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Senate Legal and Constitutional Affairs References Committee Inquiry - Illegal Tobacco Crisis in Australia

The Australian Retail Council (ARC) welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs References Committee Inquiry into the Illegal Tobacco Crisis in Australia.

ARC represents a \$444 billion sector, and 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, contributing 16 per cent of national GDP.

Our 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

Australia's illicit tobacco market has expanded rapidly in recent years and now represents a substantial share of national tobacco consumption. Recent estimates place illicit tobacco at between 50 and 60 per cent of the market in 2024–25, representing a black market valued at between \$5.6 billion and \$6.9 billion annually and resulting in substantial losses in Federal excise and customs revenue.¹

The growth of illicit supply is having direct and measurable consequences for lawful retailers operating within Australia's regulated retail environment. Retailers are subject to strict age-verification requirements, licensing regimes and product control obligations, yet illicit operators routinely ignore these safeguards and sell untaxed products at a fraction of the legal price. Evidence provided to ARC by major retailers indicates that this is not simply a reflection of declining smoking prevalence, but a substantial shift in tobacco sales from lawful retail channels to illicit traders. Major retailers have indicated that, if current trends continue, lawful tobacco sales may become commercially unviable within a relatively short period.

The scale of the price disparity is a central driver of this substitution. The total tax on the cheapest lawful packet of cigarettes is currently approximately \$33.30, while illicit products are commonly sold for as little as \$7 per pack and frequently well below \$20. This gap is diverting consumer demand away from regulated retailers, weakening lawful sales and reducing associated store traffic and basket spend across other product categories.

For many lawful retailers, particularly independent operators, the consequences now extend beyond lost sales to include extortion, property damage, rising insurance premiums, and heightened risks to staff and customer safety. These harms

¹ Illicit Tobacco and E-cigarette Commissioner (2025) Illicit Tobacco and E-cigarette Commissioner Report 2024-25.

may fall disproportionately on smaller and independent retailers, which often have fewer security resources and may be seen as more vulnerable targets.

The illicit tobacco trade is also increasingly linked to organised criminal activity. In several jurisdictions, disputes between criminal groups involved in illicit tobacco supply have resulted in arson attacks, intimidation and violence targeting retail premises. These risks are emerging within a sector that employs 1.4 million Australians, including a large proportion of young workers entering the labour market for the first time.

Evidence further demonstrates that targeted enforcement can materially disrupt illicit supply networks and restore lawful market activity. In Queensland, closure orders issued to more than 100 stores selling illicit tobacco resulted in a 65 per cent increase in legal tobacco sales across one major retailer's network before stabilising at approximately 40 per cent above baseline levels. This strongly indicates that illicit outlets are directly displacing lawful retail activity.

ARC considers that addressing the scale of the illicit tobacco market now requires coordinated national action that treats illicit tobacco distribution as a serious organised crime issue, strengthens enforcement across the supply chain, improves regulatory consistency, and remains open to broader policy levers that may reduce the scale and attractiveness of the illicit market. Enforcement will be essential, but it is unlikely to provide a durable solution if pursued in isolation.

Retail Sector Context

Australia's retail sector is a foundational pillar of the national economy. The sector generates approximately \$444 billion in annual turnover, employs 1.4 million Australians, and represents one in ten workers across the economy. With more than 155,000 retail outlets nationwide, alongside extensive online operations, retail plays a central role in essential supply chains, regional employment and household consumption.

Retail is also one of Australia's largest employers of young people and a primary entry point into the labour market. Almost one-third of the retail workforce is aged under 25. For many Australians, retail provides first-job opportunities, foundational workplace skills and pathways into long-term careers. Workforce participation in retail is therefore closely linked to youth employment, skills development and broader economic inclusion.

The sector operates within one of the most comprehensive regulatory environments in the economy. Retailers are subject to Commonwealth and state regulation across work health and safety, industrial relations, consumer protection, product standards, licensing regimes, anti-discrimination frameworks and tax administration. Research from Mandala Partners estimates that the cost of complying with Commonwealth regulation alone has increased from approximately \$65 billion in 2013 to around \$160 billion in 2024, equivalent to 5.8 per cent of GDP. Separate Mandala analysis on regulatory fragmentation highlights an annual \$2.6 billion economic burden, created by inconsistent settings across jurisdictions, which impose duplicated compliance systems and administrative costs on national retail networks.

