

Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015

Amended Explanatory Notes

Short title

The short title of the Bill is the Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015.

Policy objectives and the reasons for them

Each year more than 3,400 Queenslanders die from smoking related illnesses. The Qld Cancer Council estimate that smoking accounts for approximately \$6.1 billion every year in health costs resulting from 36,000 hospitalisations, lost productivity and premature death in Queensland.

The objective of the Bill is to further reduce the prevalence of smoking in Queensland. While the prevalence of smoking has decreased by 26% over the decade since 2004 (with the rate of decrease having slowed over recent years), new measures are required to continue historical rates of progress.

Achievement of policy objectives

Strong tobacco legislation is one element of a multi-strategy approach for reducing smoking rates. The Bill seeks to achieve the policy objectives by;

- Banning smoking with 5m of State Government buildings;
- Banning smoking at all public transport waiting points and pedestrian malls;
- Banning smoking at all public swimming pools and skate parks; and
- Banning the sale of cigarettes from pop-up stores.

The new ban on smoking with 5m of State Government buildings, including those housing the Parliament, Queensland Courts and Queensland Government departments, continues the legislative reform started under the *Health Legislation Amendment Act 2014* with its extension of smoking bans on and around health facilities and school grounds.

Local laws made by councils currently ban smoking some public transport waiting points and outdoor pedestrian malls, however, his approach has led to inconsistencies in the enforcement of smoking bans at these places. A new State-wide ban on smoking at all public transport waiting points and outdoor pedestrian malls will provide a clearer and more consistent message about not smoking at these places.

The new ban on smoking at all public swimming pools and skate parks is to help in preventing young people from taking up smoking at an early age due to exposure to peers or other persons smoking at these places.

The new ban on the sale of cigarettes from pop-up stores targets tobacco companies marketing their products to young people by using temporary stands offering cigarettes for sale at major outdoor events. It is important to prevent advertising to this age group as the majority of smokers make the transition from experimental to regular smoking during their early twenties. Queensland is the only State without a regulatory mechanism to prevent the sale of cigarettes at temporary outlets.

Alternative ways of achieving policy objectives

There is no alternative way for achieving these policy objectives.

Estimated cost for government implementation

Any costs arising from these legislative amendments will be met from existing agency resources. If further allocation of resources are required they will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Any inconsistencies with fundamental legislative principles occur in the context of balancing fundamental legislative principles with a competing policy objective of preventing or minimising harm caused by smoking.

Rights and liberties of individuals

The extension of smoking bans to more outdoor places and further restrictions on the sale of smoking products under the *Tobacco and Other Smoking Products Act 1998* may infringe on the principle that an Act should have sufficient regard to the rights of individuals. The former Scrutiny of Legislation Committee had referred to Parliament the question of whether legislation that prohibits smoking in public areas has sufficient regard to the rights of smokers, of persons conducting businesses, and of the community in general.

The congregation of smokers at places such as outdoor pedestrian malls, public swimming pools, public transport waiting points and skate parks, exposes the non-smoking community, including children, to environmental tobacco smoke. There has been strong community support for smoke-free outdoor areas, particularly where children or vulnerable persons are at risk of exposure to environmental tobacco smoke.

It should be noted that smoking is currently prohibited in many public places and the supply of smoking products is highly regulated.

Introduction of new offences

The amendments to the *Tobacco and Other Smoking Products Act 1998* include a number of new offences that may infringe on the principle of whether an Act has sufficient regard to the rights and liberties of individuals by introducing new offences. It is also necessary to ensure that penalties are proportionate to the offence and are consistent with each other. The penalties for these new offences are consistent with similar offences under the *Tobacco and Other Smoking Products Act 1998*.

Consultation

The Queensland Cancer Council was consulted on the preparation of the Bill and some of their recommendations are included in the Bill.

Consistency with legislation of other jurisdictions

The amendments included in the Bill bring Queensland legislation in line with other Australian jurisdictions. Queensland is the only State without a regulatory mechanism to prevent sale of cigarettes from temporary outlets. New South Wales prohibits smoking at all public transport waiting areas. South Australia & Victoria prohibit smoking in covered transport waiting areas. Australian Capital Territory and Western Australia have no specific legislation. Tasmania is the only jurisdiction with a state-wide ban on smoking in all pedestrian malls

Notes on provisions

Part 1 Preliminary

Clause 1 provides that this Act may be cited as the *Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Act 2015*.

