

# Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025

## Explanatory Notes

### Short title

The short title of the Bill is the Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025 (Bill).

### Policy objectives and the reasons for them

Under the *Tobacco and Other Smoking Products Act 1998* (Act), Queensland has some of the strongest offences, highest on-the-spot fines and most extensive enforcement powers in Australia. Despite this, illegally imported cigarettes, looseleaf tobacco ('chop-chop'), and nicotine-filled vapes remain readily available in tobacconists, convenience stores, gift shops and other retailers.<sup>1</sup>

Illicit tobacco and illicit nicotine products, including vapes and nicotine pouches, pose serious risks to public health and safety. The harmful effects of smoking tobacco are well established, with smoking remaining one of the leading causes of preventable disease and death. It significantly reduces life expectancy and increases the risk of conditions such as cancer, heart disease and diabetes.<sup>2</sup>

Newer products, such as vapes, also carry significant risks. These include nicotine addiction, seizures, poisoning, and lung injury. There is emerging evidence of adverse effects on cardiovascular health, such as elevated blood pressure and heart rate.<sup>3</sup> Evidence shows that vaping is likely to cause lung cancer and oral cancer.<sup>4</sup> There have also been reports of illicit vaping liquids being contaminated with dangerous substances, including synthetic opioids such as nitazenes, which can be up to ten times more potent than fentanyl.<sup>5</sup>

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<sup>1</sup> Willis, J., *Tobacco chief: Australia's black market ranks top 3 in the world*, The Daily Telegraph, 26 June 2025; Nicole, A., *Names, locations of every Queensland shop caught selling illegal tobacco*, Courier Mail, 23 June 2025; Davis, W., *Brisbane at centre of Queensland's illegal cigarette boom*, Brisbane Times, 4 April 2025; *Revealed: Record haul of illegal vapes and tobacco in Gold Coast raids*, Gold Coast Bulletin, 11 August 2025.

<sup>2</sup> Department of Health, Disability and Ageing, *Effects of smoking and tobacco*, <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-smoking/effects>.

<sup>3</sup> Banks, E., et al., 2023, *Electronic cigarettes and health outcomes: umbrella and systematic review of the global evidence*, Medical Journal of Australia, 218(6).

<sup>4</sup> Clinical Oncology Society of Australia, *E-cigarettes and Cancer: A Qualitative Risk Assessment*, July 2025, [https://www.cosa.org.au/media/j4rjo4m3/cosa\\_research\\_report\\_on\\_e-cigarettes\\_and\\_cancer\\_final\\_july\\_2025.pdf](https://www.cosa.org.au/media/j4rjo4m3/cosa_research_report_on_e-cigarettes_and_cancer_final_july_2025.pdf).

<sup>5</sup> Australian Federal Police, *AFP warn over alarming potent synthetic opioids in 2024*, 3 December 2024, <https://afp.gov.au/news-centre/media-release/afp-warn-over-alarming-potent-synthetic-opioids-2024>; Gwynn, L., *Nitazines found in black market vapes as criminals make new variations to evade detection*, ABC News, 4 April 2025; Murray, D., *Deadly nitazene vapes: First Australian arrest made in Sydney*, The Australian, 7 August 2025.

New research published in the Medical Journal of Australia indicates that the decline in youth smoking rates across Australia has slowed since the widespread uptake of vaping. The study estimates that, had the pre-vaping trend continued, only 5.8 per cent of students would have tried smoking by 2022–23. In reality, that figure has more than doubled to 13.2 per cent. In addition, the April 2025 *Report of the Chief Health Officer Queensland* revealed that vaping rates amongst Queensland highschoolers tripled between 2017 and 2023.<sup>6</sup> These findings reinforce long-standing concerns held by public health experts that vaping is not diverting young people from smoking but rather reversing decades of progress in tobacco control.<sup>7</sup>

Against this backdrop, the Bill aims to protect public health by disrupting the supply of these harmful products and reducing their widespread use, particularly among young people.

Seized point-of-sale data shows that many retailers are generating significant income from the sale of illicit tobacco and illicit nicotine products, with profits often outweighing the risks of being caught. Enforcement is further complicated by the sheer volume of businesses involved and the sophisticated tactics used to avoid detection and shield owners from financial and legal accountability. Organised crime groups are also exploiting the profitability of this illicit trade, further embedding criminal activity in local communities.<sup>8</sup>

In some cases, this criminal involvement has escalated to violence—with reports of some retailers being threatened, fire-bombed and coerced into supplying illegal products to generate profits for criminal networks across the country.<sup>9</sup> This has heightened community concern about public safety, particularly for those living or working near affected businesses where the risk of violence and criminal damage may be greater.<sup>10</sup>

Compounding this problem, some lessors wilfully turn a blind eye to illegal activity occurring on their premises. In some cases, lessors may continue leasing to the same lessees despite repeated enforcement action taken under the Act, or knowingly rent to ‘new’ lessees who are clearly rebranded versions of previously shut-down illegal operators.

Illicit tobacco and illicit nicotine products are being supplied in a wide range of businesses, including convenience stores, gift shops and tobacconists. This diversity of retail settings further complicates the enforcement environment, as any commercial business could be repurposed for illegal supply. To effectively disrupt the supply chain and reduce the commercial viability of the illegal market, it is critical to limit the availability of commercial premises for unlawful businesses.

Further legislative controls are needed to disrupt the significant economic incentives associated with the supply of illicit tobacco and illicit nicotine products, to target other players involved in the illegal trade, and to make enforcement arrangements more efficient and effective, thereby enabling targeted, rapid and responsive enforcement action against offenders. Disrupting the

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<sup>6</sup> Queensland Health, *Report of the Chief Health Officer, E-cigarettes*, April 2025, <https://www.choreport.health.qld.gov.au/our-lifestyle/electronic-cigarettes>.

<sup>7</sup> Egger, S., et al., *Trends in adolescent smoking prevalence before and after the emergence of vaping in Australia: an interrupted time series analysis, 1999–2023*, Medical Journal of Australia, 27 July 2025.

<sup>8</sup> Kohler, A., *Illegal tobacco is a deadly \$10 billion industry wiping out legitimate businesses*, ABC News, 4 August 2025; Crime and Corruption Commission, *Multi-million-dollar money laundering investigation smashes illicit tobacco and vape supply*, <<https://www.ccc.qld.gov.au/news/multi-million-dollar-money-laundering-investigation-smashes-illicit-tobacco-and-vape-supply>>, 31 August 2023.

<sup>9</sup> Chamberlin, T., *Qld tobacconists face arson threat, extortion as criminal syndicates chase profits*, Courier Mail, 12 April 2025.

<sup>10</sup> Couacaud, T., *Crime scene declared after Capalaba tobacco shop fire*, Courier Mail, 11 August 2025.

illegal market is essential to addressing the public health harms arising from the widespread availability of illicit nicotine products and cheap illicit tobacco.

The objectives of the Bill are to:

- protect public health by reducing the supply and possession of illicit tobacco and illicit nicotine products;
- strengthen existing powers and offences to ensure they provide an appropriate financial deterrent to the supply and possession of illicit tobacco and illicit nicotine products;
- reduce the availability of commercial premises used for the illegal trade;
- hold lessors who permit the supply and possession of illicit products accountable;
- improve enforcement and investigation efficiencies; and
- make minor and technical amendments to improve the operation of the Act.

### **Amendments to the *Tobacco and Other Smoking Products Act 1998***

The Bill amends the Act to introduce a range of additional enforcement powers and regulatory measures. These include amendments to:

- expand the existing 72-hour ‘interim’ closure power, to allow the chief executive of Queensland Health to order a closure of premises for three months if satisfied that illicit tobacco and illicit nicotine products are being supplied or possessed at the premises, or unlicensed sale of smoking products is occurring;
- expand the existing six month long-term closure power, to allow a Magistrate to order the closure of premises for up to 12 months in the above circumstances;
- ensure businesses cannot circumvent the intent of closure orders, by providing that it is an offence to open to the public or supply any products or services when a closure order is in effect;
- insert a statutory power for lessors of commercial premises to terminate a lease where the premise is subject to a closure order;
- create a criminal offence applying to lessors of commercial premises who knowingly permit premises to be used for the supply or possession of illicit tobacco or illicit nicotine products;
- enable the chief executive to apply to the court for a civil penalty order if the chief executive is reasonably satisfied that a lessor has permitted premises to be used for the supply or possession of illicit tobacco or illicit nicotine products;
- deem executive officers of corporations to have personally committed certain offences committed by the corporation, unless they can satisfy the evidential burden of showing that they did not know, and could not have reasonably been expected to know, of the corporation’s conduct constituting the offence, or that they took all reasonable steps to ensure the corporation did not engage in that conduct, and this cannot be disproven by the State;
- expand existing seizure and forfeiture powers to allow authorised persons, when seizing illicit tobacco and illicit nicotine products, to also seize legal smoking products, hookahs and components of hookahs as ‘compromised goods’ and forfeit them;

- expand the existing entry powers to allow authorised persons to enter wholesale premises without a warrant or occupier's consent;
- allow the chief executive of Queensland Health to appoint controlled purchase officers to participate in covert operations involving attempts to buy illegal and legal products to gather evidence and support more efficient and targeted enforcement;
- introduce the ability for evidentiary aids to be utilised in court proceedings under the Act as evidence of certain matters;
- allow authorised persons to request information from any person that is relevant to the monitoring or enforcement of certain provisions of the Act;
- expand the offences related to bongs, ice pipes and their components to capture the storage or commercial possession of these products, and to allow the forfeiture of components of these products;
- require licensed wholesalers to retain copies of invoices provided to licensed retailers for at least two years to ensure consistent requirements for all licensees and improve compliance monitoring;
- expand the information required as part of an initial licence application to assist with assessing the entity for a licence and identifying lessors;
- allow for acknowledgment of prevention measures completed by employees, relating to supply of smoking products to children, to be provided electronically; and
- provide venues with a commercial hotel, community club or commercial special facility casino licence with the option to choose either a smoking-only area (where drinking is not permitted) or a designated outdoor smoking area (where drinking is permitted).

### **Amendments to the *State Penalties Enforcement Regulation 2014***

The Bill also amends the *State Penalties Enforcement Regulation 2014* to prescribe three offences as penalty infringement notice offences with their respective penalty amounts:

- contravention of a closure order – 20 penalty units (individuals) and 100 penalty units (corporations);
- failure of a retail licensee to keep invoices for at least two years – 10 penalty units (individuals) and 50 penalty units (corporations); and
- failure of a licensee for a wholesale licence or a retail licence with a limited wholesale condition to keep invoices for at least two years – 10 penalty units (individuals) and 50 penalty units (corporations).

## **Achievement of policy objectives**

### ***Closure orders***

To address the reality that illicit operators are often well-resourced, organised, and tend to rapidly restock and resume illegal trade following a 72-hour chief executive issued closure

order,<sup>11</sup> the Bill extends the period of the order to three months (a ‘short-term closure order’). This longer period reflects the seriousness of the offending and is intended to act as a stronger deterrent by depriving offending businesses of the opportunity to continue operating from the premises.

The Bill also broadens the grounds for a short-term closure order to include the possession of illicit tobacco or illicit nicotine products, in addition to their supply. This ensures that closure powers can be used to target operators who deliberately evade enforcement action by storing illicit products in storerooms or vehicles and making them available for purchase on request by customers.

To ensure these enhanced powers are exercised appropriately, the Bill introduces additional safeguards. The chief executive will be required to be ‘satisfied’, rather than ‘reasonably suspect’, that illicit tobacco or illicit nicotine products are being supplied or possessed as part of a business activity. This higher threshold reflects current operational practice and recognises the more significant impacts of an extended closure period. The threshold for unlicensed sale of smoking products will remain that the chief executive is ‘satisfied’ (the current threshold).

In addition, the chief executive may consider a range of discretionary factors before issuing a closure order, including:

- whether prior enforcement action has been taken in relation to the premises;
- whether the order will impact the community’s ability to access essential goods or services; and
- any other matter the chief executive considers appropriate.

These discretionary factors may include, for example, whether a penalty infringement notice (PIN) has been issued or illicit stock has been seized, whether the premises are the only fuel station or grocery store in a regional area and its closure would limit the community’s ability to purchase fuel or food, or whether the closure order would unfairly impact a third party with a direct interest in the premises such as a co-lessee. Where a closure order is not issued due to its impact on the community or third parties, other regulatory or administrative action would likely be taken against the offending lessee—for example, suspension or cancellation of a licence under the Act, issuing a PIN, or prosecution.

To avoid unnecessary regulatory burden, the Bill provides that a short-term closure order will automatically end when the lease with the offending lessee ends, whether by termination or expiry. This aligns with the existing framework for long-term closure orders and avoids the need for authorised persons to re-inspect premises where the offending lessee has left because the lease has ended.

The Bill increases the maximum duration of a long-term closure order from up to six months to up to 12 months, and clarifies that such orders may be issued in response to both possession and supply offences. This sends a stronger deterrence message for serious, sustained offending.

Long-term closure orders are subject to judicial discretion. The maximum period is 12 months, but the court may impose a shorter duration based on the circumstances of the case. The Bill

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<sup>11</sup> *‘Hit the hip pocket’: Queensland government looking to crack down on illegal vape sellers*, SBS News, 5 January 2025; Fellows, T. and Scott, S., *Qld govt investigating ways to financially ruin smoke shops, disrupt organised crime amid booming black market*, Courier Mail, 5 January 2025.

also includes factors that the court may have regard to, which align with the factors included in the short-term closure order provision in the Bill.

The Bill also provides that closure orders cannot be made in relation to residential premises. This reflects operational practices.

The Bill introduces new notification requirements to improve transparency and support enforcement. Where a closure order has been made in relation to a leased premises, the chief executive of Queensland Health must provide the relevant lessor with a copy of the closure order and a notice, if reasonably practicable.

A *relevant lessor* is defined to mean a person who leases the premises directly to a person conducting a tobacco business at the premises, or who otherwise directly allows a person conducting a tobacco business at the premises to occupy the premises.

Whether providing the relevant lessor with a copy of the closure order and the required notice is reasonably practicable will depend on whether the relevant lessor's identity is discoverable or known to Queensland Health—for example, through a registered lease on a title search or as a result of the lessor's details being provided by the lessee in a licence application.

The notice must explain the reasons for the closure order, advise the relevant lessor of the statutory right to terminate the lease as a result of the order, and inform the relevant lessor that they may be liable for a criminal offence or civil penalty if they continue to permit the premises to be used for the supply or possession of illicit tobacco or illicit nicotine products.

To ensure Queensland Health is aware of when a closure order has ceased due to the lease ending, the Bill requires relevant lessors to notify Queensland Health within seven days of the lease ending. This includes where the lease ends as a result of the lessor exercising the termination power.

Failure to comply with this notification requirement, without a reasonable excuse, attracts a maximum penalty of 10 penalty units. A reasonable excuse may include, for example, that the lessor was not notified of the closure order and therefore, had no knowledge of the order at the time the lease ended.

If the lessor enters into a new lease with the same offending lessee during the closure period, the closure order will automatically recommence and continue until its original expiry date.

### ***Closure offence***

Section 209C of the Act makes it an offence to sell smoking products or to work in a business involving the supply of smoking products at premises that is subject to a closure order. The maximum penalty for this offence is 200 penalty units.

Despite this provision, authorised persons report that some businesses continue to trade in illicit tobacco and illicit nicotine products while a closure order is in effect by operating under the guise of selling unrelated goods, such as snacks or soft drinks. Unless enforcement officers catch individuals in the act of supplying smoking products or illicit products, it is difficult to

establish an offence under the Act, even where it is clear the business remains open and is trading in defiance of the intent of a closure order.

To close this enforcement gap, the Bill amends section 209C to make it an offence to:

- supply smoking products, or any other product or service at the premises;
- open the premises to the public; or
- work at a business involved in the supply of smoking products, or any other product or service from the premises.

This offence will apply regardless of whether the premises are used for retail or wholesale trade. The intent is to ensure that premises that are subject to a closure order remain entirely closed for the duration of the order, regardless of the nature of the products or services they may claim to be offering.

These changes reinforce the original policy intent of section 209C and send a strong signal to businesses and the broader community that closed means closed, for all purposes.

It is recognised that in some circumstances, individuals may require access to the premises for legitimate purposes while a closure order is in effect. To address this, the Bill inserts a reasonable excuse defence. Examples of a reasonable excuse may include:

- persons unrelated to the closed business carrying out emergency repairs; and
- emergency service providers accessing the premises for health or safety reasons.

This defence will not extend to individuals involved in setting up the premises for renewed business activity during the closure period, such as receiving deliveries, stocking shelves or filling online orders. This conduct would be subject to the amended offence.

The Bill also retains the existing statutory defence available under section 209C, which applies where a person can demonstrate that they did not know, and could not reasonably have been expected to know, that a closure order was in effect in relation to the premises.

These reforms ensure that the closure framework operates effectively and prevents businesses from circumventing closure orders through a technical loophole.

### ***Statutory lease termination power***

To complement the expanded closure powers, lessor offence and civil penalty provision in the Bill (discussed below), the Bill introduces a power that allows a relevant lessor to terminate a commercial lease where a closure order has been issued in relation to the premises.

For the purposes of the Bill, *lease* is broadly defined to include a right to occupy the premises. Consistent with the *Acts Interpretation Act 1954*, a lease can include a sublease and it is not required to be in a particular form, written or registered.

