

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

Legislative Assembly Chamber, The Clerk of the Parliament.

Brisbane,

19 September 2024

In the name and on behalf of the King, I assent to this Bill.

Government House,

Brisbane,

19th September

2024



Queensland

No. 51 of 2024

A BILL for

An Act to amend the Hospital and Health Boards Act 2011, the Tobacco and Other Smoking Products Act 1998, the Tobacco and Other Smoking Products Regulation 2021 and the Waste Reduction and Recycling Act 2011 for particular purposes



Queensland

Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024

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2024

A Bill

for

An Act to amend the *Hospital and Health Boards Act 2011*, the *Tobacco and Other Smoking Products Act 1998*, the *Tobacco and Other Smoking Products Regulation 2021* and the *Waste Reduction and Recycling Act 2011* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Act 2024*.

Part 1A Amendment of Hospital and Health Boards Act 2011

2A Act amended

This part amends the *Hospital and Health Boards Act 2011*.

2B Amendment of s 85A (Disclosure to prevent serious risk of harm)

- (1) Section 85A(4)(a), ‘a prescribed Service’—
omit, insert—
a Service
- (2) Section 85A(4)(a)(ii) and (b)(ii), after ‘making’—
insert—
, or enabling another person to make,
- (3) Section 85A(5), definition *chief executive*, paragraphs (a) to (c)—
omit, insert—
 - (a) if the health professional is appointed as a health service employee or public service

officer in the department and is working for a Service—the chief executive of the Service; or

- (b) if the health professional is appointed as a health service employee in a Service—the chief executive of the Service; or
- (c) if the health professional provides services for a Service under a contract for services—the chief executive of the Service; or
- (d) if the health professional is employed in, or provides services under a contract for services for, a private health facility—the licensee of the facility; or
- (e) otherwise—the chief executive of the department.

Part 2 **Amendment of Tobacco and Other Smoking Products Act 1998**

3 **Act amended**

This part amends the *Tobacco and Other Smoking Products Act 1998*.

4 **Amendment of long title**

Long title, ‘, to prohibit smoking in certain places,’—
omit, insert—

and illicit nicotine products, to prohibit smoking in certain places, to restrict supply and possession of illicit nicotine products,

[s 5]

5 Amendment of s 3 (Object of Act)

Section 3, from ‘and’—

omit, insert—

, other smoking products and illicit nicotine products.

6 Amendment of s 4 (How object is to be achieved)

(1) Section 4, after paragraph (a)—

insert—

(aa) restricting the supply and possession of illicit tobacco and illicit nicotine products; and

(2) Section 4(b) and (c), from ‘and other’—

omit, insert—

, other smoking products and illicit nicotine products; and

(3) Section 4(aa) to (e)—

renumber as section 4(b) to (f).

7 Replacement of s 7 (Meaning of *personal vaporiser* and *personal vaporiser related product*)

Section 7—

omit, insert—

7 Meaning of vaping-related terms

(1) In this Act—

vaping accessory means a cartridge, capsule, pod or other vessel—

(a) that is for use in, or with, a vaping device; and

- (b) whether or not the cartridge, capsule, pod or other vessel—
 - (i) contains a vaping substance; or
 - (ii) is designed or intended to be refilled.

vaping device—

- (a) means—
 - (i) a device, whether or not filled with a vaping substance, that generates or releases, or is designed or intended to generate or release, using a heating element and by electronic means, an aerosol, vapour or mist for direct inhalation by its user; or
 - (ii) a device to which subparagraph (i) would apply if the device were not temporarily or permanently inoperable, incomplete, damaged or unfinished; and
- (b) does not include—
 - (i) a device included in the register under the *Therapeutic Goods Act 1989* (Cwlth), other than a device designed for use by a person for smoking cessation or management of nicotine dependence; or
 - (ii) a device designed to be used to deliver oxygen into an individual's body; or
 - (iii) a bong, hookah or ice pipe; or
 - (iv) a device prescribed by regulation not to be a vaping device.

vaping goods—

- (a) means any of the following goods—
 - (i) a vaping substance;

[s 7]

- (ii) a vaping accessory;
- (iii) a vaping device;
- (iv) goods the presentation of which includes an express or implied representation that the goods are of a type mentioned in subparagraph (i), (ii) or (iii);

Note—

See also subsection (2) in relation to the presentation of goods.

