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Submission to ACT Consultation regarding Proposed Tobacco Reform - Closure Orders.

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The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the ACT Government regarding proposed regulatory reforms to disrupt the illicit tobacco market.

Executive Summary

The ARC welcomes the ACT Government's efforts to strengthen enforcement against the illicit tobacco trade. The illicit tobacco market has expanded significantly across Australia in recent years, creating substantial challenges for governments, law enforcement agencies and legitimate retailers. Illicit tobacco undermines legitimate businesses, deprives governments of significant tax revenue, and is increasingly linked to organised criminal activity.

Closure order powers have emerged as one of the most effective regulatory tools available to disrupt illicit tobacco retailing. Experience across multiple Australian jurisdictions demonstrates that closure orders can significantly reduce the availability of illicit tobacco when they are visible, enforceable and difficult to circumvent.

The strongest closure order model is immediate, visible, premises-based and difficult to evade. Closure duration matters, but duration alone will not suppress illicit trade. The ACT framework should combine a meaningful closure regime with coordinated geographic enforcement, seizure powers, landlord accountability, online monitoring and systematic follow-up. This package would give authorised officers, including police, a practical tool to disrupt illicit retail activity. It would also reduce the risk that offending simply shifts to another site or sales channel.

Recommendations

Based on the enforcement models operating in Queensland, New South Wales, Victoria, South Australia and Western Australia, ARC recommends the ACT closure order scheme incorporates the following:

1. **Immediate Administrative Closure Powers**: Closure orders should be capable of being issued administratively by authorised officers when evidence of illicit tobacco activity is identified. Requiring court approval before a closure can occur may significantly limit the effectiveness of the regime and reduce its deterrent impact.

2. **Minimum 90-Day Initial Closure Period:** Experience in other jurisdictions suggests that short closure periods may have limited impact. Initial closure orders should operate for a minimum period of 90 days to ensure meaningful disruption of illegal business activity.

3. **Attach Orders to Both Premises and Operators**: Closure orders should apply not only to the physical premises but also to the individuals or entities responsible for operating the business.

4. **Escalating Consequences for Repeat Offenders**: The ACT should consider stronger sanctions for repeat offenders, including extended closure periods and longer-term administrative closure orders.

5. **Geographically Targeted Enforcement**: Closure orders are often most effective when deployed strategically across a defined region, shopping precinct or district.

6. **Joint Agency Enforcement Powers:** Closure order powers should be exercisable by both health regulators and police agencies, supported by effective information sharing.

7. **Strong Compliance and Monitoring Mechanisms:** The scheme should include monitoring powers, significant penalties for breaches, powers to remove prohibited stock and authority to secure and inspect closed premises.

Detailed comments

1. Closure orders: design and implementation

1.1 Deploy closures in geographically concentrated, coordinated waves

In our view, closure orders are most effective within a targeted, concentrated enforcement strategy, rather than as isolated actions against individual retailers. The objective should be to suppress illicit availability across a defined geographic area, limiting consumers' opportunities to substitute one illicit retailer for another.

The difference between Queensland and New South Wales enforcement demonstrates this effect. Queensland's large-scale, coordinated operations produced more sustained increases in legal tobacco volumes, while the 'scatter-gun' NSW approach produced weaker results overall. The greatest method seemed to derive from targeted closures beginning in regional areas where suffocating supply was easiest, then moving closures methodically towards metro areas.

The ACT should therefore focus on removing illicit availability across an entire local area, rather than maximising the number of individual closures. Where multiple illicit retailers operate within the same area, coordinated or simultaneous closures should be prioritised. Follow-up enforcement should support these closures by preventing reopening and monitoring displacement to nearby retailers and non-traditional shop fronts.

1.2 Establish a meaningful closure period

The ACT should provide authorised officers with a rapid administrative power to close premises without first requiring a court order. A 90-day closure, as used in several jurisdictions, provides an appropriate baseline. However, the ACT should also provide a stronger administrative escalation where a 90-day closure is breached or serious or repeated offending occurs.

South Australia is currently considering a 130-day medium-term closure order to bridge the gap between shorter administrative closures and 12-month court-ordered closures. The ACT should consider a similar 130-day on-the-spot closure as the next step following a breach of a 90-day order. This would provide an immediate and meaningful escalation without relying solely on the more resource-intensive court process for a 12-month closure.

