



Tobacco and Other Smoking Products Amendment Bill 2023

**Report No. 32, 57th Parliament
Health and Environment Committee
May 2023**

Health and Environment Committee

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Acknowledgements

The committee acknowledges the assistance provided by Queensland Health.

All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Health and Environment Committee's examination of the Tobacco and Other Smoking Products Amendment Bill 2023.

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

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

I particularly want to thank and acknowledge those submitters and witnesses we heard from in my hometown of Townsville. The illicit tobacco industry is having a notable impact on licensed retailers in North Queensland and other parts of the state. Those who came before us bravely provided their concerns of the worrying criminal element involved in the illicit tobacco industry to the committee.

It is clear more must be done to combat this growing trend and I thank the committee for working in collaboration to make recommendations in this report to help tackle this serious issue from an enforcement point of view.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'Aaron Harper'.

Aaron Harper MP
Chair

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Executive Summary

Smoking remains a significant cause of death, disease and health inequality in Queensland. In recent years, the trade in illicit tobacco has exacerbated the negative impact of smoking on the community.

The Tobacco and Other Smoking Products Amendment Bill 2023 (Bill) aims to reduce the smoking rate in Queensland and better protect the community from second-hand smoke and the illicit tobacco trade.

To achieve this goal, the Bill proposes the introduction of a new licensing scheme for the wholesale and retail sale of smoking products. This change would facilitate more effective enforcement of the *Tobacco and Other Smoking Products Act 1998* (Act), and align Queensland with other Australian jurisdictions.

To achieve its objective the Bill also proposes:

- prohibiting the supply and possession of illicit tobacco
- strengthening enforcement capabilities and powers under the Act, including by facilitating intelligence sharing with other jurisdictions
- modernising and clarifying restrictions relating to the advertising, display and promotion of smoking products, including their application to online trading
- prohibiting the supply and handling of smoking products by children
- extending the prohibition on supplying smoking products to children to include supply by parents or guardians
- expanding smoke-free places, including community spaces used by children
- improving restrictions and protections that apply to liquor licensed premises.

The Health and Environment Committee (committee) heard from a diverse range of stakeholders during its inquiry into the Bill, including members of the public, academic experts, health professionals, anti-smoking organisations, smoking product retailers, organisations representing liquor licences premises and major tobacco companies.

While some stakeholders made suggestions for improving certain aspects of the Bill, the majority of submitters offered strong support for the proposed changes. Notably, there was almost universal support for the introduction of the licensing scheme for the sale of smoking products.

Some stakeholders expressed their appreciation for the collaborative consultation undertaken by Queensland Health during the Bill's development.

The committee is satisfied that the Bill is consistent with the *Legislative Standards Act 1992* and compatible with the *Human Rights Act 2019*. While some provisions of the Bill limit human rights and individual freedoms, these limitations are reasonable and justified given the safeguards included in the Bill and the significant public interest in achieving its objectives.

The committee encourages Queensland Health to continue investing in both enforcement and public health measures, including education programs and support services that reduce the harms associated with smoking.

The committee has recommended that the Bill be passed and made two further recommendations aimed at enhancing and coordinating multi-agency enforcement efforts and facilitating the search and seizure of illicit tobacco products by environmental health officers from Queensland Health.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Tobacco and Other Smoking Products Amendment Bill 2023 (Bill) are to reduce the smoking rate in Queensland and provide the community with further protections from second-hand smoke and the illicit tobacco trade.

The Bill seeks to achieve these objectives by amending the *Tobacco and Other Smoking Products Act 1998* (Act) to:

- establish a licensing scheme for the wholesale and retail sale of smoking products
- ensure there are effective deterrents against the unlawful supply of smoking products, including strong penalties
- empower Queensland Health to monitor compliance with Commonwealth requirements for smoking products and improve intelligence-sharing with other state, territory and Commonwealth law enforcement agencies
- modernise and clarify the requirements for advertising, display and promotion of smoking products, including their application to online trading
- expand smoke-free public spaces, including community spaces for children
- introduce new offences with high penalties to protect children from smoking; and
- improve protections at liquor licensed premises, including tighter requirements for smoking areas and tobacco product vending machines.¹

1.2 Background

While the adult smoking rate has halved in Queensland over the past 25 years, smoking remains a 'significant contributor to death, disease and health inequity' in Queensland.² Higher smoking rates and therefore poorer health outcomes, remain more common among Aboriginal and Torres Strait Islanders and persons in low socio-economic circumstances or living in regional and remote areas.³



There is no other single risk factor that contributes as greatly to the burden of preventable health and disease as smoking.⁴ The annual cost of smoking to Queensland, including hospital and other medical expenses, has been estimated at \$27.4 billion.⁵

Queensland Health (the department) has advised that the downward trend in smoking is 'at risk from the increasing trade in illicit tobacco and emerging smoking products and business practices targeted at children and young people, including in relation to electronic cigarettes (e-cigarettes)'.⁶

According to Hon Yvette D'Ath MP, Minister for Health and Ambulance Services, there is an increasing trade in illicit tobacco products, which do not 'comply with Commonwealth requirements for plain packaging and health warnings and that circumvent excises and duties'.⁷ This has impacted efforts to

¹ Explanatory notes, p 1.

² Explanatory notes, p 2.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 330.

⁶ Queensland Health, correspondence, 21 March 2023, p 1.

⁷ Queensland Parliament, Record of Proceedings, 14 March 2023, p 331.

reduce public exposure to tobacco and other smoking products and occurred at the expense of other businesses.⁸ Furthermore, these products ‘are often illegally imported or manufactured in unsafe or uncontrolled conditions’ and therefore they are ‘also unlikely to meet Australian safety standards in relation to ingredients and concentrations and may contain dangerous toxins’.⁹

There is also concern about ‘aggressive’ new marketing of smoking products to young people, including using social media to ‘promote allegedly safer new smoking products, such as e-cigarettes’.¹⁰ The explanatory notes refer to the uptake of smoking products by young people and the risk of a rapid escalation of smoking rates in the future.¹¹

In response to these concerns, the department undertook an extensive consultation process. That process included canvassing a range of potential responses with stakeholders in 2022, and targeted consultations on a draft of the Bill.¹²



Several submitters commented positively on the consultation process relating to the Bill. For example, Cancer Council Queensland commended the government for its ‘detailed and comprehensive consultation process’¹³ while groups representing tobacco retailers praised the department for its professional and consultative approach.¹⁴

1.3 Legislative compliance

The committee’s deliberations included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).



The committee is satisfied that the Bill is compatible with human rights and has sufficient regard to fundamental legislative principles. While some provisions of the Bill limit human rights, these limitations are reasonable and justified in the circumstances. In reaching this conclusion, the committee has considered the safeguards included in the Bill and the significant public interest in reducing the smoking rate, protecting the community from second-hand smoke, and combating the illicit tobacco trade in Queensland.

1.3.1 *Legislative Standards Act 1992*

The committee is satisfied that the Bill complies with the LSA.

In reaching this conclusion, the committee considered several issues relating to fundamental legislative principles (FLPs), including:

- whether the penalties for new and extended offences are proportionate to the relevant offences and consistent with other penalties within legislation
- whether the proposed licensing scheme:

⁸ Explanatory notes, p 2.

⁹ Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 331.

¹⁰ Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 331.

¹¹ Explanatory notes, p 2.

¹² Explanatory notes, p 19.

¹³ Submission 4, p 1.

¹⁴ Australian Lottery & Newsagents Association, the Australian Association of Convenience Stores, and Master Grocers Australia Independent Retailers, submission 23.

- defines the administrative powers to grant, change, suspend or cancel licences sufficiently to safeguard the rights and liberties of individuals
 - provides for internal and external reviews of decisions in a manner consistent with principles of natural justice
- whether the proposed power to seize illicit tobacco is consistent with principles of natural justice
 - whether the expanded powers of authorised persons, particularly their powers of entry, will impact the rights and liberties of individuals in a manner that is reasonable and justified
 - whether the Bill delegates legislative power, including in relation to the new licensing scheme, in a manner that has sufficient regard to the institution of Parliament.

The explanatory notes tabled with the Bill contained the information required by Part 4 of the LSA. They included a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 Human Rights Act 2019

The committee is satisfied that the Bill is compatible with the HRA.