- (v) goods that are, or are included in a class of goods that are, prescribed by regulation under subsection (3) to be vaping goods; and
- (b) does not include goods that are, or are included in a class of goods that are, prescribed by regulation under subsection (3) not to be vaping goods.

vaping substance—

- (a) means—
 - (i) nicotine in solution in any concentration, including in a salt or base form; or
 - (ii) any liquid or other substance for use in, or with, a vaping device; and
 - (b) includes a container or part of a container, other than a vaping accessory or vaping device, in which a liquid or other substance mentioned in paragraph (a)(i) or (ii) is present.
- (2) For subsection (1), definition *vaping goods*, paragraph (a)(iv)—
- (a) the presentation of goods includes matters relating to—

- (i) the name of the goods; and
 - (ii) the labelling and packaging of the goods; and
 - (iii) any advertising or informational material associated with the use or supply of the goods; and
- (b) goods are taken to be presented as being a particular type of goods even if the presentation—
- (i) is capable of being misleading or confusing as to the content or proper use or identification of the goods; or
 - (ii) suggests that the goods have ingredients, components or characteristics that they do not have.
- (3) A regulation may prescribe that stated goods or stated classes of goods—
- (a) are or are not vaping goods; or
 - (b) when used, advertised, or presented for use or supply in a stated way, are or are not vaping goods.

8 Amendment of s 40 (Deciding whether person is fit and proper)

(1) Section 40(1)(e)—

omit, insert—

- (e) whether or not the person has contravened a corresponding law;

(2) Section 40(2)(a)(ii)—

omit, insert—

- (ii) whether or not a director of the corporation has contravened a corresponding law; and

[s 9]

9 Amendment of s 46 (Notification of convictions)

Section 46(1)(b), from ‘a law of’—

omit, insert—

a corresponding law;

10 Amendment of s 65 (Supplier must not sell smoking products without licence)

Section 65(1)—

insert—

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

11 Amendment of s 66 (Supplier must not supply smoking products to children)

Section 66(1)—

insert—

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

12 Amendment of s 67 (Supplier must ensure employees do not supply smoking products to children)

Section 67(1)—

insert—

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

13 Amendment of s 80 (Prohibition on use of vending machine to supply personal vaporisers and related products, herbal cigarettes and loose smoking blends)

- (1) Section 80, heading, from ‘personal’ to ‘products,’—
omit.
- (2) Section 80(1), from ‘personal vaporisers’ to ‘products,’—
omit.

14 Amendment of s 88 (Definitions for pt 4)

Section 88, definition *smoking product*, paragraph (a), ‘, personal vaporiser, personal vaporiser related product’—
omit.

15 Insertion of new pt 4A

After part 4—
insert—

Part 4A Advertising, display and promotion of illicit nicotine products

109A Prohibition on display, advertising or promotion of illicit nicotine products

- (1) A person must not, as part of a business activity, display an illicit nicotine product.
Maximum penalty—140 penalty units.
- (2) A person must not, as part of a business activity, advertise an illicit nicotine product.
Maximum penalty—140 penalty units.
- (3) A person must not, as part of a business activity, promote an illicit nicotine product.

[s 16]

Maximum penalty—140 penalty units.

- (4) This section does not apply if the act constituting the offence is authorised or permitted under the *Therapeutic Goods Act 1989* (Cwlth), chapter 5, part 5-1A.

16 Amendment of s 119 (Evidentiary provisions)

- (1) Section 119(2)—

insert—

(ba) a thing was an illicit nicotine product;

- (2) Section 119(2)(ba) to (d)—

renumber as section 119(2)(c) to (e).

17 Replacement of s 161 (Supply or possession of illicit tobacco)

Section 161—

omit, insert—

161 Supply or possession of illicit tobacco as part of business activities

- (1) A person must not, as part of a business activity, supply illicit tobacco.

