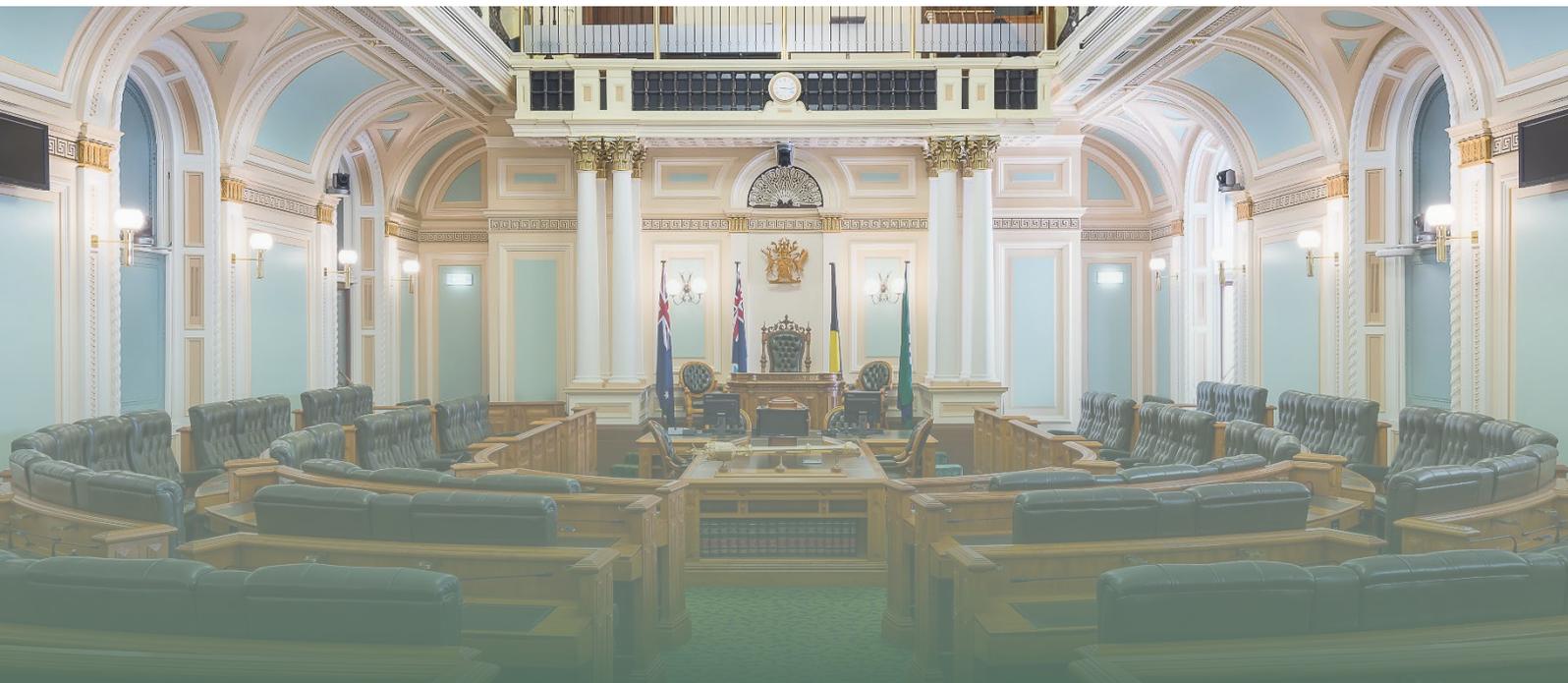




QUEENSLAND PARLIAMENT **COMMITTEES**

Health Legislation Amendment Bill 2025

Health, Environment and Innovation Committee



Report No. 4

58th Parliament, April 2025

Health, Environment and Innovation Committee

Chair	Mr Rob Molhoek MP, Member for Southport
Deputy Chair	Mr Joe Kelly MP, Member for Greenslopes
Members	Ms Sandy Bolton MP, Member for Noosa Ms Kerri-Anne Dooley MP, Member for Redcliffe Dr Barbara O'Shea MP, Member for South Brisbane Mr David Lee MP, Member for Hervey Bay

Committee Secretariat

Telephone	(07) 3553 6626
Email	HEIC@parliament.qld.gov.au
Committee Webpage	www.parliament.qld.gov.au/HEIC

All references and webpages are current at the time of publishing.

Acknowledgements

The committee acknowledges the assistance provided by the Department of Health.

Table of Contents

Chair’s Foreword	iv
Executive Summary	v
Recommendations	vi
Glossary	vii
1. Overview of the Bill.....	1
1.1. Aims of the Bill.....	1
1.2. Context of the Bill	1
1.2.1. Amendments to the Hospital and Health Boards Act 2011	1
1.2.2. Amendments to the Tobacco and Other Smoking Products Act 1998	2
1.3. Inquiry process	4
1.4. Legislative compliance	4
1.4.1. Legislative Standards Act 1992.....	5
Committee comment.....	5
1.4.2. Human Rights Act 2019	5
Committee comment.....	5
1.5. Should the Bill be passed?	5
2. Examination of the Bill.....	6
2.1. Appointment of Hospital and Health Service clinician to Hospital and Health Board	6
2.1.1. Stakeholder Submissions and Department Advice	8
i. Stakeholder Submissions.....	8
ii. Department Advice.....	9
iii. Advice from the Office of the Integrity Commissioner	9
Committee comment.....	10
2.1.2. Right to take part in public life.....	11
Committee comment.....	11
2.2. Forfeiture and destruction of vaping goods.....	12
2.2.1. Stakeholder Submissions and Department Advice	13
i. Stakeholder submissions	13
ii. Department Advice.....	13
Committee comment.....	14
2.2.2. Natural justice.....	14
Committee comment.....	17
2.3. Cost recovery from convicted persons.....	18
2.3.1. Stakeholder Submissions and Department Advice	19
i. Stakeholder submissions	19

ii. Department Advice.....	20
Committee comment.....	21
2.3.2. Right to property	21
Committee comment.....	22
2.4. Recommendations outside the scope of the Bill	22
Appendix A – Submitters	25
Appendix B – Public Briefing, 31 March 2025.....	26
Appendix C – Public Hearing, 23 April 2025	27
Statement of Reservation	28

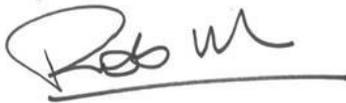
Chair's Foreword

This report presents a summary of the Health, Environment and Innovation Committee examination of the Health Legislation Amendment Bill 2025.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and Queensland Health.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Rob M', with a horizontal line underneath.

Mr Rob Molhoek MP
Chair

Executive Summary

The Bill amends the *Hospital and Health Boards Act 2011* to require at least one member of each Hospital and Health Board to be a clinician who is employed or engaged by the Hospital and Health Service for which the board is established and provide they may not be appointed as Chair or Deputy Chair of the board.

The Bill also amends the *Tobacco and Other Smoking Products Act 1998* (TOSPA) to allow the chief executive of Queensland Health to promptly forfeit vaping goods upon seizure and empower courts to order persons convicted of an offence under TOSPA to pay the state for reasonable costs incurred as a result of the offence. Minor and technical amendments to improve the operation of the TOSPA are also included.

The committee published 12 submissions and held a public hearing during which we heard from 4 witnesses. Submitters and witnesses supported the objectives of the Bill and added recommendations to expand the scope of the Bill, or the Acts being amended.

After considering the submissions and testimony we received and reviewing the Bill (including its explanatory notes and its statement of compatibility with human rights) for compliance with the *Human Rights Act 2019*, the *Parliament of Queensland Act 2001* and the *Legislative Standards Act 1992*, we are recommending that the Bill be passed.

Our assessment of the Bill's compliance with issues of fundamental legal principle found the Bill has sufficient regard for the rights and liberties of individuals, and the institution of Parliament. We carefully analysed one of the Bill's proposals which impacts natural justice and procedural fairness to ensure it sufficiently protects the rights and liberties of individuals. We also find that the Bill is compatible with human rights.

The committee made 1 recommendation, found at page vi of this report.

Recommendations

Recommendation 1 5

The committee recommends that the Bill be passed.

