1998-99 Budget, 1998, p 5-13. [Ha v New South Wales](#) [1997] HCA 34.

⁴⁷ G Griffith, [The Future of State Revenue: the High Court decision in Ha and Hammond](#), NSW Parliamentary Library Research Service, Briefing Paper No 16/97, 1997, p 3.

⁴⁸ NSW Government, [Budget Paper 2: Budget Information](#), 1998-99 Budget, 1998, p 3-18.

the [Business Franchise Licences \(Repeal\) Act 1997](#) repealed the NSW tobacco licensing⁴⁹ and related legislation.⁵⁰

The use of tobacco licensing schemes to meet public health objectives had become part of policy debates prior to *Ha & Hammond*. For example, in 1995 a Senate Community Affairs References Committee had recommended that licensing systems in all states and territories should provide for the suspension or revocation of licences where retail outlets sell tobacco products to minors. And in June 1999 the Ministerial Council on Drug Strategy endorsed the *National Tobacco Strategy* which argued that best-practice models for tobacco supply control used licensing schemes as an effective mechanism for achieving retailer and wholesaler compliance with tobacco control legislation.⁵¹

4.2 A negative licensing scheme was almost introduced by the Carr Government (1999)

On 22 September 1999, the Carr Government introduced the [Public Health Amendment \(Tobacco Control\) Bill 1999](#) into the Legislative Assembly to establish a negative licensing scheme in NSW under which retailers could be 'excluded from the market' for repeatedly breaching sale or advertising rules.⁵² According to the Shadow Minister for Health, the government had informed them that it had decided to introduce a negative licensing scheme instead of a positive licensing scheme because 'it considered the cost to business of the licence more important than the economic and ill-health costs of tobacco smoking.'⁵³ The Bill sought to:

- Prohibit a person from tobacco retailing for a 2-month period if the person had been convicted of a tobacco sales or advertising offence on 2 occasions within a 3-year period, and to prohibit them from retailing for a further 12 months if convicted of a third offence within the 3-year period
- Prohibit the display of tobacco products by a person while the subject of a prohibition on retailing
- Limit the tobacco retailing prohibition to the premises at which the offence that triggered the prohibition occurred and (unless the Director-General of the Department of Health otherwise ordered in a particular case) to premises within a 5 kilometre radius of those premises that were not already being used by the person for tobacco retailing.⁵⁴

The Bill passed the Legislative Assembly on 26 October 1999. It passed the second reading stage in the Legislative Council on 16 November 1999 with support from the opposition. Members of the cross bench from The Greens, Christian Democrats and the Australian Democrats voted against the

⁴⁹ The [Business Franchise Licences \(Tobacco\) Act 1987](#).

⁵⁰ Jurisdictions such as South Australia (5 June 1997), Tasmania (24 November 1999) and the ACT (1 July 2000) re-established licensing schemes for non-revenue raising purposes shortly after. E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

⁵¹ The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002.

⁵² C Knowles, [Public Health Amendment \(Tobacco Control\) Bill 1999](#), *NSW Hansard*, 22 September 1999.

⁵³ J Skinner, [Public Health Amendment \(Tobacco Control\) Bill 1999](#), *NSW Hansard*, 26 October 1999.

⁵⁴ NSW Government, [Public Health Amendment \(Tobacco Control\) Bill 1999: Explanatory notes](#), 1999.

Bill after noting that they would move amendments in the committee of the whole stage.⁵⁵ The Bill lapsed at this stage when parliament was prorogued on 20 February 2002. It is unclear why the Bill did not progress past this stage.

4.3 An inquiry into tobacco smoking recommended establishment of a licensing scheme for wholesalers and retailers (2006)

In 2006, the NSW Legislative Council Joint Select Committee on Tobacco Smoking held an inquiry which examined, amongst other things, the effectiveness of strategies to reduce tobacco use such as licensing schemes. The NSW Government had announced that it would introduce legislation in 2006 to establish a notification scheme for tobacco retailers to enable more effective monitoring and enforcement of retailer compliance with public health legislation by environmental health officers in area health services.⁵⁶ After considering evidence relating to licensing schemes, and the NSW Government's position on a notification scheme, the committee found that:

...there would be significantly more value in a licensing scheme than in a notification scheme in terms of the capacity to regulate the trade of what is known to be a harmful product. A licensing system will facilitate better compliance with and enforcement of the law, thereby helping to limit the negative effects of tobacco, while also offering further remedy against illicit products such as 'chop chop'. We note the tobacco industry's support for a licensing system, and the openness of the retail sector to it.⁵⁷

It therefore recommended that the government adopt a licensing system for wholesalers and retailers instead of its proposed notification scheme in a manner reflective of the best practice model set out in a report commissioned by the Australian Government called [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#).⁵⁸

4.4 The government introduced a notification scheme for retailers only (2008)

In April 2008, the NSW Government released a discussion paper on reducing tobacco-related harm.⁵⁹ The discussion paper canvassed 8 reform options including introduction of a licensing scheme for tobacco retailers.⁶⁰ At a public consultation forum held at Parliament House on 30 May 2008, stakeholders were divided on the merits of a licensing scheme. Stakeholders such as the Australian Medical Association (AMA) and CTC Group (a franchise tobacconist organisation) spoke in favour while others such as the Newsagents Association of NSW/ACT (NANA) and Master Grocers Australia (MGA) spoke against.⁶¹

⁵⁵ [Public Health Amendment \(Tobacco Control\) Bill 1999](#), *NSW Hansard*, 16 November 1999.

⁵⁶ The Cabinet Office, [Submission to the Inquiry into Tobacco Smoking in New South Wales](#), 21 April 2006, p 15.

⁵⁷ NSW Legislative Council Joint Select Committee on Tobacco Smoking, [Tobacco smoking in New South Wales](#), June 2006, p 78.

⁵⁸ The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002.

⁵⁹ NSW Government, [Protecting Children from Tobacco: A NSW Government Discussion Paper on the New Steps to Reduce Tobacco-Related Harm](#), 2008.

⁶⁰ NSW Government, [Protecting Children from Tobacco: A NSW Government Discussion Paper on the New Steps to Reduce Tobacco-Related Harm](#), 2008, p 12.

⁶¹ NSW Department of Health, [Protecting Children from Tobacco: Public Consultation Forum Transcript](#), NSW Government, 30 May 2008, accessed 8 November 2024.

On 25 September 2008, the NSW Government introduced the [Public Health \(Tobacco\) Bill 2008](#) to enact new provisions designed to prevent the exposure of children to environmental tobacco smoke and prevent the uptake of smoking by young people, including by establishment of a notification scheme for tobacco retailers.⁶² The Agreement in Principle speech⁶³ for the Bill did not discuss why the government had chosen the notification scheme option.⁶⁴

4.5 A statutory review of the notification scheme concluded that it was appropriate for ensuring retailer compliance with public health legislation (2014)

In 2013, the NSW Minister for Health established a Taskforce on Tobacco Retailing and commenced a statutory review of the PHT Act. The discussion paper released as part of the statutory review noted that the preliminary view of the Ministry for Health was that a positive licensing scheme was unnecessary.⁶⁵ A review of evidence commissioned by the Ministry found that a tobacco retail licensing scheme is 'likely to be a valuable part of comprehensive tobacco control'.⁶⁶ Nevertheless, the taskforce concluded that the TRN scheme was appropriate and enabled NSW Health to ensure retailer compliance with the PHT Act, although improvements could be introduced to ensure its 'accuracy, completeness and ease of use by relevant parties'.⁶⁷ It made the following key findings:

The strength of a tobacco licensing system is that it provides a way to monitor retailer compliance with tobacco control laws. There is no published evidence available that positive licensing per se contributes to reducing smoking rates. Therefore, the Taskforce was of the view that introducing a positive licensing scheme in NSW may be premature. It was suggested that the focus should be on improving the current TRN Scheme.

Some public health proponents argue that positive licensing schemes could be used to restrict the number, type and distribution of retail outlets for tobacco products, leading to reduced smoking rates. However, the Taskforce found no evidence of this having occurred in Australia and no evidence internationally to show whether this approach works to reduce smoking rates. There was also no evidence that any Australian tobacco retailer has ever had their tobacco licence suspended or revoked, under either positive or negative licensing schemes. The jurisdictions that require a proof of suitability from retailers prior to obtaining a tobacco licence were not able to show that this limits the number of tobacco retailer licence applications.⁶⁸

The final report of the statutory review concurred with the taskforce and committed NSW Health to non-legislative improvements to the TRN scheme.⁶⁹

⁶² T Stewart, [Public Health \(Tobacco\) Bill 2008](#), *NSW Hansard*, 25 September 2008.

⁶³ T Stewart, [Public Health \(Tobacco\) Bill 2008](#), *NSW Hansard*, 25 September 2008.

⁶⁴ Several speakers in the debate referred to the scheme as a negative licensing scheme, although it is unclear why they did so. A McDonald and D Page, [Public Health \(Tobacco\) Bill 2008](#), *NSW Hansard*, 22 October 2008; G Moyes and L Rhiannon, [Public Health \(Tobacco\) Bill 2008](#), *NSW Hansard*, 12 November 2008.

⁶⁵ NSW Health, [Public Health \(Tobacco\) Act 2008 Statutory Review: Discussion Paper](#), NSW Government, 2013, p 14.

⁶⁶ B Freeman and S Chapman, [Evidence of the impact of tobacco retail policy initiatives](#), January 2014, p 12.

⁶⁷ NSW Health, [NSW Taskforce on Tobacco Retailing: Final Report and Recommendations](#), NSW Government, 2014, p 3.

⁶⁸ NSW Health, [NSW Taskforce on Tobacco Retailing: Final Report and Recommendations](#), NSW Government, 2014, p 13.

⁶⁹ NSW Health, [Report on the Statutory Review of the Public Health \(Tobacco\) Act 2008](#), November 2014.

5. The current NSW licensing scheme and 2024 developments

This section summarises the TRN scheme as it currently exists before outlining key recent NSW parliamentary developments. In August 2024, a NSW parliamentary inquiry into e-cigarettes recommended adoption of a positive licensing scheme for tobacco retailers. Two Bills currently before the NSW Parliament were introduced in September and October respectively:

1. The [Public Health \(Tobacco\) Amendment Bill 2024](#) seeks to amend 5 Acts so that vaping products can only be prescribed by a medical or nurse practitioner and dispensed from a pharmacy. If passed, e-cigarettes will no longer be regulated by the PHT Act.
2. The [Public Health \(Tobacco\) Amendment Bill \(No 2\) 2024](#) seeks to amend the PHT Act to establish a licensing scheme for tobacco retailers and wholesalers, provide for clearer offences relating to the display of prices and brands of tobacco products and non-tobacco smoking products, and increase penalties for particular offences.⁷⁰

5.1 The current Tobacco Retailer Notification (TRN) scheme

In NSW, tobacco and e-cigarette retailing is currently regulated by the [Public Health \(Tobacco\) Act 2008](#) (PHT Act) and [Public Health \(Tobacco\) Regulation 2022](#). Tobacco and e-cigarette wholesaling is not regulated by these laws. The PHT Act and regulations regulate the advertising and display of tobacco products, e-cigarette and e-cigarette accessories and non-tobacco smoking products, and ban the supply of these products to children.⁷¹ Key features of the TRN scheme include:

- A person must not engage in tobacco or e-cigarette retailing, or both, without notifying NSW Health first (maximum penalty \$11,000 (100 penalty units)) (section 39(1))
- The notice must include the business address of the person, the premises address of the store, names and addresses of owners and directors of the business, and whether the person will retail tobacco, e-cigarettes, or both (section 39(2))
- NSW Health must issue the person with a retailer identification number (RIN) as soon as practicable after being notified by the person (section 39(5))
- A wholesaler is not permitted to sell a relevant product to another person unless that person has provided them with their RIN (s 39A).

