



Enquiries to: Mr David Noon
Manager
Cabinet and Parliamentary
Services
Telephone: [REDACTED]
File Ref: DG078623

Ms Leanne Linard MP
Chair
Health and Ambulance Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Linard

Thank you for your letter dated 12 November 2015, regarding the Health and Ambulance Services Committee's inquiry into the Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015.

Please find enclosed, as requested, the Department of Health's written briefing to the Committee on the Bill.

Should you require further information, the Department of Health's contact for the inquiry is Mr David Noon, Manager, Cabinet and Parliamentary Services, on telephone [REDACTED]

Yours sincerely

Michael Walsh
Director-General
Queensland Health

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Office
19th Floor
Queensland Health Building
147 - 163 Charlotte Street
BRISBANE QLD 4000

Postal
GPO Box 48
BRISBANE QLD 4001

Phone
[REDACTED]

Fax
[REDACTED]

Queensland Parliamentary Health and Ambulance Services Committee
Departmental Briefing on the Tobacco and Other Smoking Products (Smoke-free Places)
Amendment Bill 2015
November 2015

OVERVIEW OF THE BILL

Summary

The primary purpose of the Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015 (the Bill) is to amend the *Tobacco and Other Smoking Products Act 1998* (the Tobacco Act) to create more smoke-free public places across Queensland, prohibit the sale of smoking products from temporary retail outlets and make minor and technical amendments to clarify and strengthen Queensland's tobacco laws.

Context

More than 85 per cent of Queenslanders are non-smokers, yet continue to be exposed to second-hand smoke in public places. Smoking-related diseases continue to take the lives of more than 3,700 Queenslanders each year—ten-times greater than the annual road toll, with one in 10 people who die from smoking-related diseases having never smoked themselves.

For more than a decade, the Tobacco Act has banned smoking at many outdoor public places including near children's playground equipment, between the flags on patrolled beaches, at prescribed outdoor swimming areas such as artificial beaches, at major event facilities such as Suncorp Stadium, at entrances to non-residential buildings, and at outdoor eating and drinking places. In 2014, these bans were extended to schools and health facilities.

The Tobacco Act, along with quit smoking mass media campaigns, smoking cessation services and targeted programs for priority populations, have been proven elements of a multi-strategy approach for reducing smoking rates. The introduction of smoking bans, tobacco retail restrictions and other strategies in Queensland during the period between 2001 and 2014 resulted in approximately 190,000 fewer smokers in 2014 than there would have been if the interventions had not occurred.

While daily smoking rates in Queensland have declined in recent decades, this decline is slowing. Therefore, the Bill has been developed to create more smoke-free places to reduce people's exposure to second-hand smoke, reduce the normalcy and social acceptability of smoking behaviours particularly for young people, and provide supportive environments to help people quit smoking.

Summary of key provisions

The objective of the Bill will be met by prohibiting smoking at:

- all outdoor pedestrian malls
- all public transport waiting points, including within five metres from the public transport waiting point
- all public swimming facilities
- within 10 metres of a skate park
- sporting grounds or viewing areas for a water sports during organised underage sporting events, including within 10 metres of the sporting ground or viewing area
- early childhood education and care facilities, including a five metre buffer around the early childhood education and care facility
- residential aged care facilities, including a five metre buffer around the residential aged care facility
- prescribed national parks or a part of a national park, and
- prescribed outdoor government precincts.

Importantly, the Bill also empowers local governments to make laws banning smoking at any outdoor public place not covered by State law.

The Bill aims to reduce youth uptake of smoking by decreasing visibility of smoking at areas that are frequented by young people and prohibiting the sale of smoking products at temporary retail outlets, which often target events frequented by young people.

The ultimate aim of the Bill is to reduce the incidence of tobacco-related illness and premature death.

Commencement

The Bill will commence on a day to be fixed by proclamation. This is expected to occur approximately six months following passage of the Bill to allow for the Department of Health, together with other agencies, to provide education to stakeholders and the community to support awareness and compliance.

Temporary retail stores (clause 5, s13C)

Smoking products have been marketed to young people through temporary retail outlets at major arts, music and sporting events. The Bill prohibits a supplier from selling smoking products from a temporary retail store, including a booth, tent, market stall or stand, or a vehicle or mobile structure such as a trailer or a caravan. Prohibiting the sale of smoking products from temporary retail outlets is intended to limit young people's exposure to the sale and promotion of smoking products.

