

29 July 2025

Hon. Robert Borsak MLC
Chair, Portfolio Committee No. 5 - Justice and Communities
Legislative Council, NSW Parliament
Via: Parliament of NSW Inquiries submission webpage

Dear Mr Borsak and Committee members,

Re: Inquiry into the illegal tobacco trade

Lung Foundation Australia (LFA) is pleased to provide a submission to the above inquiry and make recommendations under two of the inquiry's Terms of Reference. LFA is the leading charity and health peak body for lung health in Australia. For more than 30 years, we have championed and funded life-changing research and delivered support services that give hope to people living with lung disease or lung cancer, so that they can live their best life. As a health peak we have a remit to advise governments on issues pertaining to lung health, specifically under the *National Preventive Health Strategy 2021-2030* which includes the *National Tobacco Strategy (NTS) 2023-2030*. We provide submissions to federal, state, and territory tobacco and e-cigarette legislation and regulation amendment consultations, and to inquiries such as this one that examine the effectiveness of current law.

The illegal trade in tobacco, vaping and other nicotine products is a serious threat to decades of progress in tobacco control. Action is crucial to reinforce the integrity of public health initiatives. Our following three recommendations propose amendments to New South Wales (NSW) regulation and support for national action. While strong measures to curb illegal trade are essential, we underscore that all tobacco products—legal or illegal—are harmful and inflict widespread damage to public health thus requiring continued strengthening of legislation.

Recommendations under Terms of reference item d) the adequacy of existing legislation and the allocation of departmental responsibility for enforcement, including in other jurisdictions:

1. Enact tobacco retail licensing caps and location restrictions

New South Wales's new positive tobacco licensing scheme was strongly welcomed by LFA. However, several elements of the scheme (as in other Australian jurisdictions) are inadequate, primarily that there are no restrictions on the number and/or location of licenses. In recent years across Australia there has been an increase in the number of tobacco retailers, with Sydney particularly notable for its large number of tobacconists. A restriction in tobacco licences would reduce the number of tobacco outlets, and in turn would reduce the enforcement burden on authorities. In countries where the number of tobacco retail licenses have been capped, smoking rates have tended to decrease, and compliance with tobacco control laws has often increased.¹ Reducing the number of outlets that sell tobacco products will reduce opportunities for illegal trade.

Australia has been a world leader in effective tobacco control policy, but we have done very little to control where tobacco is sold. LFA are asking all Australian jurisdictions, in line with *National Tobacco Strategy* Action 8.6, to restrict the number of tobacco retail licences granted and the location of outlets. We recommend caps on the number of licenses per suburb and region, as well as the prohibition of licences in areas within prescribed distances from schools, youth services and

¹ Canty R, Gartner CE, Hoek J, *et al* Global policy scan of commercial combustible tobacco product retailing regulations by WHO region. *Tobacco Control*. doi: 10.1136/tc-2023-058523

health facilities. New South Wales could be the first Australian jurisdiction to implement such measures, positioning itself as a national leader and aligning with international benchmarks in tobacco control policy.

2. Continue to strengthen penalties for licensees found to be selling illegal tobacco products

LFA commend the NSW Premier's announcement on July 22 this year that NSW Health will be given the power to close businesses selling illegal tobacco for 28 days and apply to a court for an order to be extended to 12 months. Likewise, the announcement that businesses found with a commercial quantity of illegal cigarettes or vapes will face maximum sentences of seven years in prison, and \$1.5 million in fines. We look forward to providing a submission to the forthcoming Bill.

Penalties and convictions play a role in deterring illegal tobacco trade and we recommend the NSW Government continue to strengthen these measures by learning from other Australian jurisdictions and international examples. We advise that Queensland and South Australia have introduced laws that allow for a business selling illegal products to be shut down on the spot and not allowed to reopen for an extended period, along with increased penalties. Queensland extended temporary closure powers from 72 hours to three months, introduced 12-month closure orders issued by the Magistrate Court and allow landlords to terminate leases linked to illegal supply and the imposition of penalties of up to \$161,300- or 12-months imprisonment for complicity in facilitating illegal trade. South Australia has fines of up to \$4.2m for businesses possessing large commercial quantities of illegal tobacco (up to \$6.6m for body corporates).

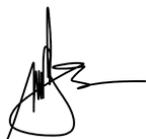
Recommendation under Terms of Reference item i) and other related matter

3. Continue NSW support for the federal tobacco excise

The federal tobacco excise remains one of the most effective policy mechanisms to reduce smoking rates and generate sustainable revenue to reinvest in health. Maintaining the current excise framework is critical to both deterring tobacco use and enabling states and territories to meet their tobacco control and enforcement responsibilities. Globally, tobacco taxation is the single most effective intervention to reduce tobacco consumption, with modelling suggesting that a 10% increase in price results in a 4–5% reduction in consumption.² International reviews find that reducing tobacco taxes is ineffective and counterproductive. When Canada halved its cigarette excise in the 1990s to address smuggling, smoking rates increased—particularly among young people—and cessation rates declined. Similarly, countries such as the United States, Vietnam, and the Philippines, have lower tobacco prices than Australia yet continue to experience significant levels of illegal trade. Lower prices do not prevent illegal markets.

To discuss our recommendations further, please contact Paige Preston, General Manager of Policy, Advocacy and Prevention at paigep@lungfoundation.com.au.

Sincerely,



Mark Brooke
Chief Executive Officer
Lung Foundation Australia

² Confronting Illicit Tobacco Trade : a Global Review of Country Experiences (Vol. 1 of 2) : Confronting Illicit Tobacco Trade : a Global Review of Country Experiences (English). WBG Global Tobacco Control Program Washington, D.C. : World Bank Group <http://documents.worldbank.org/curated/en/677451548260528135>