A person convicted of the same 2 offences within a 3-year period at the same premises is prohibited from tobacco retailing for 3 months. A person convicted of the same 3 offences with a 3-year period at the same premises is prohibited from tobacco retailing for 12 months. The prohibition applies to the original premises and any new premises opened after the commission of the last offence that are located within 5 kilometres of the original premises. For an individual, the maximum penalty for

⁷⁰ NSW Government, [Public Health \(Tobacco\) Amendment Bill \(No 2\) 2024: Explanatory Note](#), 2024.

⁷¹ NSW Health, [Tobacco and e-cigarette retailing laws](#), NSW Government, 9 August 2024, accessed 25 October 2024; NSW Health, [Tobacco Retailer Notification Scheme](#), NSW Government, 6 August 2024, accessed 25 October 2024.

breach of the prohibition is \$55,000 for a first offence and \$110,000 for a second or subsequent offence. For a corporation, the maximum penalty for breach of the prohibition is \$110,000 for a first offence and \$220,000 for a second or subsequent offence (ss 33-35).

5.2 An inquiry into e-cigarette regulation and compliance in NSW recommended introduction of a positive licensing scheme for tobacco retailers (2024)

In August 2024, the NSW Legislative Assembly Committee on Law and Safety tabled the report of its inquiry into e-cigarette regulation and compliance in NSW.⁷² The committee found that a positive licensing scheme would allow for better control of the tobacco market which, in turn, may help to reduce smoking rates. It also heard evidence from Assistant Commissioner Scott Cook, Commander, State Intelligence Command, NSW Police Force, who argued that the current framework 'is not fit for purpose and fails to take into account the active involvement of organised crime in the illicit tobacco and e-cigarette market'.⁷³ The committee therefore recommended that the NSW Government 'consider introducing a positive licensing scheme for tobacco retailers to support comprehensive and targeted enforcement'.⁷⁴

5.3 The Public Health (Tobacco) Amendment Bill 2024

On 25 September 2024, the NSW Government introduced the [Public Health \(Tobacco\) Amendment Bill 2024](#) (the Amendment Bill) into the Legislative Assembly.⁷⁵ If passed, the Amendment Bill will amend 5 Acts so that vaping products can only be prescribed by a medical or nurse practitioner and dispensed from a pharmacy. E-cigarettes would no longer be regulated by the PHT Act.⁷⁶ These reforms are intended to bring the NSW regulatory regime into alignment with the Commonwealth regime, which was amended in 2024 to 'prohibit the importation, domestic manufacture, supply, commercial possession and advertisement of non-therapeutic and disposable vaping goods'.⁷⁷ The Acts to be amended are:

1. The [Poisons and Therapeutic Goods Act 1966](#) (PTG Act) to regulate the supply and possession of vaping goods consistent with recent amendments to the [Therapeutic Goods Act 1989](#) (Cth) (TG Act) and other Commonwealth legislation to ban the supply and commercial possession of disposable single use and recreational vapes unless they are therapeutic goods
2. The [Medicines, Poisons and Therapeutic Goods Act 2022](#) (MPTG Act) to regulate the supply and possession of vaping goods consistent with amendments to Commonwealth legislation

⁷² NSW Legislative Assembly Committee on Law and Safety, [E-cigarette regulation and compliance in New South Wales](#), August 2024.

⁷³ NSW Legislative Assembly Committee on Law and Safety, [E-cigarette regulation and compliance in New South Wales](#), August 2024, p 17.

⁷⁴ NSW Legislative Assembly Committee on Law and Safety, [E-cigarette regulation and compliance in New South Wales](#), August 2024, p 16.

⁷⁵ See also: NSW Parliamentary Library, [Public Health \(Tobacco\) Amendment Bill 2024: Bills Assist](#), 30 September 2024.

⁷⁶ R Park, [Public Health \(Tobacco\) Amendment Bill 2024](#), NSW Hansard, 25 September 2024.

⁷⁷ J Phillips et al., [Therapeutic Goods and Other Legislation Amendment \(Vaping Reforms\) Bill 2024](#), Commonwealth Parliamentary Library, Bills Digest No. 61, 13 May 2024. See also: Therapeutic Goods Administration, [Changes to the regulation of vapes](#), Australian Department of Health and Aged Care, 1 October 2024, accessed 31 October 2024.

3. The [Criminal Procedure Act 1986](#) to provide that indictable offences relating to the supply and possession of vaping goods under the PTG Act and MPTG Act may be dealt with summarily
4. The [Public Health \(Tobacco\) Act 2008](#) to:
 - a. Reflect that the sale, supply and possession of vaping goods will now be regulated under the PTG Act and the MPTG Act
 - b. Reflect that advertising relating to vaping goods will now be regulated under the Commonwealth TG Act
 - c. Ensure the offence of smoking in a motor vehicle if a juvenile is present continues to apply in relation to the use of vaping goods
5. The [Smoke-free Environment Act 2000](#) to ensure the provisions of that Act apply in relation to the use of all vaping goods.⁷⁸

During the Second Reading debate, 10 of the 19 members who spoke raised the issue of illicit tobacco despite it being outside the purview of the Amendment Bill; 7 of these members were from electorates outside of Sydney.⁷⁹ For example, Justin Clancy, the Liberal member for Albury, highlighted the nexus between vapes and illicit tobacco demonstrated by the statistics from enforcement activities, and said:

I have spoken before about how Graham Baxter, the NSW Health Tobacco Control Officer, said that the current framework is not fit for purpose and fails to take into account the active involvement of organised crime in the illicit tobacco and e-cigarette market.⁸⁰

Kellie Sloane, the Shadow Minister for Health, moved amendments to the Bill seeking to increase penalties for tobacco-related offences to establish parity with the proposed new vape-related offences. The NSW Government opposed the amendments, arguing that the size of the proposed increase in penalties was extremely large and should therefore be subject to consultation and further analysis. The Minister for Health, Ryan Park, also noted that the government was planning to introduce tobacco licensing legislation.⁸¹

5.4 The Public Health (Tobacco) Amendment Bill (No 2) 2024

On 24 October 2024, the NSW Government introduced the [Public Health \(Tobacco\) Amendment Bill \(No 2\) 2024](#) (the Amendment No 2 Bill) into the Legislative Assembly to:

1. Establish a licensing scheme to regulate the sale of tobacco products and non-tobacco smoking products by retail and wholesale

⁷⁸ NSW Government, [Public Health \(Tobacco\) Amendment Bill 2024: Explanatory Note](#), 2024.

⁷⁹ The 10 members were Kellie Sloane (the Shadow Minister for Health), Adam Crouch, Hugh McDermott, Felicity Wilson, Justin Clancy, Wendy Tuckerman, Richie Williamson, Gurmeh Singh, Gareth Ward and Joe McGirr. [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

⁸⁰ J Clancy, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

⁸¹ K Sloane and R Park, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

2. Provide for clearer offences relating to the display of prices and brands of tobacco products and non-tobacco smoking products and to increase penalties for particular offences.⁸²

On 13 August 2024, a notice of motion for the introduction of a similar bill (the [Tobacco Licensing Bill 2024](#)) had been moved by Joe McGirr, the independent member for Wagga Wagga.

In the Second Reading Speech of the Amendment No 2 Bill, the Minister for Health, Ryan Park, noted that the proposed reforms would meet illicit tobacco control and public health objectives. He stated:

This bill is a direct response to these community expectations regarding the need to tackle the trade in illicit tobacco and ensure robust enforcement of tobacco retailing laws.

...

Introducing a tobacco licensing scheme is one part of a comprehensive approach to help reduce the use, impact and associated costs of tobacco in New South Wales.⁸³

He also drew a clear connection between the two issues, observing that the 'availability and affordability [of illicit tobacco] undermine[s] this Government's public health efforts.'⁸⁴

The Minister for Health did not discuss the views of any stakeholders on the proposed legislation.⁸⁵ In his contribution to the second reading of the Amendment Bill, Joe McGirr briefly discussed his extensive consultation with industry and health stakeholders on his proposed licensing bill:

I am delighted to say there has been widespread support for a licensing system, with many legitimate operators saying that it will be an important step towards tackling a problem that is enriching criminals while decimating the incomes of honest retailers.⁸⁶

On the impact of the black market for illicit tobacco and its connection with criminal activity, he noted:

Licensing will be just one weapon in the armoury against that criminality, and more will need to be done. Licensing will also allow the retention of control over health messaging to smokers and new recruits to the addiction.⁸⁷

5.4.1 The proposed positive licensing scheme for tobacco retailers and wholesalers

The Amendment No 2 Bill proposes to insert a new Part 5 (ss 31 to 39M) to establish the licensing scheme. Section 32 of the new Part 5 provides for retail and wholesale licences to sell tobacco and non-tobacco smoking products. Non-tobacco smoking products are defined as 'any product (other than a tobacco product) that is intended to be smoked, and includes any product known or described as herbal cigarettes' (s 4 of the PHT Act). Retail licences will need to be held for every retail outlet and

⁸² NSW Government, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024: Explanatory note](#), October 2024. See also: NSW Parliamentary Library, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024: Bills Assist](#), 30 September 2024.

⁸³ R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), *NSW Hansard*, 24 October 2024.

⁸⁴ R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), *NSW Hansard*, 24 October 2024.

⁸⁵ R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), *NSW Hansard*, 24 October 2024.

⁸⁶ J McGirr, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

⁸⁷ J McGirr, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

every online retail shop owned by the same person or corporation.⁸⁸ Each licence could be granted for a period of up to 12 months (s 34).

Section 39 stipulates the form which an application for a licence must take and identifies the information that must accompany an application. This includes:

- The applicant's name and business address
- For a retail licence, the address of the retail premises or the website of the online retail shop, together with the details of the person with day-to-day responsibility for running the premises or shop
- Any other information required by the Secretary for Health.