Glossary

ACN	Australian College of Nursing
FLP	Fundamental Legislative Principle
HHB	Hospital and Health Board
HHB Act	<i>Hospital and Health Boards Act 2011</i>
HHS	Hospital and Health Service
HHS clinician	A clinician who is employed or engaged by the HHS for which the board is established
HRA	<i>Human Rights Act 2019</i>
HSCE	Health Service Chief Executive
LSA	<i>Legislative Standards Act 1992</i>
QNMU	Queensland Nursing and Midwives' Union
TOPSA	<i>Tobacco and Other Smoking Products Act 1998</i>
WMRR	Waste Management and Resource Recovery Association of Australia

1. Overview of the Bill

The Health Legislation Amendment Bill 2025 (the Bill) was introduced by the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services, and was referred to the Health, Environment and Innovation Committee (the committee) by the Legislative Assembly on 14 March 2025.

1.1. Aims of the Bill

The objectives of the Bill are to amend the:

- *Hospital and Health Boards Act 2011* (HHB Act) to require at least one member of each Hospital and Health Board (HHB) to be a clinician who is employed or engaged by the Hospital and Health Service (HHS) for which the board is established, and provide they may not be appointed as Chair or Deputy Chair of the board¹
- *Tobacco and Other Smoking Products Act 1998* (TOSPA) to:
 - allow the chief executive of Queensland Health to promptly forfeit vaping goods upon seizure
 - empower courts to order persons convicted of an offence under TOSPA to pay the state for reasonable costs incurred as a result of the offence, and
 - make minor and technical amendments to improve the operation of the Act.²

1.2. Context of the Bill

1.2.1. Amendments to the Hospital and Health Boards Act 2011

Queensland has a total of 16 HHSs, with each HHS governed by a board. Currently, the HHB Act requires that each board must have five or more members, with at least one member who is a clinician. However, it is not a requirement that the clinician is employed or engaged by that particular HHS.³

A clinician is defined as a registered health professional⁴ who is currently providing care or treatment to patients in a public sector health service.⁵ This means the clinician can have experience or be working in any aspect of delivering health care and does not necessarily have direct experience of public hospitals or health facilities in the local area.⁶

During the 2024 State Election campaign, the Queensland Government committed to putting ‘doctors, nurses and clinical staff back in charge of hospitals’, so that frontline

¹ Explanatory notes, p 1.

² Explanatory notes, p 1.

³ Queensland Health, correspondence, 26 March 2025, p 2.

⁴ A registered health professional is registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student, or holds non-practising registration under the Health Practitioner Regulation National Law in a health profession (Schedule 2, HHB Act).

⁵ HHB Act, s 23(5).

⁶ Queensland Health, correspondence, 26 March 2025, p 2.

clinical staff are involved in decision making for the delivery of health services.⁷ This election commitment is to be implemented, in part, by ‘encouraging frontline clinicians to take on leadership positions in local HHSs, including as members of HHBs’.⁸

1.2.2. Amendments to the Tobacco and Other Smoking Products Act 1998

The Commonwealth Government banned the importation, manufacture, supply, and non-personal possession of disposable and recreational vapes in an effort to combat the illicit trade of tobacco and vaping goods. To enforce these bans, the Queensland Government made amendments to the TOSPA, which included empowering enforcement officers to seize and forfeit illicit nicotine products, including recreational vaping goods.⁹

According to the explanatory notes, while these amendments bolstered enforcement efforts, some operators continue to trade illegally because of the high profitability of supplying illicit vaping goods.¹⁰ Queensland Health advised that since 1 October 2024, investigations carried out by enforcement teams have resulted in the seizure of more than 150,000 vapes from stores, with a street value of over \$5 million.¹¹ Since 1 January 2025, more than 81,000 vapes have been seized.¹²

As a result, Queensland Health is experiencing operational challenges when enforcing the bans, including managing the increasing volume of seized vaping goods.¹³ Further detail is provided below.

Forfeiture and destruction of vaping goods

Under the TOSPA, the chief executive of Queensland Health has authority to forfeit illicit tobacco and illicit nicotine products to the state. In order to do this, a show cause notice is issued, with the owner of the products given 28 days to respond before forfeiture takes effect.¹⁴ After the 28 days has passed and a forfeiture decision is made, the owner of the products can appeal the decision within 28 days of receiving the notice.¹⁵ An appeal does not automatically halt the destruction of forfeited goods. However, the TOPSA enables a court to grant a stay, preventing destruction if deemed necessary.¹⁶

This means that Queensland Health stores seized vaping goods for a minimum of eight weeks, to comply with the show cause periods, and to avoid the risk of compensation if the forfeiture decision is overturned or if a court-ordered stay delays destruction.¹⁷ The

⁷ Explanatory notes, pp 1, 2.

⁸ Explanatory notes, p 1.

⁹ Explanatory notes, p 2. Information on the procedural matrix (including the involvement of Queensland Police) for the process of identification, seizure, destruction and prosecution of vaping products can be found in the correspondence from Queensland Health to the committee on 1 April 2025 on the committee’s website.

¹⁰ Explanatory notes, p 2.

¹¹ Queensland Health, correspondence, 26 March 2025, p 4.

¹² Record of proceedings, Brisbane, 31 March 2025, p 2.

¹³ Explanatory notes, p 2.

¹⁴ TOPSA, s 205.

¹⁵ TOPSA, s 225.

¹⁶ TOPSA, ss 225 (7), 226; explanatory notes, p 2.

¹⁷ Explanatory notes, p 2.

explanatory notes state, that 'with the rapid increase in seized vaping goods, Queensland Health's storage capacity is becoming unsustainable, further compounded by the current show cause provisions'.¹⁸

According to the explanatory notes, vaping goods also pose significant safety and environmental risks that make their management more complex than illicit tobacco. They are highly flammable, contain lithium-ion batteries that can overheat or explode, and include hazardous materials such as liquid nicotine, heavy metals, and carcinogens. Their non-compostable plastic components further contribute to the potential for environmental harm. Given these risks, storing vaping goods safely requires specialised, fire-resistant facilities, such as ventilated and cooled shipping containers, which the committee has been told can cost up to \$65,000 each.¹⁹

The explanatory notes state that other goods that pose immediate safety risks, such as explosives, drugs, and chemicals are often exempt from show cause notices due to their inherent danger. It is argued that vaping goods should be treated similarly to mitigate safety risks, given vaping goods' hazardous nature.²⁰

Cost recovery from convicted persons

The challenges outlined above illustrate the substantial costs associated with the specialised storage and handling of vaping goods. There are also costs associated with the destruction and disposal of vaping goods.

The disposal of vaping goods is subject to a range of regulatory requirements. These regulatory frameworks prescribe strict requirements for the storage, transportation, and handling of vaping goods.²¹

Under these regulatory requirements, seized vaping goods are classified as 'R120 (pharmaceutical waste)' and 'Class 9 (miscellaneous dangerous goods)'. According to Queensland Health, these classifications 'represent some of the costliest types of waste to destroy'.²² In addition, suppliers in regional Queensland do not have access to destruction facilities that meet the requirements for destroying vaping goods. Therefore, they must be transported to South-East Queensland for destruction, which adds to the cost. To date, Queensland Health has spent a total of \$164,821.26 on the destruction of vaping goods across 6 HHSs.²³

Currently, TOSPA does not provide the court with the explicit authority to order persons convicted of offences to pay the state's costs reasonably incurred in relation to those

¹⁸ Explanatory notes, p 3.

¹⁹ Explanatory notes, p 3.

²⁰ Explanatory notes, p 3.

²¹ These frameworks include the Environmental Protection Regulation 2019 and the Australian Dangerous Goods Code. The Environmental Protection Regulation assigns classification levels to trackable waste, while the Australian Dangerous Goods Code assigns classification levels to dangerous goods.

²² Queensland Health, correspondence, 8 April 2025, pp 6-7.

²³ Queensland Health, correspondence, 8 April 2025, pp 6-7.

offences, such as the costs associated with the storage, destruction, and disposal of seized items.²⁴

Other illicit items regulated under TOSPA, such as ice pipes, bongs, and illicit tobacco, also incur costs for Queensland Health in terms of testing, transportation, storage, and disposal.²⁵

To support the continued enforcement of these bans, address the above operational challenges, and alleviate the financial burden of the enforcement of TOSPA, further amendments to that Act are required.²⁶ These amendments are outlined in sections 2.2 and 2.3 of this report.