In reaching this conclusion, the committee considered a variety of factors, including:

- the impact of the new licensing scheme on the right to privacy and the right to property
- whether the provisions relating to the seizure and forfeiture of illicit tobacco are consistent with the right to property
- whether the information sharing provisions are consistent with the right to privacy
- whether the restrictions on advertising are consistent with the right to freedom of expression
- whether provisions relating to child employees are consistent with the rights of children to non-discrimination on the basis of age with regard to the right to work (this issue is discussed in more detail in section 2.4.1.1)
- whether prohibiting the supply of smoking products to children by parents or guardians is consistent with the cultural right and the right to privacy (this issue is discussed in more detail in section 2.4.2)
- whether the expansion of smoke-free areas and buffer zones is consistent with cultural rights and the right to freedom of movement
- whether the additional restrictions on tobacco vending machines are consistent with the right to property
- whether the penalties associated with new offences are proportionate and compliant with the HRA.

While the provisions identified above do place limits on the relevant human rights, the committee is satisfied that these limitations are reasonable and justified in the circumstances. This conclusion is based on the safeguards included in the Bill and the significant public interest in reducing the smoking rate, protecting the community from second-hand smoke, and combating the illicit tobacco trade in Queensland.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

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

Recommendation 1

The committee recommends the Tobacco and Other Smoking Products Amendment Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Staggered commencement of the Bill

A notable feature of the Bill is its staggered commencement. As Table 1 outlines, while most provisions in the Bill will commence on assent, certain key changes will not commence for more than a year, and the Bill will not have full effect until 1 September 2025.

Table 1 – When key changes in the Bill will take effect

	Key changes ¹⁵	Explanation ¹⁶
On assent	Most of the Bill, including: <ul style="list-style-type: none"> prohibition on the supply and possession of illicit tobacco framework for the licensing scheme, including provisions relating to application and grant criminalisation of supply of smoking products to children by parent or guardian modernised provisions relating to advertising, display, and promotion of smoking products 	Will allow: <ul style="list-style-type: none"> for immediate action regarding illicit tobacco administrative machinery for licensing scheme to be rolled out before licences are required (application portal expected to 'go live' in September 2023)
1 September 2023	New offences, requirements and powers relating to smoke-free areas, including: <ul style="list-style-type: none"> carparks adjacent to schools outdoor eating or drinking places outdoor markets organised children's activities. 	Will allow the department to provide information and education to impacted stakeholders
1 July 2024	Provisions relating to designated outdoor smoking areas at liquor licensed premises, including: <ul style="list-style-type: none"> their design (buffer zones) the presence of children 	Gives impacted stakeholders time to make necessary structural and operational changes
1 September 2024	Provisions that: <ul style="list-style-type: none"> prohibit unlicensed retail or wholesale of smoking products require employers (other than small businesses) to prevent supply or handling of smoking products by child employees further restrict sale from tobacco vending machines at liquor licensed premises 	Gives: <ul style="list-style-type: none"> retailers and wholesalers a year to apply for and obtain licences impacted employers and licensed premises the time to make changes to practices and staffing.
1 September 2025	Requirement for employers who are small businesses to prevent supply or handling of smoking products by child employees	Gives small businesses more time to make changes to practices and staffing.

Some stakeholders expressed concerns regarding the delayed commencement of certain aspects of the Bill.¹⁷ The most notable of their concerns are discussed in the relevant sections below.

¹⁵ Bill, cls 2 and 65; *Acts Interpretation Act 1954*, s 15A.

¹⁶ Explanatory notes; Queensland Health, correspondence, 21 March 2023, pp 2-4.

¹⁷ See for example, submission 4.

2.2 Licensing scheme for wholesale and retail supply of smoking products

At present, there is no scheme for licensing the wholesale and retail supply of smoking products in Queensland.

Retail and wholesale licensing schemes for smoking products have a number of objectives. For retail licensing schemes, these can include: tracking the number of tobacco outlets in order to assist with implementing compliance programs; preventing the sale of products to minors; and, regulating the availability of tobacco products by limiting the number or density, location and type of tobacco outlets. The objective of wholesale licensing schemes can include: sending a message that selling tobacco is a privilege and not a right; provision of information to regulators; and making it harder for retailers to avoid being licensed.¹⁸

The lack of a licensing scheme limits the ability of the department to enforce existing laws. In particular, it limits the ability of the department ‘to effectively identify and monitor the number, type and location of businesses selling smoking products’.¹⁹ This problem has become particularly acute in relation to the growing e-cigarette market, ‘where there is no reliable list of wholesalers and an increasing amount of illicit products entering the market’.²⁰

The Bill therefore proposes to improve oversight of the smoking product industry in Queensland by introducing a licensing scheme for wholesale and retail sellers of smoking products.²¹

2.2.1 Overview of the proposed licensing scheme

Under the proposed licensing scheme:

- a retail licence will authorise the sale of smoking products by retail sale
- a wholesale licence authorises the sale of smoking products by wholesale, but only to licensed retailers
- both types of licence authorise sales at one physical premises and one online shop, with additional premises or online shops requiring separate licences.²²

Special provisions apply to liquor licensed premises, recognising that this group of retailers is already subject to a high degree of regulation. Where the holder of a liquor licence applies to sell smoking products at their premises, they will automatically be granted a retail licence (liquor).²³ However:

- the chief executive may refuse to grant a retail licence (liquor) if the applicant’s liquor licence is suspended or cancelled, or they have had a previous retail licence (liquor) suspended or cancelled²⁴
- sales will only be allowed from the liquor licensed premises, not from an online shop.²⁵

Before granting a retail or wholesale licence, the chief executive must be satisfied the relevant person is a fit and proper person to hold the licence.²⁶ This includes considering:

¹⁸ HCDSDFVPC, Inquiry into tobacco licensing arrangements in Queensland (Report 19), April 2016, pp 12, 13.

¹⁹ Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 331.

²⁰ Explanatory notes, p 2.

²¹ Bill, cl 7.

²² Bill, cl 7 (proposed ss 7B and 7C of the Act).

²³ Bill, cl 7 (proposed s 7I(2) of the Act).

²⁴ Bill, cl 7 (proposed s 7I(3) of the Act).

²⁵ Explanatory notes, p 4.

²⁶ Bill, cl 7 (proposed s 7I(1) of the Act).

- whether the applicant holds or previously held a licence under the Act, any specific conditions attached to the licence and whether the licence was ever suspended or cancelled
- previous convictions, for example - breaches of the Act or serious offences involving fraud and dishonesty
- compliance with any State or Commonwealth smoking product laws
- any instance of insolvency, administration, receivership, liquidation or disqualification from managing corporations.²⁷

A licence may be granted with or without conditions.²⁸ If a licence is declined or cancelled, no further application for a licence may be made for six months.²⁹



There will be an annual flat fee charged for obtaining and renewing a licence. The annual fee for a retail licence is expected to be \$475, while the fee for a wholesale licence will be \$675.³⁰

These fees are intended to provide for full cost recovery of the new licensing scheme. The requirement for annual renewal 'will also provide an opportunity to update the broad industry profile and information held about individual sellers'.³¹

The Bill creates an offence to sell a smoking product by wholesale or retail without a licence, and an offence for a wholesaler to sell to an unlicensed retailer.³² The penalty for these offences will be 1,000 penalty units (\$143,750, with the current penalty unit value of \$143.75).³³ There will be an exception for pharmacists, who will not require a licence to sell smoking products that are 'regulated products' on prescription.³⁴

Where a licensee breaches the Act or otherwise ceases being a fit and proper person, the Bill also provides that the chief executive may:

- suspend or cancel the licence where a holder of a licence breaches the Act or a condition of their licence³⁵
- cancel the licence where the licensee is no longer a fit and proper person to hold a licence or the licensee is placed in administration, wound up, or deregistered under the *Corporations Act 1990*.³⁶

If a person is adversely affected by a decision of the chief executive, they may first seek an internal review of the decision through a process set out in the proposed new Subdivision 2 of the Act. If they are not satisfied with the outcome of the internal review, they may seek an external review by the Queensland Civil and Administrative Tribunal.³⁷

The Bill also proposes:

²⁷ Bill, cl 7 (proposed s 7ZC of the Act).

²⁸ Bill, cl 7 (proposed s 7J(3) of the Act).

²⁹ Bill, cl 7 (proposed s 7H of the Act).

³⁰ Explanatory notes, p 3; Queensland Health, correspondence, 21 March 2023, p 2.

³¹ Explanatory notes, p 3.