Major sports facilities and major event facilities (clause 9, ss 26VG to 26VN)

The Tobacco Act currently has the same smoking bans for major sports facilities and major event facilities. The changes in the Bill acknowledge that major events, such as the two motorsports events held at Townsville and the Gold Coast, are significantly different to major sports facilities, such as Suncorp Stadium.

The existing provisions in the Tobacco Act for major sports facilities are retained and moved to division 2 of new part 2BB to ensure clarity and ease of understanding.

The Bill provides that smoking is prohibited at a major event facility—that is, a major event area during the major event period provided for under the *Major Events Act 2014*. However, the major event organiser may establish a nominated outdoor smoking place as an area in which smoking is permitted, provided food and drink is not consumed in the area.

Health facilities and school facilities (clause 9, ss 26VO to 26VR)

Existing provisions in the Tobacco Act relating to health facility land and school land (see division 2A of part 2C) have been omitted and replaced with divisions 4 and 5 of part 2BB of the Bill, which provide for smoke-free health facilities and school facilities. The provisions are moved to ensure proximity with new smoking bans at residential aged care facilities and early childhood education and care facilities. Some minor amendments have also been made to clarify when it is an offence to smoke in a motor vehicle in or near a health or school facility.

Public swimming facilities (clause 9, ss 26VS to 26VT)

The Bill provides that a person must not smoke at a public swimming facility. A public swimming facility means a swimming pool that is owned or operated by a local government that is open to the public for swimming, whether or not on the payment of money. A public swimming facility includes the associated area, such as the area providing access to the pool, an area adjacent to the pool provided to watch swimmers or sunbathe, the kiosk and seating area. It also includes any area within the fence or wall surrounding the pool. A public swimming facility does not include natural bodies of water such as dams and creeks.

Early childhood education and care facilities (clause 9, ss 26VU to 26VV)

Smoking is already prohibited indoors at early childhood education and care facilities. The Bill provides that a person must not smoke at an early childhood education and care facility or within five metres beyond the boundary of an approved early childhood education and care facility.

An early childhood education and care facility means the land on which an early childhood education and care service is provided. An early childhood education and care service means an approved education and care service under the *Education and Care Services National Law (Queensland) Act 2011* and Queensland approved education and care services under the *Education and Care Services Act 2013*. Services commonly approved under these laws include family day care services, standalone kindergarten services, long day care services, limited hour services and outside school hours care services.

It may not always be apparent from the outside that a residence is providing an early childhood education and care service, for example, a family day care service. Accordingly, the Bill provides that it is a defence for a person smoking at or near an early childhood education and care facility that is also a residential premises, if the person can prove they were not aware, and could not have reasonably been expected to be aware, that the premises is an early childhood education and care facility.

The Bill also provides that it is not an offence to smoke at an early childhood education and care facility if it is a residential premises and it is not being used to provide an early childhood education and care service at the time the person is smoking. This allows a person to smoke on their land while they are not providing an early childhood education and care service.

As with existing smoking bans at health and school land, the offence of smoking within five metres of an early childhood education and care facility will not apply to a person who is at residential or business premises. The Bill also provides that it is not an offence to smoke within five metres beyond the boundary of an early childhood education and care facility while driving past in a motor vehicle. It will, however, be an offence to smoke if parked in a motor vehicle either within five metres of the boundary of the early childhood education and care facility, or at a car park located within the boundary of the facility.

Residential aged care facilities (clause 9, ss 26VU to 26VX)

The Bill will provide that it is an offence to smoke at both public and private residential aged care facilities or on land within five metres beyond the boundary of a residential aged care facility. A residential aged care facility means a facility that provides aged care but does not include retirement villages or home-based aged care. To accommodate the needs of elderly residents given this is their permanent home, the person in charge of the residential aged care facility can clearly define a nominated outdoor smoking place as an area where smoking is permitted.

Government precincts (clause 11, ss 26ZD to 26ZE)

The Bill will provide that smoking is prohibited at any government precinct prescribed in regulation. A government precinct may include land that adjoins a building occupied by:

- the State
- The Legislative Assembly
- a court or tribunal
- an entity that represents the State, or
- another entity established by an Act.

However, the offence will only apply where the government precinct is prescribed by regulation. The regulation will clearly define the space in which smoking is prohibited in the government

precinct. This may be done by reference to a map or another clear method to define the space where smoking is prohibited. A government precinct would only be prescribed following consultation with impacted entities. The regulation may prescribe an outdoor government precinct such as 1 William Street when it is completed or the Parliamentary Precinct in Brisbane.