Under section 39A, the secretary may grant or refuse a licence. When deciding the application, the secretary may consider whether the applicant, or a relevant person for the applicant, has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under the NSW PHT Act or regulations or similar Australian laws. Section 31 defines a relevant person as someone who holds or will hold the position of director in the relevant business or another position prescribed by the regulations. The secretary may also consider any other matters they consider to be relevant or which are prescribed by the regulations (s 39A(2)). Subsection 39A(4) identifies grounds upon which the secretary may refuse to grant a licence:

- (a) the applicant, or a relevant person for the applicant, has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under—
 - (i) this Act or the regulations, or
 - (ii) another Act or law, including a law of the Commonwealth or another State or Territory,
- (b) any information given by the applicant for this Act or the regulations is false or misleading in a material way,
- (c) the applicant has failed to comply with another retail or wholesale licence currently or previously held by the applicant,
- (d) another ground prescribed by the regulations.

The secretary may grant a licence with or without conditions (s 39A(5)) and may, at any time, impose, vary or revoke a condition of a licence (s 36(1)). Standard conditions may be imposed on a licence by the regulations (s 36(2)).

In the case of licence renewal, the secretary must consider whether the applicant, or a relevant person for the applicant, has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under the NSW PHT Act or regulations or

⁸⁸ R Park, [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#), *NSW Hansard*, 24 October 2024.

similar Australian laws (s 39C(2)). The grounds upon which the secretary may refuse to renew a licence are the same as those upon which they may refuse to grant a licence (s 39C(4)).

The maximum penalty for retailing tobacco products or non-tobacco smoking products without a retail licence is proposed to be \$44,000 for an individual (400 penalty units) and \$220,000 for a corporation (2,000 penalty units). Maximum penalties of the same size would apply to:

- A retailer who sells tobacco products or non-tobacco smoking products in a manner that is inconsistent with the Act, regulations or retail licence (s 37)
- A wholesaler who sells tobacco products or non-tobacco smoking products without a wholesale licence
- A wholesaler who sells tobacco products or non-tobacco smoking products in a manner that is inconsistent with the Act, regulations or wholesale licence (s 38).

Section 39G lays out the grounds upon which the secretary may revoke a licence:

- (a) the licence holder has been found guilty of an offence against—
 - (i) this Act or the regulations or the provisions of another Act or regulation relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods, or
 - (ii) a law of the Commonwealth or another State or Territory that the Secretary reasonably considers to be similar to a law mentioned in subparagraph (i),
- (b) any information given by the licence holder for this Act or the regulations is false or misleading in a material way,
- (c) the licence holder has failed to comply with a condition of the licence,
- (d) the licence holder asks the Secretary to revoke the licence,
- (e) another ground prescribed by the regulations.

Under section 39K, the secretary will be required to maintain a register of licences.

5.4.2 Other amendments to the PHT Act

The Amendment No 2 Bill proposes to increase penalties for several other offences:

- Under sections 6 and 7, the current maximum penalty for selling tobacco products without the mandated health warning, not in the required packaging or as individual cigarettes is \$11,000 for an individual (100 penalty units) and \$55,000 for a corporation (500 penalty units). The Bill seeks to double these penalties to \$22,000 for an individual (200 penalty units) and \$110,000 for a corporation (1,000 penalty units).
- Under the Act, there are 2 tiers of offences for the sale of tobacco and non-tobacco smoking products to minors. The first tier is for a first offence, and the second tier is for a second or subsequent offence. The Bill proposes to double the maximum penalty for first tier offences for an individual from \$11,000 (100 penalty units) to \$22,000 (200 penalty units) and for a corporation from \$55,000 (500 penalty units) to \$110,000 (1,000 penalty units). A doubling of

the maximum penalty for second tier offences is also proposed, for individuals from \$55,000 (500 penalty units) to \$110,000 (1,000) penalty units and for corporations from \$110,000 (1,000 penalty units) to \$220,000 (2,000 penalty units).

- The Bill proposes to increase the maximum penalty for impersonating or obstructing an inspector from \$550 (5 penalty units) to \$11,000 (100 penalty units).

The amendments moved by the opposition to the Amendment Bill to increase the maximum penalties for certain offences under the PHT Act sought to increase the penalties by a much larger extent than those proposed by the Amendment No 2 Bill. For offences under sections 6 and 7 where the maximum penalty is currently 100 penalty units (\$11,000), the opposition sought to increase them to 1,400 penalty units (\$154,000). The opposition sought to increase maximum penalties of 500 penalty units (\$55,000) to 7,000 penalty units (\$770,000). These proposed amendments were also intended to apply to offences under section 8 of the PHT Act, which prohibit a person from packaging a tobacco product or selling a tobacco product with prohibited words on them. Prohibited words include 'non-injurious', 'non-hazardous', 'harmless to man', 'harmless to woman' and any words of similar meaning or words which directly or indirectly qualify or modify a health warning on the packet.⁸⁹ The opposition also proposed amending the length of time within which proceedings for an offence against the PHT Act or regulations could be brought before the Local Court, from 12 months to 2 years after the date on which the offence was allegedly committed.⁹⁰

The Amendment No 2 Bill also seeks to create a standalone offence for the display of retail prices and the names of tobacco products in a public place or a place prescribed in the regulations. A new section 16E would establish a maximum penalty of \$11,000 (100 penalty units) for a person and \$55,000 (500 penalty units) for a corporation for the breach of this prohibition.

⁸⁹ K Sloane, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

⁹⁰ K Sloane, [Public Health \(Tobacco\) Amendment Bill 2024](#), *NSW Hansard*, 15 October 2024.

6. Recent developments in Australian jurisdictions

6.1 National developments

6.1.1 A 2020 parliamentary inquiry into illicit tobacco recommended development of a nationally consistent licensing regime for tobacco products and manufacturing supplies and equipment

In November 2020, the Australian Parliamentary Joint Committee on Law Enforcement tabled its final report into illicit tobacco.⁹¹ The committee inquired into illicit tobacco because it had been a cause for growing concern to law enforcement and health agencies as it undermines tobacco control policies designed to reduce smoking and involves organised criminal gangs in its importation, manufacturing and distribution.⁹²

Chapter 5 of the report reviewed options for further action to address illicit tobacco, including strengthening and expanding tobacco licensing schemes. The committee heard evidence suggesting that a nationally consistent licensing system for tobacco products and manufacturing supplies and equipment would help reduce the size of the illicit tobacco market. According to the Police Federation of Australia, such a licence system could be easily enforced by state and territory police.⁹³ The committee recommended that:

...the Australian Government explore options to develop a nationally consistent licencing regime for tobacco products, including tobacco product manufacturing supplies and equipment.⁹⁴

6.1.2 The National Tobacco Strategy 2023–2030 also recommends consideration of establishment of a consistent licensing scheme that covers the whole tobacco supply chain in Australia

In 2023, the Australian Government Department of Health and Aged Care published the [National Tobacco Strategy 2023–2030](#), which was developed by all Australian governments. The strategy identifies 11 priority areas, including priority area 8: Strengthen regulation to reduce the supply, availability and accessibility of tobacco products. The strategy observed that licensing schemes may provide benefits by restricting who can obtain a licence and increasing the costs of licence, which in turn may deter retailers from selling tobacco products.⁹⁵

Eleven actions are listed under priority area 8 for which all Australian governments are responsible for implementing, including:

8.5 Explore mechanisms to have a consistent licensing scheme in place covering all aspects of the tobacco supply chain in Australia, such as establishing a national framework for licensing schemes.

⁹¹ Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020.

⁹² Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020, p 1.

⁹³ Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020, p 73.

⁹⁴ Parliamentary Joint Committee on Law Enforcement, [Illicit Tobacco](#), Australian Parliament, November 2020, p 73.

⁹⁵ Department of Health and Aged Care, [National Tobacco Strategy 2023-2030](#), Commonwealth Government, 2023, p 23.

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.

8.9 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.

8.10 Identify, mitigate and/or address any barriers to enforcing tobacco legislation at all levels of government.⁹⁶

6.1.3 Recent legislative reforms have increased taxation of tobacco products

On 20 March 2024, the Australian Government introduced the [Excise Tariff Amendment \(Tobacco\) Bill 2024](#) and the [Customs Tariff Amendment \(Tobacco\) Bill 2024](#) to 'encourage a decline in smoking within the Australian community and to reduce consumption of tobacco goods by increasing rates of duty for tobacco goods.'⁹⁷ Higher taxation on tobacco products was introduced in response to the National Tobacco Strategy, which argues that 'reducing the affordability of tobacco products through tobacco tax increases is the single most effective measure that governments can adopt to reduce smoking.'⁹⁸ While the reforms were supported by stakeholders such as health organisations,⁹⁹ some experts have argued that increased taxes have 'resulted in an unintended and dangerous outcome – the rise of a lucrative and expanding black market for these products.'¹⁰⁰ The Bills received assent on 9 July 2024, and were taken to have commenced on 1 September 2023.¹⁰¹

6.2 Queensland

6.2.1 The Tobacco and Other Smoking Products Amendment Bill 2023

A 2016 Queensland parliamentary inquiry into tobacco licensing recommended that the government consider establishing a positive licensing scheme for retailers and wholesalers.¹⁰² The Queensland Government accepted the recommendation,¹⁰³ but a bill to introduce a scheme was not introduced to parliament until 14 March 2023. When introducing the [Tobacco and Other Smoking Products Amendment Bill 2023](#), the Minister for Health and Ambulance Services noted that progress to reduce smoking in Queensland was threatened by aggressive marketing of smoking products to young people, including by use of social media to promote allegedly safer new smoking products such as e-cigarettes. She observed that the community was concerned about the increasing trade in illicit tobacco products which are unlikely to meet Australian safety standards in relation to ingredients and

⁹⁶ Department of Health and Aged Care, [National Tobacco Strategy 2023-2030](#), Commonwealth Government, 2023, p 23.

⁹⁷ Australian Government, [Excise Tariff Amendment \(Tobacco\) Bill 2024, Customs Tariff Amendment \(Tobacco\) Bill 2024: Explanatory Memorandum](#), 2024, p 11.

⁹⁸ Department of Health and Aged Care, [National Tobacco Strategy 2023-2030](#), Commonwealth Government, 2023, p 16.

⁹⁹ I Zhou, [Excise Tariff Amendment \(Tobacco\) Bill 2024 \[and\] Customs Tariff Amendment \(Tobacco\) Bill 2024](#), Commonwealth Parliamentary Library, Bills Digest No. 60, 25 March 2024.

¹⁰⁰ J Martin and D Bright, [Australia's restrictive vaping and tobacco policies are fuelling a lucrative and dangerous black market](#), *The Conversation*, 12 March 2024.

¹⁰¹ [Customs Tariff Amendment \(Tobacco\) Act 2024](#) and [Excise Tariff Amendment \(Tobacco\) Act 2024](#).

¹⁰² Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p vii.