These closure powers should be available to both authorised health officers and police to maximise operational flexibility.

1.3 Close the physical premises, not merely the business entity

The order should attach to the physical premises and prohibit all retail or commercial trading at those premises for its duration. Targeting only a named business, licence holder or company allows circumvention through a new corporate entity, associate or nominal ownership change. The legislation should expressly prevent phoenixing.

1.4 Make enforcement highly visible

Visibility is a core and overlooked deterrent feature. Queensland demonstrated the value of a high-impact launch through Operation Major, which closed 148 stores in ten days using the new 90-day power. Publicised operations, prominent fluorescent notices, closure tape and an accessible public register create a clear community signal. Together, these measures increase the perceived likelihood of enforcement among non-compliant retailers.

ACT closure notices should be large, standardised and visible from the street. They should identify tobacco or vaping offences as the reason for closure, state the closure period and provide a reporting channel for suspected breaches. Removing, obscuring or damaging a notice should be an offence. The ACT should also introduce an online closure register, as seen in New South Wales, Victoria and Western Australia. This allows for clear tracking and public identification of offending storefronts.

1.5 Build monitoring and escalation into the scheme

A closure order is only effective if it is observed. The enforcement model should require follow-up inspections, remote or intelligence-led monitoring, and a documented compliance check before expiry. Any premature reopening, continued supply, removal of notices or trading through an associate should trigger a standard escalation response. This should include significant penalties, longer closure order and potentially prison sentencing.

The scheme should also capture repeat offending at the premises, even where the operator or company has changed. This prevents enforcement history from being reset through corporate restructuring.

1.6 Lessons from New South Wales and Queensland

Feature	What has worked	Challenge or design response
Administrative closure	Both jurisdictions allow immediate closure for up to 90 days, enabling instant disruption without awaiting prosecution.	Consider the addition of a 130 day immediate closure order to stores breaking closure rules
Coordinated operations	Queensland's statewide Operation Major combined closure orders, seizures and coordinated agency action, generating substantial visibility and deterrence.	Large operations require sufficient inspectors, police support, product destruction and a clear post-operation monitoring plan.
Geographic suppression	Concentrated closures are more likely to shift demand to lawful retailers when nearby illicit substitutes are unavailable.	Isolated closures can displace demand to another shop as seen in NSW. Focus on removing illicit availability across an entire local area, rather than maximising the number of individual closures.
Premises-based effect	Orders that prevent trading from the premises create a stronger disruption than a penalty directed only at the operator.	Phoenixing must be addressed expressly through premises-based orders and controls on replacement operators.
Public notices and registers	Visible notices and public registers demonstrate consequences and help the community report breaches.	Notices must be protected from removal or concealment and online registers must be kept current.

Landlord involvement	QLD and NSW provide landlord consequences and termination pathways.	Landlords need timely notice, clear obligations and escalating liability where they knowingly permit or are recklessly indifferent to continued offending.

2. Auxiliary supporting functions

2.1 Seizure and destruction of illicit and tainted stock

ARC submits that authorised officers should be able to seize and destroy illicit products. This power should apply to all tobacco, vaping and related stock reasonably connected with the offending premises. Restricting seizure to products immediately proven illicit allows operators to retain mixed inventory, frustrates enforcement and creates disputes during inspections. The preferred model would treat all tobacco and related products at premises where illicit conduct is established as tainted stock. It would also allow immediate destruction of that stock. Agencies across Australia struggle to store vast quantities of seized stock, while destruction presents an administrative burden where it is not expressly provided for in legislation. Queensland uses this model.

2.2 Landlord notification, termination rights and liability

The ACT regulator should promptly notify the property owner or relevant lessor when a closure order is issued. Landlords should have an express statutory right to terminate the lease without liability to the tenant. Importantly, the closure order should attach to the physical premises rather than the tenant or business entity. Termination of a lease should therefore not extinguish the order or permit a new operator to trade from the premises until the closure period has expired. This would prevent operators from circumventing closure orders by transferring the lease or reopening under a new or phoenix entity.

As in other jurisdictions, the framework should also impose liability where a landlord knowingly permits, facilitates or is recklessly indifferent to illicit conduct. A practical model would provide an initial formal notice and reasonable opportunity to act. Escalating civil and criminal consequences would follow where the landlord fails to take reasonable steps. This model would discourage landlords and lessors from leasing premises to illicit operators and encourage early lease termination where offending occurs. This would reduce the enforcement burden on government while eliminating illicit trade at the retailer level.

