

SUBMISSION

LANDLORD OFFENCE RELATING TO ILLICIT TOBACCO SALES IN NSW
SEPTEMBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on the Landlord offence relating to illicit tobacco sales in NSW.

The ARA and the NRA (the Associations), which propose to amalgamate into the Australian Retail Council (ARC), represent a \$430 billion sector that employs 1.4 million Australians - one in ten workers - making retail the nation's largest private sector employer and a cornerstone of the Australian economy.

Our combined membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95% of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

EXECUTIVE SUMMARY

The Associations welcome the opportunity to comment on the Tobacco Legislation (Closure Orders) Amendment Bill 2025.

We strongly support the Bill's introduction of closure orders and strengthened offence provisions, which provide clear and enforceable consequences for businesses engaged in the criminal sale of illicit tobacco. These measures will deter illegal activity, protect compliant retailers, and reinforce government's commitment to public health and retail integrity.

We also acknowledge the Bill's statutory lease termination rights. However, allowing landlords to choose whether to act risks enabling offenders to return once closure orders expire. Instead, we recommend adopting the stronger Queensland model, where breaches result in immediate and permanent lease repudiation. This would remove offenders' legal right to occupy, maximise deterrence, eliminate reliance on landlord discretion, and deliver consistency across jurisdictions.

BODY OF SUBMISSION

Illicit tobacco is a persistent and growing threat to both the community, retail industry and government fiscal sustainability. Its sale is a criminal act that undermines public health objectives by making harmful products available outside regulated channels. It also distorts the market, creating an uneven playing field where compliant retailers are disadvantaged, and governments are deprived of substantial excise revenue needed to fund essential services.

The challenge extends beyond lost revenue and health impacts. Illicit tobacco is frequently linked to organised criminal networks, fuelling broader unlawful activity and compounding risks to public safety and community

wellbeing. For retailers who operate responsibly, the presence of illicit operators erodes confidence in the system and undermines the significant investments made to comply with strict regulations.

The Associations believe strong and practical enforcement measures are essential to disrupt this trade, permanently remove non-compliant operators from the market, and protect the integrity of legitimate businesses.

Support for Closure Orders & New Offences and Penalties

The Associations strongly support the NSW Government's introduction of closure orders and strengthened offence provisions through the Tobacco Legislation (Closure Orders) Amendment Bill 2025. These measures are essential to ensuring that businesses engaged in the criminal sale of illicit tobacco face clear and enforceable consequences.

Closure orders provide regulators with the authority to immediately halt unlawful activity, through both short-term orders (up to 90 days) and long-term sanctions (up to 12 months). Breaching these orders carries significant penalties, including fines of up to \$1.54 million and/or seven years' imprisonment for commercial possession or sale of illicit tobacco. These strong, visible consequences send a powerful message that illicit behaviour will not be tolerated in the retail sector.

We also welcome the creation of new offences for falsely claiming licensure, resisting seizure, or attempting to reclaim seized products. These reforms close existing gaps in enforcement and provide the necessary tools to ensure that offenders cannot exploit weaknesses in the current regulatory framework.

Taken together, these measures will deter illegal activity, strengthen enforcement, protect compliant retailers, and demonstrate government's commitment to safeguarding both public health and the integrity of the retail market.

Consideration for Lease Termination Rights

The Bill proposes to give landlords a statutory right to terminate leases where closure orders have been issued against their tenants. While intended to support enforcement, it relies on landlords choosing to act, leaving the possibility that tenants engaged in illicit tobacco sales could simply resume trading once a closure order expires.

There is a clear distinction between the NSW model and the Queensland approach:

- NSW: Closure orders are temporary (90 days or 12 months). Lease termination rights are discretionary, landlords must actively end the lease. If they do not, the tenant may return to trade once the closure order ends.
- Queensland: Closure orders trigger automatic lease repudiation. Once a breach is proven, the lease is voided by law. The tenant loses all legal right to occupy the premises and cannot return when the closure period ends.

The Associations do not support the proposed NSW approach of discretionary lease termination. It creates inconsistency, weakens deterrence, and risks allowing known offenders to re-enter the market.

To be effective, the Bill must be strengthened to require immediate and permanent lease repudiation once a breach is established. This would remove offenders' legal right to occupy, deliver consistent outcomes across jurisdictions, and bring NSW into alignment with Queensland's stronger enforcement framework, closing the loophole that currently allows illicit operators to re-emerge in the retail market.

CONCLUSION

The Associations commend the NSW Government for its strong stance against illicit tobacco through the Tobacco Legislation (Closure Orders) Amendment Bill 2025. The introduction of closure orders, new offences, and significant penalties represent an important step in protecting public health, safeguarding government revenue, and ensuring a fair competitive environment for compliant retailers.

We encourage the Government to consider strengthening the Bill further by aligning with the Queensland model of immediate and permanent lease repudiation once a breach is proven. This would maximise deterrence, provide consistent enforcement outcomes across jurisdictions, and permanently remove offenders from the retail market.

The Associations remain committed to working constructively with government, regulators, and law enforcement to support effective, practical measures that uphold integrity and compliance within the retail sector.

The ARA and NRA appreciate the opportunity to contribute to this important discussion.

We encourage the Government to continue collaborating with business groups and service providers to ensure the enforcement framework is practical, proportionate, and delivers lasting outcomes without placing unintended burdens on compliant landlords or retailers.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.