Maximum penalty—2,000 penalty units or 2 years imprisonment, or both.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

- (2) A person must not, as part of a business activity, store or otherwise be in possession of illicit tobacco at—

- (a) the premises where the business activity is conducted; or
- (b) another premises, including, for example, a storage shed or vehicle, connected with the premises where the business activity is conducted.

Maximum penalty—1,000 penalty units or 1 year's imprisonment, or both.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

- (3) Subsections (1) and (2) do not apply to an act of the person that is done as an employee, or otherwise acting on behalf, of another person.
- (4) It is a defence to a charge under subsection (2) for the person to prove that the illicit tobacco is for personal use by the person or an employee of the person.
- (5) Subsection (4) does not apply if the quantity of illicit tobacco is a commercial quantity.
- (6) In this section—
commercial quantity, for illicit tobacco, means more than the quantity prescribed by regulation for this definition.

161A Supply or possession of illicit nicotine products as part of business activities

- (1) A person must not, as part of a business activity, supply an illicit nicotine product.

Maximum penalty—2,000 penalty units or 2 years imprisonment, or both.

[s 17]

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

- (2) A person must not, as part of a business activity, store or otherwise be in possession of an illicit nicotine product at—
- (a) the premises where the business activity is conducted; or
 - (b) another premises, including, for example, a storage shed or vehicle, connected with the premises where the business activity is conducted.

Maximum penalty—1,000 penalty units or 1 year's imprisonment, or both.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken to have committed an offence against section 230A(1).

- (3) Subsections (1) and (2) do not apply to an act of the person that is done as an employee, or otherwise acting on behalf, of another person.
- (4) Subsection (1) does not apply in relation to the supply of an illicit nicotine product if—
- (a) the illicit nicotine product is vaping goods; and
 - (b) were the person to be charged with an offence under the *Therapeutic Goods Act 1989* (Cwlth), section 41QB in relation to the supply of the illicit nicotine product, the person would be entitled to claim an exception in relation to the supply under that section.
- (5) Subsection (2) does not apply in relation to the

possession of an illicit nicotine product if—

- (a) the illicit nicotine product is vaping goods;
and
 - (b) were the person to be charged with an offence under the *Therapeutic Goods Act 1989* (Cwlth), section 41QC or 41QD in relation to the possession of the illicit nicotine product, the person would be entitled to claim an exception in relation to the possession under—
 - (i) section 41QC(12), (13) and (14); or
 - (ii) section 41QD(6), (7) and (8).
- (6) It is a defence to a charge under subsection (2) for the person to prove that the illicit nicotine product is stored or possessed for personal use by the person or an employee of the person.
- (7) However, if the illicit nicotine product is vaping goods, subsection (6) does not apply if the quantity of vaping goods is more than the permitted quantity.
- (8) In this section—
permitted quantity, for vaping goods, means the quantity prescribed by regulation for this definition.

161B Supply of illicit tobacco or illicit nicotine products by employees at retail outlets etc.

- (1) This section applies in relation to the supply of illicit tobacco or an illicit nicotine product by a person—
 - (a) acting as the employee of another person (the *principal*); or
 - (b) otherwise acting on behalf of another person (also *the principal*).

[s 17]

- (2) The person must not supply illicit tobacco or an illicit nicotine product at—
 - (a) a retail outlet; or
 - (b) premises at which an illicit nicotine product is available for sale by retail; or
 - (c) a wholesale outlet; or
 - (d) premises at which an illicit nicotine product is available for sale by wholesale.

Maximum penalty—140 penalty units.

- (3) Subsection (2) does not apply to the supply of an illicit nicotine product if the principal would be entitled to claim the benefit of an exception in relation to the supply of the product under section 161A(4).

161C Supply of illicit nicotine products by other adults to children

- (1) This section does not apply in relation to the supply of an illicit nicotine product—
 - (a) by a person acting as the employee of, or otherwise on behalf of, another person; or
 - (b) by another person as part of a business activity.
- (2) An adult must not supply an illicit nicotine product to a child (the *relevant person*).

Maximum penalty—140 penalty units.

- (3) It is a defence to a charge under subsection (2) for the defendant to prove that at the time of the offence the defendant honestly and reasonably believed that the relevant person was an adult.

