

Standards Alert

Public Health (Tobacco) Act 2008 (NSW)

Closure Orders, Lease Termination and Important Considerations for Valuers

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This Standards Alert is to increase awareness for API Valuer Members (“Valuers”) who undertake valuations of commercial premises in NSW. This includes the provision of rental advice, assessments and determination services.

What has Changed

From 3 November 2025, NSW Health may issue a short-term closure order (up to 90 days) on reasonable suspicion that someone has sold, or is likely to sell, illicit tobacco, illicit vaping goods, or unlicensed tobacco or non-tobacco smoking products on the premises. The Local Court may make a long-term closure order (up to 12 months) on the same grounds.

Once a closure order is issued, it is an offence to sell any products from the premises for the period of the closure order, and no person may enter the premises, except those with an exemption or with a reasonable excuse.

As of 15 May 2026, 264 short-term closure orders had been issued since the November 2025 commencement. NSW Health publishes a public register of closure orders and affixes a notice of the order to the front of the premises.

A retail shop lease may now be terminated by a landlord, on at least 28 days’ notice, where the premises is subject to a closure order. The termination is taken to be for repudiation of the lease by the tenant.

In addition, the *Public Health (Tobacco) Amendment (Landlord Offences) Bill 2025* passed Parliament on 7 May 2026. Commencement is currently expected in July 2026. Once in effect, the amendments will introduce an offence for a commercial landlord that knowingly permits a premises to be used for the sale of illicit tobacco or illicit vaping goods. The new offence carries a maximum penalty of 1 year imprisonment and/or a fine of \$165,000. The termination rights of landlords will also apply to wholesale premises and retail premises not governed by the *Retail Leases Act 1994* (NSW).

Considerations for Valuers

When undertaking a valuation of a subject property that is not a tobacco premises, Valuers should exclude market evidence of tobacco premises from both their analysis and report.

Valuers undertaking commercial valuations of retail or wholesale premises in NSW are encouraged to familiarise themselves with the legislation and to review the NSW Health closure orders register when the subject property or comparable evidence involves tobacco, convenience or vape tenancies. The searches should relate to both the premises and licence details of the tenant. The result of the search, including a search that did not reveal the property on the register, should be retained on file. Avoid any reliance on market evidence that is subject to a closure order at the valuation date.

Members are advised not to enter a premises that has a public notice of the closure order displayed at or near the front of the premises, as prosecution may result in fines up to \$82,500 for the first offence and \$137,500 for a subsequent offence.



Where indicators of illicit trade are suspected, Valuers should cease work, notify the client(s) and clarify instructions before proceeding. Any amendment to instructions must be confirmed in writing and retained on file.

Potential risks for Valuers to consider:

- an inability to complete a physical inspection;
- the validity of a lease for a premises subject to a closure order and/or termination;
- the quality and suitability of tenants and landlords that permit illegal trade;
- adequately reflecting any vacancy period and/or other adjustments due to closure orders; and
- consistent content throughout the report, including risk ratings, the social and governance pillars of ESG, the rationale and conclusions.

National Framing

Although the Tobacco Act and the new offence provisions are NSW-specific, the policy direction is national, and Members in other jurisdictions are likely to encounter similar issues. Victoria, Queensland and Western Australia each have parallel tobacco licensing regimes, and the Commonwealth focus on customs and excise enforcement means all Members should remain informed of developments in their markets. The API will monitor developments nationally and consider issuing further guidance as the legislative position develops.

Useful Links

- NSW Health closure orders register: www.health.nsw.gov.au/tobacco/Pages/closure-register.aspx
- NSW Health information on closure order laws: www.health.nsw.gov.au/tobacco/Pages/closure-orders.aspx
- NSW ministerial release on the landlord offence: www.nsw.gov.au/ministerial-releases/penalty-landlords-selling-illicit-tobacco

If there are any comments or feedback regarding this Standards Alert, please contact us at standards@api.org.au.