

Health Legislation Amendment Bill 2025

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Timothy Nicholls, Minister for Health and Ambulance Services make this statement of compatibility with respect to the Health Legislation Amendment Bill 2025.

In my opinion, the Health Legislation Amendment Bill 2025 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the:

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

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

In 2024, the Commonwealth Government took action to address increasing levels of vaping in the community by banning the importation, manufacture, supply, and non-personal possession of disposable and recreational vapes. Enforcement of these bans falls primarily to states and territories, supported by delegated powers under the Commonwealth *Therapeutic Goods Act 1989*.

In response, Queensland's *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Act 2024* made significant amendments to TOSPA, equipping enforcement officers with powers to seize and forfeit illicit nicotine products. The term 'illicit nicotine products' captures vaping goods and other products containing nicotine or other substances detrimental to health that are prescribed by regulation.

Although Commonwealth vaping offences carry penalties of up to seven years imprisonment and fines of up to \$21.9 million, enforcing these is resource-intensive and complex. State-level

offences provide a more practical, graduated enforcement framework that ensures efficient, timely, and proportionate responses across a broader range of cases.

Queensland Health is working closely with both federal and state agencies to combat the illicit trade of tobacco and vaping goods. Although the 2024 reforms have bolstered enforcement efforts, some operators continue to trade illegally because of the high profitability of supplying illicit vaping goods. Ongoing enforcement efforts are critical to curbing illegal supply, however, operational challenges have arisen in managing the increasing volume of seized vaping goods. These challenges have been exacerbated by the hazardous nature of vaping goods which require specialised storage.

These ongoing challenges have highlighted the need for further legislative action to support effective enforcement against illegal vaping operators, enable the safe and efficient management of vaping goods, and help to alleviate the substantial financial burden of the enforcement of TOSPA.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Right to take part in public life (section 23)
- Right to a fair hearing (section 31)
- Property rights (section 24)

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Amendments to the *Hospital and Health Boards Act 2011*

*Right to take part in public life (section 23, *Human Rights Act*)*

(a) the nature of the right

Section 23 of the Human Rights Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.

Participation in the conduct of public affairs is a broad concept and covers all aspects of public administration. Individuals participate in the conduct of public affairs when they are members of legislative bodies or hold executive office. The right protected by section 23 of the Human Rights Act has been interpreted by the United Nations Human Rights Committee as providing a right of access, on general terms of equality, to positions in both the public service and public office.

The right to take part in public life is limited to ‘eligible persons’. This internal limitation allows for legislation to prescribe matters such as eligibility for membership to a body.

The Bill limits the right to take part in public life by specifying requirements for at least one member of a HHB to be a clinician who is employed or engaged by the HHS for which the board is established.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to take part in public life is to ensure that the membership of a HHB is appropriate to deliver efficient and effective governance of HHSs.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to take part in public life will ensure that frontline clinicians within each HHS are appointed to a HHB. The inclusion of frontline clinicians on boards will help to deliver efficient and effective governance and ensure that local clinicians are involved in decision-making for patient services. As such, the limitation is directly related to the purpose.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The provisions are necessary to ensure a HHB is constituted with the appropriate representation of frontline clinicians working in the HHS. The limitation is only that the HHB must have at least one member who is a clinician employed or engaged by the HHS for which the board is established. Under the Act, HHBs consist of five or more members appointed by the Governor in Council on the Minister's recommendation. The Minister can recommend a range of other people with skills, knowledge and experience to be members of HHBs, including people with experience in health, business, finance, human resources, law, academia, primary healthcare, health consumer representatives or Aboriginal and Torres Strait Islander health and community issues. This means a wide range of persons are eligible for membership of HHBs, which provides the opportunity for them to participate in public affairs.

There is no other less restrictive and reasonably available way to achieve the purpose of the limitation.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any limitations on a person's right to take part in public life protected by section 23 of the Human Rights Act is reasonable and justified, when balanced against the public interest in facilitating local frontline clinical staff being involved in decision making for the delivery of services within each HHS.