1.3. Inquiry process

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 12 submissions (a list of submitters is provided at Appendix A)
- received a written briefing on the Bill from Queensland Health prior to a public briefing with departmental officials from Queensland Health on 31 March 2025 (a list of officials who appeared at the briefing is provided at Appendix B)
- requested and received written advice from Queensland Health on issues raised in submissions and other matters
- held a public hearing with stakeholders on 23 April 2025 (a list of the witnesses who participated in the hearing is provided at Appendix C).

The submissions, written advice, and transcripts of the briefing and hearing are available on the committee's webpage.

1.4. Legislative compliance

The committee's deliberations included assessing whether the Bill complies with the requirements for legislation as contained in the *Parliament of Queensland Act 2001*, the *Legislative Standards Act 1992* (the LSA),²⁷ and the *Human Rights Act 2019* (the HRA).²⁸

²⁴ Explanatory notes, p 3.

²⁵ Explanatory notes, p 3.

²⁶ Explanatory notes, p 2.

²⁷ *Legislative Standards Act 1992* (LSA).

²⁸ *Human Rights Act 2019* (HRA).



1.4.1. Legislative Standards Act 1992

Assessment of the Bill's compliance with the LSA identified consistency with the principles of natural justice as an issue. This issue is discussed in Section 2 of this Report.

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly.²⁹

Committee comment



The committee is satisfied that the Bill has sufficient regard to rights and liberties of individuals.

The committee is satisfied that the explanatory notes that were tabled with the introduction of the Bill contain the information required by Part 4 of the LSA and contain a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.



1.4.2. Human Rights Act 2019

Assessment of the Bill's compatibility with the HRA identified issues with the following, which are analysed further in Section 2:

- the right to take part in public life (section 23)
- the right to property (section 24).

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA.

Committee comment



The committee found that the Bill is compatible with human rights.

Further, the committee is satisfied that the statement of compatibility contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5. Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.



Recommendation 1

The committee recommends that the Bill be passed.

²⁹ LSA, s 22.

2. Examination of the Bill

This section discusses key themes which were raised during the committee's examination of the Bill.

2.1. Appointment of Hospital and Health Service clinician to Hospital and Health Board

To implement the election commitment to put frontline clinicians 'back in charge of hospitals', the Bill amends the HHB Act to require that at least one board member is to be a clinician who is employed or engaged by the HHS the board controls (HHS clinician).³⁰ This requirement will mean that the clinician must have direct experience working within the public health sector and the local area.³¹

The Bill outlines the following minimum requirements for a clinician to be considered eligible as a HHS clinician:

- a practitioner who is registered under the Health Practitioner Regulation National Law (a doctor, nurse, midwife or clinician from another allied health profession that requires registration)
- employed or engaged to provide care or treatment for an average of at least 8 hours per week
- may be an employee of the HHS or a clinician engaged by the HHS as a contractor, such as a visiting medical officer
- must be and have been employed or engaged by the HHS as a clinician for at least two years.³²

Once a clinician no longer meets one of these requirements, the Bill provides that a board member may be removed from the board if they were appointed because they were a HHS clinician.³³

Queensland Health advised this opportunity will be promoted to clinicians 'who have experience in those capabilities that are outlined in the act currently'.³⁴ The sought-after capabilities may include financial management, research, teaching and training or human resource management, or experience in broader governance roles and systems management.³⁵

According to Queensland Health, these minimum requirements will enable the clinician to bring a unique 'on the ground' perspective to the board.³⁶ Examples of this included contributing to decision-making on improvements to service delivery, and retention and

³⁰ Bill, cl 4; explanatory notes, p 1.

³¹ Queensland Health, correspondence, 26 March 2025, p 2.

³² Bill, cl 8.

³³ Bill, cl 7; explanatory notes, p 5.

³⁴ Record of proceedings, Brisbane, 31 March 2025, p 4.

³⁵ Record of proceedings, Brisbane, 31 March 2025, p 4.

³⁶ Queensland Health, correspondence, 26 March 2025, p 2.

recruitment of the workforce.³⁷ Queensland Health added ‘they are looking at ensuring that clinicians can represent what ‘good’ looks like not only from a clinician perspective within the hospital and health service but also from the perspective of the local community’, such as how the HHS interacts with the network of other services within the community.³⁸

The amendments also provide that the HHS clinician may not be appointed as Chair or Deputy Chair of the board.³⁹ Under the HHB Act, the Chair has responsibilities such as having a casting vote at meetings and signing service agreements between the HHS and the department.⁴⁰ Service agreements relate to the budget and linking funding to service delivery for that HHS and its activity targets.⁴¹ The Deputy Chair acts as Chair of the board when the Chair is absent from duty or during a vacancy in the Chair position.⁴²

The explanatory notes advise that, given the significant responsibilities of the Chair and Deputy Chair, preventing the HHS clinician from filling one of these roles helps to manage any potential conflicts of interest for the clinician between their role on the board and their role in the HHS.⁴³

On the issue of managing conflicts of interest, Queensland Health provided the following explanation:

The Queensland Integrity Commissioner is often consulted around identifying conflicts of interest and developing strategies to manage or resolve those conflicts of interest. An example of that would be: if we went through the expression-of-interest process and a senior medical officer who was an oncologist was identified as a preferred candidate for a board, that board member would have to abstain from any decisions about the cancer services or oncology. Similarly, they would abstain from receiving board papers relating to those types of decisions. That might be an approach taken to manage that conflict of interest where a local clinician is on a board. That is common practice already—managing those conflicts of interest, developing a conflict-of-interest management plan and submitting that through to the minister for approval.⁴⁴

A clinician who does not work for a HHS may also continue to be appointed as a board member. This ‘allows for flexibility for board appointments to have a range of clinical experience and expertise, while ensuring that at least one member of the HHB must be a HHS clinician’.⁴⁵

If the Bill is passed, the requirement for a HHS clinician to be appointed to the board will commence on 1 April 2026, to allow sufficient time for Queensland Health to undertake

³⁷ Record of proceedings, Brisbane, 31 March 2025, p 3.

³⁸ Record of proceedings, Brisbane, 31 March 2025, pp 2, 7.

³⁹ Bill, cl 6; explanatory notes, p 1.

⁴⁰ Explanatory notes, p 5.

⁴¹ Record of proceedings, Brisbane, 31 March 2025, p 6.

⁴² Explanatory notes, p 5.

⁴³ Explanatory notes, p 5; Queensland Health, correspondence, 26 March 2025, p 2.

⁴⁴ Record of proceedings, Brisbane, 31 March 2025, p 4.

⁴⁵ Explanatory notes, p 5.

the recruitment process for new board members with the necessary skills, knowledge and experience for the role.⁴⁶



2.1.1. Stakeholder Submissions and Department Advice

i. Stakeholder Submissions

There was strong support for the amendment to the HHB Act to mandate the appointment of at least one registered health practitioner from the relevant HHS to each HHB in Queensland.⁴⁷ Support was given for the following reasons:

- having a clinician on all the relevant boards ensures that decisions are informed by firsthand experience and knowledge of the healthcare system, service delivery and direct patient care experience⁴⁸
- their direct input in decision-making processes will assist with more effective patient-centred outcomes, including patient safety and care⁴⁹
- the amendment addresses a gap in the current system where critical decisions are often made without adequate consultation with those who are on the front lines of healthcare, such as paramedics⁵⁰
- the inclusion of clinicians in leadership roles supports more effective and informed governance, which is beneficial for addressing the specific needs of the community.⁵¹

The Queensland Nurses and Midwives Union (QNMU) added it supports merit-based appointments that reflect the sixteen registered health professions who are regulated under the Health Practitioner Regulation National Law.⁵² Similarly, the Australian College of Nursing (ACN) suggested that representation be spread across disciplines and the selection process needs to be fair and equitable to prevent a bias towards medical practitioners.⁵³

The QNMU also stated that any clinician appointed to be a board member must be able to undertake all work associated with preparing and attending for board meetings in paid time away from their HHS clinical duties.⁵⁴ The ACN also raised the issue of incentives if there are no clinicians who volunteer for a position on the HHB.