As noted above in relation to closure orders, *relevant lessor* means a person who leases the premises directly to a person conducting a tobacco business at the premises, or who otherwise directly allows a person conducting a tobacco business at the premises to occupy the premises. It excludes, for example, a head lessor who leases to another party that subleases the premises

to the tobacco business operator. A *tobacco business* is defined as a business that involves supplying or possessing smoking products, illicit nicotine products or illicit tobacco.

The definition of *relevant lessor* is intended to capture the person who has the direct legal relationship with the offending business, as they are best placed to act. For example, where the premises are subleased to a person running a vape store, the relevant lessor would be the sublessor, not the head lessor. This avoids placing obligations on property owners who have little or no visibility of or control over the conduct on the premises.

The statutory lease termination power can be invoked at any point while a closure order is in place for the premises. This power protects the legitimate interests of the lessor, mitigates their exposure to the lessor offence and civil penalty, and reduces the availability of commercial premises for illicit trade.

In practice, many commercial leases already contain termination clauses for illegal conduct. However, the lessee is typically required to be convicted of the offence before the termination clause can be relied upon. This creates an unfair situation where lessors are burdened by closure orders affecting their ability to access, use or relet their property.

Commercial leases often involve significant investment and high rental costs. Closure orders can have serious financial implications, including when the offending business falls into arrears or the premises cannot be relet. Closure orders may also devalue other properties in the same location as the closed premises, and expose the lessor to reputational risk. The statutory termination power ensures that lessors are not left to bear the burden of a closure order because of the lessee's offending conduct.

As noted above, the Bill requires the chief executive to give a lessor a copy of a closure order and provide them with a notice detailing the availability of the termination power. This notice will include an approved form to terminate the lease, which can be given to the lessee.

The Bill clarifies that, provided the termination notice is given while the closure order is in effect, the lessor can rely on the protections offered by the termination power, even if the closure order later ends, is revoked, or is found to be invalid.

The power to terminate applies to all commercial leases, entered into both prior to and after commencement. This ensures that all leases, existing and new, can be terminated where the statutory grounds arise.

The effect of the termination power is to override inconsistent lease terms or statutory rights and obligations, including those under the *Property Law Act 2023*, *Retail Shop Leases Act 1994*, or *Small Business Commissioner Act 2022*. This includes provisions that would otherwise require particular notice periods before termination, give lessees an opportunity to remedy a breach, or mandate mediation or court processes.

To reflect that the lease is being terminated due to the lessee's illegal activities, the Bill inserts a range of rights in favour of a lessor who validly invokes the statutory lease termination power under the Act. The termination is treated as a termination for repudiation of the lease by the lessee, and all rights and powers available to the lessor in those circumstances are preserved. This includes, for example, the ability to claim damages or recover a rental bond. Following the termination date, the lessor may also remove, and deal with as they see fit, any property left behind by the lessee, including fit-outs, chattels, fixtures and fittings, and any personal



possessions. These rights aim to reduce the financial burden on lessors and encourage the use of the termination power as a tool to disrupt illegal activity.

To provide commercial certainty, a lessor who validly exercises the termination power within the period of a closure order will be immune from damages or compensation, on any ground, from any person, because of the termination. The lessee will not be entitled to bring a proceeding against the lessor or others involved in the leasing arrangements such as the head lessor, on any ground, because of the termination. ‘Proceeding’ is defined in schedule 1 of the Acts Interpretation Act 1954 to mean a legal or other action or proceeding. This is intended to include a range of actions, including an application for mediation about the dispute over the termination of the lease.

However, the Bill clarifies that this does not affect ancillary rights or obligations accrued under the lease prior to termination. This includes, for example, a breach of the lease by the lessor before the termination of the lease under the Act, or other entitlements or liabilities that arose before the lease ended. These continue to apply and can be pursued by the lessee after the termination.

In the unlikely circumstances that a closure order is later found to have been wrongfully issued, is revoked, or is found by a court to be invalid, a person who has incurred loss or expense as a result of the closure order may be able to seek compensation from the State under section 219 of the Act. Compensation may be awarded by the court where it is just to do so. Compensation claims are expected to be rare, as closure orders are only issued in response to strong evidence of illegal conduct or repeated non-compliance.

Under section 9 of the Acts Interpretation Act, the termination power must be interpreted as operating only to the extent of Parliament’s legislative power. It is therefore intended to operate concurrently with relevant Commonwealth legislation. Accordingly, a lessor who is subject to Commonwealth legislation, such as a franchisor who granted a franchisee a right to occupy premises under their franchise agreement, must consider their own circumstances and exercise the termination power in a way that complies with all applicable legislative frameworks. In the case of franchisors, this includes compliance with the Commonwealth framework governing franchise agreements, namely the *Competition and Consumer Act 2010* (Cth), the *Competition and Consumer (Industry Codes—Franchising) Regulation 2024* (Cth), the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cth), and the *Trade Practices (Industry Codes—Franchising) Regulations 1998* (Cth) (together, ‘the Franchise Legislation’).

Under the Franchise Legislation and the terms of their franchise agreements, franchisors are likely to have a range of mechanisms available to terminate a franchise agreement, including, for example, where the franchisee breaches the agreement. Examples of such breaches may include where the agreement requires the franchisee to remain operational, but they are unable to do so because of a closure order, where the franchisee operates in a way that compromises public health and safety, or where the franchisee is operating without the licence required to carry on the franchised business.

Overall, the statutory lease termination power is intended to give lessors the confidence and legal means to protect their commercial interests. The amendment supports broader efforts to disrupt the illegal trade and reduce the availability of commercial premises by enabling illegal operators to be evicted under the Act.

### ***Lessor offence and civil penalty provision***

One of the key enforcement challenges in disrupting the illicit tobacco and illicit nicotine product market is the widespread availability of commercial premises used to carry out illegal supply and possession. Across Queensland, some lessors have permitted their commercial premises to be used for these illegal activities, wilfully ignored the conduct, or turned a blind eye, provided the rent is paid. This behaviour facilitates the continuation of illegal trade. This ongoing illegal trade undermines public health efforts, and exposes the community and neighbouring occupiers to serious risks, including criminal activity, burglary, ram-raids, and arson.<sup>12</sup>

To address this, the Bill creates a new criminal offence for a relevant lessor who knowingly permits their premises to be used by another person for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity, without a reasonable excuse. The evidential burden of proof for establishing the reasonable excuse rests with the defendant. If the defendant discharges this burden, the reasonable excuse defence is taken to be satisfied unless the prosecution proves beyond a reasonable doubt that the excuse does not apply.

Examples of a reasonable excuse may include where:

- a franchisor is actively taking steps under the Franchise Legislation to terminate a franchise agreement;
- the lessor did not receive notice of a closure order from Queensland Health and had no reason to suspect illegal conduct; or
- other extenuating circumstances beyond the lessor's control explain the continued occupation by the offending lessee.

The maximum penalty for this offence is 1,000 penalty units, one year's imprisonment, or both. This offence is intended to capture more serious conduct, where a lessor has actual knowledge of the unlawful activity and allows it to continue. The defences in chapter 5 of the Criminal Code may also be applicable.

The Bill also provides that the chief executive may apply to the court for a civil penalty order if the chief executive is reasonably satisfied that a relevant lessor of the premises permitted another person to use the premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity, without a reasonable excuse. This application must be brought within two years after the contravention first comes to the notice of the chief executive.

Actual knowledge does not need to be proven for the purposes of the civil penalty. The civil penalty is intended to apply in circumstances where a lessor has been recklessly indifferent to the illegal conduct or has failed to take reasonable steps to prevent it, despite warning signs or opportunities to act.

To assist the courts in determining whether a lessor has 'permitted' the illegal activity to occur, the Bill outlines a non-exhaustive list of factors that the court may have regard to, including:

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<sup>12</sup> Chamberlin, T., *Qld tobaccoists face arson threat, extortion as criminal syndicates chase profits*, Courier Mail, 12 April 2025; Couacaud, T., *Crime scene declared after Capalaba tobacco shop fire*, Courier Mail, 11 August 2025.

- a pattern of supply or possession of illicit tobacco or illicit nicotine products from the premises;
- whether the lessor has been notified by Queensland Health that one or more closure orders have been issued against the premises;
- evidence of a non-arm's length relationship between the lessor and the lessee;
- the lessor was receiving rent that is significantly above market value or paid well in advance;
- the lack of a written lease or arrangement relating to the use of the premises; and
- whether the lessor has taken steps to terminate the lease or otherwise prevent the continued supply or possession of illicit tobacco or illicit nicotine products from the premises.

Similar to the criminal offence, the evidential burden for establishing the reasonable excuse defence for a civil contravention rests with the lessor. If the lessor discharges this burden, the State must prove, on the balance of probabilities, that the reasonable excuse defence does not apply.

The civil penalty provision is a novel but necessary addition to Queensland's enforcement framework. It is designed to fill a critical gap by enabling action to be taken against lessors whose conduct may not meet the criminal threshold of actual knowledge but who nonetheless facilitate illegal activity through wilful blindness or reckless indifference.

Civil penalties serve a distinct regulatory purpose. Unlike criminal offences, which are focused on punishment and require proof beyond reasonable doubt that the offence occurred, civil penalties aim to deter non-compliance, encourage behavioural change, and remove the financial incentives that may encourage a lessor to ignore illegal activity. The lower burden of proof means proceedings can be pursued more efficiently, providing for more effective enforcement where evidence of actual knowledge may be difficult to obtain but indicators of constructive knowledge are clear.

Importantly, the civil penalty allows lessors to make a commercial decision in response to known or suspected illegal activity on their premises. Unlike the criminal offence, a civil penalty does not result in a criminal record, making it a commercial rather than punitive sanction. A lessor who suspects illegal activity is occurring at their premises but does not want to lose their rental income may decide to turn a blind eye to their lessee's activities, rather than terminate the lease. However, in doing so, they expose themselves to a significant financial penalty. This reflects the transactional nature of the civil penalty and allows lessors to weigh up the costs of termination against the cost of the potential civil penalty. The provision also gives the court the discretion to impose a penalty that balances the severity of the offending conduct with the need for deterrence. The penalty may be higher for a well-resourced corporate offender to ensure it achieves a sufficient deterrent effect. This reflects the High Court of Australia's findings in *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

The maximum penalty for a civil contravention is the equivalent of 1,000 penalty units for an individual and the equivalent of 5,000 penalty units for a corporation. As a 'penalty unit' is defined in the *Penalties and Sentences Act 1992* for the purpose of criminal sentencing, an amount equivalent to 1,000 and 5,000 penalty units has been set to reflect the civil nature of this provision.

The Bill clarifies that any evidence or information obtained under the Act in relation to the lessor offence, including evidence obtained under a warrant, is admissible in a civil penalty proceeding.

The Bill provides safeguards where both criminal and civil proceedings could arise from the same conduct. If a proceeding is commenced against a person for a civil contravention of the lessor offence, and a criminal proceeding is also commenced (or has already commenced) for the lessor offence based on substantially the same conduct, the civil proceeding is stayed until the criminal proceeding is finalised. If the person is not convicted in the criminal proceeding, the civil proceeding may resume or otherwise it is dismissed. ‘Substantially the same conduct’ refers to the same set of actions or omissions giving rise to both civil and criminal action. It does not prevent separate criminal or civil action if, in the future, the lessor engages in new and different conduct, even if it is of a similar nature.

In addition, a criminal proceeding for the lessor offence cannot be commenced if an order has already been made against the lessor for a civil contravention based on substantially the same conduct. This ensures that a person is not subject to both a civil penalty order and a criminal prosecution for the same conduct that gave rise to the civil or criminal action.

The Bill also protects individuals who provide information or documents in civil penalty proceedings. Evidence of information given, or documents produced by an individual in a civil penalty proceeding is not admissible against that individual in any subsequent criminal proceedings.

The lessor criminal offence and civil penalty do not apply to lessors of residential premises. Their application is limited to commercial leases, ensuring the regime targets actors who are in a position to prevent illegal commercial conduct.

The purpose of the dual-enforcement framework is to create a strong incentive for lessors to take action when they become aware that their premises are being used for the supply or possession of illicit tobacco or illicit nicotine products. Civil penalties are regulatory in nature and promote compliance by targeting those who ignore warning signs, while criminal offences apply to more serious, knowing conduct and carry punitive consequences. Together, they create a credible and effective deterrent against lessors leasing to non-compliant operators.

### ***Executive officer liability***

Section 230A of the Act provides that an executive officer of a corporation commits an offence if the corporation commits an offence against an executive liability provision and the executive officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

The term ‘executive officer’ is defined broadly to include any person who is concerned with, or takes part in, the management of the corporation, regardless of whether the person is a director or holds the title of executive officer. This broad definition ensures that individuals who may exert influence over the corporation’s conduct, even if they do not hold formal executive titles, are covered by the definition.

To strengthen accountability and ensure executive officers cannot avoid liability for the actions of the corporations they control, the Bill reverses the evidential burden of proof for executive liability provision offences. Under the new approach, an executive officer will be deemed to have committed the relevant offence unless they satisfy the evidential burden that either:

- the officer did not know, and could not have been reasonably expected to know of the corporation's conduct constituting the offence; or
- the officer took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence.

Where an executive officer discharges this evidential burden, the defence is taken to apply unless the State can prove, beyond reasonable doubt, that the defence does not in fact apply.

As recognised in the Explanatory Notes to the *Directors' Liability Reform Amendment Act 2012*, this type of reverse-onus liability, known as type 2 executive liability, is reserved for offences that pose a significant risk of harm to public safety, public health, or the environment. The offences to which executive liability applies target conduct that poses a significant risk to public health, namely:

- supply or possession of illicit tobacco or illicit nicotine products as part of a business activity;
- unlicensed sale of smoking products;
- supply of smoking products to children; and
- a failure to ensure that employees do not supply smoking products to children.

Smoking poses serious health risks, contributes to various diseases and places a significant burden on Queensland's health system. The illicit tobacco and illicit nicotine product market undermines efforts to reduce smoking rates and protect children, young people and other vulnerable populations. Illicit nicotine products are unregulated, often mislabelled, and flavoured to appeal to children and young people, exposing them to high doses of nicotine and other harmful chemicals. Nicotine exposure during adolescence is linked to addiction, impaired brain development, and increased likelihood of lifelong smoking.<sup>13</sup> While type 2 executive liability provisions are uncommon in Queensland, the scale of the current public health crisis and the deliberate strategies used to avoid personal liability justify exceptional measures.

Given the scale of harm and the difficulty of prosecuting executive officers of corporations with complex and deliberately opaque structures, a type 2 executive liability provision is necessary and appropriate. This is a novel and extraordinary case, where entities involved in the illicit trade deliberately use corporate arrangements to shield individuals from legal consequences while continuing to profit from illegal conduct. This amendment will ensure executive officers cannot avoid liability by hiding behind the corporate veil and that they are held accountable where they fail to take reasonable steps to prevent the corporations that they control from offending.

### ***Compromised goods***

Authorised persons report that operators often keep only small quantities of illicit tobacco and illicit nicotine products at premises, purposely limiting the amount that can be seized by authorised persons during inspections. These tactics reduce the financial impact of enforcement action and evade efforts to disincentivise the supply of illicit products.

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<sup>13</sup> Tobacco in Australia, *Health effects of e-cigarette use during adolescence*, May 2024, <https://www.tobaccoinaustralia.org.au/chapter-18-e-cigarettes/18-6-the-health-effects-of-e-cigarette-use/18-6-2-health-effects-of-e-cigarette-use-during-adolescence>.

To increase the impact of seizure, the Bill empowers authorised persons to also seize compromised goods found at premises where illicit tobacco or illicit nicotine products are seized. *Compromised goods* is defined to include legal smoking products, hookahs, and hookah components. *Smoking products* is defined in schedule 1 of the Act to mean, for part 11 of the Act, a tobacco product, herbal cigarette or loose smoking blend. These products will be able to be forfeited once the associated illicit tobacco or illicit nicotine products are forfeited.

Where compromised goods are seized alongside vaping goods, they will be subject to an expedited forfeiture process under section 205B. However, if compromised goods are seized in connection with *relevant products*, being illicit tobacco or other illicit nicotine products (excluding vaping goods), the forfeiture process under section 205 of the Act will apply.

The seizure and forfeiture of compromised goods is designed to ensure an immediate financial consequence, so that operators found stocking illicit products at a commercial quantity will jeopardise the rest of their legal stock. This enforcement mechanism is necessary as an additional measure to accompany and strengthen other enforcement action, such as PINs and closure orders. The seizure and forfeiture of legal stock is also intended to dissuade legitimate tobacco retailers and wholesalers from dabbling in the illicit trade.

### ***Controlled purchase operations***

The Bill establishes a robust framework for controlled purchase operations to enhance Queensland Health's ability to detect and disrupt the unlawful supply of illicit tobacco and illicit nicotine products and unlicensed sale of smoking products. The Bill authorises the chief executive to appoint adult public service employees and health service employees as 'controlled purchase officers', to carry out covert operations for the purpose of testing compliance with three prescribed offences under the Act. The prescribed offences involve serious and deliberate breaches of the Act, typically for commercial gain, and pose significant risks to public health. They are:

- section 65 – unlicensed sale of smoking products;
- section 161 – supply or possession of illicit tobacco as part of a business activity; and
- section 161A – supply or possession of illicit nicotine products as part of a business activity.