In relation to tobacco and other regulated products, lawful retailers operate under strict age-verification, product control and reporting requirements. Retailers invest significantly in staff training, mandatory identification protocols, refusal procedures, internal compliance auditing and point-of-sale systems to ensure adherence to underage sales laws and product standards. These safeguards form part of a broader compliance culture that reflects retailers' visibility, accountability and public-facing role in the community.

At the same time, the retail operating environment has become increasingly challenging. Retail crime is escalating rapidly across Australia. Auror data indicates that almost 800,000 retail crime events were recorded nationally in 2024, with approximately 25 per cent involving violence, intimidation, threats or abuse. Weapon-related incidents increased by 66

per cent over the same period, including a 40 per cent rise in knife-related events. These trends have direct implications for worker safety, customer confidence and the viability of local retail precincts.

This is not solely a business issue but a broader community concern. Around nine in ten Australians visit a retailer at least weekly, and two-thirds either work in the sector themselves or have a close friend or family member who does. RedBridge polling shows that 62 per cent of Australians are concerned about retail crime levels in their state, while more than nine in ten report that crime has negatively affected their sense of safety. Retail crime is estimated to cost the Australian economy approximately \$9 billion annually through increased security expenditure, insurance premiums, stock losses and operational disruption.

A significant proportion of this harm is linked to organised criminal activity operating across jurisdictions. Illicit tobacco and other contraband are now entrenched in some retail precincts, drawing organised crime networks into everyday shopping environments and elevating risks for workers and customers. In this context, the growth of the illicit tobacco market must be understood not only as a revenue or regulatory issue, but as part of a broader market integrity and community safety challenge affecting Australia's largest private sector employer.

The Scale and Nature of the Illicit Tobacco Market

Australia's illicit tobacco market has expanded rapidly in recent years and now represents a substantial share of national tobacco consumption. Current estimates suggest that illicit tobacco accounts for between 50 and 60 per cent of total consumption, representing a black market valued between \$5.6 billion and \$6.9 billion annually. This activity is estimated to result in \$7.7 billion to \$11.8 billion in lost government excise revenue each year.

Illicit tobacco is typically distributed through unlicensed retail outlets and informal supply networks that operate outside established regulatory and taxation frameworks. These operators frequently sell products under the counter or through storefronts that are not subject to the same licensing, age-verification, product standards and reporting obligations that apply to lawful retailers.

The price differential between legal and illicit tobacco products is significant, creating strong incentives for consumers to shift toward unregulated supply channels. Recent economic analysis indicates that the legal-illicit price gap has widened sharply in recent years and is now a primary driver of substitution away from lawful retail channels. In many cases, illicit tobacco outlets have opened in close proximity to legitimate retailers, directly diverting consumer demand and distorting local competition.

ARC recognises that enforcement failures are a major part of this problem. However, the evidence also suggests that broader policy settings influencing the price and accessibility of legal nicotine products cannot be ignored. As the gap between lawful and illicit product pricing widens, the incentive for consumers to shift into unregulated channels becomes stronger, making the illicit market more resilient even where enforcement action is increased.

The prolonged expansion of illicit supply over a number of years has allowed these channels to become increasingly normalised in parts of the market, making the problem more difficult to reverse through short-term interventions alone.

This pattern is also reflected in broader market data. Between 2019 and 2023, the daily smoking population declined by 24.5 per cent, while legal tobacco sales declined by 41.6 per cent, suggesting that changes in smoking prevalence alone do not explain the deterioration in lawful sales and that a growing share of consumption is shifting into illicit channels.²

² Tulipwood Economics, *Report on the Impacts of Tobacco Excise Tax* (prepared for the Australasian Association of Convenience Stores, February 2025)

Stakeholder engagement also indicates that counterfeit products are becoming increasingly sophisticated in their packaging and presentation, making visual identification more difficult and reinforcing the need for stronger intelligence-led, supply-chain and verification-based responses.

Recent regulatory changes have also altered the structure of the nicotine market in ways that may be unintentionally reinforcing illicit supply. Commonwealth reforms affecting vaping availability, product ingredients and packaging requirements were introduced with clear public health objectives. However, where regulated products become less accessible while illicit supply remains widely available, consumers may increasingly turn to unregulated channels.

Consumer awareness of illicit tobacco availability has risen significantly, with surveys indicating that more than 75 per cent of consumers are now aware that illicit tobacco products can be purchased. Roy Morgan data also indicates that smoking rates among 18 to 24 year olds increased from 12.9 per cent to 15.5 per cent over the past three years, during a period in which low-priced illicit tobacco products have become more widely available.