⁴⁶ Explanatory notes, p 5.

⁴⁷ Submission 2, p 1; submission 4, p 3; submission 5, p 3; submission 12, p 2.

⁴⁸ Submission 2, p 1.

⁴⁹ Submission 2, p 1; submission 4, p 3.

⁵⁰ Submission 2, p 1.

⁵¹ Submission 2, p 2; submission 4, p 3.

⁵² Submission 5, p 3.

⁵³ Submission 12, p 2.

⁵⁴ Submission 5, p 3.

ii. Department Advice

In response to the issue of the HHS clinician being a merit-based appointment that reflects the 16 registered health professions, Queensland Health advised the following:

*The Department will undertake recruitment and promotional activities to advertise the Board roles and attract candidates with frontline HHS expertise from across all health professions. There will be a focus on attracting a range of suitable candidates with the appropriate skills, knowledge and experience to make a significant contribution to the Board positions for each HHS. The recruitment process will include a skills assessment for each Board, to ensure a balanced membership will be appointed with a breadth of skills, experience and backgrounds.*⁵⁵

On the issue of time and payment to a clinician for their time on the board, Queensland Health advised that members are remunerated in accordance with the whole-of-government policy titled 'Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies'. To ensure a clear separation between a person's board role and clinical duties, Queensland Health stated that HHS clinicians will be required to take approved leave from their HHS role while undertaking board duties, if the timing of the two roles overlaps.⁵⁶ This approach is to ensure transparency and accountability and to ensure that they are not paid concurrently while undertaking different roles.⁵⁷

iii. Advice from the Office of the Integrity Commissioner

The committee sought advice from the Queensland Integrity Commissioner on the Bill. Specifically, the committee sought advice regarding the potential for any conflicts of interest to arise where a HHS employee being appointed to the board of that service, advice on managing those conflicts, advice regarding local-HHS clinicians being appointed as Chair or Deputy Chair of the board, and proposed amendments to the Bill in consideration of the advice provided.

In respect of potential conflicts of interest, the Commissioner advised that conflicts could arise in two key areas; matters before the board relevant to the board member's interests as a HHS employee, and the employee-employer relationship, whereby the employee reports to the Health Service Chief Executive (HSCE) in their employee role and the HSCE reports to the employee in their board member role.⁵⁸

On the adequacy of existing Queensland Government risk control frameworks for managing conflicts of interest, the Commissioner noted that government risk management frameworks do not specify scenarios where risk cannot be appropriately managed, and submitted that assessing whether conflict of interests risks can be appropriately managed is a question for the department, agency or service concerned.⁵⁹ In the case of boards however, the Commissioner observed that board members have statutory obligations regarding disclosure and management of conflicts of interest; notably Schedule 1 of the

⁵⁵ Queensland Health, correspondence, 16 April 2025, p 2.

⁵⁶ Queensland Health, correspondence, 16 April 2025, p 2.

⁵⁷ Queensland Health, correspondence, 16 April 2025, p 2.

⁵⁸ Office of the Queensland Integrity Commissioner advice, pp 2-3.

⁵⁹ Office of the Queensland Integrity Commissioner advice, p 3.

Hospital and Health Boards Act 2011 and section 40F of the *Integrity Act 2009*.⁶⁰ The Commissioner suggested that the management plans required to address conflicts of interest inherent in appointing HHS employees to its boards could be complex and administratively onerous, and weighing this with other less complex alternatives would be a relevant consideration for the committee.⁶¹

Regarding the issue of HHS employees being appointed to Chair and Deputy Chair roles on the HHS board, the Commissioner was of the view that this would not be appropriate, noting the compounding effects of potential conflicts of interest.⁶²

In respect of proposed amendments to the Bill, the Commissioner questioned whether the Bill as drafted is the only way of achieving the policy objectives, but considered that the existing statutory requirements for disclosing and managing conflicts of interest are adequate. The Commissioner did not propose any amendments to the Bill.⁶³

Committee comment



The committee notes the support from stakeholders to require at least one member of each Hospital and Health Board (HHB) to be a clinician who is currently employed or engaged (local-HHS clinician) by the relevant Hospital and Health Service.

The committee sought advice from the Queensland Integrity Commissioner about the potential for any conflicts of interest to arise for a local-HHS clinician appointed to their local HHB. The committee notes the Commissioner's advice that conflicts could arise (particularly in relation to matters before the board relevant to the board member's interests as a HHS employee, and the employee-employer relationship), and that management plans required to address conflicts of interest could be complex and onerous. However, the committee also notes that the Commissioner considers the existing statutory requirements for disclosing and managing conflicts of interest to be adequate.

The committee is satisfied that conflicts of interest can be managed using existing processes.

⁶⁰ Office of the Queensland Integrity Commissioner advice, p 3.

⁶¹ Office of the Queensland Integrity Commissioner advice, p 3.

⁶² Office of the Queensland Integrity Commissioner advice, p 4.

⁶³ Office of the Queensland Integrity Commissioner advice, p 4.



2.1.2. Right to take part in public life

The right to take part in public life is construed broadly, covering all aspects of public administration.⁶⁴ It could include membership of a board, and appointment to positions within the board.

According to the explanatory notes, the reason a HHS clinician member cannot be appointed as the Chair or Deputy Chair of a board is to help manage any perceived issues relating to the functions of the Chair and Deputy Chair.⁶⁵

Under the *Hospital and Health Boards Act 2025*, the Chair has ‘significant responsibilities’, which include signing the service agreement on behalf of the Service.⁶⁶ In addition, the Chair may enter into a written contract of employment with the HSCE,⁶⁷ and terminate the appointment and contract of employment of the HSCE.⁶⁸ Further, the presiding member at board meetings has a casting vote,⁶⁹ and an executive committee always includes the Chair or Deputy chair.⁷⁰

Committee comment



We recognise the importance of managing both real and perceived conflicts of interest for those appointed to Hospital and Health Boards. We note that while local HHS clinicians may not be appointed to such roles, not all clinicians would be prohibited from being appointed as Chair or Deputy chair of a board. Clinicians who do not work for an HHS may still be appointed as a board member.

Given the issues raised by the Queensland Integrity Commissioner about conflicts of interest and her advice that it would not be appropriate for HHS employees to be appointed as Chair or Deputy Chair, the committee considers that the limitation is reasonable and justifiable, taking into account the importance of preserving the right of HHS clinicians to take part in public life but also the purpose of the limitation on the right.

⁶⁴ Queensland Government, Guide: nature and scope of the human rights protected in the Human Rights Act 2019, version 2, 2022, p 67.

⁶⁵ Explanatory notes, p 5.

⁶⁶ Explanatory notes, p 5. See also *Hospital and Health Boards Act 2011* (HHB Act), s 35(2).

⁶⁷ HHB Act, s 74(1)(c).

⁶⁸ HHB Act, s 74(4)(c).

⁶⁹ HHB Act, schedule 1, ss 5, 6. The chair presides at all meetings of the board unless they are not present, in which case the deputy chair presides.

⁷⁰ HHB Act, s 32C.

2.2. Forfeiture and destruction of vaping goods

To help manage the operational challenges involved with enforcing the vaping ban, the Bill introduces a new provision which allows the chief executive to determine that seized vaping goods are forfeited to the state, without the show cause process that applies to other forfeited items.⁷¹

The chief executive will be required to provide the former owner of the vaping goods with written notice of the forfeiture decision, including the reasons for the decision. The seized vaping goods can then be destroyed. This provision will only apply to vaping goods, and not to goods that don't present the same risks or storage difficulties.⁷²

By removing the show cause process, the objective is to enable the chief executive to order the forfeiture and destruction of vaping goods promptly upon seizure, mitigating the issues of storage and safety. Queensland Health stated 'this change is a necessary step to ensure that enforcement remains effective, efficient and sustainable'.⁷³

To ensure that legitimate retailers, such as community pharmacies selling therapeutic vaping goods, are not affected, the following safeguards will remain in place:

- an authorised person must reasonably believe that the item is evidence of an offence under TOSPA before seizing the vaping goods
- the chief executive must reasonably believe that ordering forfeiture is necessary to prevent the goods from being used for the offence for which it was seized (for example, illegal supply of vaping goods to the public).⁷⁴

Queensland Health emphasised that these goods are 'extremely easy' to identify, stating:

*...the only lawful vapes in Australia are your plain packaged, pharmacy-only supplied vapes. A vape is intrinsically very obvious to identify with its cartridge and ignition and all the rest of it. Because the Commonwealth scheme is so strict in terms of who can possess and supply these products, there is very little opportunity for genuine mistake of fact.*⁷⁵

If vaping goods intended for personal use or therapeutic vaping goods are inadvertently forfeited and destroyed, individuals may claim compensation for any loss or expense incurred due to the exercise, or attempted exercise, of these powers. Claims must be made through a court, either as a standalone proceeding or as part of another proceeding involving an offence under TOSPA. Compensation will only be awarded if the court deems it just.⁷⁶

⁷¹ Bill, cl 20; explanatory notes, p 5.