18 Amendment of s 163 (Supply of objects resembling tobacco products)

Section 163(3)—

omit.

19 Amendment of s 170 (Appointment)

Section 170(7)—

omit, insert—

- (7) A police officer is an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with sections 65 and 161 to 161B.

20 Amendment of s 181 (Entry of places by authorised persons)

Section 181(2)—

insert—

- (c) premises at which illicit nicotine products are available for sale by retail when the premises are open for carrying on business; or
- (d) premises for which an order is in effect under division 4A; or
- (e) a place in relation to which an injunction is in effect under division 4B.

21 Amendment of s 187 (General powers after entering places)

Section 187(3)(g)(ii)—

omit, insert—

- (ii) if smoking products or illicit nicotine products are sold at the place—the name

[s 22]

and contact details of the business that sells the smoking products or illicit nicotine products at the place.

22 Amendment of s 192 (Power to require evidence of age, name and address of person observed being supplied a smoking product)

(1) Section 192, heading, after ‘smoking product’—

insert—

or illicit nicotine product

(2) Section 192(1)(a) and (6), after ‘smoking product’—

insert—

or illicit nicotine product

23 Amendment of s 193 (Power to seize smoking product)

Section 193, after ‘smoking product’—

insert—

or illicit nicotine product

24 Amendment of s 205 (Forfeiture of illicit tobacco)

(1) Section 205(1), heading, after ‘tobacco’—

insert—

or illicit nicotine product

(2) Section 205(1)(a) and (2)(a), after ‘illicit tobacco’—

insert—

or an illicit nicotine product

25 Insertion of new s 205A

After section 205—

insert—

205A Forfeiture of bongs and ice pipes

- (1) The chief executive may decide a seized thing is forfeited to the State if the chief executive—
 - (a) is satisfied the thing is a bong or ice pipe; and
 - (b) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, before making the decision, the chief executive must give the owner of the seized thing a notice stating that—
 - (a) the chief executive believes the seized thing is a bong or ice pipe and it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized; and
 - (b) the chief executive proposes the seized thing be forfeited to the State; and
 - (c) the owner may, within 28 days after being given the notice (the *response period*), give the chief executive a written response to the belief and proposal.
- (3) Also, before making the decision, the chief executive must consider all responses complying with subsection (2)(c).
- (4) If the chief executive decides the seized thing is forfeited to the State, the chief executive must give the owner of the seized thing written notice of the decision and the reasons for the decision.
- (5) However, if a proceeding involving the seized thing was started, the chief executive must not act under subsection (1) until the end of the proceeding or any appeal from the proceeding.

[s 26]

(6) In this section—

seized thing means a thing seized under section 197 or 198.

26 Amendment of s 208 (Return of seized things)

Section 208(1), ‘6 months’—

omit, insert—

12 months

27 Insertion of new pt 11, divs 4A and 4B

Part 11—

insert—

Division 4A Closure orders

209A Interim closure of premises

- (1) The chief executive may make an order that stated premises be closed (an *interim closure order*) if—
 - (a) the chief executive reasonably suspects illicit tobacco or illicit nicotine products are being supplied at the premises as part of a business activity; or
 - (b) the chief executive is satisfied a business is being carried on at the premises in a way that involves a contravention of section 65.
- (2) The interim closure order must be—
 - (a) served on the person apparently in charge of the premises, if any; or
 - (b) posted in a conspicuous place—

- (i) for premises that are fixed premises—at the entrance to the premises; or
 - (ii) for premises that are mobile premises—
 - (A) on the mobile premises; or
 - (B) at the entrance to fixed premises that are connected to the business carried on at the mobile premises.
- (3) The interim closure order—
- (a) takes effect from the time it is served or posted; and
 - (b) continues until the first of the following happens—
 - (i) the chief executive revokes the order;
 - (ii) the end of 72 hours after the order was served or posted.
- (4) No more than 1 interim closure order may be made for the same premises in a period of 7 days.
- (5) In this section—
- mobile premises*** means premises that is a vehicle, building or other structure ordinarily moved from place to place.