Evidence from law enforcement and industry sources also indicates that illicit tobacco supply chains are increasingly linked to organised criminal networks. These networks exploit the high margins and comparatively low enforcement risk associated with illicit tobacco distribution, embedding criminal activity within everyday retail precincts.

The expansion of the illicit tobacco market therefore represents a significant market integrity challenge, undermining lawful businesses, distorting competition and enabling organised criminal activity to operate within the retail environment.

Commercial Impacts on Lawful Retailers

The growth of the illicit tobacco market is having a direct and measurable impact on lawful retailers operating within Australia's regulated retail environment.

Evidence provided to ARC by major retailers demonstrates the scale of this commercial disruption. One national retailer reported that tobacco sales declined from approximately \$3.5 billion annually to around \$0.8 billion, representing a 77 per cent reduction since FY21. The scale of this decline is not explained by changes in smoking rates alone, and instead points to a substantial shift in tobacco sales from the lawful market to illicit trade. In the current financial year, sales remain 48 per cent below the previous year, reflecting the rapid displacement of lawful sales by illicit supply.

Major retailers have indicated to ARC that, if current trends continue, lawful tobacco sales may become commercially unviable within a relatively short period. Given the significant compliance burden associated with selling tobacco, combined with the rapid erosion of lawful sales volumes, the category is becoming increasingly difficult for legitimate retailers to sustain. If major retailers were to withdraw from the lawful tobacco market, this would risk further entrenching illicit supply by reducing the availability of regulated retail channels.

The price differential between legal and illicit products is significant. The total tax on the cheapest legal packet of cigarettes is currently approximately \$33.30, while illicit products are commonly sold for as little as \$7 per pack and frequently well below \$20.

This price disparity is not incidental; it reflects a market in which lawful retailers bear the full weight of taxation and compliance settings, while illicit operators face neither, creating a structural commercial imbalance that cannot be resolved through retail enforcement alone.

This disparity is contributing to the diversion of customer demand away from lawful retailers. Tobacco sales are a significant driver of store traffic in many convenience and grocery settings, and the migration of tobacco consumers to illicit retailers can also reduce associated basket spend across other product categories.

Evidence from enforcement activity further demonstrates the relationship between illicit supply and lawful sales. In Queensland, targeted enforcement action that issued closure orders to more than 100 stores selling illicit tobacco resulted in a 65 per cent increase in legal tobacco sales across one major retailer's network before stabilising at approximately 40 per cent above baseline levels. This correlation indicates that illicit tobacco outlets are directly displacing lawful retail activity.

The commercial impacts of illicit tobacco therefore extend beyond the sale of tobacco products themselves. The presence of illicit operators undermines investment in compliance, distorts local competition and weakens the viability of legitimate retail businesses operating within Australia's regulatory framework. In the worst-case scenario this shift threatens the viability of some operators, with consequent loss in community amenity, which can have especially acute impacts on regional and rural communities.

Market Distortion and Compliance Burden

The growth of illicit tobacco has created a structural distortion in Australia's retail market, where lawful retailers operating within regulated frameworks face significant compliance obligations while illegal operators incur none of these costs.

Retailers selling tobacco products must comply with a range of regulatory requirements across multiple jurisdictions. These include age-verification obligations, product control requirements, licensing regimes, and internal compliance systems designed to prevent unlawful sales. Retailers also invest heavily in workforce training, point-of-sale controls and internal auditing processes to ensure adherence to underage sales laws and product standards.

Licensing requirements alone impose direct costs on lawful retailers. In New South Wales, for example, tobacco retailers must pay approximately \$1,100 per store annually to maintain a tobacco retail licence. These licensing fees sit alongside broader compliance obligations relating to product controls, age verification protocols and regulatory reporting requirements.

Illicit operators frequently avoid these obligations entirely. In many cases illegal retailers operate without licences or exploit phoenix company structures to evade regulatory oversight while continuing to sell untaxed products. These operators are therefore able to undercut lawful retailers on price while incurring none of the compliance costs required to operate within the regulated market.

The resulting market imbalance undermines investment in lawful retail operations and weakens the integrity of Australia's regulated tobacco framework. Without effective enforcement, regulatory obligations intended to protect public health and ensure responsible retailing risk becoming a competitive disadvantage for businesses that comply with the law.