³² Bill, cl 9.

³³ Explanatory notes, p 3.

³⁴ Bill, cl 9.

³⁵ Bill, cl 7 (proposed ss 7Y and 7Z of the Act).

³⁶ Bill, cl 7 (proposed s 7Z of the Act).

³⁷ Bill, cl 7 (proposed s 7ZX of the Act).

- the establishment and maintenance of a register of licences, which will be published on the department’s website (which may include the conditions listed on a licence)³⁸
- empowering the chief executive to request information from a licence holder about the chemical composition of any smoking product sold or available for sale through their business³⁹
- helping small retailers in rural and remote areas who cannot obtain smoking products from wholesalers by allowing for a ‘limited wholesale condition’, which authorises a retail licensee to on-sell small amounts of smoking products to these retailers, provided such on-selling is not their primary business activity.⁴⁰

The government expects the licence application portal to go live on 1 September 2023, with the offence of unlicensed supply to commence on 1 September 2024. This will give wholesalers and retailers 12 months to obtain a licence.⁴¹

2.2.2 The proposed licensing scheme

The vast majority of submitters strongly supported the licensing scheme. This group comprised a diverse mix of stakeholders, including members of the public, academic experts, health professionals, retailers, anti-smoking organisations and big tobacco companies.⁴²

Many of these submitters supported the licensing scheme on the basis that it will:

- help to reduce rates of smoking in Queensland, benefiting public health
- strengthen the ability of the department to respond to illicit tobacco
- generate benefits for legitimate businesses who seek to comply with regulations.⁴³

Typically, these submitters also stressed the importance of effective enforcement of the new licensing scheme as well as existing laws (see section 2.3.1, which discusses enforcement in more depth).

A small number of submitters offered express support for the exception relating to pharmacies,⁴⁴ who will not require a licence to sell smoking products that are ‘regulated products’ on prescription.⁴⁵ The Royal Australian College of General Practitioners (RACGP) Queensland Faculty explained that this exception, ‘will facilitate smoking cessation strategies utilised by General Practitioners, including the prescribing of nicotine replacement therapies’.⁴⁶

In his evidence, Dr Stephen Donohue, Director of the Townsville Public Health Unit noted that the *Medicines and Poisons Act 2019* (MPA) deals with nicotine and the *Tobacco and Other Smoking Products Act 1998* (TOSPA) deals with smoking products and tobacco. He also noted discrepancies between the acts in respect of things like advertising standards and product display which impact negatively on enforcement efforts. He agreed that these two pieces of enforcement legislation could benefit from streamlined operation. Dr Donohue also noted that there are gaps between the

³⁸ Bill, cl 7.

³⁹ Bill, cl 12(4).

⁴⁰ Bill, cl 7 (proposed s 7B(3) of the Act). See: Explanatory notes, pp 3-4; Hon Y D’Ath MP, Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 331.

⁴¹ Explanatory notes, p 3.

⁴² For example, see submissions 1, 4, 6, 7, 10, 13, 18, 19, 21, 23, 25, 26, 28 and 29.

⁴³ See for example submissions 1, 4, 6, 7, 10, 13, 18, 19, 21, 23, 25, 26, 28 and 29.

⁴⁴ Pharmaceutical Society of Australia, submission 28, p 2; Royal Australian College of General Practitioners (RACGP) Queensland Faculty, submission 29, p 1.

⁴⁵ Bill, cl 9.

⁴⁶ RACGP Queensland Faculty, submission 29, p 1.

Commonwealth legislation and what the Queensland inspectors are able to do, acknowledging that '[t]o some extent that loophole has been fixed in the amendments.'⁴⁷

Dr Donohue recounted for the committee some of the enforcement difficulties confronting his team of environmental health officers in trying to stop illicit tobacco sales, as well as sales of vapes suspected to contain nicotine, stating:

They go to a tobacco seller and most likely the person will refuse consent for entry. Therefore, you can only go in with a warrant which is really hard to get and specific to a particular purpose and piece of law. They will refuse to answer questions and refuse to identify themselves because there is a loophole about self-incrimination. They will demand under what act you are entering because they can use that against you. They will then go through all sorts of appeals, requests and complaints about whether or not you have seized any product and in most cases, because of the difficulty of testing et cetera, you will have to give it back. The fundamental problem in Queensland is that there is the medicines and poisons legislation, which is about things like nicotine, which is a poison—most of the big vapes have enough nicotine in them to kill a child—versus TOSPA. The fundamental problem my team has is that under TOSPA you can search and seize but you cannot get in, without permission or a warrant, beyond the front desk.

Under the MPA, the Medicines and Poisons Act, you can get in, even without a warrant or permission, but you cannot seize anything. They are operating under legal opinions which say that you cannot operate under more than one act at a time... Under MPA it is called reasonable suspicion. Under TOSPA it is called reasonable belief. On what basis can you enter when you see a whole range of vapes? There are dozens of different colours, types, brands, shapes, sizes, and which ones might contain nicotine. I can tell you straight that the vast majority of vapes available in my area contain nicotine and it affects every school, but apparently that is not reasonable suspicion. Without a legal basis they have been utterly unsuccessful in all of the basic steps that you want to talk about—entry, information, search, seizure and prosecution. At every step there are multiple impediments.⁴⁸

To address some of these concerns, the committee recommends improved alignment of the MPA and TOSPA to remove barriers to executing warrants, searching premises and seizing contraband items.

Recommendation 2

The committee recommends improved alignment of the *Medicines and Poisons Act 2019* and the *Tobacco and Other Smoking Products Act 1998* to remove barriers to executing warrants, premises and seizing contraband items.

2.2.3 Submitter views

Some submitters supported the licensing scheme generally, but proposed specific changes to improve its operation. Their suggestions included:

- adopting a more nuanced scheme for licensing retailers that distinguishes between different types of stores (e.g. general retail vs specialist tobacconists, physical vs online stores) allowing a tailored approach to regulation, monitoring and compliance⁴⁹

⁴⁷ Queensland Parliament, Record of Proceedings, 12 March 2023, p 10.

⁴⁸ Queensland Parliament, Record of Proceedings, 12 March 2023, pp 9-10.

⁴⁹ Professor Matthew Rimmer, submission 7; Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health, submission 21; and Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphet, School of Public Health, The University of Queensland, submission 24.

- expanding the range of factors that the Chief Executive can consider when granting a retail license to include, for example, the location of premises and their proximity to schools⁵⁰
- expanding the kinds of information that retailers and wholesalers are required to report and requiring them to report this information regularly⁵¹
- clarifying that the exception relating to pharmacists extends to the sale of devices used to administer regulated substances (not just the substances themselves)⁵²
- inserting an additional defence to the offence of wholesale supply to an unlicensed retailer, where a retailer deceived the wholesaler about having a licence⁵³
- strengthening the consequences associated with disciplinary matters and making additional changes to prevent businesses being ‘reborned’ under different names, or with different directors, after a licence is revoked⁵⁴
- banning online sales entirely, or at a minimum ensuring that regulations require online retailers to have robust age verification mechanisms⁵⁵
- inserting additional accommodations of liquor licensed premises⁵⁶
- placing limits on increases to the proposed licence fee, such as being limited to the Consumer Price Index⁵⁷
- substantially increasing the proposed licence fees⁵⁸
- placing more stringent limits on the sale of e-cigarettes and e-liquids, for example by restricting their sale to pharmacies, under prescription, regardless of whether they contain nicotine.⁵⁹

In response to these suggestions, the department advised the committee that:

- it will obtain the information required to enable effective regulatory oversight of smoking products without the need for additional licence types or requirements to provide information
- additional controls on the location of smoking product suppliers has not been considered as part of the current reforms, in part because of the current lack of information about suppliers (which the new licensing scheme will address)
- regarding pharmacies, the intent is for the exception to extend to devices used to administer regulated substances when they are included on the prescription

⁵⁰ Cancer Council Queensland, submission 4; Name withheld, submission 7.

⁵¹ No More Butts, submission 1; Cancer Council Queensland, submission 4; and Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphett, School of Public Health, The University of Queensland, submission 24.

⁵² Pharmaceutical Society of Australia, submission 28.

⁵³ British American Tobacco Australia, submission 10.

⁵⁴ British American Tobacco Australia, submission 10.

⁵⁵ Cancer Council Queensland, submission 4.

⁵⁶ Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphett, School of Public Health, The University of Queensland, submission 24.

