



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC/CLC:JBgl110925

11 September 2025

NSW Illicit Tobacco Taskforce
NSW Government

By email: officeoftheedppc@customerservice.nsw.gov.au

Dear Sir/Madam,

PROPOSED LANDLORD OFFENCE RELATING TO ILLICIT TOBACCO SALES IN NSW

Thank you for the opportunity to provide a response to this consultation. The Law Society's Property Law and Criminal Law Committees contributed to this submission.

General Comments

The Law Society does not support the introduction of a landlord offence relating to illicit tobacco sales in NSW. We acknowledge and support the NSW Government's policy objective of reducing illicit tobacco sales due to its impact on public health and its association with organised crime. However, we do not regard it as an appropriate measure for achieving the policy objective. We set out in more detail our concerns with the proposed offence.

1. Existing provisions under the *Crimes Act 1900* (NSW)

In our view, the behaviour of landlords knowingly involved in illicit tobacco sales is wholly criminal behaviour, and should be addressed as such. In determining whether a new landlord offence relating to illicit tobacco sales should be introduced, we suggest further consideration should be given to utilising existing provisions of the *Crimes Act 1900* (NSW) (**Crimes Act**) to address the circumstance of a landlord knowingly leasing their premises for illicit tobacco sales. For example, section 316 of the Crimes Act:

Concealing serious indictable offence

(1) An adult—

- (a) who knows or believes that a serious indictable offence has been committed by another person, and
 - (b) who knows or believes that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and
 - (c) who fails without reasonable excuse to bring that information to the attention of a member of the NSW Police Force or other appropriate authority,
- is guilty of an offence.

Utilising existing provisions of the Crimes Act, such as section 316, means that the framework for establishing the key element of the offence, proving that a landlord *actually knew* of the illicit tobacco sales, already exists. Additionally, using the existing criminal law framework means that there are built in safeguards and established matters of procedure.

2. Due diligence by landlords

We note that the consultation webpage states that the introduction of a landlord offence is 'intended to encourage due diligence by landlords'. In our view, most landlords undertake careful due diligence in relation to a prospective tenant, and it would be quite difficult for a landlord to discern at the pre-lease stage that a prospective tenant will likely be involved in illegal tobacco sales.

We note that, in practice, the introduction of a landlord offence may not lead to more thorough vetting, but rather to increased risk aversion. We are concerned that the proposed reforms may result in unintended consequences. For example, faced with the possibility of a penalty, some landlords may default to assumptions or perceived risk profiles, potentially affected by conscious or unconscious bias, about who is more likely to engage in this conduct. As a result, landlords may become more cautious about leasing to certain individuals or tenant groups, and this raises broader concerns about equity and access.

We are also concerned with the implication that it is the role of the landlord to police the behaviour of the tenant during the term of the lease. Where a tenant is conducting illicit tobacco sales, by the very nature of that activity, it will be difficult for a landlord to know about that activity. To impose this role on a landlord is not appropriate, and the carrying out of such a role, may, in some cases, jeopardise the safety of the landlord, the managing agent and family members.

Increased resourcing should be provided for existing frontline law enforcement agencies, such as the Australian Border Force, and similar organisations at State and Federal level, whose personnel, unlike a landlord, have been trained and equipped to deal with illegal behaviour. It is not appropriate for a landlord to effectively play a role in law enforcement as proposed.

The consultation webpage states:

A key challenge would be to define clear criteria for establishing deliberate or knowing conduct, while ensuring procedural fairness and avoiding unintended impacts on landlords acting in good faith.

We agree that it is appropriate to keep matters of procedural fairness, and avoiding unintended impacts on landlords acting in good faith, as matters of primary importance in considering this proposal. In our members' experience, most landlords do act in good faith. Those that do not act in good faith, and are complicit in criminal activity, should be subject to criminal sanction.

We are concerned that under the proposal, landlords who become aware that their premises are being used for illegal tobacco sales are left in the position where they will have to terminate the lease and obtain vacant possession to avoid potential prosecution. A landlord confronting organised criminals who will not leave, and may be threatening the landlord and their families, should not be in a position where they are required to lock out the tenant or face prosecution themselves. That is a matter for the police.

3. New tobacco licensing scheme

We note that a new tobacco licensing scheme commenced in New South Wales on 1 July 2025, which as referred to on the consultation webpage is expected to:

provide greater oversight of the tobacco retail industry, support enforcement efforts, deter tobacco retailing businesses from operating outside of the law and support a comprehensive approach to tobacco control.

We suggest that the impact of the new licensing scheme should be considered in determining whether a new landlord offence relating to illicit tobacco sales should be introduced. Given its recent introduction this is not yet possible.