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

1. Human rights impacted by the removal of the show cause process relating to forfeiture of vaping goods

The Bill amends TOSPA to streamline the forfeiture process for vaping goods by removing the show cause and appeals process. This will allow the chief executive to forfeit and destroy illegal vaping goods promptly upon seizure, enabling swift action to mitigate safety risks.

Right to a fair hearing (section 31, Human Rights Act)

(a) the nature of the right

Section 31 of the Human Rights Act provides for the right to a fair hearing. It provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, impartial and independent court or tribunal after a fair and public hearing.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing of a number of factors, including the rights of the parties to the proceeding. This human right generally requires that any party who may be affected by the orders sought is given an opportunity to be heard and to put their position forward.

Under section 205 of TOSPA, the chief executive of Queensland Health can order the forfeiture of illicit tobacco or illicit nicotine products to the State. The process includes a show cause notice with a 28-day period for the owner to respond before forfeiture. Section 225 provides that a person may appeal a forfeiture decision within 28 days after receiving a written notice of the forfeiture decision. While section 225(7) provides that an appeal does not technically prevent destruction, section 226 allows a court to grant a stay, preventing destruction if granted. In light of this, Queensland Health typically stores vaping goods for a minimum of eight weeks to:

- avoid the risk of compensation if items are destroyed and the forfeiture decision is overturned by the court; and
- account for the possibility of a court-ordered stay, which could prevent destruction.

The Bill amends TOSPA to permit the chief executive to forfeit a seized vaping good without a show cause process. This will ensure the chief executive can act swiftly following seizure of vaping goods to forfeit and then destroy those goods. Although the amendment may limit the right to a fair hearing, it addresses safety and logistical issues caused by prolonged storage of hazardous vaping goods.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right to a fair hearing is to mitigate the risks associated with the increasing volume of seized vaping goods and the substantial hazards they pose. Vaping goods contain lithium-ion batteries, toxic liquids, and heavy metals. These products are hazardous and can cause significant safety risks, including fires, explosions, chemical spills, and environmental contamination.

Under the existing forfeiture framework, vaping goods are stored for extended periods. As HHSs in Queensland face capacity constraints, the current process of storing goods during the show cause and appeals processes creates significant logistical, environmental, and financial challenges.

The Bill's amendments remove the show cause process from the forfeiture of vaping goods, allowing the chief executive to order the forfeiture of vaping goods immediately if the chief executive reasonably believes forfeiture is necessary to prevent further criminal use. This will streamline the enforcement process, ensuring the swift forfeiture and destruction of vaping goods and mitigating safety and logistical concerns. The chief executive will be required to provide written notice of the decision to the former owner, along with reasons for the forfeiture.

This approach is consistent with other legislative frameworks. For example, section 705 of the *Police Powers and Responsibilities Act 2000* allows authorised officers to destroy dangerous items on-site to prevent further offences. Section 106 of the *Explosives Act 1999* allows the Minister to declare that a seized explosive is forfeited to the State, without a show cause period, if returning it to its owner would not be in the interests of public safety. Section 206 of the *Customs Act 1901* (Cth) permits the disposal of prohibited goods, including vaping goods, when officers are reasonably satisfied that the items are prohibited. These precedents demonstrate that immediate forfeiture and destruction of hazardous goods, in certain contexts, is a well-established and necessary approach to public safety and the effective enforcement of laws.

The removal of the show cause process is justified by the practical need to address the health and safety risks, and unique logistical challenges posed by these hazardous goods, while ensuring continued regulatory enforcement.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to a fair hearing directly relates to the purpose of addressing the safety, environmental, and logistical challenges created by the current storage and handling of vaping goods. The current show cause process is a major contributor to the accumulation of seized vaping goods, which are stored for a minimum of eight weeks while awaiting a decision on forfeiture or appeals.