Covert operations of this kind are a proven enforcement tool and are used across Australia in the investigation of criminal and regulatory offences. In the criminal context, the Queensland Police Service uses similar techniques to investigate drug trafficking and weapons offences,<sup>14</sup> while the Crime and Corruption Commission uses controlled operations when investigating corrupt criminal conduct or misconduct (as defined under the *Police Service Administration Act 1990*).<sup>15</sup>

Other jurisdictions such as South Australia, the Australian Capital Territory and Western Australia operate controlled purchase operations and compliance testing for the purposes of regulating tobacco control. In Victoria, controlled operations are also used to detect illegal wildlife sales.

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<sup>14</sup> Queensland Police Service, *Controlled Operations Committee – Annual Report 2023-24*, tabled in Queensland Parliament, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5724t2040/5724t2040-e7e7.pdf>.

<sup>15</sup> Under the *Police Powers and Responsibilities Act 2000* or the *Crime and Corruption Act 2001*.

The purpose of enabling controlled purchase operations under the Act is to provide an opportunity for a person reasonably suspected of having committed, or being likely to commit, one of the prescribed offences, to do so in the presence of a controlled purchase officer.

A controlled purchase officer will be able to act as a customer under an assumed name and carry out a range of tasks, such as making enquiries about ‘cheaper’ or ‘off-market’ products, handling and purchasing illicit and legal products, creating online profiles or retail memberships, arranging delivery, and purchasing the goods.

These operations will primarily occur in the retail environment, and enable covert evidence collection to support more efficient and targeted enforcement. The evidence collected by controlled purchase officers will be used as the basis of prosecutions or further enforcement action, including by informing further inspections by authorised persons and seizure of products identified as part of the operation.

For online operations, controlled purchase officers may be provided with a list of suspicious websites, online stores or certain accounts on various platforms, that have been identified as likely to be committing the prescribed offences. Officers will attempt to engage with targets and suspects on these online platforms to gather intelligence and evidence of offending.

To ensure the integrity of an operation, each operation must be supervised by an authorised person named in the operation’s authority. This individual is responsible for the overall management and oversight of the operation and for ensuring that all officers comply with their appointment authority and the terms of the operation. The supervising authorised person is accountable to the chief executive and is not permitted to participate in the controlled purchase activities themselves. This ensures a clear delineation between operational oversight and investigative conduct.

The Bill allows controlled purchase officers to use an assumed name or code name during an operation to conceal their identity from suspects. This reduces the risk of detection and preserves their ability to participate in future operations. However, the authorised person supervising the operation will be identified in the operation’s authority, and their identity may be disclosed in legal proceedings, including in order for the authorised person to give evidence about the controlled purchase operation if required.

To ensure appropriate limitations on entry powers, the Bill provides that entry under a controlled purchase operation is restricted to places that an authorised person could otherwise lawfully enter without a warrant or the occupier’s consent under the Act. This ensures that the operation does not extend entry powers beyond what is authorised for the purposes of monitoring and enforcement under the Act, and helps protect the safety of officers.

To provide effective oversight, the Bill requires each controlled purchase operation to be individually authorised in writing by the chief executive, and limits it to a maximum duration of three months. The authority must identify a range of matters, including:

- the name or number of the operation;
- the supervising authorised person;
- the identity of each controlled purchase officer;
- the prescribed offence to which the operation relates;

- the types of purchases officers may make or attempt to make;
- the places and websites officers may enter or access;
- any conditions applying to the conduct of the operation;
- the period of the authority (up to three months); and
- the date and time the authority is granted.

Before authorising the operation, the chief executive must also be satisfied that:

- a prescribed offence is likely to have been, is being, or is likely to be committed;
- the nature and extent of the suspected offending justifies conducting the operation;
- the operation will not be carried out in a way that is likely to induce a person to commit a prescribed offence;
- the operation will not seriously endanger the health or safety of any person;
- the chief executive will be immediately notified if a controlled purchase officer engages in conduct that may seriously endanger the health or safety of any person or in conduct that may not be authorised under the authority of the operation; and
- each controlled purchase officer who is proposed to participate has received appropriate training for the role.

Under the Bill, the authority can subsequently be varied or cancelled. A variation may include, for example, changes to the duration or timing of the operation, the particulars of the operation or the prescribed offences investigated. Variations will not have retrospective effect, and the Bill provides protection for officers who are genuinely unaware of a variation to or cancellation of the operation's authority.

The Bill provides controlled purchase officers with protection from criminal liability. These protections apply where the person's conduct is authorised by the operation or is ancillary to that authorised conduct. The protections do not apply if the conduct involves intentionally inducing another person to commit an offence they would not otherwise have committed, or if their conduct severely endangers the health or safety of any person.

Controlled purchase officers are also protected from civil liability in circumstances where an act or omission is done in good faith, and without gross negligence, under the Act. They are afforded this protection by the *Public Sector Act 2022* because of their status as public service employees or health service employees. Under the Public Sector Act, liability instead attaches to the State. This ensures that supervising authorised persons and controlled purchase officers are not left vulnerable to civil proceedings due to participating in an operation.

The Bill also clarifies that any evidence collected by controlled purchase officers is not inadmissible only because it was obtained by a person while acting under the operation, where they may have engaged in an unlawful act, so long as the act is authorised by the operation.



### ***Entry to wholesale premises***

Under the Act, authorised persons can enter a premises without the occupier's consent or a warrant if the premises are:

- a public place open to the public;
- an outlet of a supplier or liquor licensed premises that is open for business;
- premises selling illicit nicotine products by retail that are open for business; or
- premises subject to a closure order or injunction.

These entry powers do not currently extend to wholesale outlets or premises, which limits the ability to monitor compliance and detect illegal activity at the wholesale level.

To address this, the Bill allows authorised persons to enter both licensed and unlicensed wholesale premises to monitor compliance when the premises are open for business. The Bill also expressly expands the power to enter premises at which illicit nicotine products are available for sale by wholesale where they are open for business. This entry will be permitted without requiring occupier consent or a warrant.

Wholesalers play a significant role in the broader supply chain for illicit products. If unauthorised products are entering the market at this point, they may be distributed across multiple retail premises, expanding the risks to public health. Therefore, the ability to enter and inspect wholesale premises is essential to prevent the supply of illicit tobacco and illicit nicotine products to retailers. This closes an enforcement gap in the Act and will improve Queensland Health's ability to monitor all parts of the supply chain and respond to non-compliant wholesale supply.

### ***Evidentiary aids***

Evidentiary aids help establish the facts of a matter in a court proceeding by providing methods for proving certain facts exist, or by presuming certain things to be true. Legislation may provide that a certificate signed by a person administering a law is evidence of a fact stated in the certificate. These provisions enable an administering authority to put evidence before courts about a range of basic matters without the need to call witnesses and lengthen court proceedings.

To improve efficiency in prosecutions under the Act, the Bill permits evidentiary aids to be used to demonstrate evidence of a range of non-controversial matters, including that:

- a licence was or was not in effect, or was subject to a certain condition;
- a licence was cancelled or suspended on a certain date;
- a person was given a notice under the Act on a certain date;
- an authorised person or controlled purchase officer was duly appointed; and
- an amount due under the Act was payable and was not paid.

The chief executive of Queensland Health will certify that the content of the certificate is correct, and it will be presented to a court as evidence. The facts presented in a certificate are

not conclusive proof and are not determinative—they are merely aids to the court.<sup>16</sup> Each certificate is still open to being rebutted by the defendant (or respondent in civil proceedings) as part of the court process.

Evidentiary aids are a well-established tool in Queensland legislation, including, for example, in the *Medicines and Poisons Act 2019*, the *Food Act 2006*, the *Liquor Act 1992*, the *Police Powers and Responsibilities Act 2000* and the *Environmental Protection Act 1994*.

### ***Request for information power***

The Act allows an authorised person to request information from any person if they believe an offence against the Act has been committed and the person has relevant information about the offence. Failure to comply with a request for information without a reasonable excuse attracts a maximum penalty of 100 penalty units. However, there is no general power to request information relevant to potential non-compliance under the Act, including for monitoring purposes.

Currently, authorised persons cannot request information that may uncover an offence, or which helps build a reasonable belief that an offence has been committed. This limits Queensland Health's ability to understand the performance of a licensee, supplier or lessor before it leads to a clear contravention of the Act. This undermines the preventative focus regulators should have on reducing the prevalence of offences through regulatory action.

To address this, the Bill empowers authorised persons to request information from any person, where the authorised person reasonably believes the person may be able to give information relevant to monitoring or enforcing sections 65, 66, 67, 161, 161A, or 209CE of the Act. These sections relate to the unlicensed sale of smoking products, supply of smoking products to children, supply and possession of illicit tobacco and illicit nicotine products, and lessors permitting their premises to be used for illegal supply. These powers may be used in circumstances where it is suspected, but not yet believed, that an offence has been committed, or to support general ongoing compliance checks. This aligns with similar powers in sections 183 and 183AA of the *Liquor Act 1992*.

This power will support a broader range of inquiries. For example, it will allow authorised persons to obtain information from utility companies, storage facility managers, real estate agents, retail employees, and other individuals and entities who may hold information relevant to monitoring or enforcing these specific provisions of the Act.

The maximum penalty for failing to comply with the authorised person's request is 100 penalty units. The offence does not apply if the person has a reasonable excuse for not providing the requested information, including where giving the information might tend to incriminate the person.

### ***Bongs, ice pipes and their components***

The Act prohibits the sale, supply, and display of bongs, components of bongs, ice pipes, and components of ice pipes, but does not prohibit their commercial possession or storage. Authorised persons have reported that some retailers store bongs and ice pipes in stockrooms,

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<sup>16</sup> Office of Queensland Parliamentary Council, *Principles of good legislation: OQPC guide to FLPs – Reversal of onus of proof*, June 2013.

storage areas, or vehicles near a shop, and claim they are not for sale, or are intended to be returned to a wholesaler, despite the products being available for sale upon request by a customer.

Additionally, while the Act allows the chief executive to forfeit assembled bongs and ice pipes, this power does not currently extend to their individual components. Retailers are aware of this legislative anomaly and often dismantle bongs and ice-pipes into separate components to ensure they cannot be forfeited.

To address these tactics, the Bill makes storage and commercial possession of bongs, ice pipes, and their components an offence. The Bill also clarifies that all bongs and ice pipes, including dismantled or separated components, may be forfeited by the chief executive following a show cause process, consistent with the existing forfeiture process for seized assembled bongs and ice pipes under the Act.

### ***Proof of occupancy and business registration***

Applicants for retail and wholesale licences are currently required to provide certain information to Queensland Health as part of an initial application under the Act. This includes information about the outlet's location and proof of identity. However, there is currently no requirement for applicants to provide their Australian Business Number (ABN), prove an entitlement to occupy the relevant outlet, or, where a lease arrangement is in place, provide the details of the lessor.

To improve enforcement, the Bill will require licence applications submitted after commencement to include:

- the ABN for registered businesses;
- the name, address, and contact details of the lessor of the outlet, where the applicant leases or holds an entitlement to occupy the outlet from another person; and
- sufficient evidence of the nature of the applicant's entitlement to occupy the outlet (for example, pursuant to a lease).

The Bill will also require licensees issued with a licence after commencement to notify Queensland Health of any changes to these matters as part of ongoing notification obligations.

This additional information will improve Queensland Health's ability to detect unfit applicants, including illegitimate or sham businesses, and will also allow the lessor of the premises to be identified for the purposes of enforcement. This will be essential for enforcing the new lessor offence and civil penalty, and identifying and giving notice to lessors of closure orders issued against their properties.

### ***Wholesaler invoices***

The Act requires wholesale licensees to issue invoices to retail licensees relating to the supply of smoking products. Retailers must retain the invoices for at least two years, and it is an offence not to do so, carrying a maximum penalty of 140 penalty units. However, licensed wholesalers are not subject to the same obligation. The Bill amends the offence provision to

require licensed wholesalers (including retail licensees subject to a limited wholesale condition) to also retain invoices for this period.

This will ensure licensees are subject to the same obligations, regardless of their retail or wholesale status. This amendment will assist authorised persons to track the sale of smoking products, as wholesalers are only permitted to sell to licensed retailers under the Act.

Invoices may be analysed to identify any discrepancy between the products received and handled between licensed wholesalers and retailers. This will assist authorised persons to investigate the wholesale distribution network and identify supply chains between licensees, for monitoring purposes.

### ***Written acknowledgement of prevention measures***

The Act requires suppliers and tobacco vending machine operators to take prevention measures to reduce the risk of employees supplying smoking products to children. These measures involve providing instructions to employees about the employee's responsibilities to avoid providing smoking products to children, and obtaining written acknowledgements from each employee to confirm they understand those instructions. Authorised persons may inspect written acknowledgements.

To increase efficiencies and reflect modern practices, the Bill will clarify that written acknowledgements can be provided in an electronic format by licensees when requested for inspection. This will ensure that online training records or extracts from electronic record management systems can be provided to Queensland Health to satisfy the request. Electronic formats are acceptable provided there is a unique identifier that demonstrates each individual has in fact been briefed on the prevention measures and understands their responsibilities and the consequences of supplying smoking products to a child.

The Bill defines *unique identifier* to include the following:

- a digital signature of the person; and
- an identifying number for the person.

### ***Smoking areas at particular liquor licensed premises***

Under the current Act, most venues that serve food and drink may nominate a smoking-only area, where food and drink must not be served, or a designated outdoor smoking area, where food must not be served but drinking is allowed. However, this does not apply to certain liquor licensed premises—specifically, those with a commercial hotel licence, community club licence, or a casino under a commercial special facility licence. These venues are instead only permitted to establish a designated outdoor smoking area, where drinking is allowed. These venues cannot opt to instead have a smoking-only area where food and drink must not be served.

The Bill makes amendments to give these licensed venues greater flexibility, by providing the option to choose either a smoking-only area, or a designated outdoor smoking area.

This change allows venues to adopt arrangements that best suit their operations. It also reduces regulatory burden, as the requirement to develop a smoking management plan and display

signage for a designated outdoor smoking area does not apply if the venue chooses to establish a smoking-only area instead.

From a public health perspective, the option to establish a smoking-only area instead of a designated outdoor smoking area may help reduce the time patrons spend in smoking environments. Smoking only areas are less likely to encourage prolonged socialising while smoking, which is more common when alcohol consumption is also permitted.

### ***Prescribing penalty infringement notices***

The *State Penalties Enforcement Act 1999* enables the issuing of PINs for certain offences as an alternative to prosecution. The recipient of a PIN can either pay the fine set out in the PIN or, if they wish to contest the offence, elect to have the matter decided by a court.

PINs can be issued for an offence if the offence is prescribed in schedule 1 of the State Penalties Enforcement Regulation as an infringement notice offence. PINs are an essential component of the enforcement framework under the Act.

The Bill prescribes three offences as new PIN offences—sections 49(3), 49(4) and 209C(1).

Prescribing section 209C(1) as a PIN offence is intended to address the persistent non-compliance with closure orders, with some operators continuing to sell illicit tobacco and illicit nicotine products in defiance of regulatory action. This behaviour undermines enforcement efforts. By enabling the issue of a PIN for section 209C(1), the Bill provides a more immediate and practical enforcement tool to deter this conduct.

Sections 49(3) and 49(4) are prescribed as PIN offences to improve the deterrent effect of failures by licensees to keep invoices for the required period and to allow for effective and prompt enforcement.

## **Alternative ways of achieving policy objectives**

There are no alternative options that would achieve the Bill's objectives as effectively as the proposed reforms.

Over the past 12 months, the Queensland Government has made significant amendments to the Act and the State Penalties Enforcement Regulation to strengthen enforcement. These changes have improved compliance outcomes but further changes are required to fully address ongoing contraventions, the entrenched economic incentives of the illicit market, and the need for faster, more responsive enforcement action.

The illicit tobacco and illicit nicotine product trade is increasingly sophisticated, well-resourced, and highly profitable. Offenders adapt quickly to enforcement measures, and in some cases, are supported directly or indirectly by commercial lessors willing to ignore illicit activity. Traditional measures, such as increasing penalties or restricting licences, are not sufficient to address this behaviour. The scale and profitability of the industry requires a more comprehensive and targeted response that removes opportunities for offenders to continue operating and creates a strong deterrent against facilitating illegal trade.

Several alternatives to the statutory termination power were considered, including restricting it to leased premises subject to long-term closure orders. However, this would allow lessees to continue occupying and trading from the relevant premises until a court order was obtained, which could take considerable time. During that period, the illegal trade could continue and lessors would remain exposed to the legal, financial and reputational risks of leasing to offending lessees. The broader termination power offers a timelier and more proportionate tool for protecting commercial lessors, reducing the premises available for illegal activity and ensuring closure orders achieve their intended effect.

When developing the lessor offence and civil penalty provision, several options were considered. These included a deeming provision to automatically attach liability to a lessor following service of a closure order, varying the knowledge threshold, altering the penalty amount, and retaining only the civil penalty. None of these approaches matched the effectiveness of the dual-enforcement framework outlined in the Bill. This framework reserves criminal penalties for more serious conduct, where a lessor knowingly permits illicit trade, while applying a civil penalty where a lessor facilitates the trade by turning a blind eye. The combination ensures proportionality, maintains flexibility and provides a strong deterrent against the targeted behaviour. Civil penalties, as a regulatory measure, aim to drive compliance rather than punish, while still enabling lessors to weigh commercial considerations against the potential costs and risks of termination.

