

Tobacco and Other Smoking Products Amendment Bill 2023

Explanatory Notes

for

Amendments to be moved during Consideration in Detail by The Honourable Shannon Fentiman MP, Minister for Health, Mental Health and Ambulance Services and Minister for Women

Title of the Bill

Tobacco and Other Smoking Products Amendment Bill 2023

Objectives of the Amendments

The amendments will correct two drafting errors identified in the Bill.

Clause 40 of the Bill amends section 26Y of the *Tobacco and Other Smoking Products Act 1998*. Clause 40(4) makes a technical amendment to section 26Y(2), to replace the words ‘a direction to stop the contravention’ with ‘the direction’. This will simplify the Act. However, due to a drafting error, the word ‘the’ before the word ‘contravention’ was not included in the words to be replaced.

The amendment will correct this drafting error, by including the missing word within the words to be omitted from the provision.

Clause 47 amends section 26ZKD of the Act. Clause 47(3) omits section 26ZKD(2) and replaces it with an expanded subsection (2). This will ensure the existing no-smoking buffer zone around an under-age sporting event also applies to an organised children’s activity. However, due to a drafting error, the existing penalty (of 20 penalty units) for contravening subsection (2) was not included in the replacement subsection (2).

The amendment will correct this drafting error, by including the penalty in the replacement provision.

The objective of the amendments is to correct these two drafting errors in the Bill.

Achievement of the Objectives

The policy objectives are achieved by:

- making a technical amendment to clause 40 of the Bill, which amends section 26Y of the Act, to insert the word ‘the’ in the words of section 26Y(2) to be omitted; and
- making a technical amendment to clause 47 of the Bill, which amends section 26ZKD of the Act, to insert a penalty of 20 penalty units into the replacement section 26ZKD(2).

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Without the amendment to clause 40, the clause in its present form may be considered invalid by reason of error, and not be able to proceed.

Without the amendment to clause 47, an existing penalty would be removed, preventing the replacement section in the Act from being enforced. It is unlikely that inclusion of this penalty in the section could be inferred, to allow it to be inserted during a future reprint of the Act pursuant to the *Reprints Act 1992*.

Estimated Cost for Government Implementation

There are no costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The Amendments are generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. However, one clause may potentially impact on a particular principle. The potential departure from fundamental legislative principles is discussed below and is considered justified to give effect to the Bill, which supports improving the health of Queenslanders by reducing their exposure to tobacco and other smoking products.

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

Offence provision

For legislation to have sufficient regard to the rights and liberties of individuals, new offences should be appropriate and reasonable, and the penalty should be proportionate to the wrong occasioned by the breach.

The amendment to clause 47 of the Bill only reinstates a penalty which already existed in the provision being replaced. It was always intended that the same penalty apply to the replacement provision and the penalty was only omitted in error. The amendment does not create a new offence or penalty.

The penalty is for contravening the prohibition on smoking on land within the buffer zone of a sporting ground, viewing area for a water sport or the part of a park or similarly defined area of land being used for an organised children’s activity. The penalty is 20 penalty units.

The prohibition is intended to protect the public from the dangers of second-hand smoke, support quit-smoking campaigns and discourage people, particularly children, from taking up smoking. The associated penalty is necessary to ensure there are sufficient deterrents against non-compliance with the prohibition.

The penalty is consistent with penalties for similar offences in the Act.

Consultation

As the amendments are minor and technical, no consultation has been undertaken.

Consistency with legislation of other jurisdictions

As the amendments are minor and technical, it is not necessary to consider their consistency with legislation in other jurisdictions.

NOTES ON PROVISIONS

Amendment 1

Amendment 1 amends clause 40 of the Bill.

Clause 40 amends section 26Y of the Act, to replace the words ‘a direction to stop the contravention’ with ‘the direction’. However, due to a drafting error, the word ‘the’ before the word ‘contravention’ was not included in the words to be replaced.

To correct this error, *Amendment 1* includes the word ‘the’ before the word ‘contravention’ in the Clause 40 amendment.

Amendment 2

Amendment 2 amends clause 47 of the Bill.

Clause 47 amends section 26ZKD of the Act, to replace subsection (2) with an expanded subsection (2). However, due to a drafting error, the existing penalty for subsection (2) was not included in the replacement subsection (2).

To correct this error, *Amendment 1* includes a maximum penalty of 20 penalty units in the Clause 47 amendment.