2.3 Online retail and delivery-channel enforcement

Effective ground enforcement will displace demand to online platforms, social media, messaging services, postal channels and local delivery networks. Online monitoring should therefore be established as a standing enforcement function rather than an optional extension of retail inspections.

The ACT should consider a dedicated capability to identify online sellers, seek removal of unlawful listings and trace payment and delivery pathways. This capability should also support intelligence sharing with Commonwealth agencies.

2.4 Broad entry, inspection and seizure powers

Authorised officers should have broad powers to enter and inspect any premises reasonably connected to illicit tobacco activity. These powers should not be limited to tobacconists, or other traditional tobacco retailers, but extend to any premises including warehouses, storage facilities, distribution points and postal facilities. Officers should be expressly authorised to inspect and open containers or packages and seize suspected illicit products.

Importantly, the framework should support enforcement beyond physical retail as illicit supply increasingly shifts to online and delivery channels. Officers should have the necessary powers to investigate products moving through postal and parcel networks, including inspecting and seizing packages.

This would ensure enforcement powers are positioned to keep pace with an adaptive route to consumers rather than being confined to the premises where products are currently sold.

3. Impact of Closure Orders to the Community

Closure orders can deliver benefits beyond enforcement outcomes. Legitimate retailers have welcomed stronger action against illicit tobacco, which helps address the competitive disadvantage created by businesses selling unlawful products. These businesses operate outside the regulatory and taxation framework.

The highly visible nature of closure orders also delivers an important community benefit. Closing offending premises, displaying prominent closure notices and publishing enforcement activity demonstrates that illicit tobacco laws are being actively enforced. This can strengthen public confidence while reinforcing to other retailers that non-compliance carries immediate and tangible consequences.

Importantly, closure orders target businesses engaged in unlawful activity while supporting retailers that continue to comply with tobacco laws. Combined with coordinated enforcement and ongoing monitoring, they can help restore a more level playing field for legitimate businesses. They can also reduce the visibility and accessibility of illicit tobacco and improve the amenity of local retail areas.

4. Recommended ACT model at a glance

- Target enforcement geographically: Deploy closure orders in concentrated, coordinated waves to suppress illicit supply across entire local areas and minimise substitution between illicit retailers.
- Use a 90-day baseline with stronger escalation: Introduce an immediate 90-day administrative closure, with a 130-day medium-term order available for breaches, serious offending or repeat offending, reducing reliance on resource-intensive 12-month court orders.
- Close the premises, not just the operator: Ensure closure orders remain attached to the physical premises to prevent businesses circumventing enforcement through new companies, lease transfers or phoenix entities.
- Make enforcement visible: Require prominent closure notices, closure tape and a publicly accessible register, supported by enforcement communications that maximise deterrence.
- Monitor and escalate: Conduct follow-up inspections throughout the closure period, with significant penalties and longer closures for premature reopening or attempts to circumvent an order.
- Seize and destroy tainted stock: Allow officers to seize all tobacco, vaping and related products associated with illicit conduct, with appropriate powers for timely destruction.
- Engage landlords: Require landlord notification, provide clear lease-termination rights and introduce escalating liability where landlords knowingly permit or fail to address illicit activity.
- Address online displacement: Establish dedicated monitoring and enforcement against online sellers and delivery networks as physical availability is reduced.

- Provide broad enforcement powers: Ensure authorised officers can enter relevant premises, inspect and open containers or packages, and seize suspected illicit products across the supply chain.

Please contact policy@retail.org.au if you have any questions about this submission.

About ARC

ARC represents the Australian retail sector. Valued at $444 billion, retail is the nation's largest private sector employer, supporting more than 1.4 million jobs, including more young Australians aged 15 to 24 years than any other industry. ARC's membership is diverse. From family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting communities across metropolitan and regional Australia. With more than 155,000 retail outlets nationwide and a growing online presence, the retail sector is embedded throughout the economy, playing a critical role in the supply chain of Australian businesses. ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it. At a time of rapid change, from technological disruption and international competition to shifting consumer behaviour and sustainability expectations, effective policy settings are critical for retailers, workers, consumers, and communities.