Consideration was also given to broadening the closure offence to prohibit any person from being at the premises during a closure period, mirroring the South Australian model.<sup>17</sup> This approach was not adopted as there may be legitimate reasons for certain individuals to be present at the premises. The intended outcome is to prevent the business from opening to the public, and to prevent any products or services from being supplied at the premises during the closure, not to impose a blanket prohibition on entry.

Alternative approaches to particular amendments are also addressed in the Human Rights Statement of Compatibility for the Bill. Ultimately, it was determined that the Bill, as drafted, was the most efficient and reasonable approach. Across all areas, the Bill's provisions have been determined to be the most effective and reasonable means of delivering the policy objectives.

The reforms are carefully targeted to disrupt the financial drivers of the illicit trade, strengthen the tools available to Queensland Health and reduce the opportunities for both direct offenders and those who enable their operations. By increasing the duration of closure orders, expanding the closure offence, reducing the premises available for illegal activities, disincentivising lessors from leasing to non-compliant operators and allowing for the seizure of 'compromised goods', the Bill closes existing enforcement gaps and responds to the increasingly organised and profit-driven nature of the illicit market.

## **Estimated cost for government implementation**

The amendments in the Bill will be met by existing budget allocations.

The Queensland Government has announced a funding package of \$12.7 million over two years (2025-27) to support frontline enforcement of the amendments in the Bill. Funds will be used to increase the pace and impact of action on illicit tobacco and illicit nicotine products, and

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<sup>17</sup> Subsection 69CD(2), *Tobacco and E-Cigarette Products Act 1997* (SA).

expedite seizures, store closures, fines and prosecutions of non-compliant businesses. This builds on recurrent funding of \$5 million for enforcement and \$4.9 million for nicotine dependence services.

## **Consistency with fundamental legislative principles**

Several amendments in the Bill may impact upon fundamental legislative principles. Potential departures from these principles have been carefully assessed and are justified given the Bill's primary objective of improving the health of Queenslanders by reducing exposure to illicit tobacco and illicit nicotine products. Where departures are necessary, their impact has been minimised as far as practicable.

### **Amendments to the Tobacco and Other Smoking Products Act 1998**

#### **Whether the legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act 1992, s 4(3))**

##### ***Exercise of administrative power***

Section 4(3)(a) of the Legislative Standards Act refers to legislation which makes rights and liberties dependent on administrative power. It provides that legislation may have regard to the rights and liberties of individuals if the administrative power is sufficiently defined and subject to appropriate review.

##### ***Extension of closure orders***

The Bill extends existing administrative powers under the Act to allow the chief executive to issue closure orders for a longer period. Currently, the Act enables the chief executive to order the closure of a premises for up to 72 hours where there is a reasonable suspicion that illicit tobacco or illicit nicotine products are being supplied, or the chief executive is satisfied that unlicensed sale of smoking products is occurring.

The Bill allows the chief executive to instead issue a closure for three months (a 'short-term closure order'). This amendment is intended to ensure closure orders serve as a meaningful deterrent against the supply or possession of illicit tobacco or illicit nicotine products and the operation of unlicensed businesses. This change responds to persistent non-compliance within the industry, where the current 72-hour limit has proven insufficient to deter offenders or disrupt operations in a meaningful way.

The longer closure period is intended to deliver a more substantial financial and operational impact on non-compliant operators, increasing the likelihood that the consequences of breaching the Act will outweigh any profit made through illegal conduct. The measure is designed to disrupt repeat offending by reducing opportunities to continue trading and by increasing the commercial risk associated with engaging in the illicit market.

To balance the greater consequences of a three-month closure, the Bill also strengthens the threshold that must be met before the power can be exercised by the chief executive. Instead of requiring the chief executive to hold a reasonable suspicion, the chief executive must be *satisfied* that illicit tobacco or illicit nicotine products are being supplied or possessed at the premises as part of a business activity, or that unlicensed sale of smoking products is being

carried on. This is designed to provide a timely regulatory response to illegal conduct, and will only apply where there is a clear connection between the premises and illegal activity.

The Bill also provides a range of discretionary factors that the chief executive may have regard to when deciding whether to issue a closure order. This allows for an assessment of whether another type of enforcement action, such as a PIN, an injunction or prosecution, would be more appropriate in the circumstances.

The amendments will affect lessors whose premises are subject to a closure order. To mitigate this, the Bill introduces a new statutory lease termination power, allowing a relevant lessor to terminate a lease when a closure order is issued. This recognises that closure orders may prevent the lessor from receiving rent or reletting the premises and ensures they are not unfairly burdened by the actions of non-compliant lessees.

The Bill clarifies that a short-term closure order will cease to have effect once a lease ends, whether through termination or expiry, aligning with the existing approach for long-term orders. This safeguard ensures that any interference with the lessor's property rights is both proportionate and time-limited, and that restrictions do not continue beyond the life of the lease.

Together, these amendments create a stronger and more effective framework to address ongoing non-compliance. They ensure that closure orders operate as a genuine deterrent to illegal activity, while also including practical safeguards to avoid unfair consequences for lessors who are not involved in the offending. By raising the threshold for issuing a short-term closure order and giving lessors a clear statutory power to end a lease affected by a closure order, the Bill balances fairness with effective enforcement. Although these measures impact upon property and commercial interests, the impacts are carefully constrained and necessary to protect the public and disrupt illegal operations. In this way, the amendments promote the broader public health and enforcement objectives of the Act while ensuring the regulatory response remains proportionate and fair.

#### *Seizure and forfeiture of compromised goods*

The Bill confers administrative powers on authorised persons to enter certain premises and seize legal products including, for example, legal cigarettes and hookahs, as 'compromised goods', in limited and prescribed circumstances. These powers are a targeted measure to support the Bill's overarching objective of disrupting the illegal market and protecting public health. They are designed to close a clear enforcement gap by ensuring that operators engaged in the illicit trade face immediate and significant commercial consequences.

The Bill allows authorised persons to seize compromised goods found at a place where illicit tobacco and illicit nicotine products are seized. Once the associated illicit products are forfeited, the compromised goods may likewise be forfeited and destroyed.

Current seizure powers for illicit products have not been sufficient to deter illegal activity, with many operators quickly restocking and resuming trading after enforcement action. Allowing the seizure of legal products that are tainted by their association with illegal products is intended to impose greater financial consequences, disrupt the business of illegal operators, and discourage legitimate retailers from dabbling in the illicit market.

The new powers are clearly defined and appropriately constrained. Compromised goods may only be seized if illicit tobacco or illicit nicotine products are also found and seized at the same



place. The scope of the power is confined to products already regulated under the Act. It is exercised only after lawful entry under the Act and does not authorise inspections or entry into places that are otherwise off-limits, such as residential premises, without the necessary authority.

Appropriate safeguards are in place to ensure the powers are exercised fairly and proportionately. Authorised persons are trained in identifying smoking products and hookahs, and are guided by internal policies, including directions to avoid seizing small quantities of illicit tobacco and illicit nicotine products from personal belongings. In extremely rare cases, legal property may be inadvertently forfeited and destroyed—for example, in circumstances where a personal use defence would have applied to the seized illicit tobacco or illicit nicotine products. In such circumstances, section 219 of the Act provides an avenue for individuals to seek compensation through the courts for any loss or expense incurred due to the exercise, or attempted exercise, of a power under part 11 of the Act, including under this new power.

The nature of the illicit market, including the involvement of organised crime, high profit margins, and deliberate evasion of enforcement, justifies the introduction of stronger powers targeted at non-compliant operators. The administrative powers of seizing and forfeiting compromised goods represent a necessary and reasonable enhancement to existing enforcement tools. This supports the overarching policy objective of disincentivising illegal trade and reducing the public health harms associated with illicit tobacco and illicit nicotine products.

Any limitation on fundamental legislative principles arising from the seizure and forfeiture of compromised goods is reasonable and justified. The power is narrowly framed, applies only in defined circumstances, and includes safeguards to prevent arbitrary or disproportionate use. It will not impact individuals who do not engage in the supply of illicit tobacco and illicit nicotine products. It responds to a clear enforcement gap and targets conduct undermining the regulatory scheme and public health objectives.

#### *Request for information power*

The Bill amends the Act to expand the existing information-gathering powers for authorised persons to request information relevant to the monitoring and enforcement of sections 65 to 67, 161, 161A and 209CE of the Act from any person. These sections relate to the unlicensed sale of smoking products, supply of smoking products to children, supply and commercial possession of illicit tobacco and illicit nicotine products and the new lessor offence.

This expansion will permit requests to be made where an authorised person reasonably believes that a person holds information relevant to potential non-compliance with the Act. This could include, for example, details from a lessor about steps taken to ensure their premises are not being used for the supply or possession of illicit tobacco or illicit nicotine products. The scope of the power is designed to assist in detecting potential or ongoing contraventions, rather than being limited to investigating offences that are believed to have already occurred. The maximum penalty for non-compliance is 100 penalty units.

A person must comply with a request made under this power unless the person has a reasonable excuse. A reasonable excuse may include circumstances where providing the information could incriminate the person. This is a safeguard which ensures the power is not applied inappropriately or in a way that unreasonably infringes upon individual rights.

Any limitation on this fundamental legislative principle resulting from this expanded power is reasonable and appropriately justified. The power is clearly defined, proportionate, and supported by the safeguards outlined above. The power is necessary to strengthen enforcement and support the effective administration of the Act.

### *Controlled purchase operations*

The Bill introduces administrative powers for the chief executive to authorise controlled purchase operations. This will enhance enforcement efforts by authorising controlled purchase officers to conduct covert operations. The primary intention is to provide targets with the opportunity to commit prescribed offences—namely offences against sections 65, 161 and 161A of the Act, related to the unlicensed sale of smoking products and the supply and commercial possession of illicit tobacco and illicit nicotine products—to collect evidence that will inform enforcement action under the Act.

Controlled purchase operations are necessary to respond to the prevalence and increasing sophistication of the illicit market. Operators often evade traditional inspection methods and rely on elusive tactics to continue illegal operations. This includes using closed membership for customers, group chat messaging to coordinate sales, online ordering with home delivery, and coded transactions. The use of covert operations will help overcome these barriers and ensure that evidence of offending can be secured in a timely and effective manner.

To ensure that the use of this power is consistent with fundamental legislative principles, the Bill includes several safeguards. First, only adult public service employees and health service employees may be appointed as controlled purchase officers. This ensures that the power is exercised by individuals subject to codes of conduct, accountability mechanisms, and disciplinary frameworks. Second, each controlled purchase operation must be individually authorised in writing by the chief executive, for a maximum duration of three months. Before authorising the operation, the chief executive must be satisfied of a range of matters relating to the proper conduct and oversight of the operation. Finally, controlled purchase officers will be required to act in accordance with the terms of their appointment and the operation authority, with their conduct supervised by an authorised person responsible for the operation, and overseen by the chief executive.

The use of covert operations may raise concerns about the scope of administrative power, as the operations will not be subject to external review or judicial oversight. In addition, the covert nature of these operations may raise issues in relation to procedural fairness and the general principle that entry into premises should occur only with occupier consent or under a warrant, as discussed further below. However, these concerns are addressed through the limited scope and targeted purpose of the amendment. Controlled purchase operations will only be used in clearly defined circumstances and in relation to three key offences under the Act, being the unlicensed sale of smoking products and the supply and commercial possession of illicit tobacco and illicit nicotine products.

Controlled purchase operations will assist with collecting intelligence to confirm whether these activities are occurring. Without the ability to conduct these operations, authorised persons may be unable to obtain the evidence necessary to take meaningful action against illegal operators.

Any limitations on rights or liberties resulting from controlled purchase operations are reasonable and justified in the context of the purpose of these operations and the applicable

safeguards. The powers are clearly defined, limited in scope, and supported by several precautions including appointment restrictions, narrowly scoped authorities, training, and oversight. These operations are necessary to support the effective administration and enforcement of the Act.

### *Natural justice*

Section 4(3)(b) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the three principles of natural justice, which require:

- that something should not be done to a person if it would arbitrarily deprive the person of some right, interest or legitimate expectation;
- that the decision-maker be unbiased; and
- procedural fairness.<sup>18</sup>

### *Statutory lease termination power*

The Bill permits a relevant lessor to exercise the statutory power to terminate a lease where a closure order has been issued. As closure orders are not subject to review rights, this may be seen as undermining procedural fairness for the lessee.

The power, and therefore the departure from natural justice principles, serves two purposes.

The first is to enable the lessor to protect their own commercial and financial interests. Closure orders may apply for a period of three months (short-term closure orders) or up to 12 months (long-term closure orders), during which time the premises cannot lawfully be used for retail or wholesale purposes. Without the ability to terminate the lease, a lessor may suffer financial loss from unpaid rent, an inability to relet the premises, or reputational damage. The statutory lease termination power provides protection for lessors, who are burdened by the impact of a closure order due to the lessee's illegal conduct. It gives lessors a timely and effective mechanism to act when their premises are subject to a closure order.

The second purpose is to disrupt illegal trading activity by reducing the availability of commercial premises for unlawful use. By empowering lessors to take swift action, the Bill supports broader enforcement and deterrence measures under the Act.

Closure orders are generally only made where previous enforcement action has been taken against the lessee, demonstrating a pattern of offending behaviour. Lessees will, in most cases, have had prior opportunities to address their offending conduct, and to avoid a closure order being imposed.

The departure is reasonable and justified as it ensures lessees engaging in illegal conduct can be evicted, reduces the availability of commercial premises for illegal supply and allows lessors to protect their commercial interests and avoid liability under the lessor offence and civil penalty.

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<sup>18</sup> The Office of Queensland Parliamentary Committee, *Fundamental Legislative Principles – The OQPC Notebook*, [https://www.legislation.qld.gov.au/file/Leg\\_Info\\_publications\\_FLPNotebook.pdf](https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLPNotebook.pdf), pp. 24- 25.

### *Seizure and forfeiture of compromised goods*

The Bill introduces the concept of compromised goods and permits authorised persons to seize compromised goods found at a place where illicit tobacco or illicit nicotine products are seized.

In some cases, the forfeiture of compromised goods will be subject to limited procedural fairness. This occurs when the illicit nicotine products found at the same place are vaping goods. Under section 205B of the Act, vaping goods can be immediately forfeited without a show cause process. Because the forfeiture of compromised goods depends on the forfeiture of the illicit products found, any compromised goods located alongside vaping goods would also be forfeited immediately. In such case, the owners of those otherwise legal products would not have the opportunity to be heard before the items are forfeited.

However, the purpose of the limitation on natural justice is to ensure that the immediate impact on individuals and businesses is sufficient to deter their involvement in the illicit market.

The seizure of illicit tobacco and illicit nicotine products alone has not been sufficient to deter the supply of illicit products, and many operators quickly restock and resume trading after enforcement action. Including compromised goods in the seizure framework is designed to impose a greater financial consequence, disincentivise licensed businesses from dabbling in the illegal market, and create an immediate consequence for stocking illicit products. Further justification of this limitation on natural justice is provided on pages 24 and 25.

This amendment meets the policy objectives of the Bill, including by deterring the supply of illicit tobacco and illicit nicotine products due to their detrimental impacts on public health. Accordingly, any limitation on natural justice is reasonable and proportionate, and the amendment remains consistent with the principles of natural justice.

### *Bongs, ice pipes and their components*

The Act currently prohibits the sale, supply and display of bongs, components of bongs, ice pipes, and components of ice pipes, but does not prohibit their commercial possession or storage. Authorised persons have reported that some retailers store bongs and ice pipes in stockrooms or storage areas, claiming they are not for sale or are intended to be returned to a wholesaler, when they are in fact available for sale on request by a customer. Additionally, the Act currently does not expressly permit the forfeiture of components of bongs and ice-pipes. Retailers exploit this loophole by separating these products into their components so they cannot be forfeited.

To strengthen enforcement, the Bill amends the Act to make it an offence to store and commercially possess bongs, ice pipes and their components. This ensures that all such items can be lawfully seized. The Bill also makes it clear that dismantled or separated parts of bongs or ice pipes are subject to forfeiture decisions by the chief executive.

To ensure procedural fairness, the forfeiture of ice pipe and bong components may only occur after a show cause process. Any decision of the chief executive to forfeit these seized items is subject to judicial review. As part of this process, the owner of the seized component, ice pipe or bong will be issued with a notice, which gives them an opportunity to respond to the chief executive's belief that the item seized is an ice pipe, a bong or a component of either and that keeping the item is necessary to prevent it from being used to commit the offence for which it was seized.

This process ensures transparency and provides the owner of the item with a clear explanation of the decision, which can be relied upon if they choose to seek judicial review. An owner may bring an action to appeal a forfeiture decision in the Magistrates Court, which is empowered to confirm the original decision, make a substitute decision, or set aside the decision and return the matter to the chief executive with directions.

As such, any limitation on rights resulting from the offences and forfeiture powers is reasonable and justified. The amendments are targeted at closing a known gap in the existing legislative framework. Importantly, the inclusion of a show cause process and the right to judicial review ensures procedural fairness is preserved.

#### *Executive officer liability*

Section 4(3)(b) of the Legislative Standards Act also deals with procedural fairness. Procedural fairness involves a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances.

The Bill may limit an individual's right to procedural fairness, as it amends the Act to reverse the evidential burden of proof for the executive liability provision offences. Under the Bill, an executive officer will be deemed to have committed the offence unless they satisfy the evidential burden of showing that either they did not know, and could not reasonably have been expected to know, of the corporation's conduct constituting its offence, or that they took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence.