Outdoor pedestrian malls (clause 13, s26ZKA) and public transport waiting points (clause 13, s26ZKB)

In 2010, the Tobacco Act was amended to provide local governments with the power to create local laws to prohibit smoking at outdoor pedestrian malls and outdoor public transport waiting points. Brisbane City Council, Ipswich City Council and Logan City Council have declared particular outdoor pedestrian malls to be smoke-free places in their local government area.

To ensure that all Queenslanders have access to smoke-free outdoor pedestrian malls, the Bill will prohibit smoking at all outdoor pedestrian malls that have been established under the *City of Brisbane Act 2010*, the *Local Government Act 2009*, or the repealed *Local Government (Chinatown Mall and Valley Malls) Act 1984* and the *Local Government (Queen Street Mall) Act 1981*.

Ipswich City Council and Fraser Coast Regional Council have declared that all bus stops and taxi ranks on local government or state-controlled roads, in their local government area, are smoke-free areas. Redland City Council prohibits smoking at each jetty and ramp that is considered a public transport waiting point, within the local government area.

To ensure a consistent state-wide approach, the Bill will provide that a person must not smoke at a public transport waiting point or on land within five metres beyond a public transport waiting point (the *buffer zone*), unless the person has a reasonable excuse. Public transport waiting points include:

- train stations
- light rail platforms
- busway platforms
- bus stops, including school bus stops
- taxi ranks
- limousine ranks, and
- ferry terminals.

The smoking ban will extend to people in a queue for public transport, provided the queue starts within five metres of the public transport waiting point. For example, a person will be prohibited from smoking in a taxi queue, even if they are more than five metres from the taxi rank sign.

Smoking is already prohibited under transport regulations at certain busways, busway transport infrastructure, light rail platforms and areas of railways, where there is a sign indicating that smoking is not allowed in the area. If smoking is prohibited under transport legislation, all enforcement action will occur under the transport legislation and the smoking ban under the Tobacco Act will not apply.

The amendments make it clear that it is not an offence to smoke at residential premises or business premises that fall within five metres of a public transport waiting point, or while travelling through the buffer zone of a public transport waiting point in a motor vehicle. The Bill provides that it is a reasonable excuse for smoking in the buffer zone of a public transport waiting point, for example, if the person was walking along the street and incidentally passed within five metres of a bus stop.

The impact of these provisions is that existing local laws, made under the current power in the Tobacco Act for local governments to make local laws, will no longer be valid. This is because section 28 of the *City of Brisbane Act 2010* and section 27 of the *Local Government Act 2009*

provide that if there is any inconsistency between a local law and a State law, the State law prevails to the extent of the inconsistency.

Skate parks (clause 13, s26ZKC)

The Bill provides that a person must not smoke within 10 metres of any part of a skate park. This is consistent with the ban from smoking within 10 metres of children's playground equipment. A skate park is a public place where obstacles, jumps and uneven surfaces have been constructed for the purpose of riding or skating on bicycles, roller-blades, roller-skates and skate boards. It does not include a bicycle path or footpath or a shared path.

Organised under-age sporting events (clause 13, s26ZKD)

The Bill provides that a person must not smoke at, or within ten metres of, a sporting ground or a viewing area for a water sports during:

- an organised under-age sporting event
- a training or practice session to prepare for an organised under-age sporting event, or
- any break or interval during an organised under-age sporting event or training or practice session.

The Bill defines an organised under-age sporting event as a sporting event that is organised in advance, for persons predominantly under the age of 18, and conducted by a professional or amateur sporting body or education institution according to established rules.

The Bill is not intended to apply to a sporting event that is largely participated in by persons over the age of 18—for example, a representative rugby match in which the majority of players are over the age of 18, but a small number of participants are under 18 years.

National parks (clause 13, s26ZKE)

The Bill provides that a person must not smoke at a national park, or a part of a national park, that has been prescribed in a regulation. A national park is defined by reference to the *Nature Conservation Act 1992*.

To address the complexities of the land management arrangements for some national parks, the Bill provides that, before a regulation is made to prohibit smoking at a national park, or a part of a national park, the Minister who administers the Tobacco Act must obtain the agreement of the Minister responsible for the management of national parks under the *Nature Conservation Act 1992*.

The regulation will clearly identify the national parks, or the areas of the national park, in which smoking is prohibited. The regulation will also clearly identify any areas in which the smoking ban will not apply, for example, a public road which passes through the national park.

Local government laws prohibiting smoking (clause 16, s26ZPA to 26ZPD)

The Bill provides local governments with the power to make local laws prohibiting smoking at outdoor public places in their local government area, for example, restaurant and commercial precincts or particular parks and boardwalks.