By removing the show cause process, the Bill allows for the immediate forfeiture of vaping goods, which directly addresses these challenges. This change reduces the amount of time vaping goods are stored, alleviating capacity issues and mitigating the safety and environmental risks posed by their storage. Importantly, it enables the State to act more swiftly and effectively to destroy hazardous items, ensuring that enforcement actions remain timely, practical, and cost efficient.

This limitation will allow Queensland Health to effectively manage these goods, by ensuring that illicit vaping goods are removed from storage and destroyed as quickly as possible. In doing so, the Bill ensures that enforcement actions remain effective and that the risks associated with the illicit vaping trade are appropriately managed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive alternatives to achieve the purpose of the amendments. The current forfeiture process, which includes the show cause requirement, leads to delays in the destruction of illicit goods. Vaping goods, due to their hazardous components, require stringent storage protocols and fire-resistant, ventilated containers, which are both costly and limited in availability.

Furthermore, as storage facilities within Queensland HHSs are nearing capacity, continuing to store vaping goods for extended periods is not a feasible option. The prolonged retention of hazardous vaping goods exacerbates safety and capacity issues and increases the financial burden on the State.

To balance efficiency with fairness, the amendment includes several safeguards to protect the rights of the former owners of vaping goods. When deciding whether to seize vaping goods, an authorised person must have a reasonable belief that the goods are evidence of an offence under TOSPA.

To protect individual rights, section 219 of TOSPA allows individuals to claim compensation for any loss or expense incurred due to the exercise or attempted exercise of powers under part 11 of TOSPA. Claims must be made through a court, either as a standalone proceeding or as part of another proceeding involving an offence under TOSPA. Compensation will only be awarded if the court deems it just, providing a legal avenue for individuals who are adversely affected.

Further safeguards include administrative protocols for the preservation of evidence before destruction. This may involve collecting representative samples, photographing the goods, and documenting the destruction process through detailed reports. These measures ensure that secondary evidence is available for potential legal proceedings, maintaining procedural integrity and transparency in the enforcement process.

The prompt forfeiture and destruction of vaping goods is the most effective and practical solution to address the concerns about the storage of vaping goods. The Bill provides for swift forfeiture while still maintaining safeguards to ensure transparency and accountability in the decision-making process. Given the specific risks posed by vaping goods, the removal of the show cause process is both necessary and proportionate to address the logistical, safety, and environmental challenges posed by their storage.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While the Bill limits the right to a fair hearing by removing the show cause process, this limitation is justified by the significant public health and safety concerns posed by illicit vaping goods. The amendments strike a reasonable balance between upholding public health and safety and the need to maintain procedural fairness. The Bill ensures that the chief executive must provide written notice and reasons for the decision to order the forfeiture of vaping goods, ensuring that transparency is maintained. Additionally, the possibility for compensation further safeguards the interests of persons affected by the forfeiture decision.

Evidence from the Generation Vape research project shows that Australia's new vaping laws have successfully reduced adolescent access to and use of vapes. Only 26.8% of adolescents who have vaped reported purchasing their own devices since the introduction of the reforms. Furthermore, 87% of adolescents recognise the potential for addiction.

Amendments to TOSPA's forfeiture provisions are consistent with the government's commitment to reducing the health risks associated with vaping and ensuring efficient enforcement. In December 2024 and January 2025, over 31,000 vapes were seized by Queensland Health officials, underscoring the growing need for streamlined enforcement procedures to support enforcement teams.

The amendments also align with similar legislative frameworks, such as the Police Powers and Responsibilities Act and Explosives Act, that permit the immediate forfeiture and destruction of hazardous goods. By allowing for the swift forfeiture of vaping goods, the Bill ensures that the State can respond efficiently and proportionately to the health and safety risks posed by these goods. This balance is essential to maintaining a robust enforcement framework that can address the unique challenges presented by the illicit vaping trade while safeguarding public health.