⁵⁷ Australian Lottery & Newsagents Association, the Australian Association of Convenience Stores, and Master Grocers Australia Independent Retailers, submission 23.

⁵⁸ Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphett, School of Public Health, The University of Queensland, submission 24.

⁵⁹ Australian Dental Association Queensland, submission 30, p 1.

- additional accommodations for liquor licenced premises are ‘unnecessary and could inhibit its ability to obtain complete information about businesses engaged in the supply of smoking products’
- there is no justification for increasing the proposed licence fees, which are designed to ensure full cost recovery
- more stringent regulation of e-cigarettes and e-liquids falls beyond the scope of the Bill, but may be considered in the future.⁶⁰

Committee comment

The committee notes that a diverse range of stakeholders support the aims of the licensing scheme as proposed in the Bill, and that some submitters have acknowledged collaborative consultation undertaken with Queensland Health during the Bill’s development.

The committee is satisfied that the licensing scheme proposed in the Bill is another key reform in the ongoing battle to combat the illicit tobacco market.

In the course of this inquiry, the committee also heard evidence from submitters and witnesses who are concerned about the increasing use of e-cigarettes in the community. While those concerns fall outside the scope of this Bill inquiry, the issues raised can inform the committee’s consideration of the issues around vaping for its *Inquiry into reducing rates of e-cigarette use in Queensland*.

2.3 Strengthening enforcement capabilities and powers

The Bill proposes a number of changes designed to strengthen enforcement of the Act and relevant State and Commonwealth laws. These include:

- inserting new provisions in the Act that permit the disclosure of confidential information in certain circumstances, and ensure that disclosure is subject to safeguards to facilitate the sharing of intelligence with other State and Commonwealth enforcement agencies⁶¹
- extending the existing powers of authorised persons under the Act to take monitoring and enforcement action including: making additional inquiries, issuing improvement notices to immediately prohibit an activity, and remaining at a premises for a reasonable period to check compliance with an improvement notice⁶²
- expanding the definition of authorised persons under the Act to include:
 - a conservation officer appointed under the *Nature Conservation Act 1992*, for the purpose of monitoring and enforcing compliance with the prohibition of smoking in a national park
 - a police officer with the functions to investigate, monitor and enforce compliance with the offences of a supplier selling smoking products without licence and supplying or possession of illicit tobacco.⁶³

2.3.1 Effective enforcement of new and existing laws

The effective enforcement of new and existing laws was a high priority for many submitters.

⁶⁰ Queensland Health, correspondence, 6 April 2023, Attachment, pp 2-3.

⁶¹ Bill, cl 60 (proposed ss 52 and 52A of the Act).

⁶² Bill, cls 52, 53, and 57.

⁶³ Bill, cls 51 and 66.

A number of submitters expressed concern about whether the licensing scheme would be enforced effectively. Many of these submitters stressed that this will require the provision of adequate resources and funding to the agencies responsible for enforcement.⁶⁴

To improve enforcement of existing laws, in particular the prohibition on the sale of smoking products to children, several submitters suggested amending the Act to permit 'controlled purchases' (i.e. a purchase by someone under 18 who is acting under the direction of an authorised officer).⁶⁵ Cancer Council Queensland advised that several other jurisdictions (including the Australian Capital Territory, Victoria and South Australia) permit controlled purchases as a tool for testing suppliers' compliance with age restrictions on the sale of smoking products.⁶⁶

In response to these concerns regarding enforcement, the department advised the committee that:

- several of the changes proposed in the Bill, including the expansion of the definition of 'authorised officer' to include police, will facilitate effective enforcement of both the changes proposed and existing laws
- it will continue to invest in enforcement, including by using some of the fees paid under the new licensing scheme to enhance its enforcement capability
- its compliance strategy does not include controlled purchases because they 'are not consistent with the broad policy objective of both the Act and the Bill to reduce children's exposure to smoking products.'⁶⁷

Committee comment

The committee notes submitters concerns about the enforcement of smoking and tobacco laws. It is clear that non-compliance with existing laws has a range of adverse effects, including negative effects for those businesses that do comply with the law.

The committee is satisfied that the proposed changes to enforcement capabilities and powers will contribute to effective enforcement of new and existing laws.

The committee believes that there needs to be greater coordination between Queensland Health, the Queensland Police Service and other state and federal agencies operating in this space (such as Australian Border Force and the Australian Taxation Office) to more efficiently focus enforcement efforts on the tackling of illicit tobacco and vaping markets.

Recommendation 3

The committee recommends that the Government fully consider resourcing enhanced enforcement efforts coordinated between Queensland Health and the Queensland Police Service, and between the relevant state and federal agencies targeting illicit tobacco and vaping markets.

⁶⁴ Nick Kumar, submission 2; Pamela Wright, submission 8; West Moreton Health, submission 18, Lisa Baldwin, submission 19; and name withheld, submission 22

⁶⁵ Cancer Council Queensland, submission 4; Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health, submission 21; Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphet, School of Public Health, The University of Queensland, submission 24.

⁶⁶ Submission 4.

⁶⁷ Queensland Health, correspondence, 6 April 2023, Attachment, p 5.

2.4 Offences designed to protect children from smoking

The Bill includes changes to offences that are designed to protect children from smoking. It proposes amendments to the Act to prohibit:

- the supply of smoking products by children⁶⁸
- the supply of smoking products to children by parents or guardians.⁶⁹

2.4.1 Prohibiting the supply of smoking products by children

Although the Act prohibits the supply of a smoking product to a person under the age of 18 years, there is no prohibition on such a person handling or supplying such a product. This means that children employed by a smoking product retailer, such as a supermarket or newsagency, can sell smoking products.

The sale of smoking products by children is of concern to the committee. As the Minister noted:

Employees under the age of 18 who sell smoking products may grow to view smoking as normal behaviour. They will also become familiar with brand names and be exposed to the variety of smoking products available, including the multiple flavours of e-cigarettes'.⁷⁰

The Bill amends the Act to prohibit the supply and handling of smoking products by children.⁷¹

Notably, it is the employer, not the child employee, who is responsible for complying with this prohibition: suppliers are required to ensure that a child employee does not supply or handle a smoking product in the course of their employment.⁷² It will be a defence for the supplier to show that they took prevention measures, such as providing instructions to the child employee and obtaining their written acknowledgement prior to the supply.⁷³

The prohibition will not apply where children are working in a pharmacy and play a role in the sale of a smoking product that is a regulated product on prescription.⁷⁴

As noted in section 2.1, table 1, the prohibition on the sale of smoking products by children will commence on 1 September 2024, giving retailers time to adjust their practices and staffing. For small businesses (such as those employing less than 20 people) the commencement date will be 1 September 2025.⁷⁵

2.4.1.1 *Submitter views*

Submitters expressed divergent views about the proposal to prohibit the supply and handling of smoking products by children.

The majority of the submitters who commented on this proposal supported it. However, some of these submitters:

⁶⁸ Bill, cls 10 and 11.

⁶⁹ Bill, cl 17.

⁷⁰ Minister for Health and Ambulance Services, Queensland Parliament, Record of Proceedings, 14 March 2023, p 332.

⁷¹ Bill, cl 10.

⁷² Bill, cl 10 (proposed s 11A(1)).

⁷³ Bill, cl 10 (proposed s 11A(4)) and explanatory notes, p 5.

⁷⁴ Bill, cl 11 (proposed s 12(3)(b)).

⁷⁵ Explanatory notes, pp 4-5.