¹⁰³ Queensland Government, [Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 19: Inquiry into tobacco licensing arrangements in Queensland](#), Queensland Government response, 2016.

the presence of dangerous toxins.¹⁰⁴ The Bill was also introduced to fulfil the Queensland Government's 2020 election commitment to 'strengthen the retail supply, advertising and promotion provisions in the act and take direct action on illicit tobacco'.¹⁰⁵

When discussing the details of the Bill, the minister noted the following with regards to addressing illicit tobacco:

The absence of a licensing scheme in Queensland has contributed to a proliferation of retail shops trading in illicit tobacco. By seeking to profit from the evasion of standard retail requirements, this growing trade in illicit tobacco is causing significant detriment to compliant businesses and to public health. To provide more effective deterrence and enforcement, the bill makes it an offence under Queensland law for a person to supply smoking products not complying with Commonwealth requirements. Because the covert nature of the illicit tobacco trade may make it difficult to obtain evidence of an actual supply, it will also be an offence to store illicit tobacco at a retail premises as it presumes this product is intended as stock rather than for personal use.¹⁰⁶

The overarching policy objective of the Bill was to 'strengthen, modernise and future-proof the requirements, restrictions and safeguards in the *Tobacco and Other Smoking Products Act 1998*'.¹⁰⁷ The Bill amended the Act in several ways to achieve the objective, including by:

- Establishing a licensing scheme for the wholesale and retail sale of smoking products
- Ensuring there are effective deterrents against the unlawful supply of smoking products, including strong penalties
- Empowering Queensland Health to monitor compliance with Commonwealth requirements for smoking products and improve intelligence-sharing with other state, territory and Commonwealth law enforcement agencies
- Prohibiting the supply and possession of illicit tobacco.

6.2.2 An inquiry into the Bill recommended its adoption and additional resourcing for enforcement of tobacco control legislation

The Bill was referred to the Health and Environment Committee for detailed consideration. It published its final report on 5 May 2023. Queensland Health advised the committee that the downward trend in smoking is 'at risk from the increasing trade in illicit tobacco and emerging smoking products and business practices targeted at children and young people, including in relation to electronic cigarettes (e-cigarettes)'.¹⁰⁸

¹⁰⁴ Y D'Ath, [Tobacco and Other Smoking Products Amendment Bill](#), Queensland Hansard, 14 March 2023.

¹⁰⁵ Y D'Ath, [Tobacco and Other Smoking Products Amendment Bill](#), Queensland Hansard, 14 March 2023.

¹⁰⁶ Y D'Ath, [Tobacco and Other Smoking Products Amendment Bill](#), Queensland Hansard, 14 March 2023.

¹⁰⁷ Queensland Government, [Tobacco and Other Smoking Products Amendment Bill 2023: Explanatory Notes](#), 2023, p 1.

¹⁰⁸ Health and Environment Committee, [Tobacco and Other Smoking Products Amendment Bill 2023](#), Report No. 32, 57th Parliament, May 2023, p 1.

According to the inquiry report, the 'vast majority' of submitters supported the licensing scheme, including health professionals, retailers, anti-smoking organisations and big tobacco companies. Some submitters proposed specific changes to improve the licensing regime, including:

- adopting a more nuanced scheme for licensing retailers that distinguishes between different types of stores (e.g. general retail vs specialist tobacconists, physical vs online stores) allowing a tailored approach to regulation, monitoring and compliance
- expanding the range of factors that the Chief Executive can consider when granting a retail license to include, for example, the location of premises and their proximity to schools
- strengthening the consequences associated with disciplinary matters and making additional changes to prevent businesses being 'reborned' under different names, or with different directors, after a licence is revoked.¹⁰⁹

In response to the first 2 suggestions listed above, the department advised the committee:

- it will obtain the information required to enable effective regulatory oversight of smoking products without the need for additional licence types or requirements to provide information
- additional controls on the location of smoking product suppliers has not been considered as part of the current reforms, in part because of the current lack of information about suppliers (which the new licensing scheme will address).¹¹⁰

Chapter 2.7 of the inquiry report considered the effect of the Bill on prohibiting the supply and possession of illicit tobacco. Almost all submitters to the inquiry strongly supported action on illicit tobacco, and many stressed the importance of enforcement. The Queensland Network of Alcohol and Other Drug Agencies (QNADA) and the Australian Medical Association (AMA) Queensland raised concerns about the apparent emphasis on a regulatory response and its potential to criminalise vulnerable groups:

They stressed that any regulatory response should be accompanied by investment in support services that reduce demand for illicit tobacco and mitigate the harm it causes. QNADA explained:

... an increased regulatory response has the potential to lead to a range of negative consequences for individuals and the community and is unlikely to have sustained benefits without continued investment in demand and harm reduction strategies... it is possible we have reached a threshold where prohibitive pricing is pushing vulnerable populations to unregulated [i.e. illicit] tobacco in the absence of other nicotine replacements and support.¹¹¹

Based on the department's response to these concerns, the committee was satisfied that the changes proposed were an appropriate public health response to smoking.

¹⁰⁹ Health and Environment Committee, [Tobacco and Other Smoking Products Amendment Bill 2023](#), Report No. 32, 57th Parliament, May 2023, p 9.

¹¹⁰ Health and Environment Committee, [Tobacco and Other Smoking Products Amendment Bill 2023](#), Report No. 32, 57th Parliament, May 2023, p 10.

¹¹¹ Health and Environment Committee, [Tobacco and Other Smoking Products Amendment Bill 2023](#), Report No. 32, 57th Parliament, May 2023, p 22.

The committee made 3 recommendations:

1. The committee recommends the Tobacco and Other Smoking Products Amendment Bill 2023 be passed
2. The committee recommends improved alignment of the *Medicines and Poisons Act 2019* and the *Tobacco and Other Smoking Products Act 1998* to remove barriers to executing warrants, searching premises and seizing contraband items
3. The committee recommends that the Government fully consider resourcing enhanced enforcement efforts coordinated between Queensland Health and the Queensland Police Service, and between the relevant state and federal agencies targeting illicit tobacco and vaping markets.¹¹²

The government supported the first recommendation in full, and the other 2 in principle.¹¹³ The Bill passed parliament with amendment on 25 May 2023 and the licensing scheme commenced on 1 September 2024. It is compared with other Australian licensing schemes in [Section 7](#).¹¹⁴

6.3 Victoria

As at 8 November 2024, Victoria has a negative licensing scheme in place under the [Tobacco Act 1987](#) (Vic).

6.3.1 An independent review of illicit tobacco regulation recommended that the government adopt a positive licensing scheme for tobacco retailers and wholesalers (2022)

On 4 October 2021, the Victorian Minister for Health asked Better Regulation Victoria (BRV) to undertake an independent review of Victoria's approach to illicit tobacco regulation.¹¹⁵ BRV provided the final report to the Victorian Government in May 2022, but the report does not appear to have been made public until a 2024 parliamentary inquiry into vaping and tobacco controls.¹¹⁶ The minister requested that the review cover a number of matters including recommendations for improvement and the costs and benefits of a preferred approach.¹¹⁷

With regards to the incidence of illicit tobacco, the review made several key findings:

- The sale of illicit tobacco had continued to increase despite 2014 reforms to raise penalties for selling illicit tobacco

¹¹² Health and Environment Committee, [Tobacco and Other Smoking Products Amendment Bill 2023](#), Report No. 32, 57th Parliament, May 2023, p iv.

¹¹³ Queensland Government, [Tobacco and Other Smoking Products Amendment Bill 2023 Report No. 32, 57th Parliament: Government response](#), 24 May 2023.

¹¹⁴ Business Queensland, [Smoking product supplier licensing scheme](#), Queensland Government, 28 August 2024, accessed 31 October 2024; Queensland Government, [Smoking product supplier licensing – Public Health Connect instructions](#), 7 August 2024, accessed 31 October 2024; Queensland Health, [Smoking product retailing](#), Queensland Government, 28 November 2023, accessed 31 October 2024.

¹¹⁵ D Pearson, [Request for advice on Victoria's approach to illicit tobacco regulation](#), Victorian Minister for Health, 4 October 2021.

¹¹⁶ T Read, [Tobacco licensing scheme](#), *Victorian Hansard*, 22 February 2024.

¹¹⁷ D Pearson, [Request for advice on Victoria's approach to illicit tobacco regulation](#), Victorian Minister for Health, 4 October 2021.

- Reliable data on illicit tobacco is difficult to source, and the lack of information available to the government is exacerbated by the absence of a licensing scheme
- Illicit tobacco regulation involves local, state and federal agencies. There is a lack of coordination, collaboration and clarity of responsibilities across these agencies.¹¹⁸

The BRV made 6 recommendations designed to address illicit tobacco sales, including establishment of a licensing regime:

1. Establish a licensing scheme for retailers and wholesalers
2. Provide for clear and effective regulatory oversight through administration by a department such as the Department of Justice and Community Safety and the establishment of a statutory advisory committee
3. Enhance investigation and enforcement powers
4. Provide for increased deterrence via stronger penalties
5. Invest in education about the new licensing scheme and continue to support programs to reduce the use of tobacco products by vulnerable persons and communities
6. Continue to support campaigns discouraging smoking and collaborate with relevant Commonwealth agencies and other jurisdictions on tobacco control enforcement and compliance.¹¹⁹

6.3.2 A parliamentary inquiry into vaping and tobacco controls recommended establishment of a positive licensing scheme for tobacco retailers and wholesalers (2024)

On 29 August 2024, the Victorian Public Accounts and Estimates Committee tabled its final report into vaping and tobacco controls. The inquiry covered a range of matters including the financial, health, social and environmental impacts of smoking and vaping, the impacts of illicit vapes and tobacco on law enforcement and the Victorian justice system ([chapter 4](#)), legislative, regulatory and administrative frameworks ([chapter 5](#)), and public health measures.

The committee made some key findings in chapter 4 including:

FINDING 21: Several drivers have contributed to the extensive black market in illicit vapes and cigarettes in Victoria including the price differential between legal and illicit cigarettes, absence of a licensing scheme, lack of enforcement activity and minor penalties for illegal activity, with products readily available and accessible in local shopping strips. The 'low-risk high-reward' nature of these commodities have attracted overseas crime syndicates to the lucrative market.¹²⁰

It did not make any recommendations in this chapter but emphasised 'the need for strong regulations and enforcement to combat the illicit vape and tobacco trade, sustainable solutions for storing seized

¹¹⁸ Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, pp iii-iv.

¹¹⁹ Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, pp vi-vii.

¹²⁰ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), Victorian Parliament, August 2024, p xviii.

products and support for affected businesses through financial aid and enhanced security measures.¹²¹

Chapter 5 contains many key findings and recommendations concerning tobacco licensing reforms, the most significant of which was the establishment of a positive licensing scheme in Victoria for tobacco retailers and wholesalers (recommendation 9). Other key recommendations include:

- High annual licence fees similar to the Tasmanian scheme, restrictions on the number of licences granted, density limits for each local government area and prohibition of licences within 150 metres of a school (recommendation 10)
- Establishment of an independent, well-resourced, standalone regulatory agency within the Department of Justice and Community Safety to undertake compliance and enforcement activities (recommendation 13) in partnership with police that have been granted additional powers to carry out enforcement and investigation activities (recommendation 16)
- Strengthened licence revocation capability, prohibition of the sale of tobacco by minors (recommendation 17), and high penalties for illicit tobacco sale and possession (recommendation 18).¹²²

As at 8 November 2024, the Victorian Government had not responded to the inquiry.