Property rights (section 24, Human Rights Act)

(a) the nature of the right

Section 24 of the Human Rights Act provides that every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Common law suggests that 'arbitrary' in this context refers to conduct that is capricious, unpredictable or unjust, as well as interferences which are not proportionate to a legitimate aim being sought.

'Property' includes all real and personal property interests recognised under general law (that is, interests in land, contractual rights, money and shares), and may also include some statutory rights (for example, use, transfer, disposal or exclusion of property).

The removal of the show cause process from the forfeiture of vaping goods could limit a person's property rights by overriding legal ownership of vaping goods. When vaping goods are forfeited, they become the property of the State, and the State can then dispose of or destroy them as deemed appropriate. By empowering the chief executive to forfeit such goods to prevent them being used to commit an offence, without the existing procedural safeguards, the Bill restricts these property rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation on property rights by removing the show cause process is intended to simplify and streamline the forfeiture and enforcement framework under TOSPA as it relates to vaping goods. This change will enable the chief executive to efficiently order the forfeiture of vaping goods, addressing significant practical challenges, such as the safe and secure storage of seized goods within Queensland Health facilities. Additionally, it will reduce enforcement costs,

enhance operational effectiveness, and ensure swift action to mitigate the risks posed by hazardous vaping goods under the State's framework.

This amendment aligns with the goals of promoting public safety and effective enforcement, supporting the broader objectives of a free and democratic society by protecting public health and reducing harm to individuals.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The streamlined forfeiture process directly addresses key issues such as storage capacity and the associated risks of prolonged storage of hazardous vaping goods. By expediting forfeiture and destruction, the amendment reduces storage time, lowers enforcement costs, and mitigates health, safety, and environmental risks related to these goods.

The limitation applies only when a person possesses illicit vaping goods that have been lawfully seized under TOSPA. As such, the limitation is both justifiable and necessary to address storage challenges and ensure the safe handling of hazardous products. This targeted approach ensures that enforcement actions are not only efficient but also effective in addressing the public health risks posed by vaping goods.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive alternatives to achieve the purpose of the amendments. The proposal includes safeguards to ensure fairness, such as the ability to seek compensation and the provision of written reasons for any forfeiture decisions.

As outlined above, when vaping goods are seized, the authorised person must have reasonable grounds to believe they are evidence of an offence under TOSPA. Compensation is also available under section 219 of TOSPA for those who suffer loss or expense due to the exercise of powers under part 11 of the Act.

The amendments align with frameworks established in other Queensland legislation, such as the Police Powers and Responsibilities Act and Explosives Act and are necessary to address the existing pressing storage and enforcement issues relating to illegal vaping goods.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While property rights are fundamental, they are not absolute and may be restricted when they conflict with broader public interests, such as safeguarding public health and safety. Vaping goods present significant risks due to their addictive nature and the presence of harmful substances, including nicotine and cancer-causing agents. The State must take all reasonable actions to regulate and manage these risks in the interest of public health and safety.

When persons possess illicit goods, such as vaping goods, property rights cannot shield those items from lawful forfeiture. Vaping goods are readily identifiable by their distinctive physical characteristics, such as cartridges, e-liquid containers, and lithium-ion batteries. This ease of

identification eliminates the need for extensive analysis, reducing the risk of misidentification and justifying the removal of procedural requirements, including the show cause process.

Storage capacity at Queensland Health facilities is nearing capacity, and the cost of maintaining individual storage units is high. The amendments will enable the prompt forfeiture and destruction of seized vaping goods, addressing the pressing need for efficient enforcement and storage management.

The amendments strike a fair balance between protecting property rights and achieving the essential objective of enhancing public health protections, ensuring that the limitation on property rights is proportionate and justified under section 24 of the Human Rights Act.

2. Human rights potentially impacted by court-ordered cost recovery from convicted persons

The Bill amends TOSPA to allow courts to order convicted persons to pay reasonable costs incurred by the State due to an offence under TOSPA. These costs include expenses for testing, transporting, storing, dismantling, destroying or disposing of illicit products, as well as the Department's reasonable investigation and prosecution costs related to offences under TOSPA.