- suggested that employers be placed under a greater onus to prevent the sale of smoking products by children, expressing concern that employers might merely tell child employees not to sell smoking products, while tolerating or encouraging that behaviour in practice⁷⁶
- called for the relevant provisions to commence sooner, arguing that the proposed delay in their commencement is excessive given the potential harm to child employees⁷⁷
- expressed concern about the exception for pharmacies, suggesting there is potential for it to be exploited by the tobacco industry in the future.⁷⁸

In contrast, the Queensland Hotels Association stated that the prohibition is likely to have a negative impact on liquor licenced premises. They submitted that the sale of smoking products by children should be permitted in liquor licensed premises, as these suppliers are already subject to a high degree of regulation that ensures child employees are adequately supervised.⁷⁹

A small number of submitters expressed concern that the prohibition of the sale of smoking products by children could lead to age-based discrimination in the workplace.⁸⁰

In response to these suggestions and concerns, the department advised that:

- the balance struck by the proposal is fair and reasonable, as employers will bear the burden of proving that they took appropriate prevention measures in relation to the handling or supply of smoking products by child employees
- the delayed commencement of the relevant provisions is necessary to give affected stakeholders adequate time to make the changes necessary to comply
- the exception for pharmacies is narrow, as it applies only to smoking products dispensed on prescription, and is necessary to ensure that pharmacies have sufficient staff available, especially in rural and remote areas.
- although liquor licensed premises provide additional training and supervision to child employees, this does not prevent those children from being exposed to smoking products if they are permitted to supply or handle them
- the potential for the prohibition to lead to age-based discrimination in employment will be reduced by:
 - the fact that some major retailers, including Coles and Woolworths, already have policies that prevent child employees from working at counters where smoking products are sold⁸¹
 - the prohibition's deferred commencement which will mean that many children employed today will have naturally aged out of this prohibition before it takes effect.⁸²

⁷⁶ Cancer Council Queensland, submission 4.

⁷⁷ Australian Medical Association Queensland, submission 6; Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health, submission 21.

⁷⁸ AMA Queensland, submission 6.

⁷⁹ Queensland Hotels Association, submission 15.

⁸⁰ For example, the Australian College of Nursing, submission 31.

⁸¹ Queensland Health, public briefing transcript, Brisbane, 31 March 2023, p 3.

⁸² Queensland Health, correspondence, 6 April 2023, Attachment, p 7.

Committee comment

The committee notes the divergent views expressed by submitters regarding the prohibition on the sale of smoking products by children.

The committee is satisfied that the approach proposed in the Bill strikes an appropriate balance between the need to protect child employees from exposure to smoking products, and the need to ensure that the financial and operational burden placed on employers is reasonable.

The committee acknowledges that the prohibition on the supply of smoking based products by children may lead to age-based discrimination in the workplace. As such, it will limit their ability to enjoy their human rights without discrimination, a right protected by section 15(2) of the HRA.

The committee considers that this limitation of human rights is reasonable and justified given that the prohibition will protect children from exposure to smoking products. As such, the prohibition ultimately bolsters the rights of children to be protected in their best interest because of their status as children, a right also protected by the HRA.⁸³

2.4.2 Prohibiting the supply of smoking products to children by parents and guardians

While the Act already prohibits the supply of smoking products to children, no offence is committed if the supplier is a responsible adult for the child, such as a parent or guardian.

This exception is a concern, as the ‘supply of smoking products to children by family and friends contributes to smoking initiation, experimentation and progression to regular smoking’.⁸⁴

The Bill therefore amends the Act to remove the exemption that prevents a responsible adult committing an offence if they supply a smoking product to a child.⁸⁵



Under the changes proposed in the Bill, a parent or guardian who supplies a smoking product to a child would be liable to a fine of up to 140 penalty units (currently equivalent to \$20,125).⁸⁶

However, the explanatory notes advise that, the ‘intended enforcement approach will focus on monitoring, prevention and education, rather than prosecution of the parent or guardian’.⁸⁷

2.4.2.1 Extension of prohibition to parents and guardians engages human rights

Extending the prohibition on the supply of smoking products to children to include supply by parents and guardians limits the right to privacy in the home, and could limit cultural rights, if a relevant cultural practice involves the consumption of smoking products at home.

Under the HRA:

- a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with⁸⁸
- all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.⁸⁹

⁸³ HRA, s 26(2).

⁸⁴ Explanatory notes, p 5.

⁸⁵ Bill, cl 17.

⁸⁶ Bill, cl 17 (proposed s 19).

⁸⁷ Explanatory notes, p 5.

⁸⁸ HRA, s 25(a).

⁸⁹ HRA, s 27.

However, the extended prohibition is likely to bolster other human rights because it is designed to protect children from the life-long harm associated with smoking. Most notably, the proposal will promote the rights of children to be protected in their best interests because of their status as a child, a right protected by the HRA.⁹⁰

By prioritising prevention over punitive action, the intended enforcement approach (detailed in the explanatory notes and discussed in section 2.4.2.3, below) may also reduce the impact of the extended prohibition on the right to privacy and cultural rights.

2.4.2.2 Enforcement approach that avoids criminalisation

All of the submitters that commented on the prohibition on the supply of smoking products to children stressed the importance of an enforcement approach that prioritises prevention and education, rather than criminalisation.⁹¹ Several of them stressed the potential for the provision to have a disproportionate and negative impact on disadvantaged communities, including Aboriginal and Torres Strait Islander peoples, where smoking rates remain higher.

The Queensland Network of Alcohol and Other Drug Agencies (QNADA), expressed particular concern at the magnitude of the penalty associated with the relevant offence. They explained:

This [140 penalty units, \$20,125] is a significant penalty for any impacted person. For this reason, and to ensure the intent of the provision is actualised, the penalty units should be removed, or significantly reduced, as failure to pay fines may result in escalating contact with the criminal justice system as a result of broader statutory enforcement regimes.⁹²

2.4.2.3 Department response

In response, the department advised the committee that:

- it does not intend to prosecute parents or guardians for supplying smoking products to children in the first instance
- it may consider prosecution in the most serious cases, for example ‘where the supply was intentional, in wilful disregard of a prior warning or done for profit’
- it will develop guidelines that clarify the criteria to be considered in determining appropriate enforcement actions.⁹³

Committee comment

The committee notes the concerns of some submitters regarding the potential for the proposal to prohibit the supply of smoking products to children by parents and guardians to adversely affect vulnerable members of our community. As discussed above, the extension of the prohibition has the potential to limit cultural rights and the right to privacy, both rights protected by the HRA.

However, the committee also notes that the extended prohibition bolsters other human rights, including the rights of children to be protected in their best interests because of their status as a child. When children are exposed to smoking by parents or guardians, they are placed at risk of significant and long-term harm.

In light of these factors, and the enforcement approach outlined by the department, the committee is satisfied that the extended prohibition will be implemented in a manner that is compatible with the HRA.

⁹⁰ HRA, s 26(2).

⁹¹ Cancer Council Queensland, submission 4; Australian Medical Association Queensland, submission 6; and Queensland Network of Alcohol and Other Drug Agencies, submission 27.

⁹² Submission 27, p 3.

⁹³ Queensland Health, correspondence, 6 April 2023, Attachment, p 6.

However, the committee also notes that the extended prohibition will take effect on assent. This means that neither the department, nor parents or guardians affected by this change, will have much time to prepare for its implementation. In contrast, the commencement of many other provisions in the Bill, particularly those affecting the business community, has been staggered to allow the department to provide information and education to affected stakeholders.

The committee therefore urges the department to ensure that the guidelines clarifying the criteria to be considered in determining appropriate enforcement action be developed in a timely manner.

2.5 Improving protections at liquor licenced premises

The Bill proposes improved protections from smoking at liquor licensed premises, including:

- tighter requirements for tobacco vending machines⁹⁴
- strengthening requirements relating to designated outdoor smoking areas (DOSAs).⁹⁵

2.5.1 Tighter requirements for tobacco vending machines

There are an estimated 800 tobacco product vending machines in licensed premises across Queensland. By making smoking products easier to access, these machines can trigger relapses by recent quitters and encourage social smokers to increase their smoking. Both these risks are exacerbated by the strong association between alcohol and tobacco consumption.⁹⁶

To address these risks, the Bill amends the Act to require that tobacco vending machines in liquor licensed premises must not be accessible by patrons. Instead, smoking products would only be supplied from a service area, such as a bar or bottle shop, with service area staff required to accept payment and retrieve the requested product from either a suitable cabinet or a tobacco product vending machine.⁹⁷

The existing display restrictions in the Act will apply to the cabinet or vending machine.⁹⁸

Licensed premises will be given time to adjust their practices and physical environment, with the new restrictions on tobacco vending machines to commence on 1 September 2024.⁹⁹

2.5.1.1 *Submitter views*

Most of the submitters who commented expressly on the new requirements for tobacco vending machines supported them.¹⁰⁰ A small number of these submitters suggested that the restrictions

⁹⁴ Bill, cls 14-16.

⁹⁵ Bill, cls 42-43.

⁹⁶ Explanatory notes, p 5.

⁹⁷ Bill, cls 13-16.

⁹⁸ Explanatory notes, p 5.

⁹⁹ Bill, cl 2.