Where an executive officer discharges this evidential burden, the defence is taken to apply unless the State can prove, beyond reasonable doubt, that the defence does not apply. This shifts the evidential burden of proof to the executive officer, who is best placed to justify their role and actions.

The lucrative nature of supplying illicit tobacco and illicit nicotine means that many entities involved in the illicit trade deliberately use complex corporate arrangements to obscure individuals from legal consequences while continuing to profit from illegal conduct. The limitation on procedural fairness is justified because it ensures executive officers cannot avoid liability by hiding behind the corporate veil and ensures they are held accountable where they fail to take reasonable steps to prevent corporate offending.

#### *Evidentiary aids*

A key element of procedural fairness is adherence to the rules of evidence. Any departure from these rules must be appropriately justified. The Bill introduces evidentiary aid provisions, which allow the chief executive to issue signed certificates attesting to certain non-controversial factual matters for use in court proceedings.

The use of evidentiary aids effectively reverses the burden of proof for the defendant (or respondent in civil penalty proceedings), who would need to demonstrate that the certified facts are incorrect.

Despite this reversal, the inclusion of evidentiary aids is necessary to reduce the burden on the courts and streamline proceedings. These provisions help minimise delays and complexity

while maintaining fairness. Evidentiary aids are commonly used across Queensland legislation and are recognised as an effective tool for improving the efficiency of court processes.

The use of evidentiary aids in this context is justified as:

- the evidence in evidentiary certificates is not conclusive and the defendant or respondent can lead evidence in rebuttal of the evidence;
- the evidence provided in an evidentiary certificate is often information extracted from records maintained by Queensland Health in relation to its regulatory and enforcement activities—for example, relating to matters such as licences, authorisations and notices; and
- the certificates are for matters that are generally non-contentious and do not go to the core elements in dispute as part of a proceeding.

Evidentiary aids also benefit defendants by reducing the costs of court proceedings. Recent amendments introducing new section 223A allow the courts to order convicted persons to pay the reasonable costs incurred by Queensland Health in managing seized items, investigating offences under the Act, and preparing for prosecution. This applies to all offences under the Act, not just those offences involving illicit tobacco or illicit nicotine products, enabling the State to seek cost orders in all appropriate cases. The use of evidentiary aids reduces the time and cost imposed on all parties to court proceedings, thereby promoting further fairness.

### ***Reversing evidential onus***

Section 4(3)(d) of the Legislative Standards Act states the principle that legislation must not reverse the onus of proof in criminal proceedings without adequate justification. The reversal of the onus may be reasonable and appropriate in circumstances where the conduct poses a danger to the health and safety of the public, and where the matters required for proof are within the person's knowledge and can be easily adduced, if required.

### ***Executive officer liability***

As outlined earlier at page 29, the Bill reverses the evidential burden of proof for executive liability provision offences. An executive officer will be taken to have committed the offence unless they can demonstrate that they did not know, and could not reasonably have been expected to know, of the corporation's conduct, or that they took all reasonable steps to prevent the conduct. Where the evidential burden is discharged, the defence is taken to apply unless the State can prove beyond reasonable doubt that it does not.

The facts relevant to the executive officer's knowledge of the corporation's conduct, and the steps taken by them to avoid the corporation committing the offence, are uniquely within their control and can be readily presented in court, if required. This approach is necessary to ensure executive officers of commercial entities engaged in the illegal trade cannot evade the consequences of their actions.

Further justification of this limitation and appropriate safeguards are discussed on page 29. On balance, any limitation on fundamental legislative principles is reasonable and proportionate, and the amendment remains consistent with the rights and liberties of individuals.

### *Entry and seizure via warrant*

Section 4(3)(e) of the Legislative Standards Act states that legislation may have regard to rights and liberties of individuals if the conferral of power to enter premises, and search for or seize documents or other property, occurs only with a warrant issued by a judge or other judicial officer.

#### *Entry to wholesale premises*

The Bill departs from this general principle, by allowing authorised persons to enter wholesale outlets and premises where illicit nicotine products are available for wholesale supply, without a warrant or occupier's consent. This change is necessary to close an enforcement gap and to strengthen Queensland Health's ability to limit the supply and possession of illicit tobacco and illicit nicotine products in the community.

Following entry, the Act empowers authorised persons to seize anything they reasonably believe is evidence of an offence against the Act or is otherwise covered by the terms of the consent or warrant. Extending this power to wholesale premises enables earlier intervention, allowing illicit products to be intercepted before they enter the retail market.

Requiring a warrant to be issued prior to entry would not be practicable and would hinder enforcement and seizure of evidence related to illicit supply. The illicit trade involves sophisticated supply networks and the movement of products between premises at speed. Historically, such entry powers have been applied in the retail environment, leaving the wholesale sector as an unintended enforcement gap that could be exploited.

Safeguards remain in place. To protect against misuse, the power to enter is confined to periods when the outlet or premises is open for carrying on a business, and operates in the same manner as the power to enter retail premises.

Extending the power for authorised persons to enter and search a wholesale premises without a warrant is justified having regard to the public health objectives of the Bill. Preventing illegal activity linked to organised crime and addressing significant public health and safety risks to the community is a legitimate aim and justifies the limitation presented by the power of entry to wholesale premises.

#### *Seizure and forfeiture of compromised goods*

The power to seize and forfeit compromised goods found at a place where illicit tobacco and illicit nicotine products are seized may depart from the general presumption in favour of warrants.

Under the amendment, an authorised person may seize items if they have a reasonable belief the items are compromised goods and illicit tobacco or illicit nicotine products have been seized at the same place. Lawful entry under the Act remains a prerequisite.

As outlined above, section 181(2) allows warrantless entry to certain locations, including premises where illicit nicotine products are supplied or where both legal and illicit products are present. Section 197 allows the seizure of evidence from a place entered without a warrant, while section 198 covers seizure where entry is under a warrant. Because warrants typically do

not list legal goods, compromised goods could not be seized unless they constituted evidence of an offence.

The Bill overcomes this gap by amending sections 197 and 198 to allow authorised persons to seize compromised goods, despite not being evidence of an offence or specified in a warrant. This amendment is required to ensure there is an immediate consequence for operators engaging in the trade of illicit tobacco and illicit nicotine products. Authorised persons are trained in identifying smoking products and are subject to internal policies, which direct officers to avoid seizing small quantities of illicit products from individuals' personal belongings.

The power to seize and forfeit compromised goods is narrowly framed, applying only in defined circumstances where illicit tobacco or illicit nicotine products are seized, and includes safeguards to prevent arbitrary or disproportionate use. It will not impact individuals and businesses uninvolved in the supply of illicit tobacco and illicit nicotine products. It responds to a clear enforcement gap by targeting conduct that undermines the regulatory scheme and public health objectives. Compensation will be available for wrongful seizure or forfeiture. Further justification of this limitation and appropriate safeguards are discussed on pages 24 and 28.

Accordingly, any limitation on fundamental legislative principles is reasonable and proportionate—the amendment remains consistent with the rights and liberties of individuals.

#### *Controlled purchase operations*

Under the Bill, controlled purchase officers will be entitled to enter premises without a warrant, in the same manner as any ordinary customer. Even though entry is for an investigative purpose, controlled purchase officers will not be required to present a warrant, request occupier consent, show identity cards, or declare their purpose for attending the premises.

Controlled purchase operations are necessary to respond to the prevalence and growing sophistication of the illicit market. Operators often evade traditional inspection methods and rely on elusive tactics to continue their illegal operations. This includes using closed membership for customers, group chat messaging to coordinate sales, online ordering with home delivery, and coded transactions. These methods make detection and evidence gathering difficult without covert investigative powers.

Only adult public service employees and health service employees may be appointed as controlled purchase officers, and each controlled purchase operation must be individually authorised in writing by the chief executive. These safeguards ensure that controlled purchase operations are tightly controlled and only used where necessary.

Further justification of this limitation is discussed on page 26. On balance, any limitation on fundamental legislative principles is reasonable and proportionate, given the need to disrupt illegal supply networks and achieve the Bill's public health objectives.

#### *Immunity from civil or criminal action*

Section 4(3)(h) of the Legislative Standards provides that legislation should not confer immunity from proceedings or prosecution without adequate justification.



### *Statutory lease termination power*

The Bill provides that relevant lessors who validly exercise the statutory power to terminate a lease under section 209CC are afforded a range of legal protections. These protections include that a lessor is not liable for damages or compensation, on any ground, to any person, in relation to the termination of the lease. The Bill provides immunity from court proceedings that may otherwise arise, including under the *Property Law Act 2023*, *Retail Shop Leases Act 1994* and *Small Business Commissioner Act 2022*, in relation to the termination. These protections aim to provide lessors with the confidence to terminate a lease and end a closure order over their premises.

Granting this immunity is intended to facilitate the eviction of persons supplying illicit tobacco and illicit nicotine products, as well as those engaging in unlicensed sale of smoking products, and to deprive them of commercial premises from which to conduct their illegal business. By affording this protection to lessors, the Bill enables the swift removal of operators from their premises, disrupting illegal trade. The termination will be taken to be termination due to a repudiation of a lease by the lessee, preserving the rights and powers of the lessor, including the right to claim damages or a rental bond. This acts as a further disincentive and provides legal protection to the lessor who may incur costs in evicting the lessee.

Lessors will still be able to exercise any rights they may have under the terms of their lease, but granting an immunity that encourages lessors to evict illicit operators benefits the public by reducing the number of illicit operators working out of visible shopfronts. This immunity also ensures that lessors have a sufficiently viable mechanism to protect themselves against the lessor offence and corresponding civil penalty provision.

On balance, the public interest benefits associated with reducing the supply and possession of illicit tobacco and illicit nicotine products justifies any limitation of fundamental legislative principles arising due to the immunity provided to lessors, noting that the lease termination arises from the illegal conduct of the lessee.

### *Controlled purchase operations*

The Bill provides protection from criminal liability for persons participating in controlled purchase operations, where they act within the scope of their appointment and the operation authority issued by the chief executive. Civil liability protection is afforded to both public service employees and health service employees under the Public Sector Act.<sup>19</sup>

Controlled purchase operations will assist in collecting critical intelligence to confirm whether these activities are occurring. Without the ability to conduct these operations, authorised persons may be unable to obtain the evidence necessary to take meaningful action against illegal operators and collect sufficient evidence to address illegal conduct.

To ensure that the use of these operations is consistent with the fundamental legislative principles, the Bill includes several safeguards modelled on other legislative frameworks that permit controlled operations. In these other legislative frameworks, immunity from civil and

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<sup>19</sup> See schedule 1, *Public Sector Regulation 2023*, which prescribes health service employee for the purpose of section 268, *Public Sector Act 2022*.

criminal liability also attaches to participants of these operations to ensure eligible persons are not dissuaded from taking part in covert investigations.<sup>20</sup>

The provisions in the Bill relating to controlled purchase officers are designed to ensure Queensland Health can obtain direct, first-hand evidence of the supply and possession of these illicit products. Given the strict safeguards in place, the public health objectives of the Bill, and the need to protect participants in covert operations, it is justified to provide immunity from civil and criminal action in this instance.

### ***Compulsory acquisition of property***

Section 4(3)(i) of the Legislative Standards provides that legislation should provide for the compulsory acquisition of property only with fair compensation. This means that a legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason for not doing so (for example, the power to confiscate the profits of crime).

### ***Seizure and forfeiture of compromised goods***

While the seizure and forfeiture of compromised goods involves interference with legal property, it is not an unjustified acquisition. The amendment targets individuals who engage in illegal activity, and the forfeiture of these goods is part of an enforcement framework aimed at addressing a serious public health issue.

A common exception to this legislative principle relates to the State seizing assets obtained using the proceeds of crime. While not necessarily acquired as a direct result of the proceeds of illicit tobacco and illicit nicotine products sales, the proximity of illicit products to the legal products compromises the legal products by association.

Allowing the seizure and forfeiture of compromised goods provides an additional enforcement tool to disrupt illegal trade. This amendment increases the financial consequences for non-compliant operators by enabling the removal of broader inventory that facilitates illegal conduct. It is designed to deter unlawful activity by making it clear that businesses involved in the illegal trade risk losing not only illicit stock but also legal smoking products. The financial disincentive reduces the profitability of mixing legal and illegal trade and discourages others from entering or dabbling in the illicit market, as the potential loss may be too great to justify the risk.

Compensation will be available under section 219 of the Act in the unlikely event that compromised goods are wrongfully seized, forfeited and destroyed. Consistent with the requirement to provide the owner of a seized thing with a receipt of the seizure under section 202 of the Act, compromised goods will be documented and a receipt provided to the person from who it was seized. This will ensure the description and condition of compromised goods are recorded, should any wrongful damage or destruction occur.

Further justification of the limitation and appropriate safeguards is provided at pages 24, 28 and 31. Accordingly, any limitation on fundamental legislative principles is reasonable and proportionate, and the amendment remains consistent with the rights and liberties of individuals.

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<sup>20</sup> See *Police Powers and Responsibilities Act 2000*, sections 258 and 259.

***Does the legislation in all other respects have sufficient regard to the rights and liberties of individuals?***

The list of examples in the Legislative Standards Act is not an exhaustive list of the issues relevant to deciding whether legislation has sufficient regard to the rights and liberties of individuals. Further considerations include whether the legislation infringes on the privacy of individuals, whether it unduly restricts ordinary activities (including the right to conduct business without interference), whether the consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied, and if the legislation imposes presumed responsibility on others.

***Right to privacy***

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have been identified by the former Scrutiny of Legislation Committee as relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The Bill contains a range of amendments that may infringe upon the privacy of individuals, including expanded powers of entry, the power to require information from any person relating to the monitoring or enforcement of certain provisions of the Act, and the use of controlled purchase operations.

***Entry to wholesale premises***

The Bill amends the Act to allow authorised persons to enter wholesale premises without a warrant or occupier consent when the outlet is open for business or where illicit nicotine products are available for sale by wholesale.

The amendment is required to enable more efficient monitoring and enforcement under the Act, and to allow swift seizure of illicit tobacco and illicit nicotine products before they are supplied to the community. It is also consistent with the powers currently available for entry into retail premises. Further justification of the limitation is discussed on page 31.

Any limitation on fundamental legislative principles is reasonable and proportionate, and the amendment remains consistent with the rights and liberties of individuals.

***Request for information power***

This amendment will engage the right to privacy because it may involve the disclosure of personal information of licensees, lessors and other parties. Given the breadth of the power, there is potential for personal or confidential information to be disclosed.

The purpose of this amendment is to ensure Queensland Health can obtain the information necessary to monitor and enforce compliance with specified offences under the Act, relating to unlicensed sale of smoking products, supply of smoking products to children, the supply and commercial possession of illicit tobacco and illicit nicotine products, and the new lessor offence.

The amendment applies to a wider range of information and people. Failure to comply with an information request attracts a maximum penalty of 100 penalty units. However, this

amendment is accompanied by a reasonable excuse defence which ensures individuals are afforded an opportunity to raise an appropriate defence for failing to comply with the request, including self-incrimination.

Given that authorised persons are focused on disrupting the supply and possession of illicit tobacco and illicit nicotine products, the new information-gathering power is sufficiently justifiable to ensure illegal activity is identified early and investigated.

The scope is also deliberately limited—it does not extend to all provisions of the Act, but only those offences critical to achieving its objectives, such as reducing exposure to smoking products and limiting access to illicit products. This amendment will complement the objects of the Act by strengthening the monitoring, investigation, and enforcement framework.

#### *Controlled purchase operations*

The introduction of controlled purchase operations, as outlined above on pages 26, 32 and 33, may limit the right to privacy. These operations are intended to enhance enforcement efforts by authorising controlled purchase officers to conduct covert operations to detect and investigate specified offences and gather evidence to support enforcement action under the Act.

Controlled purchase operations are necessary to respond to the prevalence and increasing sophistication of the illicit market. Operators often evade traditional inspection methods and rely on various elusive tactics to continue illegal operations.

Under the framework, these operations will occur without the knowledge or consent of the occupier and without the need to obtain a warrant. As such, they may limit a person's reasonable expectation of privacy, despite these sales being undertaken in places open to the public. These sales may also be initiated online, where certain information is shared with a person that would not otherwise be shared with a representative of Queensland Health.

The form of these operations is clearly defined, limited in scope, and supported by several precautions including appointment restrictions, narrowly scoped authorities, training, and oversight. Further justification of this limitation is discussed on pages 26, 32 and 33. Any limitation on fundamental legislative principles is reasonable and proportionate, and the amendment remains consistent with the rights and liberties of individuals.

#### ***Restrictions on ordinary activities must be justified***

Although not specifically enumerated in the Legislative Standards Act, legislation should not, without sufficient justification, unduly restrict ordinary activities. An activity should be lawful unless, for a sufficient reason, it is declared unlawful by an appropriate authority. This includes avoiding undue interference with a person's conduct of business.

#### *Extension of closure powers*

The Bill extends the period for which closure orders can be issued, and amends the existing section 209C offence to include opening the premises to the public, supplying products or providing services from the premises, and working in a business involving the supply or provision of any product or service at the premises. This expands the remit of the rights interfered with and further restricts a person's ability to conduct a business from the premises.

