



Health
South Eastern Sydney
Local Health District

Public Health Unit

Tobacco and E-Cigarette Control

Annual Report, 2022-2023

South Eastern Sydney Local Health District

November 2023

Contents

1	NSW LEGISLATION	3
2	SOUTH EASTERN SYDNEY LOCAL HEALTH DISTRICT	4
3	KEY PERFORMANCE INDICATORS	4
3.1	Sales to Minors Compliance Testing	4
3.1.1	Enforcement Actions	5
3.2	Point of Sale Inspection	5
3.2.1	Enforcement Actions	6
3.3	Smoke Free Environment	7
4	PROSECUTIONS	8
5	MEDIA AND COMMUNICATIONS	10

Table 1.	Key Performance Indicator targets for South Eastern Sydney Public Health Unit	4
Table 2.	KPI: Sales to minors inspection target (1 July 2022 to 30 June 2023)	4
Table 3.	KPI: Sales to Minors enforcement (1 July 2022 to 30 June 2023)	5
Table 4.	KPI: Point of sale inspections (1 July 2022 to 30 June 2023)	6
Table 5.	Point of Sales compliance (1 July 2022 to 30 June 2023)	6
Table 6.	Point of Sales enforcement (1 July 2022 to 30 June 2023).....	6
Table 7.	Concluded Prosecutions (1 July 2022 to 30 June 2023)	8
Table 9.	Social and media releases (1 July 2022 to 30 June 2023).....	10
Figure 1	Sales to Minors compliance inspections key findings (1 July 2022 to 30 June 2023)	5
Figure 2	Seized product totals (1 July 2022 to 30 June 2023).....	6

Authors and Acknowledgements: The authors of this report are Wade Dillon and Alexander Kiss.
Acknowledgements for the tobacco and e-cigarette work to Brian Huang, Misha Klingstrom and Toby Hannan.

1 NSW LEGISLATION

Tobacco and e-cigarette retailing laws in NSW (New South Wales) can be found in the **Public Health (Tobacco) Act 2008** and the **Public Health (Tobacco) Regulation 2022** (NSW Health, 2022).

Key inclusions:

- A notification (registration) and negative licensing scheme for retailers selling tobacco products or non-tobacco smoking products or e-cigarettes (electronic cigarettes) – known as a RIN (retailer identification number).
- A ban on the sale of tobacco products, non-tobacco smoking products, e-cigarettes, and e-cigarette accessories to anyone under 18.
- E-cigarettes and accessories cannot be sold from temporary and mobile premises such as a market stall or stand, a tent or a car, and cannot be given out as a free sample (NSW Health, 2022).
- A ban on the display of tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes, and e-cigarette accessories in shops.
- All tobacco sold must be packaged correctly with appropriate health warnings.
- Allowing only a single point of sale (POS) for tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes, and e-cigarette accessories in retail outlets – if more than one POS is present within the retailing premise signage must indicate which POS will be dedicated for tobacco retailing.
- Restricting tobacco or e-cigarette vending machines to licensed venues restricted to over 18s.
- Ensuring that tobacco or e-cigarette vending machines comply with product display bans and are only activated by a staff member or by a token which is only available from a staff member.
- A ban on tobacco products, non-tobacco smoking products and e-cigarette products in shopper-loyalty programs.
- Displaying health warnings and a notice regarding sales to minors at the point of sale. For more information, see **How to display the compulsory warning signs**.

It has been noted many tobacco retailers are also selling e-cigarettes (or ‘vapes’). These products are often found to contain liquid nicotine. The sale and supply of schedule 4 drugs such as nicotine is set out in the **NSW Poisons and Therapeutic Goods Act 1966 and NSW Poisons and Therapeutic Goods Regulation 2008**. This means e-cigarettes containing nicotine cannot be sold or supplied in NSW without a prescription. The retailer must also be an authorised and registered health practitioner (i.e., a pharmacist) licensed to dispense nicotine.

E-cigarettes containing nicotine cannot be purchased by individuals without a prescription from a medical doctor to support smoking cessation efforts. The regulations state:

- From 1 October 2021, e-cigarettes and e-liquids containing nicotine are a prescription only medicine.
- It is illegal for retailers (other than pharmacies) to sell e-cigarettes or e-liquids that contain nicotine, including online sales.
- Retailers can only sell e-cigarettes and accessories from a single point of sale in each retail outlet and cannot promote or include these products in a shopper loyalty program.