This distortion has required many legitimate retailers to adapt away from a previously lawful product category, not through ordinary market competition, but because criminal supply has fundamentally altered the commercial environment.

The distortion in this market is not limited to compliance asymmetry. It is compounded by policy settings that continue to widen the commercial gap between lawful and illicit products. Where lawful retailers must recover rising excise and compliance costs through shelf prices, while illicit sellers face none of those costs, the competitive imbalance becomes increasingly entrenched. This dynamic should be considered alongside enforcement and licensing reform in any durable policy response.

Organised Crime and Community Safety

The retail operating environment is already under significant pressure from rising levels of retail crime. The rapid expansion of the illicit tobacco market is increasingly intersecting with these broader safety challenges and drawing organised criminal activity into everyday retail precincts.

Illicit tobacco distribution has become an attractive enterprise for organised criminal networks due to the high margins associated with untaxed products and the comparatively lower enforcement risk relative to other illicit commodities. The size of the legal-illicit price differential also sustains the profitability of these networks, reinforcing the attractiveness of illicit tobacco as a comparatively low-risk, high-reward organised crime activity.³ In several jurisdictions, conflicts between criminal groups seeking to control illicit tobacco supply have resulted in serious incidents including arson attacks, intimidation and violence targeting retail premises suspected of selling illicit products. In Victoria alone, more than one hundred firebombings and arson attacks linked to the illicit tobacco trade have been recorded since 2023, prompting the establishment of dedicated police task forces and large-scale enforcement operations.

Law enforcement activity has also highlighted the organised nature of the illicit market. Multi-agency investigations have uncovered sophisticated criminal networks distributing illicit tobacco through storage facilities, transport networks and retail outlets, with seizures in individual operations involving millions of illegal cigarettes and large quantities of loose tobacco alongside other criminal assets.

These developments have direct human consequences for the retail sector. Retail employs 1.4 million Australians, including a large proportion of young workers entering the labour market for the first time. Frontline retail employees operate in open public environments and are increasingly exposed to abusive, threatening and sometimes violent behaviour. Where organised criminal activity associated with illicit tobacco becomes embedded in local retail areas, these risks are further heightened for staff and customers.

ARC also notes that the full extent of retailer harm may be under-reported. Stakeholder engagement indicates that some businesses are reluctant to provide detailed public examples of intimidation, extortion or criminal targeting for fear of drawing further attention to their stores.

More broadly, the presence of organised criminal activity linked to illicit tobacco can undermine the safety and viability of local shopping precincts. Violence, intimidation and criminal disputes damage neighbouring businesses, reduce customer confidence and contribute to the deterioration of community retail environments.

The consequences for lawful retailers also extend to insurance costs and business continuity. Stakeholder feedback indicates that some retailers have experienced sharp premium increases and, in some cases, increasing difficulty obtaining cover at all. These pressures may arise not only where a business is directly targeted, but also where criminal activity linked to illicit tobacco has elevated the perceived risk profile of a local area.

³ Australian Criminal Intelligence Commission (ACIC), *Media statement: Illicit tobacco* (media release, 2022). <https://www.acic.gov.au/media-centre/media-releases-and-statements/media-statement-illicit-tobacco>

In this context, the illicit tobacco market should not be understood solely as a taxation or regulatory issue. It forms part of a broader organised crime challenge that compounds the safety pressures already facing Australia's retail sector and the communities it serves.

Policy Recommendations

The evidence outlined above demonstrates that the rapid expansion of the illicit tobacco market cannot be addressed through isolated enforcement actions or jurisdiction-specific regulatory responses. At the same time, recent enforcement activity shows that targeted intervention can materially restore lawful market conditions. In Queensland, closure orders issued to more than 100 stores selling illicit tobacco resulted in a 65 per cent increase in legal tobacco sales across one major retailer's network before stabilising at approximately 40 per cent above baseline levels.

This evidence indicates that illicit tobacco outlets are directly displacing lawful retail activity and that coordinated enforcement action can quickly disrupt illicit supply networks. Stakeholder feedback also indicates that disruption of physical illicit retail outlets may lead to some displacement of activity into online sales channels, reinforcing the need for a response that extends beyond storefront enforcement. However, enforcement alone is unlikely to provide a durable solution if pursued in isolation. Evidence provided to ARC, together with recent economic analysis, indicates that the substantial price gap between lawful and illicit tobacco remains a key driver of consumer substitution into unregulated supply channels. Addressing the scale of the illicit tobacco market therefore requires a nationally coordinated response that treats illicit tobacco distribution as a serious organised crime issue, strengthens enforcement across the retail supply chain, and considers broader policy settings that may reduce the scale and attractiveness of the illicit market.