Restrictions that interfere with a person's ability to conduct a business can be justified, particularly where the rationale for the restriction is to protect the health and safety of the public. In this instance, restricting a person's ability to conduct a business and sell any products or provide any services for an extended period of time is justified as it provides a sufficient financial deterrent and ensures the intent of a closure order is fully realised.

The longer closure periods and expanded closure offence increase the likelihood that the consequences of breaching the Act will outweigh the profits made through illegal conduct and will help disrupt repeat offending.

The restrictions placed on ordinary business activities are justified in light of the public health risks of illicit tobacco and illicit nicotine products, and the fact that the restrictions are placed primarily on people dealing with these illicit products or otherwise flouting the Act through the unlicensed supply of smoking products.

### ***Proportionate and relevant consequences***

Although not specifically enumerated in the Legislative Standards Act, for legislation to have sufficient regard to the rights and liberties of individuals, the consequences imposed by legislation should be proportionate and relevant to the actions to which they are applied. Legislation should maximise the reasonableness, appropriateness and proportionality of the legislative provisions giving effect to policy.

### ***New offences***

The fundamental policy intent of the Bill is to protect public health and safety by increasing deterrents against participating in the illegal market.

To give effect to this, the Bill introduces the following new offences:

- an offence for a relevant lessor of premises who knowingly permits their premises to be used by another person for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity, unless the relevant lessor has a reasonable excuse;
- an offence of failing to comply with a request for information relevant to the monitoring or enforcement of certain provisions of the Act, unless the person has a reasonable excuse;
- failure of a relevant lessor to provide notice to Queensland Health following the end of a lease subject to a closure order; and
- failure of a wholesale licensee to keep invoices for at least two years.

The Bill will also amend existing offences to ensure they better deter operators from acting contrary to the intent of the Act. This includes expanding the offence relating to the supply of smoking products during a closure period to prohibit the opening of the premises to the public and the supply of any other product or service during a closure period, thereby ensuring a greater financial deterrent for non-compliance. The Bill also amends the offences related to bongs, ice pipes and components of these items to capture storage and possession, closing an existing enforcement gap, as outlined above from page 28.

Introducing a specific offence for lessors is reasonable as it reflects the role that some lessors play in knowingly permitting illicit operations by providing a base from which illegal activity

can be conducted. Permitting premises to be used for the supply or possession of illicit tobacco or illicit nicotine products poses significant risks to the community and neighbouring businesses. The maximum penalty for the lessor offence is one year's imprisonment, 1,000 penalty units, or both. The penalty framework reflects the seriousness of this conduct.

A term of imprisonment sends a clear message that knowingly enabling illegal operations is unacceptable and will be met with a strong enforcement response. A monetary penalty alone may not be sufficient to shift behaviour where the financial gain from knowingly leasing to non-compliant lessees outweighs the risk of a fine. Prosecutorial and judicial discretion will be exercised to ensure fairness and proportionality, with consideration to be given to the individual circumstances of each case.

The inclusion of a reasonable excuse defence further protects lessors from unfair outcomes. It ensures that individuals who take reasonable and proactive steps to prevent or respond to illegal use of their premises are not penalised. However, this defence is not intended to shield deliberate inaction. Courts will have full discretion to consider the evidence and ensure that outcomes are fair but not lenient in the face of serious non-compliance.

While the defence places the evidential burden of proof on the defendant to prove that it applies, this is appropriate as the lessor is best placed to explain the steps they took and their knowledge of the conduct. The legal burden to prove that the defence does not exist rests on the State to prove beyond a reasonable doubt.

The failure to comply with a request for information relevant to the monitoring or enforcement of certain provisions of the Act, without reasonable excuse, is appropriate and proportionate in the circumstances of regulating an industry that has significant health and safety implications. The ability to request information from a range of entities and persons to support regulatory action before the commission of an offence helps strengthen the enforcement framework under the Act.

In terms of the failure of a wholesale licensee (or a retail licensee subject to a limited wholesale condition) to keep invoices for at least two years, this offence is proportionate and appropriate as it mirrors the identical offence for retail licensees. This offence creates a consistent approach across licensees and closes an enforcement gap.

In exercising the administrative power of imposing these offences, consideration has been given to sufficiently defining the scope of the offences to limit the imposition on rights. As such, the new and amended offences are appropriate and proportionate in the context of the policy intent.

#### *Civil penalty provision*

The Bill enables the chief executive to apply for a civil penalty order where the chief executive is reasonably satisfied that the lessor has permitted another person to use their premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity.

The maximum penalty for a civil contravention is equivalent to 1,000 penalty units for an individual and 5,000 penalty units for a corporation. This provision is intended to apply in circumstances where a relevant lessor has been recklessly indifferent to the unlawful conduct or has failed to take reasonable steps to prevent it, despite warning signs or opportunities to act.

Civil penalties are regulatory in nature and are designed to promote compliance and deter contraventions, rather than punish offenders. The civil penalty targets and recognises the financial benefits that may incentivise a lessor to turn a blind eye to the illegal conduct of the lessee. A lessor subject to this penalty will not be subject to imprisonment or a criminal record, recognising that this conduct is less serious than offending intended to be prosecuted under the lessor offence. The provision deliberately targets those lessors who are not acting in good faith, rather than those who had no way of knowing about the illegal conduct of their lessee. As such, the civil penalty is appropriate and proportionate in the context of the policy intent.

The court may not make a civil penalty order against a relevant lessor if the lessor has a reasonable excuse for permitting the person to use the premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity. The evidential burden of establishing the reasonable excuse rests with the lessor, while the legal burden of proof of disproving the excuse rests with the State.

#### *Seizure and forfeiture of compromised goods*

In addition to the fundamental legislative principles discussed above at pages 24, 28 and 31, legislation should have consequences that are appropriate and proportionate, and be generally protective against loss of property.

The Bill introduces the ability to seize and forfeit compromised goods that are found alongside illicit tobacco or illicit nicotine products. Regardless of the amount of illicit product seized, the amendment may jeopardise the entirety of a person's legal smoking products if illicit products are present or supplied at the premises.

The purpose of the amendment is to create an economic disincentive and impose a further financial consequence for supplying or possessing these illicit products. Operators found stocking illicit products in commercial quantities will jeopardise the rest of their legal stock.

This enforcement approach is necessary as an additional measure to accompany and strengthen other enforcement tools, such as PINs and closure orders. The seizure and forfeiture of legal stock is also intended to dissuade legitimate tobacco retailers and wholesalers from dabbling in the illicit trade.

There are a range of public health and safety reasons for introducing such a novel approach, and it is proportionate and reasonable to give effect to the policy intent of disrupting the financial incentives of participating in the illegal trade.

#### *Imposition of presumed responsibility*

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. The unilateral imposition of responsibility on a person for a matter over which they may have no control is considered an interference with the rights and liberties of a person.

### *Executive officer liability*

The former Scrutiny Committee previously considered that legislation should not make executive officers of a corporation vicariously liable for alleged offences by a corporation unless it is a practical necessity, and where it does, it should provide appropriate safeguards.

As noted above on pages 29 and 30, the amendments provide that executive officers will be deemed to have committed an offence committed by their corporation unless they satisfy the evidential burden of proof by showing that either they did not know, and could not reasonably have been expected to know, of the corporation's conduct constituting its offence, or that they took all reasonable steps to ensure the corporation did not engage in the conduct constituting its offence. Where an executive officer discharges this evidential burden, the defence is taken to apply unless the State can prove, beyond reasonable doubt, that the defence does not in fact apply.

While these types of executive liability provisions are uncommon in Queensland, it is considered that the public health risks described above warrant exceptional measures. This amendment will ensure executive officers are held accountable where they fail to take reasonable steps to prevent corporate offending against key offences in the Act.

### *Lessor offence and civil penalty provision*

The lessor offence and civil penalty provision may affect the rights and liberties of individuals because they attribute responsibility to a person for the conduct of another. It is acknowledged that in some situations, a lessor may have limited ability to control what occurs on the premises, including, for example, where they are acting under duress or face other exceptional circumstances.

However, these amendments are necessary and proportionate to address situations where commercial lessors knowingly permit or turn a blind eye to the supply or commercial possession of illicit tobacco or illicit nicotine products.

The Bill includes important safeguards. Lessors with premises subject to a closure order will be given a statutory power to terminate the lease, providing a clear pathway to prevent further liability. This gives lessors a practical and immediate means to act once they become aware of illegal activity. Further, both the offence and civil penalty provisions set high thresholds that must be met by the State. For the criminal offence, it must be proven beyond a reasonable doubt that the lessor knowingly permitted the conduct. For a civil penalty, the lessor's conduct in permitting the illicit trade from the premises must be proven on the balance of probabilities. In both cases, a reasonable excuse defence remains available, ensuring that lessors who genuinely lack control or knowledge are not unfairly penalised.

Any departure from this fundamental legislative principle is justified for the public health reasons identified above on pages 10, 38 and 39.



### **Amendments to the State Penalties Enforcement Regulation 2014**

#### **Whether the legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act 1992, s 4(2)(a))**

##### ***Proportionate and appropriate consequences***

Legislation must have sufficient regard to the rights and liberties of individuals by ensuring that the consequences of the legislation are appropriate and reasonable, and that penalties are proportionate and relevant to the nature of the breach.

The Bill amends the State Penalties Enforcement Regulation to prescribe the amended section 209C(1) of the Act as a PIN offence. This offence provides that a person must not contravene a closure order, including in any of the ways specified. This offence will attract a PIN of 20 penalty units (for individuals) or 100 penalty units (for corporations).

The PIN amount is intended to dissuade any person from contravening a closure order. A PIN can be issued against each person who is not complying with the provision, as well as for continued non-compliance identified at the premises. The penalty reflects the broader public interest in ceasing operations from a premises trading in illicit products and ensuring compliance with a closure order.

The Bill also prescribes sections 49(3) and 49(4) as PIN offences. Failure by a licensee for a wholesale licence, a licensee for a retail licence to which a limited wholesale condition applies, or a licensed retailer to keep invoices for at least two years will attract a PIN of 10 penalty units (for individuals) or 50 penalty units (for corporations).

When used appropriately and in conjunction with other enforcement mechanisms under the Act, PINs have proven to be a fair and effective enforcement response. PINs provide a more immediate deterrent than commencing lengthy prosecutorial action. The person issued with the PIN can choose to pay the PIN rather than face court prosecution. By avoiding a prosecution, issuing PINs reduces demand on Queensland courts while still maintaining a person's right to access the judicial system if they wish to challenge the PIN.

For these reasons, the PINs have sufficient regard to the fundamental legislative principles regarding individual rights and liberties.

## **Consultation**

Queensland Health consulted with external stakeholders over a four-week period from 22 May 2025 to 20 June 2025. A public consultation paper was prepared on the amendments proposed to be included in the Bill.

Eighty submissions were received in response to the consultation paper. Overall, feedback was largely supportive of the proposals in the Bill with only 12 respondents opposing some or all of the proposals outlined in the consultation paper.

Many of the supportive submissions came from licensed retailers who reported losing sales to illegal operations. Most considered the reforms necessary to protect the viability of their legitimate businesses. Several expressed their frustration with the volume of illegal activity, often citing a known competing illicit operator in their response.

These concerns were reflected in feedback from other stakeholders who noted that many licensed retailers are planning to cease stocking tobacco in the next year, because customers will only purchase illicit-priced products. Without stronger enforcement measures, these stakeholders considered that illicit suppliers would continue to be emboldened and proliferate, to the detriment of compliant businesses.

Most stakeholders were supportive of the proposed changes to closure orders and the introduction of a lessor offence. Many viewed these changes as necessary to impact on the financial viability of trading illicitly and to hold lessors accountable for facilitating illegal activity.

Some stakeholders noted that the incorporation of a lessor offence in the Bill transferred a degree of risk to commercial lessors, which could result in unfair outcomes, and that lessors could be exposed to further cost and dispute proceedings when exercising the statutory termination power. In response to this feedback, changes were made to refine the lessor offence and insert additional safeguards for lessors seeking to rely on the termination power.

Most of the other amendments received general support.

In addition to the public consultation process, Queensland Health met with select stakeholders to discuss key proposals in the Bill. All feedback was carefully considered, and the Bill was further refined to ensure it achieves the outlined policy objectives in a fair and efficient way.

## **Consistency with legislation of other jurisdictions**

The Bill represents a unique response to the supply and possession of illicit tobacco and illicit nicotine products. While all States and Territories have legislation for tobacco control, South Australia has the most comparable enforcement tools to Queensland. Western Australia also shares some similarities.

Like Queensland, South Australia has closure orders and offences for persons who contravene closure orders. South Australia has an offence for owners and those who manage or control premises who permit another person to engage in prohibited conduct (such as the supply of illicit tobacco) on the premises, as well as a statutory power to terminate a lease following a court issued closure order.

Both South Australia and Western Australia have a controlled purchase operation scheme that permits appointed persons, including minors, to attempt to purchase smoking products to covertly collect evidence of contraventions. The Australian Capital Territory also has controlled purchase operations (known as compliance testing programs) to detect sales to minors.

A Bill proposing similar closure orders, a closure offence, a lease termination power and the use of evidentiary aids has been introduced in New South Wales.<sup>21</sup>

The amendment to allow the seizure and forfeiture of compromised goods is novel to Queensland and tobacco regulation in Australia.

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<sup>21</sup> Public Health (Closure Orders) Amendment Bill 2025 (NSW), introduced on 6 August 2025.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* provides that the Act may be cited as the *Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Act 2025*.

## Part 2 Amendment of State Penalties Enforcement Regulation 2014

### Regulation amended

*Clause 2* states that this part amends the *State Penalties Enforcement Regulation 2014*.

### Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

*Clause 3* amends schedule 1 under the title ‘*Tobacco and Other Smoking Products Act 1998*’ to prescribe the following offences as penalty infringement notice offences:

Section	Penalty amount for individual	Penalty amount for corporation
49(3)	10	50
49(4)	10	50
209C(1)	20	100

The administering authority for the above offences is the department.

The authorised person for service of infringement notices for the above offences is determined by paragraph (j), being those authorised persons appointed under section 170(1) of the *Tobacco and Other Smoking Products Act 1998* (Act).

## Part 3 Amendment of Tobacco and Other Smoking Products Act 1998

### Act amended

*Clause 4* states that this part amends the Act.

### Amendment of s 18 (Requirements for application)

*Clause 5* amends section 18 to insert additional application requirements for a retail or wholesale licence.

This clause inserts a requirement for applicants who hold an Australian Business Number (ABN) to state the ABN as part of the licence application. This ensures that Queensland Health can search the Australian Business Register to identify the business name, ABN status and entity type of an applicant.

This clause also omits existing subsection (1)(d) and replaces it with a requirement for applications relating to retail or wholesale outlets to identify the location of the outlet and be accompanied by sufficient evidence to demonstrate the applicant's entitlement to occupy the outlet, including, for example, as an owner or lessee. Where the applicant leases or holds an entitlement to occupy the outlet from another person, subsection (1)(d)(iii) requires the application to include the name, address and contact details of the lessor. Subsections (1)(ba) to (h) are renumbered to read (c) to (i).

### **Amendment of s 47 (Notification of particular events)**

*Clause 6* replaces the existing requirement in section 47(1)(g) to notify Queensland Health of a change to the premises for a retail or wholesale outlet of the licensee with a requirement for a licensee to notify Queensland Health if the location of the outlet changes, if the licensee's entitlement to occupy the outlet ceases or changes, or, where the licensee leases or holds an entitlement to occupy the outlet from another person (the *lessor*), if the name, address or contact details of the lessor change. These changes reflect the amendments to section 18 of the Act.

This clause also expands upon the existing requirement under section 47(1)(h) for a licensee to notify Queensland Health of a change to their business name to also require the licensee to notify Queensland Health if their ABN changes.

### **Amendment of s 49 (Invoices for supply to retailers)**

*Clause 7* inserts subsection (2A) into section 49 to make it an offence for a licensee for a wholesale licence, or a licensee for a retail licence to which a limited wholesale condition applies, to fail to keep a copy of an invoice they have issued to a retailer for at least two years after giving the retailer the invoice.

This mirrors the requirement on retailers to keep a copy of the invoice for at least two years after being given the invoice. This ensures Queensland Health can track invoices issued between licensed retailers and wholesalers as part of monitoring compliance with the Act.

This new offence attracts a maximum penalty of 140 penalty units, consistent with the penalty for retailers.

This clause renumbers subsections (2A) and (3) to read subsections (3) and (4).

### **Amendment of s 91 (Location of smoking products at retail outlet)**

*Clause 8* amends section 91 to omit the words 'or in', for consistency of expression with other sections of the Act that refer to 'at a place', not 'at or in a place'.

### **Amendment of s 134 (Smoking area at outdoor eating or drinking place)**

*Clause 9* omits section 134(6) to allow premises to which a commercial hotel licence, community club licence or a commercial special facility licence that contains all or part of a

casino applies under the *Liquor Act 1992* to set aside a part of the place as an area in which smoking is allowed (a smoking only area) so long as smoking in the area is not otherwise prohibited under the Act.

### **Amendment of s 158 (Sale, supply and display of ice pipes)**

*Clause 10* omits and replaces the existing section 158(1) offence with an amended offence, and amends the heading of section 158 to ‘Supply or possession of ice pipes as part of business activities’.

The new construction of the offence in section 158 removes the previous reference to ‘sell’ as this is captured in the definition of ‘supply’ in the Act, and inserts the storage and possession of an ice pipe or component of an ice pipe as an offence. The offence now prohibits a person from supplying, displaying, storing, or otherwise possessing an ice pipe or a component of an ice pipe as part of a business activity.