¹⁰⁰ Cancer Council Queensland, submission 4; Australian Medical Association Queensland, submission 6; Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health; submission 21; Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphet, School of Public Health, The University of Queensland, submission 24.

should go even further, either by requiring tobacco vending machines to be located so that they are not visible to the public,¹⁰¹ or by banning tobacco vending machines entirely.¹⁰²

In contrast, organisations representing holders of liquor licences opposed the new requirements for tobacco vending machines. They expressed the view that tobacco vending machines are discrete, do not advertise smoking through their mere presences, account for a very small percentage of sales, and are already subject to tight regulations.¹⁰³

In response to these divergent views, the department advised the committee that ‘the reform strikes an appropriate balance between protecting the community and not unreasonably restricting a person’s choice to purchase smoking products.’¹⁰⁴

2.5.2 Strengthening requirements relating to a designated outdoor smoking area

The Bill proposes 2 key changes in relation to DOSAs at liquor licensed premises:

- introducing a requirement for smoke-free buffer zones between DOSAs and enclosed areas¹⁰⁵
- requiring liquor licence holders to ensure children do not remain in a DOSA.¹⁰⁶

To allow affected stakeholders to make the structural and operational changes needed to comply with these new requirements, these amendments will commence on 1 July 2024.¹⁰⁷

2.5.2.1 Requiring smoke-free buffer zones between a DOSA and the enclosed venue areas

The Act allows those holding a commercial hotel, community club or special facility (casino) licence to have a DOSA. This is a part of the licensed outdoor area in which smoking may occur.¹⁰⁸

To reduce the smoke drift from a DOSA into enclosed areas, the Act requires a DOSA to have a buffer zone on its perimeter wherever it is adjacent to other parts of the outdoor area. However, the Act does not currently require a buffer between the perimeter of a DOSA and an adjoining enclosed area.¹⁰⁹ This means that it is possible for smoke from a DOSA to drift into enclosed parts of a venue, for example through an open door or window in the adjoining wall.

To address this problem, the Bill proposes extending the existing buffer zone requirement to apply to the perimeter of a DOSA which is adjacent to an enclosed area of a liquor licensed premises.¹¹⁰

The Bill also proposes that:

- if the perimeter is or includes an access door, the liquor licensee must ensure the door is closed when not being used by patrons to enter or exit the DOSA

¹⁰¹ Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphet, School of Public Health, The University of Queensland, submission 24.

¹⁰² Cancer Council Queensland, submission 4; Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health; submission 21.

¹⁰³ Queensland Hotels Association, submission 15; Clubs Queensland, submission 17.

¹⁰⁴ Queensland Health, correspondence, 6 April 2023, Attachment, p 8.

¹⁰⁵ Bill, cl 42.

¹⁰⁶ Bill, cl 43.

¹⁰⁷ Bill, cl 2.

¹⁰⁸ Explanatory notes, p 7.

¹⁰⁹ Explanatory notes, p 7.

¹¹⁰ Bill, cl 42.

- where the perimeter includes a window, it must remain closed at all times when the DOSA is operating.¹¹¹

2.5.2.2 Requirement to ensure children do not remain in a designated outdoor smoking area

Children present in DOSAs are exposed to second-hand smoke, which is harmful. In addition, the fact that children are currently permitted in DOSAs makes them more appealing to adults who are caring for children.¹¹²

To address these issues, the Bill proposes amending the Act to require liquor licensees to ensure that no child remains in a DOSA. This requirement will not apply if a child is merely walking through a DOSA and does not remain there.¹¹³

2.5.2.3 Strengthened requirements for designated outdoor smoking areas

There were no submitters who expressly opposed the strengthened requirements for DOSAs.

Some of the submitters who supported the proposed changes argued that they should go further, for example by:

- further limiting the size of DOSAs¹¹⁴
- prohibiting the consumption of alcohol in these areas¹¹⁵
- requiring that these areas not be visible to children.¹¹⁶

Clubs Queensland, which represents liquor licensed venues, support the proposed changes, but noted that some venues may have to undertake significant works in order to comply. They therefore suggested that affected businesses be allowed to request additional time to undertake such works, where necessary.¹¹⁷

In response to these suggestions, the department advised the committee that:

- in 2022, it sought feedback on a proposal to ban the consumption of alcohol in DOSAs. However, ‘to allow further policy development and industry engagement, this reform was not progressed as part of this suite of amendments’
- given the delayed commencement of the relevant requirements, there is no need to allow for additional extensions.¹¹⁸

Committee comment

The committee notes that some of the proposals in the Bill may require liquor licensed venues to make significant changes to their practices and physical spaces. However, the committee is satisfied that the Bill strikes an appropriate balance between the burden placed on such venues, and the public interest in reducing smoking and protecting the community from second-hand smoke.

¹¹¹ Bill, cl 42.

¹¹² Explanatory notes, p 7.

¹¹³ Bill, cl 43.

¹¹⁴ Cancer Council Queensland, submission 4, p 11.

¹¹⁵ Cancer Council Queensland, submission 4, p 11.

¹¹⁶ Australian Medical Association Queensland, submission 6.

¹¹⁷ Clubs Queensland, submission 17.

¹¹⁸ Queensland Health, correspondence, 6 April 2023, Attachment, p 7.

2.6 Modernising advertising, display and promotion provisions to improve clarity and consistency

The current provisions in the Act regulating the advertising, display and promotion of smoking products were ‘designed primarily for the sale of tobacco products at bricks-and-mortar outlets and have not kept pace with emergent retail practices, products and initiatives’.¹¹⁹

To modernise these provisions, the Bill clarifies:

- that the restrictions on display, advertising or promotion of smoking products includes the display and advertisement of smoking products by suppliers¹²⁰
- that the prohibition on advertising captures terms used to describe e-cigarettes and their related products, including descriptors of how they differ from more traditional tobacco-based smoking products (for example, ‘smokeless products’) or colloquial names (for example, ‘vapes’)¹²¹
- that the restrictions on the display and advertising of smoking products apply to online shops¹²²
- that a supplier must not display multiple business names that each reference a smoking product¹²³
- that a supplier may only display one mandatory sign (for example, ‘it is an offence to supply a smoking product to a person under the age of 18’) and one permitted sign (that is, ‘smoking products sold here’) to reduce calling attention to the availability of smoking products at a retail point of sale¹²⁴
- that a nominal fee, such as a very small amount which is much less than the recommended retail value, will also be considered ‘free’ for the purpose of supply, to counter the trend for e-cigarette ‘sample bags’ to be sold at a dramatically-reduced price (such as five cents)¹²⁵
- the prohibition on a retail outlet displaying an image promoting the use of a smoking product includes any type of image promoting use of a smoking product, whether it is fixed, moving or within a video.¹²⁶

2.6.1 Submitters support modernisation but encourage further action

Only a small number of submitters commented directly on the modernisation of the advertising, display and promotion provisions in the Act, all of whom supported the proposed changes.¹²⁷

Several of these submitters encouraged further action. Most notably, the Cancer Council Queensland called for:

- additional restrictions on the ability of retailers to offer discounts and differential pricing

¹¹⁹ Explanatory notes, p 5.

¹²⁰ Bill, cl 19 (amending s 26).

¹²¹ Bill, cl 19 (amending s 26).

¹²² Bill, cl 20 (amending s 26A).

¹²³ Bill, cl 21 (amending s 26HA).

¹²⁴ Bill, cl 23 (amending s 26 HC).

¹²⁵ Bill, cl 24 (amending s 26N).

¹²⁶ Bill, cl 25 (amending s 26PA).

¹²⁷ Cancer Council Queensland, submission 4; Australian Medical Association Queensland, submission 6, Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphet, School of Public Health, The University of Queensland, submission 24; Royal Australian College of General Practitioners (RACGP) Queensland Faculty, submission 29.

- restrictions on other forms of promotion by tobacco companies, including political donations and the provision of promotional material to retailers.¹²⁸

In response to submitters' suggestions for further action, the department advised the committee that the government 'will continue to work with the Commonwealth and other jurisdictions to develop appropriate policy responses to these smoking product advertising, display and promotion issues.'¹²⁹

Committee comment

The committee notes the concerns of some submitters that further action on the advertising, display and promotion of smoking products may be necessary. The committee encourages the department to continue its engagement with the Commonwealth and other jurisdictions in this regard.