⁷² Explanatory notes, p 3.

⁷³ Record of proceedings, Brisbane, 31 March 2025, p 3.

⁷⁴ Explanatory notes, p 3.

⁷⁵ Record of proceedings, Brisbane, 31 March 2025, p 8.

⁷⁶ Explanatory notes, pp 3,5.

According to the explanatory notes, these provisions are designed to ensure that the rights of individuals are protected, while also allowing for swift action to address safety concerns.⁷⁷

2.2.1. Stakeholder Submissions and Department Advice

i. Stakeholder submissions

There was general support for the removal of the show cause process, allowing for the seizure and destruction of illicit vaping goods.⁷⁸

The Australian College of Nurse Practitioners acknowledged these provisions may conflict with personal property rights but agreed that the ‘departure from standard processes is justified due to the illicit nature of the goods and the significant harm they pose to public health’.⁷⁹

The Lung Foundation supported the amendments and highlighted ‘the need for ongoing adequate funding and strengthening of enforcement efforts wherever possible to ensure the continued success of the legislation’.⁸⁰

The NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame recommended this provision be extended and explicitly incorporated into Section 205 (Forfeiture of illicit tobacco or illicit nicotine product) so that the expedited forfeiture process should apply to both illicit tobacco and vaping products.⁸¹ This group also recommended the Bill make it explicitly clear that parliament intends to abrogate the right to procedural fairness under this provision, to provide clarity to the courts should they be called upon to consider this issue.⁸²

ii. Department Advice

Queensland Health responded to the recommendation that this provision be expanded to include illicit tobacco products by advising that the amendments apply only to vaping goods due to their unique storage and destruction challenges, including fire hazards, hazardous chemicals, and environmental risks. In contrast, other illicit nicotine products, such as nicotine pouches or illicit tobacco, do not pose the same risks and may not require specialised handling or immediate destruction. Queensland Health also advised that future illicit nicotine products prescribed by regulation may need testing to confirm their illicit status, making blanket removal of the show cause process inappropriate. While illicit tobacco is often identifiable due to its failure to comply with plain packaging requirements, in some instances it may closely resemble legal tobacco products and is not always easily

⁷⁷ Explanatory notes, p 5.

⁷⁸ See, for example, submissions 3, 4, 5, 6, 7, 8, 9, 10

⁷⁹ Submission 4, p 4.

⁸⁰ Submission 6, p 2.

⁸¹ Submission 9, p 2.

⁸² Submission 9, p 2.

distinguishable. In these cases, removing the show cause process may be inappropriate, as it could heighten the risk of unintentionally forfeiting lawful goods.⁸³

In response to the suggestion that the Bill should explicitly state Parliament's intention to abrogate the right to procedural fairness under this provision, Queensland Health advised this section (section 205B(3)) already states that procedural fairness is not required when giving a written notice under the section. The explanatory notes also clarify the intent and purpose of the amendments and may be used as an aid in statutory interpretation.⁸⁴

Committee comment



The committee's notes concerns expressed by witnesses at the public hearing about the classification of vaping products as pharmaceutical waste. We request that Queensland Health consult with the Department of the Environment, Tourism, Science and Innovation about the classification of vaping products as pharmaceutical waste, particularly in relation to their exclusion from the existing battery stewardship scheme, and the significant costs associated with their disposal under their current designation.

The committee also requests Queensland Health give consideration to the most appropriate methods of disposal as part of a vaping product's life cycle, taking into account the environmental risks posed by batteries, fluids and electronic components.



2.2.2. Natural justice

One of the matters to be considered in determining whether legislation has sufficient regard to rights and liberties of individuals is whether it is consistent with the principles of natural justice.⁸⁵

The principles of natural justice include a requirement for procedural fairness.⁸⁶ That is, that fair procedures are followed in administrative decision making, including that a person has an opportunity to present their case to the decision maker before a decision affecting their interests is made.⁸⁷ Procedural fairness must be afforded to persons unless there is clear, contrary legislative intent.⁸⁸

⁸³ Queensland Health, correspondence, 16 April 2025, p 2.

⁸⁴ Queensland Health, correspondence, 16 April 2025, p 3.

⁸⁵ LSA, s 4(3)(b).

⁸⁶ See, for example, Community Safety and Legal Affairs Committee, Report No. 13, 57th Parliament—Respect at Work and Other Matters Amendment Bill 2024, p 16.

⁸⁷ Australian Law Reform Commission (ALRC), *Traditional rights and freedoms—encroachment by Commonwealth laws*, report 129, 14.11, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/>.

⁸⁸ *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40 (4 November 2015), para 30.

Under the Bill, if the chief executive decides a seized thing is forfeited to the state,⁸⁹ the chief executive must give the former owner written notice of the decision and the reasons for it. However, the Bill also states that procedural fairness is not required in giving the written notice.⁹⁰ This, together with other amendments in the Bill, removes the current show cause and appeals processes in the TOSPA for the forfeiture of vaping goods.⁹¹

According to the explanatory notes, Queensland Health ‘will develop administrative protocols for the preservation of evidence relating to the seized items before they are destroyed’.⁹² This is to ensure evidence is available if required for legal proceedings and to ‘[maintain] procedural integrity and transparency in the enforcement process’.⁹³

The explanatory notes identify section 219 of the TOSPA as providing a safeguard because it allows individuals to seek compensation for any loss or expense incurred due to the exercise of the monitoring and enforcement powers under the TOSPA.⁹⁴ However, to obtain compensation, the person whose goods have been destroyed would have to bring an action in a court, which may be costly. The committee notes, as a result, some potential applicants may be deterred from bringing an action and so the provision may not operate as a safeguard in all cases.

Provisions in the *Police Powers and Responsibilities Act 2000* (allowing authorised officers to destroy dangerous items on-site) and the *Explosives Act 1999* (allowing the Minister to declare that a seized explosive is immediately forfeited to the state if returning it to its owner would not be in the interests of public safety) and in the *Customs Act 1901* (Cth) (permitting the disposal of prohibited goods, including vaping goods, when officer are reasonably satisfied the items are prohibited) are cited in the explanatory notes as supporting the approach in the Bill.⁹⁵

The committee considered whether there is justification for excluding procedural fairness, because there is flexibility as to what constitutes procedural fairness in different cases.⁹⁶

⁸⁹ That is, if the chief executive is satisfied the thing is vaping goods and reasonably believes it is necessary to keep the thing to prevent it from being used to commit the offence for which it was seized. Bill, cl 20 (*Tobacco and Other Smoking Products Act 1998* (TOSP Act), new s 205B).

⁹⁰ Bill, cl 20 (TOSP Act, new s 205B).

⁹¹ Statement of compatibility, p 4; TOSPA, ss 205, 225, sch 1 (meaning of ‘illicit tobacco product’): Bill, cls 18, 25 (TOSP Act, amended ss 205, 224). That is, the proposed amendments to sections 205 and 224 of the TOSP Act remove ‘vaping goods’ from falling within section 205 (Forfeiture of illicit tobacco or illicit nicotine product) and division 6 (Appeals for particular forfeiture provisions) of part 11 of the TOSP Act. Proposed new section 205B provides for the forfeiture of vaping goods. The Bill does not provide an avenue for appeal relating to the forfeiture of vaping goods.