Property rights (section 24, Human Rights Act)

(a) the nature of the right

As noted above, section 24 of the Human Rights Act provides that every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property.

The Bill introduces a cost recovery provision that may affect property rights. The amendment allows courts to order convicted persons to pay the State for expenses incurred during investigations and enforcement actions, including costs associated with testing, storage, disposal and prosecution under TOSPA. This applies not just to illegal vaping goods, but also to products such as ice pipes, bongs, illicit tobacco and other illicit nicotine products.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to strengthen the enforcement of laws related to vaping goods, and other illicit products, by ensuring that those responsible for illicit activities contribute to the financial burden of enforcement. By allowing courts to order cost recovery for the testing, transporting, storing, dismantling, destroying and disposing of illicit products, the provision ensures that more financial responsibility is placed on offenders, rather than the broader public. This approach helps create an efficient, sustainable, and financially viable enforcement framework.

The amendment provides a mechanism to hold persons engaged in the possession and supply of illicit vaping goods and other products, including illicit tobacco, ice pipes and bongs, accountable for the costs arising from their criminal actions. This ensures that offenders can be ordered to pay for the costs associated with managing these dangerous goods.

These limitations are consistent with the values of a free and democratic society, particularly with regards to public health and safety. The amendment addresses the significant financial costs the State faces in managing vaping goods, which contain hazardous materials like lithium-ion batteries and toxic chemicals, and other illicit products. The amendment ensures that those engaging in illicit activity contribute to the financial implications, allowing the State to allocate resources more effectively for ongoing enforcement.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on property rights are directly tied to the purpose of maintaining an effective enforcement system under TOSPA. By enabling courts to order that a convicted person pay the State costs incurred because of the commission of an offence under TOSPA, the Bill contributes to the financial sustainability of the enforcement framework, helping Queensland Health and other agencies continue to combat the trade of illicit vaping goods and other illicit products effectively.

The ability for courts to order recovery of costs from offenders also acts as a deterrent, impacting the profits associated with the supply of illegal goods, and contributing to protection of public health.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive alternatives that would effectively achieve the purpose of these amendments. Maintaining the status quo would leave the financial burden of enforcement, such as costs for storage, investigation, and disposal, solely on the State.

The amendment is essential to ensure that offenders, rather than the State, can be held financially accountable for the consequences of their actions. Importantly, the Bill allows for judicial discretion when imposing cost recovery orders, ensuring decisions are made with due regard to the specific circumstances. Moreover, persons retain the right to appeal any cost recovery order in a court of competent jurisdiction, which safeguards procedural fairness.

The limitation is also not arbitrary. The court will exercise discretion in determining whether to impose a cost recovery order, taking into account relevant factors, including for example, the extent to which the offender's conduct resulted in the costs being incurred. This ensures that decisions are balanced, fair and transparent.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitations on property rights under this Bill are proportionate to the need for a robust and effective enforcement framework aimed at protecting public health and safety. The enforcement of vaping-related offences is crucial in reducing the uptake of vaping, especially among adolescents, and preventing harm to the community. Similarly, enforcement of offences relating to illicit tobacco, and the supply of products such as bongs and ice-pipes, aims to promote public health and safety.

The Bill ensures that courts can order those responsible for supplying illicit products to the community to bear the financial responsibility for the costs, rather than the costs being solely borne by the Government and taxpayers. This approach ensures that offenders can be required to contribute to the financial burden for the testing, transporting, storing, dismantling, destruction and disposal of these goods.

In balancing the limitations on property rights with the need for effective enforcement, the Bill ensures that the measures are fair and reasonable, preserving public health protections while maintaining appropriate safeguards.

Conclusion

In my opinion, the Health Legislation Amendment Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE TIMOTHY NICHOLLS
MINISTER FOR HEALTH and AMBULANCE SERVICES

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