Smoking tobacco and using e-cigarettes are banned in all enclosed public areas and certain outdoor public areas, under the **Smoke-free Environment Act 2000** and the **Smoke-free Environment Regulation 2016** (NSW Health, 2022).

- The Regulations extend to cover areas within 4 metres of a pedestrian entrance to or exit from a public building. For example: shopping centres and malls, schools, colleges and universities,

childcare facilities, community centres, halls and places of worship, theatres, cinemas, libraries and galleries, accommodation hotels and motels, restaurants, and cafes.

- Using e-cigarettes on public transport vehicles (e.g., trains, buses, light rail, ferries) is banned under the *Passenger Transport (General) Regulation 2017*.

2 SOUTH EASTERN SYDNEY LOCAL HEALTH DISTRICT

South Eastern Sydney Local Health District (SESLHD) is the most densely populated health district in NSW with a resident population of over 979,000 in 2021. Moreover, it includes the Sydney CBD with a daily inflow, prior to the COVID-19 pandemic, of over 500,000 workers, students, and other visitors. The current tobacco retailer notification database lists **2,830 tobacco retailers** located within SESLHD boundaries.

3 KEY PERFORMANCE INDICATORS

The Ministry of Health implements key performance indicators (KPIs) for public health units in relation to the tobacco and e-cigarette compliance requirements. All KPI data is sourced from the Public Health Issue Management System (PHIMS).

Retail stores include tobacconists, convenience stores, supermarkets, newsagents, and service stations.

Table 1. Key Performance Indicator targets for South Eastern Sydney Public Health Unit

Local Health District	KPI - sales to minors inspections	KPI - point of sale inspections
South Eastern Sydney	84	168

3.1 Sales to Minors Compliance Testing

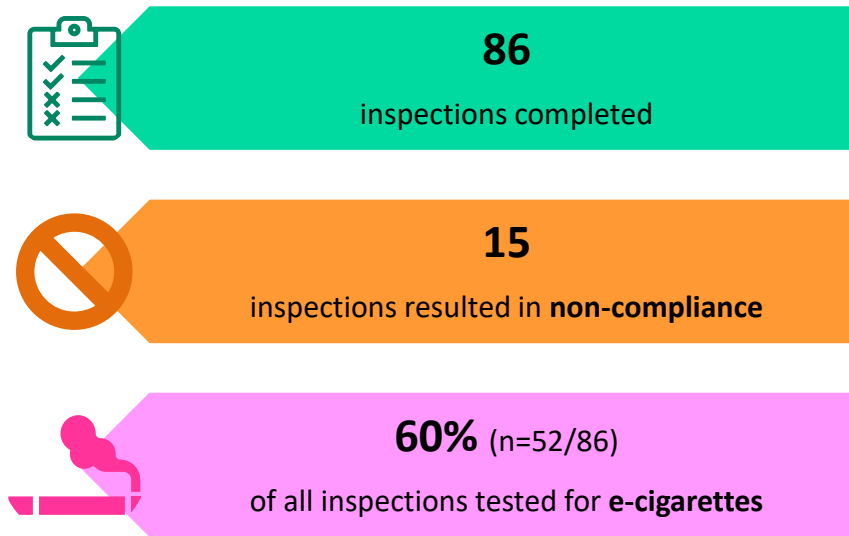
In NSW it is illegal to sell tobacco, non-tobacco smoking products, e-cigarettes, or e-cigarette accessories to a person under the age of 18. The maximum penalty for selling any of these products to minors differs between individuals and corporations (Section 22) (NSW Health, 2022).

	For individuals:	For corporations:
First offence	up to \$11,000	up to \$55,000 (max. penalty)
Second or subsequent offence	up to \$55,000	up to \$110,000

Table 2. KPI: Sales to minors inspection target (1 July 2022 to 30 June 2023)

Local Health District	Target	Actual
South Eastern Sydney	84	86

Figure 1 Sales to Minors compliance inspections key findings (1 July 2022 to 30 June 2023)



A retailer or employee must ensure the customer is over 18 before selling these products to customers. Proof of the customer’s age must be requested and checked before any tobacco product, e-cigarette or e-cigarette accessory is sold to any young person (NSW Health, 2022).