⁹² Explanatory notes, p 8.

⁹³ Explanatory notes, p 8.

⁹⁴ Explanatory notes, p 5.

⁹⁵ Explanatory notes, p 8.

⁹⁶ ALRC, *Traditional rights and freedoms—encroachment by Commonwealth laws*, report 129, 14.33, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/justifications-for-laws-that-deny-procedural-fairness-2/>. See also 14.18, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/>

While the courts recognise that procedural fairness can be excluded by legislation,⁹⁷ it is otherwise a fundamental rule that an authority must hear from a person before exercising a statutory power that affects their rights.⁹⁸ In this instance this is particularly pertinent because the Bill not only removes the show cause process, it also removes the appeals process.

The committee also raised whether it is possible for the Bill to not totally exclude procedural fairness, but instead perhaps have a shorter timeframe for responses or another process in which the affected individual can provide input before the decision is made, and/or retain the ability of a person to appeal against forfeiture decisions regarding vaping goods.

However, Queensland Health argued against this approach because of the significant safety risks and logistical challenges associated with the seizure and storage of vaping goods. Queensland Health stated the measures are narrowly targeted, supported by safeguards including compensation mechanisms, and respond to a pressing need to protect public health and safety, thereby reflecting a proportionate and practical approach.⁹⁹

Queensland Health also advised that the *Therapeutic Goods Act 1989* strictly regulates the possession, supply, importation, and manufacture of vaping goods, with very limited and clearly defined exceptions. Because these Commonwealth requirements are so prescriptive, lawful operators such as community pharmacies, licensed importers and approved manufacturers are readily identifiable. Likewise, compliant vaping goods are easily distinguished from non-compliant products. As such, Queensland Health submitted it is highly unlikely that authorised officers would inadvertently seize products from legitimate operators acting in accordance with TOSPA and Commonwealth legislation. The enforcement approach will be targeted and proportionate, with a clear distinction between lawful and unlawful activity.¹⁰⁰

In response to potential alternatives, such as shortening the show cause period, Queensland Health advised:

While it is acknowledged that reducing the show cause timeframe or adopting an alternative process to allow affected individuals to provide input before a forfeiture decision is made could, in theory, preserve some aspects of procedural fairness, this approach would not adequately resolve the core issue that the vaping goods must still be stored during that period.

...

⁹⁷ ALRC, *Traditional rights and freedoms—encroachment by Commonwealth laws*, report 129, 14.13, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/>.

⁹⁸ *Kioa v West* (1985) 159 CLR 550, 563, Gibbs CJ quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 242, 360.

⁹⁹ Queensland Health, correspondence, 1 April 2025, p 6.

¹⁰⁰ Queensland Health, correspondence, 1 April 2025, p 6.

The rationale for removing the show cause and appeals process is not solely about administrative efficiency; it is a direct response to the real and ongoing risk associated with keeping these goods in storage. Simply reducing the response timeframe would still require the goods to be retained, supervised, and protected during that time, continuing to expose staff, facilities and the public to avoidable hazards.

...

*In light of the safety risks, as well as the safeguards ... maintaining any form of show cause process would undermine the objective of the reforms, which is to minimise the risks and burdens associated with retaining dangerous and non-compliant goods. The removal of procedural fairness is a necessary and proportionate measure to protect the safety of staff and the public, while maintaining appropriate safeguards for individuals who may be affected*¹⁰¹

Queensland Health added that the justifications extend beyond health, safety and cost alone, and relate more broadly to the effectiveness, consistency and integrity of the regulatory and enforcement framework, as follows:

- the immediate forfeiture strengthens the deterrence effect of the regulatory framework (with the cost recovery provisions also reinforcing this deterrent effect by ensuring that convicted offenders, rather than the state, bear the financial burden of enforcement - see section 2.3)
- the amendments also ensure consistency with existing legislative frameworks that already provide for the immediate forfeiture and destruction of hazardous or prohibited items, and aligning with these established approaches supports consistency across regulatory regimes and promotes efficient enforcement where similar risk profiles apply
- the removal of the show cause process supports the integrity of the regulatory framework because delays in enforcement can allow unlawful trade to persist, undermining the public's confidence in regulatory frameworks.¹⁰²

Committee comment



While we recognise the importance of natural justice and procedural fairness, we note that illicit vaping goods are easily identifiable and therefore it is highly unlikely that authorised officers would inadvertently seize products from legitimate operators. We also note the need to strengthen deterrence and the regulatory framework to stop unlawful trade from continuing.

We consider these reasons, along with the health, safety and cost justifications posited in the explanatory notes, are sufficient to justify the Bill's inconsistency with principles of natural justice, such that the relevant provision has sufficient regard to rights and liberties of individuals.

¹⁰¹ Queensland Health, correspondence, 1 April 2025, p 6.

¹⁰² Queensland Health, correspondence, 1 April 2025, p 7.

2.3. Cost recovery from convicted persons

The Bill inserts a new provision in TOSPA which provides that if a court convicts a person of an offence against TOSPA, the court may order the person to pay the costs reasonably incurred by the state because of the offence, including the:

- cost of testing, transporting, storing, dismantling, destroying or disposing of smoking products, ice pipes, bongs, illicit tobacco, or illicit nicotine products
- Department's reasonable costs of investigating any offence in TOSPA, and
- reasonable costs of preparing for the prosecution of the offences related to any offence in TOSPA.¹⁰³

Queensland Health stated this provision provides a clear basis for courts to order convicted offenders to pay the costs associated with the enforcement of offences related to these products'.¹⁰⁴

The cost recovery can only apply if a person, or a company as a legal person, has been prosecuted for an offence under TOSPA and been convicted.¹⁰⁵ This means the person or corporate entity has 'been convicted of committing a supply or possession offence, a commercial possession offence, and the court has the discretion to award reasonable costs associated with investigation and enforcement'.¹⁰⁶

To ensure fairness, safeguards are included, such as allowing courts to consider case-specific factors such as an offender's cooperation with authorities and their role in incurring costs.¹⁰⁷ Hence, in deciding whether to make the costs order, the court may have regard to the:

- extent to which the person's conduct during the investigation contributed to the costs being incurred
- whether the offence was committed, wholly and partly, for a commercial purpose, and
- any other relevant matter.¹⁰⁸

Queensland Health expanded on this, stating:

*It is within the discretion of the court, so the court would look to a range of factors. It would not be the case that in every prosecution costs are awarded. They would look at how egregious was the conduct, whether it was repeated or systematic, and what steps the person took throughout the litigation. Were they trying to delay the litigation or make it difficult for the government to proceed with litigation? There are some safeguards built in in that respect.*¹⁰⁹

¹⁰³ Bill, cl 24; explanatory notes, p 6.

¹⁰⁴ Record of proceedings, Brisbane, 31 March 2025, p 3.

¹⁰⁵ Record of proceedings, Brisbane, 31 March 2025, p 8.

¹⁰⁶ Record of proceedings, Brisbane, 31 March 2025, p 8.

¹⁰⁷ Bill, cl 24; Queensland Health, correspondence, 26 March 2025, p 23.

¹⁰⁸ Bill, cl 24; explanatory notes, p 6.

¹⁰⁹ Record of proceedings, Brisbane, 31 March 2025, p 8.

The amount that the court orders to be paid will be a debt owing to the state. The explanatory notes state that this cost recovery provision does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.¹¹⁰

According to the explanatory notes, the aim of these provisions is to hold offenders accountable for the financial impact of their illegal actions and address the economic incentives driving illicit trade, increasing the deterrent effect of relevant offences.¹¹¹

Queensland Health advised there is precedent across Queensland legislation for provisions that enable court-ordered recovery of investigation and prosecution costs, such as section 158 of the *Explosives Act 1999* which allows a court to order a person convicted of an offence to pay the reasonable costs of investigating and preparing for the prosecution of that offence. Similarly, section 213(2) of the *Medicines and Poisons Act 2019* empowers a court to order a convicted person to pay the state's investigation costs.¹¹²



2.3.1. Stakeholder Submissions and Department Advice

i. Stakeholder submissions

There was general support for provisions for those convicted to pay the identified costs.¹¹³

The NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame submitted that requiring the offender to cover the costs incurred during prosecution will:

- not only hold the individual financially accountable for the offence, but also promote deterrence with proportionate and dissuasive legal sanctions to discourage repeat offending
- enable Queensland Health to financially recover a portion of the expenditure on pursuing the offence, ensuring that funds are reinvested into enhanced and continued enforcement practices.
- assist with ensuring there are adequate funds for safe storage and disposal through a cost-recovery process.