The amendments will enable a local government to make a local law prohibiting smoking at an outdoor public place in their local government area provided that it is not a place otherwise dealt with under the Tobacco Act. This ensures that local laws cannot apply in areas in which smoking is already banned under the Tobacco Act. It also means that a local law cannot ban smoking in an area in which the Tobacco Act allows for smoking—for example, within a designated outdoor smoking area established under section 26ZA of the Tobacco Act.

The Bill ensures that, before making a local law, the local government must first consult with the Department of Health if the local law is not subject to consultation requirements to conduct a state interest check under section 29A of the *Local Government Act 2009* or section 31 of the *City of Brisbane Act 2010*. This will ensure that consultation with the Department of Health occurs for all local laws, even where the local law is a subordinate local law.

A local law made under this power must not impose a penalty of more than 20 penalty units. Any fine imposed by a court in relation to an offence under this type of law local must be paid to the local government. The local government may also be required to provide information about the local government's enforcement of any local law made under the division.

Hookahs

The Tobacco Act currently defines a hookah by reference to the use of the hookah to smoke tobacco. Accordingly, the use of a hookah is prohibited in smoke-free areas only where the hookah is used to smoke tobacco. However, hookahs are increasingly being used to smoke non-tobacco products, which are a known health hazard.

To ensure that the smoking of non-tobacco products in a hookah is considered smoking under the Tobacco Act, the Bill:

- amends the existing definition of *hookah* to clarify that a hookah is a device for smoking both tobacco or another thing, by the drawing of smoke, fumes or vapor
- replaces the definition of *smoke* to include, for a smoking product that is a hookah, inhaling through the hookah, and
- amends the definition of *smoking product* to include, for a hookah, tobacco or another thing that may be smoked in the hookah.

The Bill also clarifies that the prescribed number of hookahs that a person can display in a shop includes a part of a hookah. The effect of this amendment is that if the regulation prescribes that a person can display a maximum of three hookahs in a shop, displaying part of a hookah is considered to be the display of one hookah.

Implementation

Implementation of the new legislated smoking bans and other amendments will be supported by established Queensland Health processes for the management and enforcement of public health legislation. These include online public information services, telephone advice for industry via 13 QGOV, Quitline telephone counselling service and working with enforcement agencies. A summary of the agencies able to enforce current laws and the Bill is attached.

Following passage of the Bill, the Department of Health will also:

- engage in community education targeting smokers and non-smokers
- consult stakeholders to identify collaborative initiatives which will strengthen impact throughout targeted sectors, including where existing health and wellbeing strategies and programs can be utilised, and
- assess compliance with new tobacco laws and the impact of the laws on smoking rates.

Consultation

A range of external stakeholders were consulted on the proposals, including:

- the Local Government Association of Queensland
- local governments with established local laws for public transport waiting points and malls
- non-government health organisations such as Cancer Council Queensland and the Heart Foundation Queensland
- Hospital and Health Services
- unions and retailer associations; and
- peak bodies for private residential aged care facilities, key early childhood education and care services, sporting associations.

The feedback received generally acknowledged the importance of strong and consistent tobacco laws. Non-government health organisations, including the Cancer Council Queensland and the Heart Foundation strongly supported the proposed changes, while making additional recommendations.

The feedback received from the early childhood education and care sector strongly supported the proposed ban at early childhood education and care facilities. The peak body for family day care services supported the proposed changes, subject to considering the detail of the Bill to determine the particular impacts on family day care operators. As noted above, the Bill includes specific provisions to address the circumstances of family day care services.

A number of stakeholders, particularly local government and HHSs noted that enforcement, resources and education will be important components for the successful implementation of these legislative changes.

The Queensland Government has successfully implemented smoking bans since they were first introduced in the State in 2001. This experience confirms that effective implementation of new smoking laws is critical to building and sustaining high levels of compliance and supporting community norms of non-smoking public places. Effective public education before and during introduction also reduces long-term enforcement burden.

Importantly, the focus of new smoking bans is to change the attitude and behaviour of smokers. It is anticipated that, after a period of targeted community awareness, the new smoking bans will have a high level of community ownership. This will assist in ensuring they are largely community- and self-enforced. This reflects previous experience in implementing smoking bans in Queensland.