The law is monitored through the NSW Sales to Minors Program. The recently reviewed *Monitoring Compliance with the Sales to Minors Prohibition - Procedures Manual 2023* sets standards for Authorised Inspectors and others in undertaking compliance monitoring activities relating to sales to minors. Retail outlets are randomly visited to test their compliance with the law. Employers and staff working in newsagents, tobacconists, convenience stores, supermarkets and petrol stations have been prosecuted for selling tobacco products to people under the age of 18. *Figure 1* shows the sales to minors compliance tests conducted by South Eastern Sydney Public Health Unit (SES PHU) in 2022-2023.

3.1.1 Enforcement Actions

Table 3. KPI: Sales to Minors enforcement (1 July 2022 to 30 June 2023)

Education and Verbal Warning	Warning Letters Issued	Prosecution
15	7	8*

* 7 concluded and 1 pending before the courts. See Table 7 Concluded Prosecutions for detail.

3.2 Point of Sale Inspection

A key requirement under the tobacco and e-cigarette retailing laws in NSW is allowing only a single point of sale for tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories in retail outlets. In addition, retailers must display health warnings and other notices in retail outlets where tobacco products, e-cigarettes or e-cigarette accessories are sold, including vending machines (NSW Health, 2022).

Environmental health staff are authorised under the *Public Health (Tobacco) Act 2008* to monitor point of sale compliance with the legislation. Inspectors educate retailers and can issue verbal and written warnings, fines or initiate prosecutions against retailers that do not comply with the legislation.

If during an inspection, retailers are found to have display breaches, for example public display of tobacco and/or e-cigarette products, smoking accessories OR no display of health warnings and sales to minors signage, they expose themselves to regulatory action. There are significant penalties for display breaches including \$1,100 penalty infringement notice for individuals and \$5,500 for corporations.

In addition, if retailers are found to be selling illegal e-cigarette products, the products can be seized and destroyed, and the retailer prosecuted. There are significant penalties for selling e-cigarettes containing nicotine, which includes up to 6 months in prison, or a fine of up to \$1,650, or both.

Table 4. KPI: Point of sale inspections (1 July 2022 to 30 June 2023)

Local Health District	Target	Actual
South Eastern Sydney	168	211

Table 5. Point of Sales compliance (1 July 2022 to 30 June 2023)

Premises Inspected*	Total Number of Inspections**	Inspections Not Compliant	Inspections Compliant	Compliance Rate (%)
211	265	91	174	65.7 (174/265)

* Individual premises **Total number of inspections, includes follow up inspections

3.2.1 Enforcement Actions

Table 6. Point of Sales enforcement (1 July 2022 to 30 June 2023)

Provided Education or Verbal Warning	Warning Letters Issued	PINs Issued	Reinspection Leading to Seizure	Prosecution
91	74	19	39	7*

* 3 concluded and 4 pending before the courts. See Table 7 Concluded Prosecutions for detail.

Figure 2 Seized product totals (1 July 2022 to 30 June 2023)



3.3 Smoke Free Environment

Smoking and using e-cigarettes are banned in all enclosed public areas and certain outdoor public areas. These bans protect people from harmful second-hand tobacco smoke. There is no safe level of exposure to second-hand smoke.

There are no reportable KPIs for the Smoke Free Environment matters in NSW.

There is an [online reporting form](#) to report complaints about smoking at indoor public places, as well as certain outdoor public places such as transport stops or spectator areas of sports grounds.

All enclosed public areas: includes shopping centres, cinemas, libraries, trains and buses.

Outdoor public areas: Smoking and using e-cigarettes is banned in the following outdoor public areas.

- [Within 10 metres of children’s play equipment in outdoor public places](#)
- [Public swimming pools](#)
- [Spectator areas at sports grounds or other recreational areas used for organised sporting events](#)
- [Public transport stops and platforms, including ferry wharves and taxi ranks](#)
- [Within 4 metres of a pedestrian access point to a public building](#)
- [Commercial outdoor dining areas](#)

Smoke-free guide: No smoking within 4 metres of a pedestrian access point to a building provides information on which buildings are applicable.