This group also recommended that the list of matters that should be considered when determining if an order should be made should be expanded to include a regard to deterrence, the quantity of illicit items seized, the overall scale of the offending, and the harm the offending caused to the community and the environment.¹¹⁴

The QNMU stated the Bill 'must include an allowance for the court to consider the specific circumstances of each case in deciding the amount to be paid by the convicted person',

¹¹⁰ Explanatory notes, p 6.

¹¹¹ Explanatory notes, p 6.

¹¹² Queensland Health, correspondence, 1 April 2025, p 3.

¹¹³ See, for example, submissions, 5, 6, 7, 8, 9, 10, 11.

¹¹⁴ Submission 9, p 3.

adding that 'what is deemed 'reasonable' costs to pay back will need defining and whether the offender has the resources to pay will require consideration'.¹¹⁵

The Waste Management and Resource Recovery Association of Australia (WMRR) expressed its support for the concept of 'producer responsibility' and encouraged the approach of placing responsibility on suppliers of products to bear the costs of their safe and effective disposal to be extended more broadly, so that the risks and costs of these hazardous items in the community are mitigated and not borne by the community and the Waste Avoidance and Resource Recovery industry.¹¹⁶

WMRR asked the committee to expand its consideration of the costs and safety implications of managing vapes disposal beyond the implications for Queensland health and enforcement officers, and instead 'look at how the growing financial and safety burdens of managing vapes can be more effectively addressed by the State Government as a whole'.¹¹⁷ WMRR referred to the risks associated with batteries, such as fires, and advised that although vapes include a battery, 'they are outside the scope of the existing battery stewardship scheme' and 'there is currently no safe and consistent disposal pathway for these items in Queensland'.

ii. Department Advice

In response to the QNMU's submission concerning allowance for specific circumstances, Queensland Health advised the term 'reasonable' has not been defined in the legislation, as the determination of costs is ultimately a matter for the court. This approach recognises the court's discretion and ensures it retains the flexibility to consider all relevant factors based on the circumstances of each case. Queensland Health submitted that it would not be appropriate to prescribe or limit the matters a court must consider, as this may unduly constrain judicial decision-making. For example, the court may take into account whether an offender has the capacity to pay, among other considerations. By allowing the court to determine what is reasonable, Queensland Health states the legislation ensures that cost orders remain fair, proportionate, and tailored to individual cases.¹¹⁸

Queensland Health acknowledged WMRR's recommendation that the responsibility for disposing of vaping waste be shifted toward producers or suppliers, noting that Queensland Health's role relates to the seizure, forfeiture and destruction of illicit products under TOSPA. Queensland Health submitted that the proposed cost recovery framework represents a step toward ensuring that those who supply illicit goods bear the financial responsibility for their safe management and disposal.¹¹⁹

¹¹⁵ Submission 5, p 3.

¹¹⁶ Submission 11, p 2.

¹¹⁷ Submission 11, p 2.

¹¹⁸ Queensland Health, correspondence, 16 April 2025, p 3.

¹¹⁹ Queensland Health, correspondence, 16 April 2025, p 4.

Committee comment



We note the support from stakeholders for both the removal of the show cause process and the provisions for those convicted to pay the identified costs.

We also wish to bring attention to the issues raised in relation to the disposal of vaping goods, particularly the significant costs, safety risks (such as fires), and the limited availability of safe disposal options that exist in Queensland. The Bill addresses the issue of storage but does not mitigate issues related to destruction and disposal of the vapes. While we acknowledge that the regulation of the disposal and destruction of vapes is outside the remit of Queensland Health, the committee considers that these issues need to be addressed.

We request further consideration be given to the current classification of vaping goods as pharmaceutical waste. We also believe the methods of disposal for vaping products as part of the product's life cycle needs to be considered.

Furthermore, given the concerning evidence we heard at the public hearing regarding the move to online trade by former bricks and mortar vape product retailers, the committee requests that the Minister clarify whether the proposed provisions relating to the show cause process and recovery costs will apply to online retailers who are based, and operating, in Queensland, given that some of the supply of illicit vaping goods is provided by online stores which may tout themselves as online pharmacies.

2.3.2. Right to property



A person has the right not to be arbitrarily deprived of their property.¹²⁰

The Bill could be considered to limit the property rights of certain persons convicted of offences against the TOSPA because it would allow a court to order them to pay to the State costs reasonably incurred by the State because of the offence.¹²¹

The purpose of the limitation on a convicted person's property rights is 'to strengthen the enforcement of laws related to vaping goods, and other illicit products, by ensuring that those responsible for illicit activities contribute to the financial burden of enforcement'.¹²² This may lessen the amount of taxpayer money spent on enforcement.¹²³ Therefore the committee considers there is a direct relationship between the purpose and the limitation.

¹²⁰ HRA, s 24(2).

¹²¹ Bill, cl 24 (TOSPA, new s 223A).

¹²² Statement of compatibility, p 9.

¹²³ Statement of compatibility, p 9.

The limitation on property rights is also intended to deter potential offenders,¹²⁴ and to ultimately contribute to improving public health,¹²⁵ but there is a less direct relationship between these objectives and the limitation on property rights.

There are also some safeguards in place as regards costs orders:

- It is not mandatory for a court to order a convicted person to pay to the state costs incurred by the state because of the offence.¹²⁶ That is, there is judicial discretion.¹²⁷
- Any person against whom a court order has been made to pay costs to the state may appeal the order.¹²⁸

It is also arguable that recovering costs from convicted persons is not arbitrary because a court has to make the order, and only certain costs (e.g. costs for storing the evidence and for investigating the offence¹²⁹) may be included in the order.¹³⁰

Committee comment



The committee considers that the limitation is reasonable and justifiable, given that there is a direct relationship between the purpose and the limitation, there are safeguards in place and the limitation is not arbitrary.

2.4. Recommendations outside the scope of the Bill

A number of submitters made recommendations regarding the TOSPA outside the scope of the Bill:

- The Lung Foundation Australia recommended the Queensland Government amend the *Electoral Act 1992* to include the banning of political donations from both the tobacco and vaping industry, as has been done in New South Wales.¹³¹
- British American Tobacco recommended that responsibility for tobacco compliance and enforcement be transferred from Queensland Health to the Office of Liquor and Gaming Regulation to address the lack of effective enforcement resulting from Queensland Health not being 'equipped to manage the criminal and commercial complexity of today's illicit tobacco and vaping market'.¹³²

¹²⁴ Explanatory notes, p 6.

¹²⁵ Statement of compatibility, p 10.

¹²⁶ See Bill, cl 24 (TOSPA, new s 223A(1)).

¹²⁷ Statement of compatibility, p 10. See also Bill, cl 24 (TOSPA, new s 223A(2)) which set out the factors the court may have regard to in deciding whether to make an order.

¹²⁸ Statement of compatibility, p 10.

¹²⁹ See Bill, cl 24 (TOSP Act, new s 223A(1)).

¹³⁰ See statement of compatibility, p 10.

¹³¹ Submission 6, p 2

¹³² Submission 7, p 4.