ARC recommends the following measures:

- 1. Recognise illicit tobacco as a serious organised crime issue**
Illicit tobacco distribution should be treated as organised criminal activity rather than primarily as a taxation or regulatory offence. Enforcement frameworks and penalties should reflect the scale of criminal profits and the broader community harms associated with organised tobacco supply networks.
- 2. Strengthen coordination between Commonwealth and state enforcement agencies and provide sustained funding**
Illicit tobacco supply chains operate across borders and jurisdictions. Effective disruption requires stronger coordination between Commonwealth agencies responsible for border control and taxation enforcement and state agencies responsible for licensing, inspections and criminal enforcement, including improved intelligence-sharing and more integrated joint enforcement activity across the supply chain. This should be supported by stable, long-term funding that gives enforcement agencies the certainty needed to plan and sustain disruption operations over time.
- 3. Establish nationally consistent tobacco licensing frameworks**
Licensing regimes governing tobacco retail and distribution vary significantly across jurisdictions. Greater national consistency would strengthen regulatory oversight, improve enforcement capability and reduce opportunities for illicit operators to exploit regulatory gaps between states. The growth of e-commerce further strengthens the case for nationally consistent or mutually recognised licensing arrangements, given purely state-based approaches are less well suited to policing online trade.
- 4. Increase penalties for illicit tobacco trafficking and retail sale**

Current penalties often fail to reflect the financial incentives associated with illicit tobacco distribution. Stronger penalties would improve deterrence and ensure enforcement responses are proportionate to the organised criminal activity involved.

5. **Expand enforcement targeting land-based and online retail sale and distribution networks**

Illicit tobacco markets rely on land-based retail outlets, online stores and marketplaces, and broader distribution networks that operate across many local communities and digital channels. Sustained enforcement targeting these networks is necessary to disrupt illicit supply and restore the integrity of the lawful retail market. This should include stronger intervention at point of sale, including through payment and financial service providers where appropriate, as well as consideration of more effective mechanisms to disrupt unlawful online sellers and websites.

6. **Keep broader policy settings, including excise, under review**

Enforcement action is necessary, but it should be complemented by ongoing review of the broader policy settings shaping illicit market growth. In particular, governments should remain open to considering whether current settings, including excise and other regulatory measures, are widening the legal-illicit price gap and unintentionally reinforcing substitution into unregulated supply channels.

7. **Support consumer education on the harms of illicit tobacco**

Governments should consider public awareness activity that makes clear that illicit tobacco is not a victimless or low-consequence purchase. Consumer demand for illicit products supports organised criminal networks, undermines lawful retailers, reduces public revenue and contributes to broader community safety harms across retail precincts and local communities.

8. **Establish clear targets and transparent reporting for illicit tobacco reduction**

Governments should articulate clear targets for reducing the illicit tobacco market over time and report transparently on progress. This would improve accountability, support policy evaluation, and help ensure enforcement and regulatory responses are aligned to measurable outcomes.

Addressing the illicit tobacco market will require sustained, coordinated action across all levels of government. Strengthening enforcement frameworks and improving national coordination will be essential, but a durable response should also remain open to broader policy settings that affect the scale and incentives of the illicit market. This will be critical to protecting lawful retailers, safeguarding retail workers and communities, and restoring confidence in Australia's regulated tobacco market.

Conclusion

The illicit tobacco market poses a serious threat to lawful retailers, public revenue, community safety and the integrity of Australia's regulated tobacco market. ARC considers that a durable response will require coordinated national action that strengthens enforcement, improves regulatory consistency and remains open to broader policy settings, including excise, where these contribute to the incentives sustaining illicit trade.

ARC appreciates the opportunity to provide this submission to the Legal and Constitutional Affairs References Committee in relation to the inquiry into the illegal tobacco crisis in Australia. We look forward to continuing to work constructively with government, enforcement agencies and other stakeholders on practical reforms that strengthen enforcement,

improve regulatory consistency, address the broader drivers of illicit trade, and better protect lawful retailers, retail workers and local communities.

Should the Committee have any questions regarding this submission, please contact ARC at policy@retail.org.au