4 PROSECUTIONS

Table 7. Concluded Prosecutions (1 July 2022 to 30 June 2023)



Date of Offence	Tobacco retailer	Offence/s	Court Date	Court	Outcome
10/05/2019	Miski Mixed Business, Hurstville	6x Sell tobacco product in a package not marked with a health warning. Offence under the <i>Public Health (Tobacco) Act 2008 – section 7(2)</i> .	12/07/2022	Sutherland Local Court	Guilty. Fined \$5,000.
11/07/2022, 29/08/2022, 03/11/2022, 13/02/2023, 17/02/2023	Ezymart Convenience Store, Randwick	Failure to display health warning at point of sale. Offence under the <i>Public Health (Tobacco) Regulation 2016 – clause 14</i> . Display tobacco advertisement in public place. Offence under the <i>Public Health (Tobacco) Act 2008 – section 16 (1)</i> . 10x Supply of a nicotine containing product without authority (schedule 4 substance). Offence under the <i>Poisons and Therapeutic Goods Act 1966 - section 10</i> .	01/06/2023	Waverley Local Court	Guilty. Fined \$20,950.
23/02/2023	Ezymart Convenience Store, Cronulla	5x Supply of a nicotine containing product without authority (schedule 4 substance). Offence under the <i>Poisons and Therapeutic Goods Act 1966 - section 10</i> .	25/07/2023	Sutherland Local Court	Guilty. Fined \$1,000. 18 month community corrections order. Analysis reimbursement, \$180.
29/09/2022	Lucky 7 Convenience Store, Caringbah	Sell e-cigarette to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(2A)</i> .	20/04/2023	Sutherland Local Court	Guilty. Fined \$900.

23/12/2022	Mascot Station Convenience & Tobacconist	Sell e-cigarette to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(2A)</i> .	23/03/2023	Waverley Local Court	Guilty. Issued with a 12 month conditional release order.
23/12/2022	Smart Dollar Convenience Store, Mascot	Sell e-cigarette to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(2A)</i> .	29/06/2023	Waverley Local Court	Guilty. Fined \$9,500. NB: Offender failed to appear at court but was fined in her absence
14/04/2023	Tobacco Hub Central, Sydney	Sell e-cigarette to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(2A)</i> .	07/11/2023	Downing Centre Local Court	Guilty. Fined \$600.
24/04/2023	KF Express Convenience Store, Sydney	Sell tobacco product to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(1)</i> .	19/09/2023	Downing Centre Local Court	Guilty. Fined \$1,000.
24/04/2023	Ezymart Convenience Store, Sydney	Sell tobacco product to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(1)</i> .	19/09/2023	Downing Centre Local Court	Guilty. Fined \$1,000.
24/04/2023	Connection Newsagency, Sydney	Sell tobacco product to a person under the age of 18. Offence under the <i>Public Health (Tobacco) Act 2008 – section 22(1)</i> .	19/09/2023	Downing Centre Local Court	Guilty. Fined \$700.
21/06/2023	Caringbah Cigarettes Tobacco & Vapes, Caringbah	4x Supply of a nicotine containing product without authority (schedule 4 substance). Offence under the <i>Poisons and Therapeutic Goods Act 1966 - section 10</i> . 3x Sell tobacco product in a package not marked with a health warning. Offence under the <i>Public Health (Tobacco) Act 2008 – section 7(2)</i> .	02/11/2023	Sutherland Local Court	Guilty. Fined \$2,400.

For more information see [Penalties and enforcement](#) fact sheet

5 MEDIA AND COMMUNICATIONS

Table 8. Social and media releases (1 July 2022 to 30 June 2023)

Organisation	Topic	Date
 Facebook (4 posts)	Tobacconist fined in Bondi Junction. Multiple charges of selling tobacco without a health warning and openly displaying e-cigarettes and smoking accessories.	19 July 2022
	Get the facts on vaping - infographic	21 July 2022
	Smoke Free Environment Act 2000 Did you know that smoking and using e-cigarettes are banned in all enclosed public areas?	13 August 2022
	World No Tobacco Day 2022 Vaping is the new smoking.	31 May 2023
 Twitter (4 posts)	Tobacconist fined in Bondi Junction. Multiple charges of selling tobacco without a health warning and openly displaying e-cigarettes and smoking accessories.	19 July 2022
	Get the facts on vaping - infographic	21 July 2022
	Smoke Free Environment Act 2000 Did you know that smoking and using e-cigarettes are banned in all enclosed public areas?	13 August 2022
	World No Tobacco Day 2022 Vaping is the new smoking.	31 May 2023



Health
South Eastern Sydney
Local Health District