On 29 October 2024, the Shadow Minister for Consumer Affairs, Tim McCurdy, moved a motion in the Legislative Assembly for the introduction of the opposition's Tobacco Amendment (Stamping Out Fire Bombings) Bill 2024.¹²³ The Bill would provide for a licensing scheme, other measures to combat firebombing of tobacco shops, and enforcement-related reforms. Government members who spoke against the motion noted that the Allan Labor Government will introduce legislation to establish a tobacco licensing scheme before the end of the year.¹²⁴ The motion was defeated.

6.4 South Australia

On 31 August 2023, the [Tobacco and E-Cigarette Products Act 1997](#) was amended to prohibit the packing and sale of illicit tobacco in South Australia. The Bill was introduced in response to the 'explosion of the illicit tobacco market ... in South Australia'.¹²⁵ On 29 May 2024, the South Australian Premier announced that the government would be further cracking down on the sale of illicit tobacco and vaping products by moving responsibility for licensing and enforcement away from SA Health to Consumer and Business Services. This was done to adopt a tougher compliance approach because

¹²¹ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), Victorian Parliament, August 2024, p xiii.

¹²² Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), Victorian Parliament, August 2024, p xix.

¹²³ T McCurdy, [Tobacco Amendment \(Stamping Out Fire Bombings\) Bill 2024](#), *Victorian Hansard*, 29 October 2024.

¹²⁴ N Taylor, [Tobacco Amendment \(Stamping Out Fire Bombings\) Bill 2024](#), *Victorian Hansard*, 29 October 2024. See also: R Willingham, [Victorian Premier Jacinta Allan says government will roll out tobacco shop licensing by end of year](#), *ABC News*, 28 March 2024, accessed 31 October 2024.

¹²⁵ C Bonaros, [Tobacco and E-Cigarette Products \(Tobacco Product Prohibitions\) Amendment Bill](#), *South Australian Hansard*, 2 November 2022.

of the criminal activities that were occurring, an approach more closely aligned with the work of CBS.¹²⁶

On 28 August 2024, the South Australian Minister for Health and Wellbeing introduced the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) into the Legislative Assembly.¹²⁷ Amongst other reforms, the Bill sought to amend the objects of the Act to reflect its role in regulating illicit tobacco, reintroduce a wholesale tobacco licence, and include additional criteria about who is considered to be a fit and proper person.¹²⁸

On the issue of illicit tobacco sales, the minister stated:

The Bill also introduces new penalties that are the toughest of any state or territory. This sends a clear message that the Government is very serious about cracking down on people selling illegal e-cigarettes or tobacco. We can't have penalties that are so low they are considered just a cost of business.

As examples, these new penalties include a maximum of \$750,000 on the first offence and \$1.1 million on second offence for selling tobacco without a merchant licence, and up to \$1.5 million for selling a tobacco product to a minor. This compares with the current levels which are between \$20,000 and \$40,000. This ensures that if an operator chooses to sell tobacco without a licence or sell tobacco to a child, they run the risk of being hit with these very large penalties.

...

This Bill also introduces national leading penalties for selling, supplying and commercial possession of illicit tobacco products.¹²⁹

The Bill passed both Houses on 30 October 2024 and as at 8 November 2024 awaited assent. The licensing scheme is compared with other Australian jurisdictions in [section 7](#).

¹²⁶ P Malinauskas, [Major enforcement clampdown on illegal tobacco and vapes in SA](#) [media release], South Australian Government, 29 May 2024, accessed 1 November 2024.

¹²⁷ See also: Consumer and Business Services, [Tobacco licensing and enforcement in SA](#), South Australian Government, September 2024, accessed 8 November 2024. The Bill reflects outcomes of a consultation process undertaken in 2023 and recommendations from a public health law expert, Dr Chris Reynolds, which do not appear to have been made publicly available. YourSAy, [Proposed new tobacco and e-cigarette regulations](#), South Australian Government, n.d., accessed 8 November 2024.

¹²⁸ C Picton, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill](#), *South Australian Hansard*, 28 August 2024.

¹²⁹ C Picton, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill](#), *South Australian Hansard*, 28 August 2024.

7. Comparison of Australian tobacco licensing schemes

This section compares selected characteristics of the licensing schemes of all Australian jurisdictions. The characteristics included here were chosen because they form part of the proposed NSW scheme or are closely related to provisions of the NSW scheme. The comparison also takes into account the provisions of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA), which has passed the South Australian Parliament but, as at 8 November 2024, had not received assent.

Licensing schemes differ on a range of matters not covered in detail in this section including:

- Requirements to display a licence at the retail or wholesale outlet¹³⁰
- Record-keeping requirements¹³¹
- Licence conditions.¹³²

The South Australian scheme as extended by the Bill awaiting assent is the most wide-ranging scheme in Australia. It includes a range of provisions not found elsewhere, for example:

- The regulator has the capacity to issue compliance directions and compliance notices¹³³
- The regulator can close premises using interim and long-term closure orders¹³⁴
- Controlled purchase operations are enabled by the tobacco control legislation. These operations target a person suspected of having committed an offence against a prescribed provision. The operation involves a designated person, which may include a child aged 16 and over, providing the suspected person with an opportunity to commit or attempt to commit an offence against a prescribed provision.¹³⁵ Prescribed provisions include selling or possessing illicit tobacco, selling tobacco to a minor and selling tobacco online.¹³⁶

¹³⁰ See for example section 48 of the [Tobacco and Other Smoking Products Act 1998](#) (Qld).

¹³¹ See for example section 58 of the [Tobacco Products Control Act 2006](#) (WA).

¹³² E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

¹³³ See sections 66A and 69E of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA).

¹³⁴ See Part 6AA of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA).

¹³⁵ See Part 6 of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA).

¹³⁶ Other prescribed provisions relate to selling tobacco in a quantity of less than 20, selling prohibited tobacco products, selling sucking tobacco and selling or possessing e-cigarettes (Schedule 1 of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#)). For discussion of controlled purchase operations, see the Second Reading speech and debates: C Picton, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#), *South Australian Hansard*, 28 August 2024; P Pratt and C Picton, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#), *South Australian Hansard*, 24 September 2024; B Hood and R Simms, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#), *South Australian Hansard*, 29 October 2024.

- There is a prohibition on the sale of tobacco online. Online sales pose a risk of allowing for the sale of tobacco to minors and the sale of illicit tobacco.¹³⁷

7.1 Fit and proper person tests, grounds for licence refusal or cancellation and licence bans

The tobacco licensing schemes of all Australian jurisdictions vary considerably on the following topics (see [Appendix 1](#) for a detailed comparison of the schemes):

- Specific fit and proper person tests
- Grounds for refusal of grant or renewal of a licence
- Grounds for suspension or cancellation of a licence
- Grounds for disqualification from holding a licence.

The legislation of 4 jurisdictions specifically requires a fit and proper person test to be conducted prior to a licence being granted: Queensland, South Australia, Tasmania and Western Australia. Tasmania and Western Australia do not specify what matters must be considered when conducting a fit and proper person test. However, they do have related provisions such as having to take into account 'any convictions and proceedings' taken against the applicant in any Australian jurisdiction (Tasmania¹³⁸) or any convictions or pending charges involving fraud or dishonesty in the past 10 years anywhere in the world (Western Australia¹³⁹).

Queensland and South Australia list specific matters that must be taken into account in their fit and proper person tests. A unique feature of the Queensland scheme is the requirement to consider whether the person has been convicted of an indictable offence relating to fraud, dishonesty, or tax or customs evasion. The South Australian scheme is the scheme most tailored to dealing with the connection between illicit tobacco and criminal activities. Rather than being a matter for consideration, a person is not a fit and proper person if they have been found guilty or convicted of an offence prescribed in the regulations, if they are insolvent under administration, or if they or a close associate of theirs is a member of a prescribed organisation. Prescribed organisations are defined as a declared organisation under the [Serious and Organised Crime \(Control\) Act 2008](#) (SA) or a criminal organisation under the [Criminal Law Consolidation Act 1935](#) (SA) or any organisation prescribed in the regulations. The Southern Australian minister must also take into account a number of other matters including the reputation, honesty and integrity of the person and their close associates.

The jurisdictions that do not include a specific fit and proper person test (ACT, NSW and Northern Territory) have narrower grounds for the refusal of grant or renewal of a licence. The ACT has the narrowest grounds: a licence must not be granted or renewed if the applicant holds another licence that is suspended or if they have been disqualified from holding a licence. A licence may not be granted or renewed if the applicant does not understand the obligations of the Act for a licensee or if they have been found guilty of selling tobacco to minors anywhere in Australia. In the Northern

¹³⁷ Better Regulation Victoria, [Addressing Illicit Tobacco: Review into Victoria's Approach to Illicit Tobacco Regulation](#), Victorian Government, May 2022, p 21.

¹³⁸ Section 74C(2)(b) of the [Public Health Act 1997](#) (Tas).

¹³⁹ Sections 39(3)(d)-(e) of the [Tobacco Products Control Act 2006](#) (WA).

Territory, application for granting or renewal of a licence must include a national police certificate, which provides a summary of a person's offender history in Australia. The licence may be granted or renewed if 'there is no other reason to refuse' to grant or renew the licence. In the proposed NSW scheme, a licence may not be granted or renewed if the applicant has been found guilty of an offence relating to the sale or supply of tobacco, non-tobacco smoking products or vaping goods anywhere in Australia.

The licensing schemes in 4 jurisdictions allow for a person to be disqualified from holding a licence or selling tobacco: ACT, South Australia, Victoria and Western Australia. In South Australia and Western Australia, which have positive licensing schemes, the disqualification may be for a specific period of time or on a permanent basis.¹⁴⁰ In the ACT, which also has a positive licensing scheme, the disqualification may be for a period of up to 5 years except in cases where the person is convicted of a second offence in 2 years, in which case they must be disqualified for 5 years. Common grounds for disqualification include failure to comply with the Act or licence conditions and conviction of an offence against the Act. In the ACT, failure to comply with the disqualification may incur a penalty of up to \$8,000, 6 months imprisonment or both. In South Australia, failure to comply with the ban could incur a penalty of up to \$500,000 for an individual and \$1,000,000 for a body corporate.¹⁴¹ In Victoria, which has a negative licensing scheme, a person or their close associate may be banned from selling tobacco if found guilty of selling tobacco products to a minor or selling illicit tobacco. The maximum length of the ban ranges from up to 3 months for a first offence to up to 5 years for a third or subsequent offence. The maximum penalty for breaching the ban in the case of a second or subsequent offence is \$23,710.80 for an individual and \$118,544 for a body corporate.¹⁴²

The recent reforms to the South Australian scheme have introduced interim and long-term closure. If the minister reasonably suspects that illicit tobacco or prohibited products are being, or likely to be, sold at a premises, or that tobacco products or e-cigarette products are likely to be unlawfully sold at the premises, they may issue an interim closure order that lasts up to 72 hours. A magistrate may issue a long-term closure order for a period of up to 6 months on the same grounds. Maximum penalties for breaching the order for an individual are \$350,000 for a first offence and \$700,000 for a second or subsequent offence, and for a body corporate are \$750,000 for a first offence and \$1.1 million for a second or subsequent offence.¹⁴³ In the second reading debate of the Bill, the Minister for Consumer and Business Affairs explained the reason for these provisions:

While CBS [Consumer and Business Services] has seized significant amounts of illicit tobacco products and intends to take appropriate enforcement action, this action takes time, and during that intervening time a shop can just restock and open up to the public again. One way of addressing this is for CBS to repeatedly conduct inspections at the same premises, seizing tobacco on each occasion. However, this approach is resource intensive and may lead to an increase in aggression that could therefore risk the safety of our authorised officers. Instead, this bill ... will enable stores to be issued with interim closure

¹⁴⁰ Sections 69G and 82A of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA) as passed by the South Australian Parliament and ss 47 and 48 of the [Tobacco Products Control Act 2006](#) (WA).