Part 2 Amendment of Tobacco and Other Smoking Products Act 1998

Clause 2 provides that part 2 amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 3 replaces the heading of part 2, division 1A (Point of sale at a retail outlet).

Clause 4 inserts new sections 13C and 13D. New section 13C creates an offence for a supplier to sell smoking products from a vehicle. A conviction for the offence carries a maximum penalty of 40 penalty units. New section 13D creates an offence for a supplier to sell smoking products from a pop-up store. A pop-up store is a type of temporary store that sells smoking products. A conviction for the offence carries a maximum penalty of 40 penalty units. An infringement notice may be issued to a person who commits any of the new offences under the *State Penalties Enforcement Regulation 2014* (see clause 18).

Clause 5 inserts new part 2C, division 2B which contains two new sections (sections 26ZGG and 26ZGH) and relates to government buildings. New section 26ZGG creates an offence for a person to smoke within five metres of a government building if the building has signage identifying it as a government building and has a no smoking sign near the entrance. A conviction for the offence carries a maximum penalty of 20 penalty units. An infringement

notice may be issued to a person who commits the offence under the *State Penalties Enforcement Regulation 2014* (see clause 18). New section 26ZGH requires no smoking signs to be placed at particular locations around the government buildings to which section 26ZGG applies.

Clause 6 replaces section 26ZI (Person must not smoke at a prescribed outdoor swimming area). New section 26ZI creates an offence for a person to smoke at a public swimming pool or its associated area. An associated area for a swimming pool is the area around the pool. A conviction for the offence carries a maximum penalty of 20 penalty units. An infringement notice may be issued to a person who commits the offence under the *State Penalties Enforcement Regulation 2014* (see clause 18).

Clause 7 inserts new sections 26ZKA, 26ZKB and 26ZKC. New section 26ZKA creates an offence for a person to smoke at an outdoor pedestrian mall. A conviction for the offence carries a maximum penalty of 20 penalty units. New section 26ZKB creates an offence for a person to smoke at a public transport waiting point. A conviction for the offence carries a maximum penalty of 20 penalty units. New section 26ZKC creates an offence for a person to smoke at a skate park or within five metres of a skate park. A conviction for the offence carries a maximum penalty of 20 penalty units. An infringement notice may be issued to a person who commits any of the new offences under the *State Penalties Enforcement Regulation 2014* (see clause 18).

Clause 8 amends section 26ZJ (Person must not smoke near an entrance to an enclosed place) removing an obsolete reference to outdoor pedestrian malls prescribed by regulation.

Clause 9 amends section 26ZL (Person smoking must stop when directed) to make consequential amendments to the section to include references to the new offences inserted by the Bill.

Clause 10 amends section 26ZN (Role of local government) to update the reference in the section to public swimming pools as defined by new section 26ZI(2).

Clause 11 omits part 2C, division 4 (Prohibition on smoking at public transport waiting points and malls by local governments) as the matters contained in this division are now covered by the new offence provisions inserted by the Bill.

Clause 12 amends section 40A (Power to direct person to stop smoking) to make consequential amendments to the section to include references to the new offences inserted by the Bill.

Clause 13 amends the schedule (Dictionary) to remove the obsolete definition of *prescribed outdoor swimming pool*.

Part 3 Amendment of Tobacco and Other Smoking Products Regulation 2010

Clause 14 provides that part 3 amends the *Tobacco and Other Smoking Products Regulation 2010*.

Clause 15 omits part 4 (Smoke-free outdoor places) as the matters contained in this part are no longer needed.

Clause 16 omits schedule 1 and 2 as the matters contained in the schedules are no longer needed.

Part 3 **Amendment of State Penalties Enforcement Regulation 2014**

Clause 17 provides that part 3 amends the *State Penalties Enforcement Regulation 2014*.

Clause 18 amends schedule 1 (Infringement notice offences and fines for nominated laws) to prescribe new offences under the *Tobacco and Other Smoking Products Act 1998* as infringement notice offences.