- The NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame recommended:
 - extending the definition of illicit tobacco under the *Tobacco and Other Smoking Products Act 1998* (Qld) to include prohibited goods under the *Customs Act 1901* (Cth) and excisable goods under the *Excise Act 1901* (Cth) for which no excise has been paid, to capture illegally traded tobacco products that are sold in compliant packaging¹³³
 - the inclusion of a minimum retail price for the sale of tobacco products be inserted into Queensland's tobacco retailing licences as a licence condition and that selling (or offering for sale) tobacco products for less than the minimum price should incur penalties that are equivalent to those for sale of illicit tobacco, to capture illegally traded tobacco products that are sold in compliant packaging and to protect the intent of tobacco taxation policy¹³⁴
 - all illicit tobacco and vaping products that are seized are systematically documented in a database, including images and detailed information on the quantity and type of product seized, prior to being destroyed in accordance with state law¹³⁵
 - the use of controlled purchase operations as part of the compliance monitoring programs for both underage sales and supply of illicitly traded tobacco and vaping products, which is considered best practice.¹³⁶
- The Cancer Council Queensland recommended:
 - the Bill clarify and extend product definitions by explicitly identifying emerging nicotine products such as nicotine pouches and other novel smokeless products in the legislative language to futureproof the Act and ensure comprehensive regulation of all nicotine delivery systems, regardless of form¹³⁷
 - a penalty-to-prevention circular funding model that complements enforcement strategies by mandating a proportionate re-investment of illicit trade penalties into prevention and cessation services¹³⁸
 - proactive regulation extend beyond supply and possession to include penalties for promoting and advertising illicit tobacco and nicotine products, including nicotine pouches and smokeless tobacco products such as 'snus', and establishing an accessible public reporting mechanism to facilitate community involvement in enforcement efforts¹³⁹

¹³³ Submission 9, p 3.

¹³⁴ Submission 9, p 4.

¹³⁵ Submission 9, p 4.

¹³⁶ Submission 9, p 5.

¹³⁷ Submission 10, p 4.

¹³⁸ Submission 10, p 4.

¹³⁹ Submission 10, pp 4-5.

- the Queensland Government be vigilant against increased lobbying efforts by the tobacco industry, including potential attempts to influence policy through political donations¹⁴⁰
- rigorous monitoring and enforcement of pharmacy ownership regulations and advertising restrictions for nicotine products to address emerging challenges relating to online pharmacies¹⁴¹
- all tobacco control legislative reforms should reflect Australia's obligations under Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC), which requires parties to protect public health policies from the commercial and vested interests of the tobacco industry.¹⁴²

¹⁴⁰ Submission 10, p 4.

¹⁴¹ Submission 10, pp 5-6.

¹⁴² Submission 10, p 6.

Appendix A – Submitters

<i>Sub No.</i>	<i>Name / Organisation</i>
1	Drug Free Australia
2	Australian College of Paramedicine
3	Michelle Jongenelis
4	Australian College of Nurse Practitioners
5	Queensland Nurses and Midwives' Union
6	Lung Foundation Australia
7	British American Tobacco Australia Ltd
8	Matthew Rimmer
9	NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame
10	Cancer Council Queensland
11	Waste Management and Resource Recovery Association of Australia
12	Australian College of Nursing

Appendix B – Public Briefing, 31 March 2025

Queensland Health

Ms Peta Bryant	Deputy Director-General, Strategy, Policy and Reform Division
Mr Mark West	Executive Director, Preventative Health Unit
Mr Karson Mahler	Director, Legislative Policy Unit
Mr James Liddy	Manager, Legislative Policy Unit

Appendix C – Public Hearing, 23 April 2025

Cancer Council Queensland

Mr Matt Gardner Chief Executive Officer

Dr Danielle Jackman Specialist, Policy and Advocacy

Waste Management and Resource Recovery Association of Australia

Ms Gayle Sloan Chief Executive Officer

Australian College of Nurse Practitioners

Ms Leanne Boase Chief Executive Officer

Office of the Queensland Integrity Commissioner

Mr Paxton Booth Acting Integrity Commissioner

Ms Amy Bewley Director, Legal and Integrity Services

Statement of Reservation

STATEMENT OF RESERVATION HEALTH LEGISLATION AMENDMENT BILL 2025

The Health Legislation Amendment Bill 2025 (the Bill) seeks to amend the *Hospital and Health Boards Act 2011* to require the appointment of at least one frontline health practitioner who is currently employed or engaged by the relevant Hospital and Health Service (HHS) to the respective Hospital and Health Board (HHB).

The premise of the Bill – to put doctors, nurses and clinical staff back in charge of hospitals so that frontline clinical staff are involved in decision making for the delivery of health services – is poorly founded.

We note that prior to the Health, Environment and Innovation Committee's (the committee) consideration of the Bill, the existing legislation required an HHB to have five or more members, with at least one member who is a clinician. We have learned that of the 16 HIISs, 13 HHSs currently have a person with a clinical background appointed to at least one of the following senior representative positions: Chair, Deputy Chair, or Health Service Chief Executive (HSCE).

The College of Nurse Practitioners noted concerns about the recency of practice of clinicians appointed to HHBs and the risk of conflicts of interest arising between working on the frontlines of the relevant clinical setting and their responsibilities as a member of the HHB of that organisation.

During the public hearing, they recognised the importance that a clinician appointed to the HHB practising in that relevant clinical environment, but felt that should the health practitioner be appointed from outside of the HHS which they are an employee, it would reduce potential for conflicts of interest.

The committee sought advice from the Integrity Commissioner, Linda Waugh, about the potential for any conflicts of interest to arise for a local HHS clinician appointed to their local HHB. We note the advice that 'management plans required to address conflicts of interest inherent in appointing HHS employees to its boards could be complex and administratively onerous, and weighing this with other less complex alternatives would be a relevant consideration'.

The commissioner went on to advise the committee that a relevant consideration for the amendments proposed by the Bill includes 'balancing the complexity and costs of this proposal against the public interest and whether a less complex arrangement can achieve the same ends'.

The commissioner uses the appointment of clinicians from outside the HHS as an example of such a consideration of an alternative model.

The commissioner goes on to advise that, 'while it is necessary for a properly composed [HHB] to include clinical knowledge, I question from a policy perspective whether this is best or only achieved by appointing a clinician employee of the HHS to its [HHB], particularly given the inherent and significant conflicts that come with this type of arrangement'.

A notable conflict of interest arises when a clinician becomes privy to reviewing risk registers and incidents within their own HIIS, as a matter coming before the HHB, or with consideration of the employer-employee relationship, where the employee reports to the HSCE and the HSCE reports to them in their HHB role.

The government should outline how this matter will be addressed.

To this end, we further note that the Bill does not require a review of its operation and as such should be amended to ensure its effectiveness can be independently reviewed by the relevant committee within a period of two years.

This ensures that the legislation enacted by the Parliament is reviewed with consideration of its effectiveness and remains contemporary to the context of the public interest of Queenslanders.

**STATEMENT OF RESERVATION
HEALTH LEGISLATION AMENDMENT BILL 2025**

The Bill also proposes amendments to the *Tobacco and Other Smoking Products Act 1998* to expedite the destruction of forfeited vaping products.

We support the intent of the Bill in this respect, however, as the committee heard from the Waste Management and Resource Recovery Association of Australia (WMRR), there are several barriers to the effective disposal of these goods under their current designation.

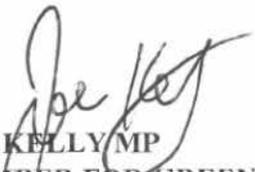
As elaborated in the explanatory notes, ‘the presence of lithium-ion batteries, which can overheat, leak, or explode under certain conditions, further complicates their handling. Vaping goods contain hazardous materials, such as liquid nicotine, heavy metals and carcinogens, which pose health and environmental risks. Their non-compostable plastic components exacerbate environmental harm’.

The WMRR provided evidence that estimated as many as 12,000 fires were caused due to the incorrect disposal of batteries and battery-powered products, with 200 battery-related fires reported in Queensland in the last 12 months.

The substantial costs associated with managing the risks of potential fires in collection vehicles and facilities, and costs to industry and the community from the incorrect disposal of vapes – as exemplified in the Cairns Regional Council following a fire that will cost an estimated \$30 million to replace – have not been effectively addressed in this legislation.

Additionally, the committee heard that vaping products are currently classified as pharmaceutical waste and excluded from the existing battery stewardship scheme.

As such, further consultation between Queensland Health and the Department of the Environment, Tourism, Science and Innovation is required to consider the most appropriate classification of and methods of disposal of vaping products, taking into account the associated cost and the environmental risks posed by batteries, fluids and electronic components.


JOE KELLY MP
MEMBER FOR GREENSLOPES
DEPUTY CHAIR OF THE COMMITTEE
SHADOW ASSISTANT MINISTER FOR HEALTH


DR BARBARA O'SHEA MP
MEMBER FOR SOUTH BRISBANE