¹⁴¹ Section 69G of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA) as passed by the South Australian Parliament.

¹⁴² Section 15D of the [Tobacco Act 1987](#) (Vic).

¹⁴³ Part 6AA of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA) as passed by the South Australian Parliament.

orders. These closure orders may be issued to a retail or wholesale premises, irrespective of whether they possess a tobacco merchant licence.¹⁴⁴

7.2 Penalties for selected offences

This section compares proposed or current NSW penalties with the lowest and highest penalties across all jurisdictions. South Australia generally has the highest penalties, while the NSW penalties tend to be at the lower end of the range. Some jurisdictions, including NSW, set penalties for persons and corporations, whereas others have only one penalty.¹⁴⁵

7.2.1 Illicit tobacco offences

Illicit tobacco is tobacco upon which the required excise or customs duty has not been paid, or which does not comply with mandatory packaging and health warning laws. Illicit tobacco provisions vary between jurisdictions so the comparison presented in Table 4 is approximate (see [Appendix 2](#) for a detailed comparison). NSW legislation does not include a definition of illicit tobacco. Instead, sections 6 to 8 of the PHT Act prohibit:

- The sale of tobacco that is not in the package in which it was packaged by the manufacturer (s 6)
- The sale of cigarettes as individual items or in a package containing fewer than 20 (s 6)
- The packing and sale of a tobacco product in a package that is not marked with a health warning (s 7)
- The packing and sale of a tobacco product in a package that contains any prohibited words such as 'non-injurious', 'non-hazardous', 'harmless to man' and 'harmless to woman' (s 8).

Queensland is the only jurisdiction which defines illicit tobacco in legislation as a smoking product that does not comply with tobacco product requirements, health warning requirements, or a requirement under a Commonwealth law prescribed by regulation.¹⁴⁶ Together with the Victorian and Western Australian legislation, the Queensland legislation appears to have the broadest definition of illicit tobacco by virtue of reference to Commonwealth law. Both Victoria and Western Australia prohibit sale and possession of tobacco products which are excisable goods under the *Excise Act 1901* (Cth) upon which excise duty has not been paid and prohibited goods as defined in the *Customs Act 1901* (Cth).¹⁴⁷

The NSW Government proposes to double the maximum penalties for sale and possession of illicit tobacco under sections 6 and 7 of the PHT Act to \$22,000 for an individual and \$110,000 for a corporation (Table 4). These are considerably lower than the highest maximum penalties introduced

¹⁴⁴ A Michaels, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#), *South Australian Hansard*, 24 September 2024. See also B Hood, [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#), *South Australian Hansard*, 29 October 2024.

¹⁴⁵ Chapter 5.6 of the 2024 Victorian parliamentary inquiry into vaping and tobacco controls discusses the role of penalties in tobacco control with reference to Australian and international case studies. Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 68.

¹⁴⁶ Schedule 1 [Tobacco Act 1987](#) (Vic).

¹⁴⁷ Section 105 of the [Tobacco Products Control Act 2006](#) (WA) and section 11A of the [Tobacco Act 1987](#) (Vic). Section 11A of the Victorian Act also includes 'smuggled goods' as defined under the *Customs Act 1901* (Cth).

by the South Australia Government for possession and sale of illicit tobacco. Queensland also has large penalties for the sale and possession of illicit tobacco including imprisonment. In the case of sale of illicit tobacco, the maximum penalty could be \$322,600, 2 years imprisonment or both. For the possession of illicit tobacco, the maximum penalty could be \$161,300, 1 year imprisonment or both.

Table 4: The range of maximum penalties across Australian jurisdictions for sale and possession of illicit tobacco (including the proposed NSW positive licensing scheme)

Offence	Lowest	NSW	Highest
Sale of tobacco in noncompliant packaging, in a quantity of less than 20 and/or upon which the required taxes have not been paid	First offence: individual (\$10,000) and body corporate (\$40,000) Subsequent offence: individual (\$20,000) and body corporate (\$80,000) (WA)	Individual (\$22,000) and corporation (\$110,000)	First offence: individual (\$350,000) and body corporate (\$750,000) Subsequent offence: individual (\$700,000) and body corporate (\$1.1 million) (SA)
Sale of tobacco with prohibited words on the package	\$18,500 (NT)	Individual (\$11,000) and corporation (\$55,000)	First offence: individual (\$50,500) and corporation (\$505,000) Subsequent offence: individual (\$101,000) and corporation (\$2.02 million) (Tas)

Sources: See [Appendix 2](#)

The NSW Government has not proposed to increase maximum penalties on the sale of tobacco products with prohibited words, which currently stand at \$11,000 for an individual and \$55,000 for a corporation. The opposition proposed raising them to \$154,000 for an individual and \$770,000 for a corporation, which are closer in size to the highest maximum penalties that are found in Tasmania.

7.2.2 Other selected offences

The proposed NSW scheme has the following maximum penalties for sale without a licence or in a manner inconsistent with the Act, regulations or licence conditions: \$44,000 for an individual and \$220,000 for a corporation. It has lower proposed maximum penalties for the standalone offence of advertising in a public place, with a penalty of \$11,000 for an individual and \$55,000 for a corporation. In all three cases, these penalties are considerably lower than South Australia, which has recently introduced the highest maximum penalties of \$700,000 for an individual and \$1.1 million for a corporation (Table 5).

Penalties for the sale of tobacco products to minors are amongst the largest included in the NSW reforms. For a first offence, the Amendment No 2 Bill proposes a maximum penalty of \$22,000 for an individual and \$110,000 for a corporation. For a second or subsequent offence, the proposed maximum penalties are \$110,000 for an individual and \$220,000 for a corporation. South Australia has the largest maximum penalties for licensees at \$750,000 for an individual and \$1.5 million for a corporation. South Australia and Queensland are the only 2 jurisdictions that have separate penalties for licensees and employees for the offence of selling tobacco products to a minor (see [Appendix 2](#)).

Table 5: The range of maximum penalties across Australian jurisdictions for selected offences (including the proposed NSW positive licensing scheme)

Offence	Lowest	NSW	Highest
Sale without a licence	\$8,000 (ACT)	Individual (\$44,000) and corporation (\$220,000)	First offence: individual (\$350,000) and body corporate (\$750,000) Subsequent offence: individual (\$700,000) and body corporate (\$1.1 million) (SA)
Failure to comply with Act or licence	\$10,100 (Tas)	Individual (\$44,000) and corporation (\$220,000)	First offence: individual (\$350,000) and body corporate (\$750,000) Subsequent offence: individual (\$700,000) and body corporate (\$1.1 million) (SA)
Advertising in a public place	\$8,000 (ACT)	Individual (\$11,000) and corporation (\$55,000)	First offence: individual (\$350,000) and body corporate (\$750,000) Subsequent offence: individual (\$700,000) and body corporate (\$1.1 million) (SA)
Sale of tobacco products to minors	First offence: individual (\$10,000) and body corporate (\$40,000) Subsequent offence: individual (\$20,000) and body corporate (\$80,000) (WA)	First offence: individual (\$22,000) and corporation (\$110,000) Subsequent offence: individual (\$110,000) and corporation (\$220,000)	First offence: individual (\$500,000) and body corporate (\$1 million) Subsequent offence: individual (\$750,000) and body corporate (\$1.5 million) (SA)
Sale of tobacco products by minors	First offence: individual (\$10,000) and body corporate (\$40,000) Subsequent offence: individual (\$20,000) and body corporate (\$80,000) (WA)	N/A	Individual (\$250,000) and body corporate (\$500,000) (SA)

Sources: See [Appendix 2](#)

Four jurisdictions prohibit the sale of tobacco products by a minor: Northern Territory, Queensland, South Australia and Western Australia. In the Northern Territory, there are equivalent penalties for both the licensee and the supervising employee, whereas in the other 3 jurisdictions there is a penalty for the licensee only. Western Australia has the lowest maximum penalty for this offence: \$10,000 for an individual and \$40,000 for a corporation. South Australia has the highest maximum penalty: \$250,000 for an individual and \$500,000 for a corporation.

8. Positive tobacco licensing schemes: advantages and disadvantages

This section briefly outlines the potential advantages and disadvantages of positive licensing schemes.¹⁴⁸

8.1 Advantages

A positive tobacco licensing scheme places limits on who is permitted to sell tobacco. It can help ensure that permission is given only to sellers who meet desired requirements such as a demonstrated record of honesty and compliance with relevant laws.¹⁴⁹ This advantage is closely linked to the idea that a licence system serves as a 'formal representation of the special care and responsibility that the community expects to be demonstrated by those who choose to sell' products that present a significant risk to health.¹⁵⁰ The sale of tobacco products is a 'conditional privilege rather than an unfettered right'.¹⁵¹

Positive licensing schemes enable regulators to maintain a comprehensive register of all tobacco sellers. This gives the government capacity to provide targeted education to all tobacco sellers, thereby ensuring that they are aware of their legal responsibilities.¹⁵² It also makes it easier for the government to carry out compliance and enforcement activities. Administrative enforcement options such as licence conditions, high penalties and the capacity to disqualify a person from holding a licence are likely to reduce illicit tobacco sales.¹⁵³ Licence fees collected under the scheme can be used to cover all education, compliance and enforcement costs.¹⁵⁴

The ability for a positive licensing scheme to meet public health objectives depends in part on the features of the scheme. For example, restricting the number of total licences granted and imposing geographic limitations like not being located within a certain distance of a school may reduce the number of people who smoke.¹⁵⁵ Smoking prevalence is highest in more disadvantaged areas of Australia. Research conducted in NSW found that retailers in low-socioeconomic status areas were

¹⁴⁸ For discussion of the advantages and disadvantages of other types of licensing schemes, see: The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002.

¹⁴⁹ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p 26.

¹⁵⁰ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p 58.

¹⁵¹ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p 26.

¹⁵² The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002, p 40.

¹⁵³ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, p 26; E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

¹⁵⁴ The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002, p 40.