This clause also removes reference to displaying these items ‘in a shop or near, and in connection with, a shop’ for consistency with the other central offences in the Act that refer instead to supply ‘as part of a business activity’ (see sections 161 and 161A).

The amended offence retains the maximum penalty of 140 penalty units.

### **Amendment of s 159 (Sale, supply and display of bongs)**

*Clause 11* makes similar changes to those made to section 158 by omitting and replacing the existing section 159(1) offence with an amended offence, and amending the heading of section 159 to ‘Supply or possession of bongs as part of business activities’.

The offence now prohibits a person from supplying, displaying, storing, or otherwise possessing a bong or a component of bong as part of a business activity.

The amended offence retains the maximum penalty of 140 penalty units.

### **Amendment of s 160 (Display of hookahs)**

*Clause 12* omits reference to a ‘part’ of a hookah in section 160(2)(a), (c) and (3) and replaces it with the term ‘component’. This ensures that display of a component of a hookah will be taken to be the display of a hookah for the offence under section 160(1).

### **Amendment of s 170 (Appointment)**

*Clause 13* omits reference to ‘officer or’ in section 170(1)(a) so that it refers only to a ‘public service employee’. The term ‘public service officer’ is redundant because it is defined as a subset of public service employee in the *Public Sector Act 2022*.

### **Amendment of s 181 (Entry of places by authorised persons)**

*Clause 14* amends section 181(2) to insert a new subsection (ba) to permit an authorised person to enter a wholesale outlet without the occupier’s consent or a warrant when the outlet is open for carrying on a business.

This clause also amends existing subsection (2)(c) to include reference to a premises at which illicit nicotine products are available for sale by wholesale, in addition to retail sale. This means authorised persons will be able to enter both wholesale and retail premises without the occupier's consent or a warrant, so long as the premises is open for carrying on a business.

This clause renumbers subsections (2)(ba) to (e) as to read (2)(c) to (f).

### **Insertion of new s 194A**

*Clause 15* inserts a new section before section 195, titled 'Definition for division'. This new section 194A inserts a definition of *compromised goods* to mean a smoking product or a hookah, or a component of a hookah, present in a place in which illicit tobacco or an illicit nicotine product is seized under sections 197 or 198 of the Act.

For clarity, *smoking product* for the purposes of this section refers to a tobacco product, herbal cigarette or loose smoking blend (as defined for the purposes of part 11 in schedule 1 of the Act).

### **Amendment of s 195, hdg (Application of div 4)**

*Clause 16* amends the heading of section 195 to reflect modern drafting conventions.

### **Amendment of s 197 (Seizing evidence at a place that may be entered without consent or a warrant)**

*Clause 17* inserts a new subsection (2) into section 197 to clarify that an authorised person who enters a place that may be entered under part 11 of the Act, without the consent of the occupier and without a warrant, may seize a thing if the authorised person reasonably believes the thing is compromised goods.

### **Amendment of s 198 (Seizing evidence at a place that may only be entered with consent or a warrant)**

*Clause 18* makes a minor change to section 198 to simplify the heading to refer to 'seizing evidence at a place that may be entered only with consent or a warrant' and to replace all references to 'in the place' with 'at the place', for consistency with the forfeiture provisions in sections 205 to 205B.

This clause also inserts two new subsections into section 198 to allow for the seizure of compromised goods.

New subsection (5) of section 198 permits an authorised person to seize a thing at the place if the authorised person reasonably believes the thing is compromised goods.

New subsection (6) declares that subsection (5) applies to an authorised person who enters a place with a warrant even if the warrant does not state that the compromised goods may be seized under the warrant.

### **Amendment of s 205 (Forfeiture of relevant product)**

*Clause 19* omits the definition of *seized thing* from section 205(6). This definition has been

moved to schedule 1.

### **Amendment of s 205A (Forfeiture of bongs and ice pipes)**

*Clause 20* amends section 205A to insert reference to a ‘component of a bong or ice pipe’ to enable the chief executive of Queensland Health to decide that a seized component of either product is also able to be forfeited to the State.

This clause also omits the definition of *seized thing* in subsection (6).

### **Insertion of new s 205BA**

*Clause 21* inserts a new section after section 205B, titled ‘Forfeiture of compromised goods’.

Subsection (1) of new section 205BA permits the chief executive to decide that a seized thing is forfeited to the State if the chief executive is satisfied the thing is compromised goods and a relevant product under section 205(6) was present at the place in which the thing was seized and has been forfeited under section 205, or vaping goods were present at the place in which the thing was seized and have been forfeited under section 205B.

‘Relevant product’ is defined in section 205(6) of the Act to mean illicit tobacco or an illicit nicotine product mentioned in schedule 1, definition illicit nicotine product, paragraph (b)—that is, a product other than vaping goods prescribed by regulation.

Subsection (2) of new section 205BA states that the chief executive is not required to provide procedural fairness in making the decision.

### **Insertion of new pt 11, div 4AA**

*Clause 22* inserts a new division 4AA, titled ‘Controlled purchase operations’. This division includes new sections 208 to 208J.

New section 208, with the heading ‘Definitions for division’, inserts definitions for *controlled purchase officer*, *controlled purchase operation* and *prescribed offence*. *Prescribed offence* is defined to mean an offence against section 65, 161 or 161A of the Act.

This clause also inserts new section 208A, titled ‘Authorisation of controlled purchase officer’.

Subsection (1) of new section 208A empowers the chief executive to authorise an adult who is a public service employee or a health service employee to be a controlled purchase officer.

Subsection (2) requires the chief executive to only authorise a person to be a controlled purchase officer if the chief executive is satisfied the person is appropriately qualified.

Subsection (3) authorises a controlled purchase officer to make or attempt to make the purchases set out in the operation authority.

This clause also inserts new section 208B, titled ‘Authorisation of controlled purchase operation’.

Subsection (1) of new section 208B empowers the chief executive to authorise a *controlled*

*purchase operation*, the intended purpose of which is to provide a person with an opportunity to commit or to attempt to commit a prescribed offence. The authorisation must be in writing.

Subsection (2) clarifies that the chief executive must be satisfied of the following before authorising a controlled purchase operation:

- a prescribed offence has been, is being, or is likely to be committed;
- the nature and extent of the prescribed offence justifies the operation;
- the operation will not be conducted in a way that makes it likely for a person to be induced to commit a prescribed offence, or any other offence, that the person would not otherwise have intended to commit;
- any conduct involved in the operation will not seriously endanger the health or safety of any person;
- the controlled purchase operation will be conducted in a way that will ensure the chief executive is immediately notified if a controlled purchase officer engages in conduct that may seriously endanger the health or safety of any person or conduct that may not be authorised under the operation's authority; and
- each controlled purchase officer proposed to participate in the operation has received appropriate training for the purpose.

New section 208C, titled 'Supervision by authorised person', details the role of the authorised person responsible for supervising the operation.

Subsection (1) requires the controlled purchase operation to be supervised by an authorised person chosen by the chief executive.

Subsection (2) clarifies that the authorised person supervising the operation is not authorised to make or attempt to make purchases as part of an operation.

New section 208D, titled 'Form of authority', describes what must be included in an authority to conduct a controlled purchase operation.

Subsection (1) of new section 208D states that an authority to conduct a controlled purchase operation must be in writing.

Subsection (2) requires the following information to be set out in the authority:

- an identifying name or number for the operation;
- the identity of the authorised person responsible for supervising the operation;
- the identity of each controlled purchase officer who may make or attempt to make purchases for the operation;
- the prescribed offence in relation to which the operation is to be conducted;
- a description of the type of purchases the controlled purchase officers may make or attempt to make for the operation;
- the places, if any, the controlled purchase officers may enter for the operation;
- the websites, online shops, or other online accounts or platforms, if any, the controlled



purchase officers may access or engage with for the operation;

- the period, of not more than three months, for which the authority is in effect;
- the conditions, if any, to which the conduct of the operation is subject; and
- the date and time when the authority is granted.

Subsection (3) of new section 208D provides that for the purposes of describing the identity of a controlled purchase officer in the operation's authority, an officer is sufficiently identified using an assumed name, code name or code number.

Subsection (4) confines the places that may be stated in the operation authority to only those places that can be entered by an authorised person without occupier consent or warrant under section 181(2) of the Act.

This clause also inserts new section 208E, titled 'Variation or cancellation of authority'.

Subsection (1) of new section 208E permits the chief executive to vary or cancel an operation authority at any time. Variations to the operation authority may, for example, include changes to the period the operation is in effect, the involved participants or the scope of prescribed offences covered by the operation.

Subsection (2) of new section 208E requires the chief executive to immediately notify the authorised person responsible for supervising the operation and each controlled purchase officer identified in the operation authority about a variation or cancellation.

This clause also inserts new section 208F, titled 'Effect of authority'.

Subsection (1) of new section 208F provides that the operation authority permits each controlled purchase officer identified in the authority to make or attempt to make the purchases described in the operation authority.

Subsection (2) of new section 208F clarifies that the authority to make purchases or attempt to make purchases as part of the relevant operation cannot be delegated to any other person than the controlled purchase officer identified in the operation authority.

This clause also inserts new section 208G, titled 'Protection from criminal responsibility'.

Subsection (1) of new section 208G clarifies that a participant in a controlled purchase operation, being a supervising authorised person or a controlled purchase officer, is not criminally responsible for an offence as part of the operation if certain conditions are met.

These conditions include that the conduct:

- is authorised by, and is engaged in, in accordance with the operation authority; or
- is ancillary to conduct in the operation authority; and
- does not involve the participant intentionally inducing a person to commit an offence that the person would not otherwise have intended to commit.

This subsection applies despite any other Act or law.

Subsection (2) of new section 208G declares that criminal liability protection does not apply if the participant engages in conduct that seriously endangers the health or safety of any person.

This clause also inserts new section 208H, titled ‘Effect of being unaware of variation or cancellation of authority’.

Subsection (1) of new section 208H provides that any person who is unaware of a variation to an operation authority by the chief executive that limits the scope of the operation and who is not reckless about the existence of the variation, is still protected by division 4AA and the authority continues to apply as if the operation authority had not been varied.

A similar approach applies to cancellations of operation authorities under subsection (2), which clarifies that this division continues to apply to a person authorised to engage in conduct for the purposes of the operation as if the authority had not been cancelled, so long as the person was unaware of the cancellation and is not reckless about the existence of the cancellation.

Subsection (3) of new section 208H clarifies that a person is reckless about the existence of the variation or cancellation of an authority if the person is aware of a substantial risk that the variation or cancellation has happened and, having regard to the circumstances known to the person, it is unjustifiable to continue to engage in conduct that was, but may no longer be, authorised by the authority because of the variation or cancellation.

This clause also inserts new section 208I, titled ‘Notification requirements’.

Subsection (1) of new section 208I requires the authorised person who supervises the operation to report any loss of or serious damage to property in the course of, or as a direct result of, a controlled purchase operation, to the chief executive, as soon as practicable.

Under subsection (2) of new section 208I, the chief executive must take all reasonable steps to notify the owner of the property of the loss or damage.

Subsection (3) of new section 208I clarifies that the chief executive is not required to notify the owner of property until the chief executive is satisfied that notification would not:

- compromise or hinder the operation;
- compromise the identity of an authorised person or controlled purchase officer;
- endanger the life or safety of any person;
- prejudice any legal proceeding; or
- otherwise be contrary to the public interest.

Subsection (4) of new section 208I clarifies that the requirement to report loss of or serious damage to property does not apply to property of the department.

Subsection (5) of new section 208I requires the authorised person supervising the operation to report any personal injury that occurs in the course of, or as a direct result of, a controlled purchase operation to the chief executive, as soon as possible.

This clause also inserts new section 208J, titled ‘Admissibility of evidence’.

This new section provides that evidence gathered through a controlled purchase operation is not inadmissible because the evidence was obtained by a person while engaging in an unlawful act if the unlawful act was authorised under division 4AA.

### **Amendment of pt 11, div 4A, hdg (Closure orders)**

*Clause 23* amends the heading of part 11, division 4A to refer to ‘relevant lessors’ in addition to closure orders.

### **Replacement of ss 209A and 209B**

*Clause 24* replaces current sections 209A and 209B with new provisions under a new subdivision 1, with the heading ‘Preliminary’.

Subdivision 1 includes new section 209, titled ‘Application of division’.

New section 209 provides that division 4A does not apply to residential premises.

This clause also includes a new subdivision 2, titled ‘Making of orders’.

Subdivision 2 includes new sections 209A (Definitions for subdivision), section 209B (Short-term closure of premises by chief executive) and section 209BA (Long-term closure of premises by Magistrate).

New section 209A includes definitions for *infringement notice*, *mobile premises*, and *previous enforcement action*. *Previous enforcement action* is defined to mean, in relation to premises, any of the following actions relating to the premises: the issue of a closure order; the issue of an infringement notice for an offence against section 65, 161 or 161A; seizure of evidence under part 11, division 4 in relation to an offence under section 65, 161 or 161A; the start of a proceeding for an offence against section 65, 161 or 161A; or the giving of an improvement notice under section 211 in relation to a contravention or likely contravention of section 65, 161 or 161A.

New section 209B describes the requirements the chief executive must follow to make a short-term closure order.

Subsection (1) of new section 209B empowers the chief executive to make an order that stated premises be closed if the chief executive is satisfied that either illicit tobacco or illicit nicotine products are being supplied or possessed at the premises as part of a business activity. A short-term closure order can also be made if the chief executive is satisfied a business is being carried on at the premises in a way that involves a contravention of section 65 of the Act (that is, the unlicensed sale of smoking products).

Subsection (2) of new section 209B provides that the chief executive may have regard to the following matters in whether to make a short-term closure order:

- previous enforcement action taken in relation to the premises;
- whether the order will impact the ability of the community to access essential goods and services; and

- any other matter the chief executive considers appropriate.

Subsection (3) of new section 209B requires the short-term closure order to be served on the person apparently in charge of the premises, if any, and posted in a conspicuous place.

Subsection (4) of new section 209B states that a short-term closure order takes effect from the time it is served or posted, whichever occurs first, and continues until either the chief executive revokes the order or 90 days have passed.

This clause also inserts new section 209BA, titled ‘Long-term closure of premises by Magistrate’.

Subsection (1) of new section 209BA empowers a Magistrate to make an order, on application of the chief executive, that stated premises be closed for a stated period of not more than one year (a long-term closure order) if the Magistrate is satisfied that illicit tobacco or illicit nicotine products have been, or are likely to be, supplied or possessed at the premises as part of a business activity, or a business is being carried on at the premises in a way that involves a contravention of section 65.

Subsection (2) of new section 209BA provides that when deciding whether to make a long-term closure order, the Magistrate, may have regard to any previous enforcement action, any impact the order may have on the community’s ability to access essential goods and services, and any other matter the Magistrate considers appropriate.

Subsection (3) provides that the chief executive may make an application for a long-term closure order regardless of whether a short-term closure order is, or has been, in effect in relation to the premises under section 209B.

Subsection (4) of new section 209BA provides that an application for a long-term closure order must be served on the person apparently in charge of the premises, if any, and the lessor of the premises, if any.

Subsection (5) provides that where a Magistrate makes a long-term closure order, the order must be served on the person apparently in charge of the premises, if any, and posted in a conspicuous place.

Under subsection (6) of new section 209BA, the requirement to serve the application and order does not apply if it is not reasonably practicable to do so.

### **Amendment of s 209C (Smoking products not to be supplied at closed premises)**

*Clause 25* amends the heading of section 209C to read ‘No products or services to be supplied at closed premises’.

Section 209C currently prohibits a person from supplying smoking products, or working at a business supplying smoking products, during a closure order.

This clause inserts further prohibitions into the offence under subsection (1) to include that while a closure order is in effect in relation to the premises, a person must not supply any other product or service at the premises, work in a business involving the supply of any other product or service at the premises or open the premises to the public.

New subsection (3) clarifies that a person is not required to comply with the prohibition on supplying any product or service at the premises or working in a business supplying any product or service at the premises, if the person has a reasonable excuse.

### **Insertion of new pt 11, div 4A, sdiv 3**

*Clause 26* inserts a new subdivision 3 after section 209C, titled ‘Relevant lessors’. Subdivision 3 includes new sections 209CA to 209CI.

New section 209CA, titled ‘Definitions for subdivision’, inserts definitions for *lease*, *premises*, *relevant lessor* and *tobacco business*.

For the purposes of this subdivision:

- a *lease* is taken to include any right to occupy the premises;
- *premises* is defined to be a retail or wholesale outlet, or premises at which illicit tobacco or illicit nicotine products are available for sale by retail or wholesale;
- *relevant lessor* means the person who leases the premises directly to a person conducting a tobacco business at the premises, or otherwise directly allows a person conducting a tobacco business to occupy the premises. This definition does not include a person, including for example, a head lessor, who leases the premises to a person who is not occupying the premises for the purposes of conducting a tobacco business at the premises; and
- for the purposes of the definition of *relevant lessor*, *tobacco business* means a business that involves supplying or possessing illicit tobacco, illicit nicotine products or smoking products. A business need not be advertised or held out as selling tobacco (for example, as a tobacconist) to be a tobacco business.

This clause inserts new section 209CB, titled ‘Chief executive must give relevant lessor copy of closure order and notice’

Subsection (1) of new section 209CB provides that the section applies if a closure order is made in relation to premises and the premises are subject to a lease.