209B Long-term closure of premises

- (1) A magistrate may, on the application of the chief executive, order that stated premises be closed for a stated period of not more than 6 months if the magistrate is satisfied that—
 - (a) illicit tobacco or illicit nicotine products have been, or are likely to be, supplied at the premises as part of a business activity; or

[s 27]

- (b) a business is being carried on at the premises in a way that involves a contravention of section 65.
- (2) An application may be made regardless of whether an interim closure order is, or has been, in effect in relation to the premises under section 209A.
- (3) An application under subsection (1) must be served on the owner, and the person apparently in charge, of the premises, unless it is not reasonably practicable to do so.
- (4) An order made under this section must be—
 - (a) served on the owner, and the person apparently in charge, of the premises, unless it is not reasonably practicable to do so; and
 - (b) posted in a conspicuous place—
 - (i) for premises that are fixed premises—at the entrance to the premises; or
 - (ii) for premises that are mobile premises—
 - (A) on the mobile premises; or
 - (B) at the entrance to fixed premises that are connected to the business carried on at the mobile premises.
- (4A) If a lease of premises subject to an order under this section ends, including, for example, because the lease is terminated, the order ends when the lease ends.

Note—

An order under this section may be evidence of a breach of a term of a lease.
- (4B) However, if the premises are leased to the same lessee within the period stated in the order, the

order is reinstated and ends on the last day of the period stated in the order.

(5) In this section—

mobile premises see section 209A(5).

209C Smoking products not to be supplied at closed premises

(1) A person must not, while a closure order is in effect in relation to premises—

- (a) supply smoking products at the premises; or
- (b) work in a business involving the supply of smoking products at the premises.

Maximum penalty—200 penalty units.

(2) It is a defence in proceedings for an offence against this section if the person satisfies the court the person did not know, and could not reasonably have been expected to know, a closure order was in effect in relation to the premises.

(3) In this section—

closure order means—

- (a) an interim closure order under section 209A; or
- (b) an order under section 209B.

Division 4B Injunctions

209D Application of division

This division applies if—

- (a) a person has engaged, is engaging or is proposing to engage, in the supply of illicit

[s 27]

tobacco or illicit nicotine products as part of a business activity; and

- (b) the chief executive has reasonable grounds to believe an injunction under this division is necessary in the public interest.

209E Who may apply for an injunction

The chief executive may apply to the District Court for an injunction in relation to the conduct.

209F District Court's powers

- (1) On considering the application for an injunction, the District Court may grant an injunction—
 - (a) restraining the person from engaging in the conduct concerned; and
 - (b) if in the court's opinion it is desirable to do so, requiring the person to do anything.
- (2) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
 - (b) whether or not the person has previously engaged in the conduct.
- (3) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person has previously failed to do the act or thing.

- (4) An interim injunction may be granted under this division until the application is finally decided.
- (5) The District Court may rescind or vary an injunction at any time.
- (6) The powers conferred on the District Court under this division are in addition to, and do not limit, any other powers of the court.

209G Terms of injunction

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting subsection (1), an injunction may be granted restraining a person from carrying on a business involving the supply of smoking products or illicit nicotine products, whether or not the business is carried on as part of, or incidental to, the carrying on of another business—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's conduct.

209H Undertakings as to damages or costs

If the chief executive applies for an injunction under this division, the court may not require the chief executive to give an undertaking as to damages or costs.

[s 28]

28 Amendment of s 215 (Power to require information)

Section 215(3), penalty—

omit, insert—

Maximum penalty—100 penalty units.

29 Amendment of s 216 (False or misleading information)

Section 216(1), penalty—

omit, insert—

Maximum penalty—100 penalty units.

30 Amendment of s 224 (Definition for division)

Section 224, definition *forfeiture decision*—

omit, insert—

forfeiture decision means—

- (a) a decision of the chief executive to forfeit illicit tobacco or an illicit nicotine product under section 205; or
- (b) a decision of the chief executive to forfeit a bong or ice pipe under section 205A.

31 Insertion of new s 230A

After section 230—

insert—

230A Liability of executive officer—offence committed by corporation against executive liability provision

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits an offence against an executive liability provision; and

- (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
 - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
 - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
 - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
 - (a) the liability of the corporation for the offence against the executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.
- (5) In this section—

[s 32]

executive liability provision means any of the following provisions—

- (a) section 65;
- (b) section 66;
- (c) section 67;
- (d) section 161;
- (e) section 161A.