2.7 Prohibiting the supply and possession of illicit tobacco

Queensland retailers have advocated for more state-based enforcement action against the trade in illicit tobacco.¹³⁰ Traders in illicit tobacco who seek to profit from the evasion of standard retail requirements, cause 'significant detriment to compliant businesses and to public health'.¹³¹

Illicit tobacco is often imported illegally, avoiding excise taxes and allowing it to be sold cheaply. It typically fails to comply with plain packaging requirements and requirements to include graphic health warnings.¹³²

To address this problem, the Bill amends the Act to prohibit the supply of illicit tobacco. The penalty for this offence is up to 300 penalty units, which equates to (currently) a maximum penalty of \$43,125.¹³³

The Bill also makes it an offence to store or possess illicit tobacco at a retail outlet. This offence is subject to a maximum penalty of 140 penalty units, which equates to \$20,125. It is a defence to this offence to establish that the product was for personal use, although this defence does not apply if the product was present in a commercial quantity, as prescribed by regulation.¹³⁴



The Bill defines illicit tobacco as a smoking product that does not comply with:

- plain packaging requirements¹³⁵
- requirements to include a health warning prescribed by a Commonwealth regulation¹³⁶
- another requirement for the smoking product prescribed by a Commonwealth regulation.¹³⁷

In addition, the Bill empowers the chief executive, following a show cause process, to forfeit seized illicit tobacco without first taking prosecution action.¹³⁸

¹²⁸ Cancer Council Queensland, submission 4, pp 7-8.

¹²⁹ Queensland Health, correspondence, 6 April 2023, Attachment, p 5.

¹³⁰ Queensland Health, correspondence, 21 March 2023, p 2.

¹³¹ Explanatory notes, p 6.

¹³² Explanatory notes, p 6.

¹³³ Bill, cl 50 (proposed s 26ZQB).

¹³⁴ Bill, cl 50 (proposed s 26ZQB).

¹³⁵ As prescribed in the *Tobacco Plain Packaging Act 2011* (Cth).

¹³⁶ As prescribed in the Competition and Consumer (Tobacco) Information Standard 2011, made under the *Competition and Consumer Act 2010* (Cth).

¹³⁷ Bill, cl 50 (proposed s 26ZQB(5)).

¹³⁸ Bill, cl 56 (proposed s 42F).

2.7.1 Action on illicit tobacco

Almost all submitters strongly supported action on illicit tobacco.¹³⁹ In doing so, many of these submitters cited:

- the health risks associated with illicit tobacco and the threat it poses to the effectiveness of smoking reduction measures, such as plain packaging
- the role of organised crime in the illicit tobacco trade
- the negative impact of illicit tobacco on other businesses, including both retailers and wholesalers of smoking products
- State revenue lost due to illicit tobacco.

During public hearings, a number of witnesses elaborated on the negative impact of the illicit tobacco trade on businesses that seek to comply with the Act. Pam Wright, from Tobacco Station Group, explained:

I have been in the industry itself—not as a tobacconist, but in the industry itself—for about 14 years. I have owned tobacconists for the last seven. We have been very successful but our profit margin is now really hurting because of this illicit trade... Intimidation with these guys [illicit tobacco traders] is happening all the time. I have been subject to it on several occasions.¹⁴⁰

In addition to supporting the proposed legislative changes to help combat illicit tobacco, many submitters also stressed the importance of enforcement. This group, which included several smoking product retailers and organisations representing them, urged the government to ensure that both the proposed laws, and existing laws, are enforced effectively and without delay.¹⁴¹

Several submitters proposed that the penalty for supply or possession of illicit tobacco be increased, to better reflect the significant profits associated with its sale.¹⁴² In response, the department noted that the penalties already in place are significant.¹⁴³

In contrast, QNADA and the AMA Queensland raised concerns about the apparent emphasis on a regulatory response and its potential to criminalise vulnerable groups.¹⁴⁴ They stressed that any regulatory response should be accompanied by investment in support services that reduce demand for illicit tobacco and mitigate the harm it causes. QNADA explained:

... an increased regulatory response has the potential to lead to a range of negative consequences for individuals and the community and is unlikely to have sustained benefits without continued investment in demand and harm reduction strategies... it is possible we have reached a threshold where prohibitive pricing is pushing vulnerable populations to unregulated [i.e. illicit] tobacco in the absence of other nicotine replacements and support.¹⁴⁵

In response to these submitters, the department advised the committee that:

The amendments in the Bill are intended to protect the community, particularly families and children, from the dangers of second-hand smoke, reduce exposure to smoking and smoking products for children,

¹³⁹ See submissions 2, 6, 8, 10, 11, 12, 14, 19, 22, 23, 25

¹⁴⁰ Public hearing transcript, Townsville, 12 April 2023, pp 2-3.

¹⁴¹ For example, see Pamela Wright, submission 8; TSG Franchise Management, submission 11; name withheld, submission 12; TSG Caloundra and Maroochydore, submission 14; Lisa Baldwin, submission 19; name withheld, submission 22; Australian Lottery & Newsagents Association, the Australian Association of Convenience Stores, and Master Grocers Australia Independent Retailers, submission 23.

¹⁴² Including name withheld, submission 12; Philip Morris Australia, submission 25.

¹⁴³ Queensland Health, correspondence, 6 April 2023, Attachment, p 3.

¹⁴⁴ AMA Queensland, submission 6; QNADA, submission 27.

¹⁴⁵ Submission 27, pp 3-4.

and combat the increasing trade in illicit tobacco. These are public safety initiatives, first and foremost. Although the Bill does include penalties for contravention of these new restrictions, this is necessary to ensure compliance. The Bill also supports persons wanting to stop smoking and recent quitters, and Queensland Health remains committed to providing services, pathways and materials to assist with quitting smoking.¹⁴⁶

Committee comment

The committee notes the significant and adverse effect of illicit tobacco on the Queensland community, including many of the stakeholders who submitted to the inquiry.

Based on the department's response, we are satisfied that the changes proposed are an appropriate public health response to smoking, noting the department's commitment to providing appropriate services and supports to those wanting assistance to quit smoking, as well as the ongoing need to reduce community exposure to second-hand smoke.

2.8 Expanding smoke free places

The Bill proposes expanding smoke-free places by:

- introducing a smoke-free buffer zone for outdoor eating or drinking places¹⁴⁷
- prohibiting smoking in more places, including at outdoor markets, where children's organised activities are taking place, and in carparks adjacent to schools.¹⁴⁸

These amendments will commence on 1 September 2023.¹⁴⁹

2.8.1 Introducing smoke free buffer-zones for outdoor eating or drinking places

An 'outdoor eating or drinking place' is an open-air place where persons may consume food or drink that was provided from an on-site food service.¹⁵⁰

The Act currently prohibits smoking within an outdoor eating or drinking place.¹⁵¹ However, it permits smoking in 'smoking only' areas (areas that are clearly designated as somewhere where food and drink may not be consumed).¹⁵²

To reduce exposure to the risk of second-hand smoke within outdoor eating or drinking places, the Bill amends the Act to:

- impose a five-metre buffer zone around the perimeter of outdoor eating or drinking places¹⁵³
- impose a two-metre buffer zone around any smoking-only area within an outdoor eating or drinking place. Food or drink may not be served in the buffer zone, and no entertainment may be offered.¹⁵⁴

In both cases, it will be an offence for a person to smoke in the buffer zones. However, the person in charge of the outdoor eating or drinking place:

¹⁴⁶ Queensland Health, correspondence, 6 April 2023, Attachment, p 4.

¹⁴⁷ Bill, cls 38 and 39 (proposed ss 26X and 26XA).

¹⁴⁸ Bill, cls 31 (proposed s 26VQ), 46 (proposed s 26ZE-26ZGA) and 47 (proposed s 26ZKD).

¹⁴⁹ Bill, cl 2.

¹⁵⁰ Explanatory notes, p 8.

¹⁵¹ Bill, cl 38 (proposed s 26X).

¹⁵² Explanatory notes, p 8.

¹⁵³ Bill, cl 38 (proposed s 26X).

¹⁵⁴ Bill, cl 39 (proposed s 26XA).

- **will not** be liable for any contraventions that occur in the five-metre buffer zone around the perimeter of an outdoor eating or drinking place
- **will** be liable for any contraventions that occur within the two-metre buffer zone around any smoking-only area (as these will occur within the perimeter of the venue).¹⁵⁵

2.8.2 Prohibiting smoking in more places

The Act currently regulates smoking at a variety of outdoor places. The Bill proposes strengthening these protections in several ways.