4. New closure orders

We also note the introduction of the Tobacco Legislation (Closure Orders) Amendment Bill 2025¹ (**Government Bill**) into the NSW Parliament on 6 August 2025, as referred to on the consultation webpage. Amongst other things, the Government Bill introduces short term closure orders, (not longer than 90 days) and long term closure orders (not longer than 12 months) for:

- premises selling illicit tobacco or vapes, or
- the unlicensed retail or wholesale sale of tobacco or not-tobacco smoking products without a licence.²

We further note that Schedule 2 of the Government Bill inserts new section 45A into the *Retail Leases Act 1994* (NSW) (**RLA**) which allows a landlord to terminate the lease where such a closure order has issued. This is likely to be of assistance in terminating the lease. However, obtaining vacant possession or 'locking out' the tenant is often a difficult process and may be potentially dangerous for landlords where the tenant is involved in illegal activities.

Assuming the Government Bill passes, we suggest that the impact of the proposed new closure orders, and section 45A of the RLA, should be closely monitored. If the objective is to disrupt supply chains by evicting a tenant involved in illegal tobacco sales from the premises, this objective may be achieved without the need to create a new landlord offence. Data in relation to terminations following a closure order should be examined before deciding whether or not to pursue the proposed offence.

5. Landlord offence settings in other Australian jurisdictions

We note that the consultation webpage provides information as to new, and proposed landlord offences relating to illicit tobacco sales, in South Australia and Queensland respectively. The consultation webpage notes that the South Australian offence has been in force since 5 June 2025, and the Queensland draft offence has not yet been legislated. We suggest that it would be prudent to examine the impact of these provisions in both States (assuming legislation is passed in Queensland) once they have been in force for an appropriate period, to inform the decision as to whether similar provisions are necessary in New South Wales. If the proposal is pursued in New South Wales, there may be useful lessons to be learnt in terms of the formulation and implementation of any offence from these other States.

We note that the Queensland model relies on the service of notice of a closure order. Some practical issues that arise include:

¹ The Tobacco Legislation (Closure Orders) Amendment Bill 2025 is available at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18789>.

² See sections 50B and 50D of the Tobacco Legislation (Closure Orders) Amendment Bill 2025.

- The consequences of a tenant successfully challenging a closure order where the landlord has terminated the lease on this basis. The tenant should not have recourse against the landlord in such situations.
- Whether lease obligations are suspended as a result of the closure order.

If the proposed offence effectively requires a landlord to terminate the lease as the only way of ensuring it will not later be found to have committed the offence, these issues require detailed consideration.

6. Private Member's Bill - Public Health (Tobacco) Amendment (Illicit Tobacco) Bill 2025

We note the introduction of the Public Health (Tobacco) Amendment (Illicit Tobacco) Bill 2025³ (**Private Member's Bill**) on 8 August 2026, two days after the introduction of the Government Bill. We note the Private Member's Bill includes a formulation of a landlord offence for illicit tobacco sales in proposed section 50I of the Bill. In addition to our general concerns, we have serious concerns about this particular formulation of the offence as it reverses the onus of proof in proposed section 50I(2). In addition, providing only 30 days in proposed subsection 50I(2)(c) for the landlord to terminate the retail lease after being notified of the closure order is not a sufficient period in our view. Many landlords are individuals or 'Mums and Dads', who are not necessarily sophisticated landlords, and may need to seek legal advice upon receiving notification of a closure order.

7. Further considerations if the proposal is pursued

It is difficult to provide comments without a specific formulation of the offence, but as a general comment, we suggest that careful consideration needs to be given to the required methods for the service of closure orders or other relevant notifications if this is to form part of establishing the offence. Further specificity as to the valid means of service on the landlord should be considered, for example personal service on an individual, or to the registered office of a corporate landlord. Additionally, service of the closure order on anyone other than the landlord, such as a managing agent, should not be sufficient to deem the landlord as having notice of the closure order.

We also note that the Government Bill, in proposed section 50G(3), requires the Secretary to take 'reasonably practicable steps' to give a copy of the closure order and supporting information to each 'notifiable person' (which includes the owner of the premises in section 50A). If valid service of the closure order is to form part of the mechanism for establishing the offence, proof of actual service should be required.

As a practical measure, if the proposal is pursued, we urge further consideration be given to putting in place appropriate protections for landlords who require assistance in implementing the termination of a lease and locking out a tenant who has received a closure order. Such landlords may face intimidation and serious threats, given the nature of criminal activity involved. We suggest it may be appropriate for the NSW Sheriff's Office to provide such assistance.

³ The Private Member's Bill is available at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18783>.



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We look forward to further involvement in discussing this proposal, and we would appreciate the opportunity to consider any draft legislation if the proposal is pursued. Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely,

Jennifer Ball

President