32 Amendment of s 233 (Disclosure of information to entities performing relevant functions)

Section 233(2)(a), from ‘regulation’—

omit, insert—

regulation or prohibition of the supply of smoking products or illicit nicotine products; or

33 Amendment of s 234 (Only chief executive may commence particular proceedings)

(1) Section 234(2), after ‘proceeding’—

insert—

for the offence

(2) Section 234—

insert—

(4) To remove any doubt, it is declared that this section does not prevent a police officer performing a function mentioned in section 170(7).

34 Insertion of new pt 13, div 3

Part 13—

insert—

Division 3 **Transitional provisions for
Tobacco and Other
Smoking Products
(Vaping) and Other
Legislation Amendment
Act 2024**

241 Forfeiture of bongs and ice pipes

Section 205A applies in relation to a bong or ice pipe whether it was seized before or after the commencement.

242 Application of amended s 208

Section 208, as amended by the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Act 2024*, applies in relation to a seized thing whether the thing was seized before or after the commencement.

35 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definitions *illicit tobacco*, *personal vaporiser*, *personal vaporiser related product* and *smoke*—
omit.
- (2) Schedule 1—
insert—

corresponding law means a law of the Commonwealth or a State that regulates or prohibits the supply of any of the following—

- (a) smoking products;
- (b) substances used in smoking products;
- (c) illicit nicotine products.

[s 35]

health warning requirement means a requirement to include a health warning under the *Public Health (Tobacco and Other Products) Act 2023* (Cwlth), section 8.

illicit nicotine product means—

- (a) vaping goods; or
- (b) another product containing nicotine or another substance detrimental to health prescribed by regulation for this definition.

illicit tobacco means a smoking product that does not comply with any of the following requirements applying to the product—

- (a) a tobacco product requirement;
- (b) a health warning requirement;
- (c) another requirement under a law of the Commonwealth prescribed by regulation.

smoke means—

- (a) for a smoking product other than a hookah—smoke, hold or otherwise have control over the smoking product when it is ignited; or
- (b) for a hookah—inhale through the hookah; or
- (c) for a vaping device—inhale through the device.

tobacco product requirement means a tobacco product requirement under the *Public Health (Tobacco and Other Products) Act 2023* (Cwlth), section 8.

vaping accessory see section 7(1).

vaping device see section 7(1).

vaping goods see section 7(1).

vaping substance see section 7(1).

-
- (3) Schedule 1, definition *smoking product*, paragraph (a), from ‘, loose’ to ‘related product’—
omit, insert—
or loose smoking blend
- (4) Schedule 1, definition *smoking product*, paragraph (c)(i), ‘, loose smoking blend or personal vaporiser’—
omit, insert—
or loose smoking blend
- (5) Schedule 1, definition *tobacco product*, after ‘smokeless tobacco product’—
insert—
or vaping goods

Part 2A Amendment of Tobacco and Other Smoking Products Regulation 2021

35A Regulation amended

This part amends the *Tobacco and Other Smoking Products Regulation 2021*.

35B Insertion of new s 15AA

After section 15A—

insert—

15AA Permitted quantity for illicit nicotine product—Act, s 161A

For section 161A(8) of the Act, definition *permitted quantity*, the quantity prescribed is—

- (a) if the vaping goods are a vaping substance—60mL; and

[s 36]

- (b) if the vaping goods are a vaping accessory—4 vaping accessories; and
- (c) if the vaping goods are a vaping device—2 vaping devices.

Part 3

Amendment of Waste Reduction and Recycling Act 2011

36 Act amended

This part amends the *Waste Reduction and Recycling Act 2011*.

37 Amendment of s 103 (General littering provision)

(1) Section 103—

insert—

(4A) For subsection (1), depositing waste that is a vaping device or vaping accessory under the *Tobacco and Other Smoking Products Act 1998* is taken to be dangerous littering.

(2) Section 103(4A) and (5)—

renumber as section 103(5) and (6).

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