2.8.2.1 *Outdoor markets*

Current smoking restrictions apply inconsistently across outdoor markets and even within the same market. This increases the risk of second-hand smoke exposure for market patrons.¹⁵⁶

To address this problem, the Bill inserts a new Division 2A in the Act, to regulate smoking at outdoor markets.¹⁵⁷ This new division prohibits smoking:

- within an outdoor market¹⁵⁸
- within five-metres of any clearly-defined entrance and/or exit to the market.¹⁵⁹

The market organiser can be held liable for breaches of the prohibition on smoking within the market.¹⁶⁰

The market organiser may set aside a smoking area within the outdoor market. In this case:

- there must be a five-metre buffer zone between any smoking area and other parts of the market
- smoking is prohibited in the buffer zone
- patrons will not be permitted to eat or drink in the smoking area or the buffer zone.¹⁶¹

2.8.2.2 *Children's organised activities*

To reduce children's exposure to second hand smoke, the Bill proposes expanding the existing prohibition of smoking at or near children's sporting events to include other organised children's activities, where they are conducted outdoors by an association or club.¹⁶² This does not include excursions into general community areas, a street parade, or attendance at a public event.¹⁶³

The existing requirement for a ten-metre buffer zone around the place where the activity is conducted will also apply. However, the explanatory notes advise, that 'if the organised children's activity was conducted at, for example, one end of a large park, the buffer zone will be around the area used for the activity, rather than the entire park'.¹⁶⁴

¹⁵⁵ Explanatory notes, p 8.

¹⁵⁶ Explanatory notes, p 8.

¹⁵⁷ Bill, cl 46 (new Part 2C, Division 2A, ss 26ZE-26ZGA).

¹⁵⁸ Bill, cl 46 (proposed s 26ZE).

¹⁵⁹ Bill, cl 46 (proposed s 26ZF).

¹⁶⁰ Bill, cl 46 (proposed s 26ZG).

¹⁶¹ Bill, cl 46 (proposed s 26ZGA).

¹⁶² Bill, cl 47 (proposed s 26ZKD).

¹⁶³ Explanatory notes, p 9.

¹⁶⁴ Explanatory notes, p 9; Bill, cl 47(4).

2.8.2.3 *Carparks adjacent to schools*

The Act prohibits smoking at school facilities and within a five-metre buffer zone beyond the perimeter of the school land.¹⁶⁵ According to the explanatory notes, schools report that parents and caregivers have been observed smoking at their cars in a car park located adjacent to the school, while they wait for children.¹⁶⁶

To address this problem, the Bill extends the existing smoking prohibition by amending the definition of 'school facility' to include carparks adjacent to a school that are provided for school community use.¹⁶⁷

2.8.3 Expansion of smoke free places and buffer-zones

Several submitters welcomed the expansion of smoke free places and buffer-zones.¹⁶⁸ No submitters opposed these changes.

A small number of submitters called for additional areas to become smoke-free, including:

- all beaches, regardless of whether they are patrolled or the time of day¹⁶⁹
- the balconies of flats and apartments¹⁷⁰
- outdoor family events, including agricultural shows.¹⁷¹

In response the department advised the committee that while these suggestions are beyond the scope of the Bill, 'they will be recorded and may be considered for future amendments.'¹⁷²

Committee comment

The committee notes the high level of support among submitters for the expansion of smoke-free places. The committee encourages the department to consider further expansion of these areas as part of any future reforms.

2.9 Minor and technical amendments

The Bill makes several minor and technical amendments to the Act.

To reflect the more widespread use of hookahs, the Bill proposes the following:

- expanding the existing prohibition on the display of more than three hookahs - to deem the display of packaging in which a hookah is supplied, or an image of a hookah or part of a hookah, to be a display of the hookah¹⁷³
- amending the specific definition of 'smoking product' for the advertising, display and promotion provisions to capture a non-tobacco substance which may be smoked in a hookah (for example, shisha stones).¹⁷⁴

¹⁶⁵ Act, s 26VQ.

¹⁶⁶ Explanatory notes, p 9.

¹⁶⁷ Bill, cl 31 (amending s 26VQ).

¹⁶⁸ Cancer Council Queensland, submission 4.

¹⁶⁹ No More Butts, submission 1.

¹⁷⁰ Lorri Walker, submission 3; AMA Queensland, submission 6; Professor Matthew Rimmer, submission 7; Clubs Queensland, submission 17.

¹⁷¹ Cancer Council Queensland, submission 4.

¹⁷² Queensland Health, correspondence, 6 April 2023, Attachment, p 8.

¹⁷³ Bill, cl 49 (amending s 26ZQA).

¹⁷⁴ Bill, cl 18 (amending s 25).

The Bill also proposes:

- including the Australia Post Keypass identity card as acceptable evidence of a person's age¹⁷⁵
- clarifying that a person who is smoking does not commit an offence if they are merely passing through a smoke-free government precinct without stopping.¹⁷⁶

¹⁷⁵ Bill, cl 6 (amending s 6).

¹⁷⁶ Bill, cl 44 (amending s 26ZD).

Appendix A – Submitters

Sub #	Submitter
001	No More Butts
002	Nick Kumar
003	Lorri Walker
004	Cancer Council Queensland
005	Confidential
006	Australian Medical Association Queensland Limited
007	Professor Matthew Rimmer, Queensland University of Technology
008	Pamela Wright
009	Drug Free Australia
010	British American Tobacco Australia
011	TSG Franchise Management
012	Name withheld
013	Phil Browne
014	TSG Caloundra and Maroochydore
015	Queensland Hotels Association
016	Local Government Association of Queensland
017	Clubs Queensland
018	West Moreton Health
019	Lisa Baldwin
020	Drug ARM
021	Lung Foundation Australia, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia and New Zealand, AMA Queensland, and Australian Council on Smoking and Health
022	Name withheld
023	Australian Lottery & Newsagents Association, the Australian Association of Convenience Stores, and Master Grocers Australia Independent Retailers
024	Professor Coral Gartner, Ms Tess Rooney, Dr Kylie Morphett, School of Public Health, The University of Queensland
025	Philip Morris Australia
026	Australian Retailers Association
027	Queensland Network of Alcohol and Other Drug Agencies
028	Pharmaceutical Society of Australia
029	Royal Australian College of General Practitioners (RACGP) Queensland Faculty
030	Australian Dental Association Queensland Branch (ADAQ)
031	Australian College of Nursing

Appendix B – Officials at public departmental briefings

Brisbane, 31 March 2023

Queensland Health

- Jasmina Joldić PSM, Associate Director-General, Strategy, Policy and Reform
- Mark West, Executive Director, Prevention Strategy Branch
- Karson Mahler, Director, Legislative Policy

Brisbane, 14 April 2023

Queensland Health

- Mark West, Executive Director, Prevention Strategy Branch
- Rebecca Whitehead, Advanced Health Promotion Officer, Prevention Strategy Branch
- Karson Mahler, Director, Legislative Policy Unit

Appendix C – Witnesses at public hearings

Townsville, 12 April 2023

TSG (Tobacco Station Group)

- Deb Soley, Tobacconist
- Pam Wright, Tobacconist

Townsville Hospital and Health Service

- Dr Steven Donohue, Director, Townsville Public Health Unit

No More Butts

- Shannon Mead, Executive Director

Brisbane, 14 April 2023

Australian Medical Association Queensland

- Dr Maria Boulton, President

National Heart Foundation, Australia

- Sheree Hughes, General Manager

Public Health Association of Australia

- Leanne Coombe, Policy Manager

Lung Foundation Australia

- Paige Preston, Senior Manager of Policy and Advocacy

Thoracic Society of Australia and New Zealand

- A/Professor Henry Marshall, Deputy Convenor, Tobacco and Related Substances Special Interest Group

Asthma Australia

- Laura Clarke, Policy Advisor

Clubs Queensland

- Daniel Nipperess, General Manager

Queensland Hotels Association

- Bernie Hogan, Chief Executive
- Damian Steele, Deputy Chief Executive

Cancer Council Queensland

- Sharyn Chin Fat, Senior Manager, Information and Programs

Academic experts

- Dr Matthew Rimmer, Professor of Intellectual Property and Innovation Law, Faculty of Business and Law, Queensland University of Technology

- Professor Coral Gartner, Director of the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame School of Public Health, The University of Queensland