¹⁵⁵ Victorian Public Accounts and Estimates Committee, [Vaping and tobacco controls](#), August 2024, p 60; E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

more likely to be unlisted and to breach in-store retailing laws.¹⁵⁶ A strictly enforced licensing scheme, together with limitations on the number of licences granted by area, could potentially improve retailer compliance and reduce smoking rates in these areas.

8.2 Disadvantages

There are three main disadvantages to positive licensing schemes:

1. Administrative costs for government. Cost-recovery fees can reduce these costs, but this shifts the costs to industry and ultimately the consumer
2. Administrative costs for businesses in the form of time spent applying for a licence and maintaining compliance with the scheme
3. Licence fees for businesses.¹⁵⁷ According to multiple submissions to the 2016 Queensland inquiry into tobacco licensing, licence fees could have a disproportionate impact on small businesses, especially given Australia's highly concentrated marketplace which is dominated by Coles and Woolworths.¹⁵⁸

¹⁵⁶ E Greenhalgh et al., [Tobacco in Australia: Facts and issues](#), Cancer Council Victoria, September 2024, accessed 31 October 2024.

¹⁵⁷ The Allen Consulting Group, [Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements](#), 2002, p 41.

¹⁵⁸ Stakeholders who expressed this position include the Australasian Association of Convenience Stores (AACS), Australian United Retailers Limited (FoodWorks), Alliance of Australian Retailers (AAR) and Master Grocers Australia (MGA). Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, [Inquiry into tobacco licensing arrangements in Queensland](#), Report No. 19, 55th Parliament, April 2016, pp 26-30.

Appendix 1: Fit and proper person tests, grounds for licence refusal and cancellation and licence bans

This table includes the proposed NSW positive licensing scheme and the provisions of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA) which passed the South Australian Parliament on 30 October 2024 but had not received assent by 8 November 2024.

Jurisdiction	Specific fit and proper person test	Grounds for refusal of grant/renewal of licence	Grounds for suspension/cancellation of licence or disqualification from holding a licence
ACT	No	<p>Must not grant or renew licence if the applicant holds a licence that is suspended or is disqualified from holding a licence</p> <p>May refuse to grant or renew if they have been found guilty of 2 offences relating to the sale of smoking products to a minor in the Territory or elsewhere</p>	<p>Cancellation, suspension or disqualification for up to 5 years</p> <p>If a licensee has been convicted under the relevant part of the Act</p> <p>If a licensee has contravened the licensing scheme or legislation</p> <p>If false or misleading information was provided when the licence was granted</p> <p>If a licensee has been convicted or found guilty of an offence in Australia punishable by imprisonment for at least 1 year</p> <p>If a licensee has been convicted or found guilty of an offence outside Australia that would be punishable by imprisonment for at least 1 year in Australia</p> <p>If a licensee becomes bankrupt or personally insolvent</p> <p>Penalty for failure to comply with disqualification: \$8,000, imprisonment for 6 months or both</p> <p>If a person is convicted of a second offence in 2 years, the ACT Civil and Administrative Tribunal must cancel each tobacco licence held by the person and disqualify them from holding a licence for 5 years</p>
NSW (Proposed scheme)	No	<p>May refuse to grant or renew licence if applicant has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under any Australian legislation</p>	<p>Revocation only</p> <p>If an applicant has been found guilty of an offence relating to the sale or supply of tobacco products, non-tobacco smoking products or vaping goods under any Australian legislation</p> <p>Any information provided by the licence holder is false or misleading in a material way</p> <p>The licence holder has failed to comply with a condition of the licence</p>

Jurisdiction	Specific fit and proper person test	Grounds for refusal of grant/renewal of licence	Grounds for suspension/cancellation of licence or disqualification from holding a licence
Northern Territory	No	<p>Application for licence must include a national police certificate about the proposed manager of the business, which provides a summary of a person's offender history in Australia</p> <p>May grant licence if there is no reason to refuse to grant the licence</p>	<p>Cancellation or suspension only</p> <p>If a licensee is found guilty of sale or supply to a minor</p> <p>If a licensee is found guilty of 2 or more other offences under the legislation</p> <p>If a licensee is issued with 2 or more infringements notices within a 12-month period</p> <p>If false or misleading information was provided when the licence was granted</p>
Queensland	Yes	<p>May grant or renew an application only if satisfied that the person or each partner in a partnership is a fit and proper person. Matters which must be considered include:</p> <p>Whether the person holds or has previously held a licence, and the conditions of that licence</p> <p>Whether their licence has ever been suspended or cancelled</p> <p>Whether the person has contravened the Act, regardless of whether they have been convicted of an offence</p> <p>Whether the person has contravened a corresponding Australian law</p> <p>Whether the person has been convicted of an indictable offence relating to fraud, dishonesty, or tax or customs evasion</p> <p>Whether the person has been insolvent or disqualified from managing corporations</p> <p>Whether the corporation has been placed into administration, receivership or liquidation</p> <p>The chief executive may ask the police commissioner for a criminal history report, subject to receiving written consent from the applicant</p> <p>The chief executive may request further information or for inspection of the relevant premises. If either is refused, the application is taken to be withdrawn</p> <p>The chief executive must reject an application if the applicant applied in the last 6 months and was refused, or if a licence held by the applicant was cancelled in the last 6 months</p>	<p>Suspension</p> <p>If false or misleading information was provided when the licence was granted</p> <p>If a licensee has contravened the licensing scheme or legislation</p> <p>If the licensee attempted to obstruct an authorised person</p> <p>If the licensee failed to make the premises available for inspection</p> <p>Cancellation</p> <p>If any of the grounds for suspension are met</p> <p>If the chief executive reasonably believes that the licensee or a partner is not a fit and proper person</p> <p>If the licensee is placed in administration, wound up or deregistered</p>

Jurisdiction	Specific fit and proper person test	Grounds for refusal of grant/renewal of licence	Grounds for suspension/cancellation of licence or disqualification from holding a licence
South Australia (includes Bill that passed both Houses on 30 October 2024 but which had not received assent by 8 November 2024)	Yes	<p>The minister must be satisfied that the applicant (including each person in a position of authority if the applicant is a trust or corporate entity) is a fit and proper person.</p> <p>A person is not a fit and proper person if:</p> <ul style="list-style-type: none"> They have been found guilty or convicted of an offence prescribed in the regulations They are an insolvent under administration In the case of a body corporate, it is a prescribed organisation In the case of an individual, they are a member of a prescribed organisation or a close associate of a person who is a member of a prescribed organisation. <p>A prescribed organisation is a declared organisation under the <i>Serious and Organised Crime (Control) Act 2008 (SA)</i> or a criminal organisation under the <i>Criminal Law Consolidation Act 1935 (SA)</i> or any organisation prescribed in the regulations.</p> <p>The minister must take into consideration:</p> <ul style="list-style-type: none"> The reputation, honesty and integrity (incl creditworthiness) of the person The reputation, honesty and integrity of people with whom the person associates In the case of a body corporate, whether it is being wound up, under official management or in receivership Any other factor relevant to the particular purpose to which the decision relates including any relevant offence of which the person has been convicted or found guilty. <p>The Commissioner of Police must provide the minister with relevant information about criminal convictions relating to the applicant, or any other information they consider to be relevant to whether the licence should be granted</p>	<p>Cancellation, suspension for a specified or unlimited period or disqualification on a permanent basis or for a specified time</p> <p>If the licence was improperly obtained</p> <p>If evidence comes to light showing that the person is not a fit and proper person</p> <p>If the licensee failed to comply with the Act or licence</p> <p>If the licensee has been convicted of an offence against the Act</p> <p>If the licensee has been convicted of an offence punishable by imprisonment</p> <p>If the business is being improperly conducted</p> <p>If it would be contrary to the public interest if the licensee were to continue to hold the licence</p> <p>Penalty for failure to comply with suspension, cancellation or disqualification: \$500,000 for an individual and \$1,000,000 for a body corporate</p>
Tasmania	Yes	<p>The director is to consider whether the applicant is a fit and proper person to hold a smoking product licence. They may take into account any convictions and proceedings taken against the applicant in any Australian jurisdiction, and may take into account the results of any enquiries to relevant agencies in other Australian jurisdictions</p>	<p>Cancellation only</p> <p>If a licensee has contravened the licensing scheme or legislation</p> <p>If the licensee is no longer considered to be a fit and proper person</p> <p>If the licensee is convicted of a relevant offence under the Act</p>

Jurisdiction	Specific fit and proper person test	Grounds for refusal of grant/renewal of licence	Grounds for suspension/cancellation of licence or disqualification from holding a licence
Victoria	N/A	N/A	<p>Disqualification of a person or their close associate from selling tobacco if found guilty of selling tobacco products to a minor or selling illicit tobacco</p> <p>First offence</p> <p>The court may ban retailing at the premises or any new premises within 5km for a period up to 3 months</p> <p>Second offence</p> <p>Ban from selling tobacco at the premises for 3 months. The court may extend the ban to up to 12 months and to any new premises within 5km. Penalty for breaching ban: \$23,710.80 for an individual and \$118,544 for a body corporate</p> <p>Subsequent offence</p> <p>Ban from selling tobacco at the premises for 5 years. The court may extend the ban to include any new premises within 5km of the original premises. Penalty for breaching ban: \$23,710.80 for an individual and \$118,544 for a body corporate</p>
Western Australia	Yes	<p>Matters to which the CEO is to have regard include whether:</p> <p>The applicant is a fit and proper person</p> <p>The applicant is the holder of a suspended licence under the Act or a corresponding Australian law</p> <p>The applicant has been refused or disqualified from holding a licence under the Act or a corresponding Australian law</p> <p>The applicant has at any time been convicted of an offence under the Act or a corresponding Australian law</p> <p>The applicant has, in the 10 years before, been convicted anywhere in the world of an offence involving fraud or dishonesty, or is the subject of a pending charge anywhere in the world for an offence involving fraud or dishonesty</p> <p>The applicant is likely to carry on the activities of a licence holder honestly and fairly</p> <p>There is any other good reason for not issuing or renewing the licence</p>	<p>Suspension for up to 3 months, revocation or disqualification for a set period or on a permanent basis</p> <p>If the licensee is no longer a fit and proper person</p> <p>If the licensee is the subject of a pending charge for an offence under the Act</p> <p>If the licensee has not complied with the Act or licence conditions</p> <p>If the licensee has been convicted under the Act or a corresponding Australian law</p> <p>If the licensee is the subject of a pending charge anywhere in the world for an offence involving fraud or dishonesty</p> <p>If the licensee is no longer likely to carry on the activities of a licence holder honestly and fairly</p> <p>If false or misleading information was provided when the licence was granted</p>

Sources: [Tobacco and Other Smoking Products Act 1927](#) (ACT); [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#); [Tobacco Control Regulations 2002](#) (NT); [Tobacco Control Act 2002](#) (NT); Australian Federal Police, [National Police Checks](#), Australian Government, 2024, accessed 30 October 2024; [Tobacco and Other Smoking Products Act 1998](#) (Qld); [Tobacco and E-Cigarette Products Act 1997](#) (SA); [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA); [Public Health Act 1997](#) (Tas); [Tobacco Act 1987](#) (Vic); [Tobacco Products Control Act 2006](#) (WA).