Subsection (2) of section 209CB requires the chief executive to, within seven days after a closure order is made, give the relevant lessor a copy of the closure order and a notice stating the reason for the making of the order, that the order may allow the relevant lessor to terminate the lease of the premises under section 209CC and that the relevant lessor may be liable for an offence under section 209CE or a civil penalty under section 209CF.

Subsection (3) states that subsection (2) does not apply where the chief executive is satisfied it is not reasonably practicable to give the documents.

This clause also inserts new section 209CC, titled ‘Relevant lessor may terminate lease of premises subject to closure order’.

Subsection (1) of new section 209CC states that this section applies if a closure order is made in relation to premises and the premises are subject to a lease.

Under subsection (2), the relevant lessor may terminate the lease by giving the lessee a notice (the *termination notice*) and by stating that the lease is terminated on a stated day (the *termination day*).

Subsection (3) provides that the termination date must be at least 14 days after the day the relevant lessor gives the lessee the termination notice.

Subsection (4) requires the termination notice be in the approved form and be given before the end of the closure order.

Subsection (5) provides that the power under subsection (2) applies despite any other Act or anything to the contrary in the lease or another agreement or arrangement and even if the closure order is subsequently revoked, found to have been wrongfully made, or found by a court to be invalid.

Subsection (6) of new section 209CC provides that the termination power under this section is taken to be a termination of the lease for a repudiation of the lease by the lessee, and to preserve the rights and powers of the relevant lessor, including, for example, the right to claim damages or a rental bond.

Subsection (7) provides that the relevant lessor is not liable for damages or compensation, on any ground, to any person in relation to the termination of the lease under this section. This subsection also provides the lessor with a right to enter, and take possession of, the premises after the termination of the lease, to put these rights beyond doubt.

Subsection (8) provides that a lessee subject to a termination under this section is not entitled to bring a proceeding against the following persons, on any ground, in relation to the termination of the lease:

- the relevant lessor; or
- a person who leases the premises to a person who is not occupying the premises for the purpose of conducting a tobacco business at the premises.

This is intended to ensure the relevant lessor or others that are involved in the leasing or business arrangements (such as a head lessor) are protected from proceedings to dispute the termination.

Subsection (9) of section 209CC identifies that the statutory power to terminate displaces part 9, division 5 of the *Property Law Act 2023*, part 8 of the *Retail Shop Leases Act 1994* and part 3 of the *Small Business Commissioner Act 2022* in relation to disputes specific to the termination.

Subsection (10) clarifies that a lessee may bring a proceeding against the relevant lessor on a ground unrelated to the termination of the lease, including in relation to a breach of the lease by the relevant lessor before the termination of the lease under this section.

Subsection (11) provides that if a lease is terminated under this section and the lessee has not removed the lessee's property from the premises, the relevant lessor may deal with the property as the relevant lessor considers appropriate, including for example, by disposing of the property.

Subsection (12) states that section 209CC does not limit or affect any other power of the relevant lessor to terminate the lease or deal with property not removed from the premises.

Under section 9 of the Acts Interpretation Act, section 209CC must be interpreted as operating only to the extent of Parliament's legislative power. The termination power must therefore be exercised in a manner that is consistent with relevant Commonwealth legislation, including, for example, Commonwealth legislation applying to franchises.

This clause also inserts a new section 209CD, titled 'Ending of closure order if lease ends'.

Subsection (1) of new section 209CD provides that if a lease of premises subject to a closure order ends:

- the closure order is taken to end when the lease ends; and
- if the relevant lessor of the premises has been given a copy of the closure order by the chief executive under section 209CB, the relevant lessor must give the chief executive notice that the lease has ended, within seven days after the lease ends.

Subsection (2) states that where the premises are leased to the same lessee in the period stated in the closure order, the closure order is reinstated and ends on the last day of the period stated in the order.

Subsection (3) provides that it is an offence for a lessor to fail to comply with a requirement to give notice of the end of the lease, unless there is a reasonable excuse. The maximum penalty is 10 penalty units.

This clause also inserts a new section 209CE, titled 'Offence of permitting premises to be used to supply or possess illicit tobacco or illicit nicotine products'.

Subsection (1) provides that a relevant lessor must not permit another person to use the premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity. The offence attracts a maximum penalty of 1,000 penalty units, one year's imprisonment, or both.

Subsection (2) provides that a person commits an offence under subsection (1) only if the person knowingly permits another person to use the premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity.

A note to this subsection provides that civil proceedings may be taken under section 209CF in relation to a contravention of subsection (1).

Subsection (3) provides that it is a defence to a charge under subsection (1), that the relevant lessor has a reasonable excuse for permitting the person to use the premises for this purpose.

Subsection (4) of new section 209CE declares that the relevant lessor bears an evidential burden in relation to the defence.

This clause also inserts a new section 209CF, titled 'Civil penalty for contravention by relevant lessor.'

Subsection (1) of new section 209CF provides that the chief executive may apply to the court

for an order under section 209CF if reasonably satisfied a relevant lessor has contravened section 209CE(1).

Subsection (2) provides that the court may make an order that the relevant lessor pay the State as a civil penalty an amount that is not more than the equivalent to 1,000 penalty units for an individual, or not more than the equivalent to 5,000 penalty units for a corporation. The court may also make any other order the court considers appropriate.

Subsection (3) of section 209CF states that the court may have regard to the following matters in deciding whether a relevant lessor has permitted another person to use the premises in contravention of section 209CE(1):

- whether there is a pattern of supply or possession of illicit tobacco or illicit nicotine products at the premises;
- whether the chief executive has notified the relevant lessor that one or more closure orders have been made in relation to the premises;
- whether the relevant lessor and the person using the premises have an arm's length relationship;
- whether the rent for the premises is significantly above market value or paid well in advance;
- whether the lease is in writing; and
- whether the relevant lessor has taken steps to terminate the lease of the premises or otherwise prevent the supply or possession of illicit tobacco or illicit nicotine products at the premises.

Subsection (4) of new section 209CF states that the court must not make an order against a relevant lessor if the relevant lessor has a reasonable excuse for permitting the person to use the premises for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity.

Subsection (5) states that the relevant lessor bears the evidential burden in raising the defence of reasonable excuse.

Subsection (6) requires the court to apply the rules of evidence and procedure for civil proceedings when hearing a proceeding under this section for a contravention of section 209CE(1).

Subsection (7) provides that evidence or information acquired under the Act in relation to the offence against section 209CE(1) is admissible in civil proceedings for a contravention of section 209CE(1).

Subsection (8) clarifies that a contravention of section 209CE(1) found under section 209CF is not an offence.

Subsection (9) of new section 209CF provides that an application for an order in relation to a contravention of section 209CE(1) must be made within two years after the contravention or alleged contravention first comes to the notice of the chief executive.

This clause also inserts new section 209CG, titled 'Civil proceeding stayed during civil proceeding'.



Subsection (1) of new section 209CG states that civil proceedings against a person for a contravention of section 209CE(1) is stayed if a criminal proceeding is or has commenced against the person for an offence against section 209CE and the offence against section 209CE is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of section 209CE(1).

Subsection (2) provides that the civil proceeding may be resumed if the person is not convicted of the offence against section 209CE as part of the criminal proceeding.

Subsection (3) states that where a conviction occurs in the criminal proceeding, the stayed civil proceeding is dismissed.

Subsection (4) defines *convicted* for the purposes of this section to include a plea of guilty or a finding of guilt by a court even though no conviction is recorded.

This clause also inserts new section 209CH, titled ‘No criminal proceeding after successful civil proceeding’. This new section prohibits a criminal proceeding from being commenced against a relevant lessor for conduct that is substantially the same as conduct constituting a contravention of section 209CE(1) if an order has been made under section 209CF(2).

This clause inserts new section 209CI, titled ‘Evidence given by individual in civil proceeding not admissible in criminal proceeding’.

This section provides that any evidence of information given or evidence of documents produced as part of a civil proceeding is not admissible in a criminal proceeding for an offence against the individual. This protection does not apply to a criminal proceeding in relation to the falsity of the evidence given by the individual in a civil proceeding for a contravention of section 209CE(1).

### **Amendment of s 212 (Power to require production of written acknowledgement)**

*Clause 27* amends section 212, omitting the word ‘written’ from the heading, and replacing sections 212(2) to (6) with new subsections.

New subsection (2) states that a written acknowledgement may be submitted as an electronic document on request by an authorised person under this section, but only if the electronic document includes a unique identifier for the person giving the acknowledgement.

New subsection (3) notes that if a written acknowledgment is in hard copy form, an authorised person may keep the acknowledgement to copy the acknowledgement and may require the supplier or a person in charge of the tobacco product vending machine to certify the copy as a true copy of the acknowledgement. It also requires the authorised person to return the acknowledgement as soon as practicable after copying the acknowledgement.

New subsection (4) provides that despite subsection (3)(c), if a requirement is made of a person under subsection (3)(b) to certify a copy as a true copy of an acknowledgement, the authorised person may keep the acknowledgement until the person complies with the requirement.

This clause also amends subsection (7) to insert definitions of *digital signature* and *unique identifier*.

Subsection (7) is renumbered as subsection (5).

### **Amendment of s 213 (Failure to produce acknowledgement)**

*Clause 28* amends section 213 to insert a new subsection (3), to define *acknowledgement production requirement* to mean a requirement made under section 212(1).

### **Amendment of s 214 (Failure to certify copy of acknowledgement)**

*Clause 29* amends section 214 to insert a new subsection (2) to define an *acknowledgement certification requirement* to mean a requirement made under section 212(3)(b).

### **Amendment of s 215 (Power to require information)**

*Clause 30* amends section 215, by amending the heading to read ‘Power to require information about offence’. The clause also omits the reference in subsection (2) to ‘at a stated reasonable time and place’ and replaces it with ‘within a stated reasonable period’. Finally, the clause inserts a definition of *information* into new subsection (5). For the purposes of section 215, *information* includes a document.

### **Insertion of new s 215A**

*Clause 31* inserts a new section, section 215A, titled ‘Power to require information relevant to monitoring or enforcement of particular provisions’.

Subsection (1) of new section 215A provides that this section applies if an authorised person reasonably believes a person may be able to give information relevant to the monitoring or enforcement of sections 65 to 67, 161, 161A or 209CE.

Subsection (2) states that an authorised person may, by written notice, require the person to give the authorised person information relevant to the monitoring or enforcement of the provision within a stated reasonable period.

Subsection (3) makes it an offence for the person to fail to comply with subsection (2) without a reasonable excuse. Failure to comply attracts a maximum penalty of 100 penalty units.

Subsection (4) provides that a reasonable excuse for an individual includes if giving the information might tend to incriminate the individual.

For clarity, subsection (5) declares that section 215A is not limited by, and does not limit, section 215.

For the purposes of section 215A, subsection (6) states that *information* includes a document.

### **Amendment of s 219 (Compensation)**

*Clause 32* amends section 219 to insert new subsection (2A).

New subsection (2A) clarifies that, despite subsection (1), a person may claim compensation for loss or expense incurred because of the exercise or purported exercise of a power to make

a closure order only if the order is revoked, found to have been wrongfully made or found by a court to be invalid.

This clause also renumbers subsections (2A) to (4) to read subsections (3) to (5).

### **Amendment of s 224 (Definition for division)**

*Clause 33* inserts reference to a component of a bong or ice pipe into the definition of *forfeiture decision* as a consequential amendment to expanding the forfeiture of bongs and ice pipes to include forfeiture of their components under section 205A.

### **Insertion of new s 229A**

*Clause 34* inserts a new section after section 229, section 229A, titled ‘Evidentiary provisions’.

Subsection (1) of new section 229A lists a range of matters that can be presented as prima facie evidence in a certificate purporting to be signed by the chief executive.

Subsection (2) of new section 229A states that a certificate can include stated costs that were incurred and the way in which, and purpose for which, they were incurred for the purposes of making an application under section 223A to recover costs incurred by the State because of the offence.

### **Replacement of s 230A (Liability of executive officer—offence committed by corporation against executive liability provision)**

*Clause 35* omits current section 230A and inserts a new section 230A.

Subsection (1) of new section 230A provides that each executive officer of a corporation is taken to have also committed an offence if the corporation commits an offence against an *executive liability (evidential burden) provision*, being sections 65, 66, 67, 161 or 161A (which is defined at subsection (6)).

The current maximum penalty has been retained, meaning each executive officer will be subject to the penalty applying to a contravention of the relevant executive liability provision.

Subsection (2) of new section 230A provides that the executive officer is not taken to have also committed the relevant offence if:

- firstly, the officer satisfies the evidential burden of showing either that they:
  - did not know, and could not reasonably have been expected to have known, of the corporation’s conduct constituting the offence; or
  - took all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence; and
- secondly, that the prosecution does not prove the contrary beyond reasonable doubt.

Subsection (3) of new section 230A provides that a court must have regard to whether the officer was in a position to influence the corporation’s conduct in deciding whether reasonable steps have been taken by an executive officer who raises this defence.

Subsection (4) of new section 230A states that an executive officer can be proceeded against and convicted of the relevant offence even where the corporation has not been proceeded against or convicted of the underlying offence.

Subsection (5) of new section 230A provides that the liability of the corporation for its offences against the relevant provisions or the liability of any person under the Criminal Code for the corporation's offences is not affected by pursuing the executive officer.

Subsection (6) of new section 230A lists the provisions of the Act that are *executive liability (evidential burden) provisions*, being sections 65, 66, 67, 161 and 161A.

### **Amendment of s 231 (Act does not create or preserve right to smoke)**

*Clause 36* omits reference to 'in or' in section 231(1) to simplify reference to not creating or preserving a right to smoke at any place, consistent with changes made in the Bill to refer to 'at a place'.

### **Amendment of s 242B (Application of amended s 208)**

*Clause 37* amends section 242B to insert a note which states 'Section 208 was relocated and renumbered as section 202B by the *Health Legislation Amendment Act 2025*.'

### **Insertion of new pt 13, div 4**

*Clause 38* inserts new division 4 into part 13, titled 'Transitional provisions for Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Act 2025.' This division includes new sections 243 to 248.

This clause inserts new section 243, with the heading 'Definition for division'. *New* is defined for the purposes of the transitional provisions to refer to provisions as in force from commencement.

This clause inserts new section 244, with the heading 'Notification of particular events'. This new section identifies that amended section 47 applies only to those licensees with a licence issued after commencement. This includes licences renewed following commencement.

New section 244 clarifies, that despite the amendment of section 47, former section 47 continues to apply in relation to a licensee whose licence was issued before the commencement. This means changes to the requirements to notify of a change to a licensee's ABN or lessor contacts only apply to licences issued post-commencement. Existing licensees immediately prior to commencement will not be required to notify of changes to the additional matters inserted into the Act until their licence is renewed. *Former section 47* is defined to mean section 47 as in force immediately before commencement.

This clause also inserts a transitional provision, new section 245, titled 'Proceedings for particular offences'.

Subsection (1) of new section 245 states that this section applies in relation to an offence against former sections 158, 159, 209C or 230A committed by a person before commencement.

By virtue of subsection (2) of new section 245, a proceeding for the offence may be continued

or started, and the person may be convicted of and punished for the offence, as if new sections 158, 159, 209C or 230A had not commenced. Subsection (2) expressly notes that it is not intended to limit section 20 of the Acts Interpretation Act, which provides, amongst other things, that a proceeding may be started or continued as if the amendment had not happened.

Similarly, new subsection (3) provides that such a proceeding may be continued or started despite section 11 of the Criminal Code, which states that a person cannot be punished for doing an act unless the act constituted an offence under the law in force when it occurred. This transitional provision preserves the liability of a person who committed an offence against former sections 158, 159, 209C or 230A.

New subsection (4) inserts a definition of *former section 158, 159 or 209C* to mean sections 158, 159, 209C or 230A of the Act as in force from time to time before commencement.

This clause also inserts new section 246, titled ‘Application for long-term closure order made before commencement’. This clarifies that a long-term closure order made after commencement under an application submitted in relation to former section 209B before commencement is taken to be a long-term closure order under this Act. This clause inserts a definition of *former section 209B* to mean section 209B of the Act as in force from time to time before commencement.

This clause also inserts new section 247, titled ‘New provisions applying to relevant lessors’. This section clarifies that new part 11, division 4A, subdivision 3 applies in relation to the lease of premises whether the lease was entered into before or after the commencement. However, the relevant subdivision applies in relation to a closure order only if the order is made after the commencement.

This clause also inserts new section 248, titled ‘New evidentiary provisions’. This section clarifies that new section 229A applies in relation to a proceeding whether the proceeding was started before or after the commencement and whether the offence or contravention was committed before or after the commencement.

### **Amendment of sch 1 (Dictionary)**

*Clause 39* omits definitions of *acknowledgement certification requirement* and *acknowledgement production requirement* from schedule 1. These definitions are now found in sections 214 and 213 respectively. The definition for *premises* is also removed from schedule 1.

This clause also inserts definitions into schedule 1 for the following terms: *ABN*, *at a place*, *closure order*, *component* of a bong, ice pipe and hookah, *compromised goods*, *controlled purchase officer*, *controlled purchase operation*, *identity card*, *infringement notice*, *lease*, *long-term closure order*, *mobile premises*, *premises*, *prescribed offence*, *previous enforcement action*, *relevant lessor*, *seized thing*, *short-term closure order*, and *tobacco business*.