The five local governments with existing local laws banning smoking at outdoor pedestrian malls and public transport waiting points were consulted about the impact of the proposed state-wide laws on their local laws. Four of the local governments gave in-principle support to a consistent statewide approach to banning smoking at these areas. The fifth local government did not support the proposal to override existing local laws, submitting that:

- blanket bans do not reflect local conditions and may have unintended dispersal effects
- costs and practicalities to council to remove or change items such as waste bins with ashtrays
- resources to enforce bans at the transport waiting points under council control, and
- the changes would require additional funding.

Retaining existing local laws in these areas would result in inconsistent smoking laws across Queensland for the same type of outdoor area—for example, different penalty units would apply to public transport waiting points in different local government areas. It may also lead to inconsistencies within a local government area—for example, under local laws, smoking is banned at some outdoor pedestrian malls but not others within a single local government area.

The proposed new smoking bans will not commence until six months after passage of the Bill. This will allow time for local governments to consider the impact of the new smoking bans on existing infrastructure. Queensland Health to work with all local governments, including the five with existing local laws, during this time to address any implementation issues and ensure local governments are clear about the roles and responsibilities of local government under the Tobacco Act. Imposing a consistent state-wide ban on smoking in these areas is expected to lead to behavioural changes, minimizing the need for formal compliance action as people become aware of areas where smoking is no longer permitted.

Risk management

As noted above, enforcement and education will be important components for the successful implementation of these legislative changes. As with existing smoking bans, the new smoking bans will predominantly be enforced by Environmental Health Officers employed by Queensland Health. Enforcement will include issuing warnings, asking smokers to cease or move on and the issuing of infringement notices if smokers do not comply with these directions.

The Bill makes it clear that local governments are not required to enforce provisions under the Tobacco Act, except in relation to any local laws made by the local government for their local government area. However, local governments are given an option to administer a number of new smoking bans and any local government that chooses to enforce smoking bans will be able to retain any fine revenue they collect.

Educational organisations and sporting groups responsible for organised under-age sporting events and staff at early childhood education and care facilities will not be required to enforce smoking bans.

Some stakeholders were interested in the intended capture of the provisions relating to smoking bans at government precincts. A government precinct will only be prescribed following consultation with effected entities and consideration of the impacts it may have on the tenants of the adjoining buildings and the impact on the neighbouring areas.

Queensland Tobacco Legislation (incl proposed) Enforcement by Agency

Current Smoking Bans	Environmental Health in Hospital and Health Services	Local Government (optional)	Police	Security Officers in Hospital and Health Services
Indoor smoking bans				
Indoor public places e.g. liquor licensed venues, workplaces, shopping centres	X			
Inside business vehicle with other person present	X			
Inside vehicle with person under 16 present	X		X	
Outdoor smoking bans				
Outdoor eating or drinking places	X			
Major event facilities	X			
On health facility land (public and private)	X			X
5 metre buffer outside health facility land	X	X		X
On school land (state and non-state)	X			
5 metre buffer outside school land	X	X		
Patrolled beach between flags	X	X		
Prescribed outdoor swimming area (artificial beach)	X	X		
4 metres from a non-residential building entrance	X	X		
10 metres within a children's playground	X	X		
Public transport waiting points and pedestrian malls		X (power to create and enforce)		
Supply and retail display of smoking products				
Tobacco sale and supply to U18s	X			
Vending machine restrictions	X			
Point of sale restrictions	X			
Advertising, display and promotion of smoking products	X			
Prohibited smoking products				
Sale, supply and retail display of ice pipes	X		X	
Sale, supply and retail display of bongs	X		X	
Display restrictions for hookahs	X		X	

Proposed smoking bans	Environmental Health in Hospital and Health Services	Local Government (optional)**	National Parks - Rangers	Security Officers in Hospital and Health Services
Smoke-free Facilities – outdoor areas				
Major sport facilities *	X			
Major event facilities*	X			
Health facility*	X			X
- buffer (health facility)	X	X		
School facilities*	X			
- buffer (school facility)	X	X		
public swimming facilities	X	X		
early childhood education and care (ECEC) facilities	X			
- buffer (ECEC facility)	X	X		
residential aged care facilities	X			X (specific HHS only)
- buffer (aged care facility)	X	X		X (specific HHS only)
Outdoor smoking bans				
government precincts	X			
outdoor pedestrian malls	X	X		
public transport waiting points and buffer	X	X		
skate parks and buffer	X	X		
sporting grounds and buffers	X	X		
national parks	X		X	
local laws for outdoor areas not covered under statewide bans		X (power to create and enforce)		
Supply and retail display of smoking products				
Sell smoking products from temporary retail outlets	X			

- *Replaces previous offence
- **State may request a report from local government about the administration and enforcement on any offence which they have the option to enforce