Appendix 2: Penalties for selected offences

This table includes the proposed NSW positive licensing scheme and the provisions of the [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA) which passed the South Australian Parliament on 30 October 2024 but had not received assent by 8 November 2024.

Jurisdiction	Penalties for sale without licence and failure to comply with licence	Penalties for illicit tobacco, sale without health warning and related offences	Penalties for advertising in public place	Penalties for sale to minors	Prohibition of sale by minors
ACT	Sale without a licence: \$8,000 for a person Carries on retailing without a licence: \$8,000 for a person Carries on wholesaling without a licence: \$16,000 for a person	Sale of cigarettes in a quantity of less than 20: \$8,000 for a person	Display of smoking advertisement in public place in reckless manner: \$8,000 for a person	Sale to a minor in a reckless manner: \$32,000 for a person	No
NSW (Proposed scheme)	Sale without licence or in a manner inconsistent with the Act, regulations or licence: \$44,000 for an individual and \$220,000 for a corporation	Sale without mandated health warning, not in required packaging or as individual cigarettes: \$22,000 for an individual and \$110,000 for a corporation Sale of tobacco product with prohibited words: \$11,000 for an individual and \$55,000 for a corporation	Display of retail prices and names of tobacco products in public place: \$11,000 for an individual and \$55,000 for a corporation	First offence: \$22,000 for an individual and \$110,000 for a corporation Second or subsequent offence: \$110,000 for an individual and \$220,000 for a corporation	No
Northern Territory	Sale without a licence: \$92,500 for a person Failure to comply with licence conditions: \$18,500 for a person	Sale without health warning or with prohibited words: \$18,500 for a person Sale of cigarettes in a quantity less	Display of advertisement in public place: \$37,000 for a person	Sale to a minor: \$37,000	Yes The licensee commits an offence if (a) the purchaser was an adult (\$18,500) or (b) the purchaser

Jurisdiction	Penalties for sale without licence and failure to comply with licence	Penalties for illicit tobacco, sale without health warning and related offences	Penalties for advertising in public place	Penalties for sale to minors	Prohibition of sale by minors
		than 20: \$3,700 for a person			was a child (\$37,000) The supervising adult employee commits an offence if (a) the purchaser was an adult (\$18,500) or (b) the purchaser was a child (\$37,000)
Queensland	Sale to a retailer who does not have a licence: \$161,300 for a licensee Sale without a licence: \$161,300 for a supplier	Supply illicit tobacco ¹⁵⁹ as part of a business activity: \$322,600 or 2 years imprisonment or both for a person Possess illicit tobacco as part of a business activity: \$161,300 or 1 year imprisonment or both for a person Sale of cigarettes in a quantity of less than 20: \$22,582 for a supplier	Display of advertising at place other than retail outlet or online shop: \$22,582 for a supplier	Supplier must not supply smoking products to minors. They must also ensure that employees do not supply smoking products to minors First offence: \$22,582 for a supplier Second offence: \$45,164 for a supplier Third or subsequent offence: \$67,746 for a supplier If convicted of an offence, the court may issue an order prohibiting supply of smoking products or imposing conditions on supply of smoking products. Breach of the order may incur a penalty of up to \$67,746	A supplier must ensure a child employee does not supply or handle a smoking product First offence: \$22,582 for a supplier Second offence: \$45,164 for a supplier Third or subsequent offence: \$67,746 for a supplier

¹⁵⁹ Illicit tobacco is defined as a smoking product that does not comply with any of the following requirements applying to the product: a tobacco product requirement; a health warning requirement; another requirement under a law of the Commonwealth prescribed by regulation.

Jurisdiction	Penalties for sale without licence and failure to comply with licence	Penalties for illicit tobacco, sale without health warning and related offences	Penalties for advertising in public place	Penalties for sale to minors	Prohibition of sale by minors
				An employee may also be liable if they supply a smoking product to a child after the supplier has taken prevention measures First offence: \$3,226 for the employee Second offence: \$6,452 for the employee	
South Australia (includes Bill that passed both Houses on 30 October 2024 but which had not received assent by 8 November 2024)	Sale without a licence First offence: \$350,000 for an individual and \$750,000 for a body corporate Subsequent offence: \$700,000 for an individual and \$1,100,000 for a body corporate Failure to comply with licence: \$250,000 for an individual and \$500,000 for a body corporate.	Sale of prohibited goods or excisable goods on which the excise duty has not been paid (illicit tobacco) Possession of prohibited goods or products in noncompliant packaging Sale of cigarettes in a quantity of less than 20, in noncompliant packaging, or via online outlet: First offence: \$350,000 for an individual and \$750,000 for a body corporate Subsequent offence: \$700,000 for an individual and \$1,100,000 for a body corporate	Display of tobacco product advertising except in accordance with the regulations First offence: \$350,000 for an individual and \$750,000 for a body corporate Subsequent offence: \$700,000 for an individual and \$1,100,000 for a body corporate	Sale or supply of tobacco products to a minor by the proprietor of the business First offence: \$500,000 for an individual and \$1,000,000 for a body corporate Subsequent offence: \$750,000 for an individual and \$1,500,000 for a body corporate Sale or supply of tobacco products to a minor by an employee First offence: \$350,000 for an individual and \$750,000 for a body corporate Subsequent offence: \$700,000 for an individual and \$1,100,000 for a body corporate	A person must not employ, authorise or allow a child younger than 16 years of age to sell a tobacco product: \$250,000 for an individual and \$500,000 for a body corporate
Tasmania	Sale without a licence First offence: \$10,100 for a person	Sale other than in a package, or in a quantity of less than 20	Display of advertising in a public place First offence: \$10,000 for a licensee	Sale, loan, gift or supply of smoking product to minor by licensee or by employee	No

Jurisdiction	Penalties for sale without licence and failure to comply with licence	Penalties for illicit tobacco, sale without health warning and related offences	Penalties for advertising in public place	Penalties for sale to minors	Prohibition of sale by minors
	<p>Subsequent offence: \$20,200 for a person</p> <p>Failure to comply with licence conditions or regulatory requirements: \$10,100 for a licensee</p>	<p>First offence: \$10,100 for a licensee</p> <p>Subsequent offence: \$40,400 for a licensee</p> <p>Incorrect information regarding the health effects of tobacco products</p> <p>First offence: \$50,500 for a person and \$505,000 for a corporation</p> <p>Subsequent offence: \$101,000 for a person and \$2,020,000 for a corporation</p>	<p>Subsequent offence: \$40,400 for a licensee</p>	<p>First offence: \$24,240 for a licensee</p> <p>Second offence: \$48,480 for a licensee</p> <p>Third or subsequent offence: \$72,720 for a licensee</p>	
Victoria	N/A	<p>Possession of tobacco products that are smuggled goods, prohibited imports or excisable goods upon which excise duty has not been paid: a set fine of \$47,421.60 for a person and \$237,108 for a body corporate</p> <p>Sale of cigarettes in a quantity of less than 20: a set fine of \$23,710.80 for a person and \$118,554 for a body corporate</p>	<p>Display of advertising material in a public place: a set fine of \$11,855.40</p> <p>Display of advertising material in a public place by a tobacco company in an intentional or reckless manner (an indictable offence): \$987,950</p>	<p>Sale to a minor: a set fine of \$23,710.80 for a person and \$118,554 for a body corporate</p>	No
Western Australia	<p>Sale without a retail licence: a set fine of \$50,000</p> <p>Sale to a retailer who does not hold a licence, sale without a wholesale licence</p>	<p>Provision of false information about health effects of tobacco products: A set fine of \$50,000 for an individual or</p>	<p>Display of advertising material in or in the vicinity of the outlet or display of advertising in a public place</p>	<p>Sale, supply or delivery to a minor</p> <p>First offence: a set fine of \$10,000 for an individual and \$40,000 for a body corporate</p>	<p>Yes</p> <p>A licensee must not allow or authorise a minor to sell a tobacco product</p> <p>First offence: a set fine of \$10,000 for</p>

Jurisdiction	Penalties for sale without licence and failure to comply with licence	Penalties for illicit tobacco, sale without health warning and related offences	Penalties for advertising in public place	Penalties for sale to minors	Prohibition of sale by minors
	<p>or indirect sellers licence, or failure to comply with licence conditions</p> <p>First offence: a set fine of \$10,000 for an individual and \$40,000 for a body corporate</p> <p>Subsequent offence: a set fine of \$20,000 for an individual and \$80,000 for a body corporate</p>	<p>\$250,000 for a body corporate</p> <p>Sale of tobacco product in noncompliant packaging or in a quantity of less than 20, or possession of tobacco products that are prohibited goods under the <i>Customs Act 1901</i> (Cth)</p> <p>First offence: a set fine of \$10,000 for an individual and \$40,000 for a body corporate</p> <p>Subsequent offence: a set fine of \$20,000 for an individual and \$80,000 for a body corporate</p>	<p>First offence: a set fine of \$10,000 for an individual and \$40,000 for a body corporate</p> <p>Subsequent offence: a set fine of \$20,000 for an individual and \$80,000 for a body corporate</p>	<p>Subsequent offence: a set fine of \$20,000 for an individual and \$80,000 for a body corporate</p>	<p>an individual and \$40,000 for a body corporate</p> <p>Subsequent offence: a set fine of \$20,000 for an individual and \$80,000 for a body corporate</p>

Note: All penalties are maximums unless otherwise stated. Sources: [Tobacco and Other Smoking Products Act 1927](#) (ACT); [Legislation Act 2001](#) (ACT); [Public Health \(Tobacco\) Amendment \(No 2\) Bill 2024](#); [Public Health \(Tobacco\) Act 2008](#); [Tobacco Control Regulations 2002](#) (NT); [Tobacco Control Act 2002](#) (NT); Department of the Attorney-General and Justice, [Penalty units](#), Northern Territory Government, 2024, accessed 30 October 2024; [Tobacco and Other Smoking Products Act 1998](#) (Qld); [Tobacco and E-Cigarette Products Act 1997](#) (SA); [Tobacco and E-Cigarette Products \(E-Cigarette and Other Reforms\) Amendment Bill 2024](#) (SA); [Public Health Act 1997](#) (Tas); [Tobacco Act 1987](#) (Vic); Magistrates' Court of Victoria, [Court fees and costs ready reckoner](#), 1 July 2024, accessed 31 October 2024; [Tobacco Products Control Act 2006](#) (WA).

Tobacco licensing schemes

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The Parliament of New South Wales acknowledges and respects the traditional lands of all Aboriginal people and pays respects to all Elders past and present. We acknowledge the Gadigal people as the traditional custodians of the land on which the Parliament of New South Wales stands.

This image comes from 'Our Colours of Country', which was created for the Parliament of NSW by Wallula Bethell (Munro) a Gumbaynggirr/Gamilaroi artist born and raised in Tamworth who has spent time living on Dughutti Country and is currently living in Western Sydney on Darug Country with her husband and son.

