

**Tobacco and Other Smoking Products
(Extension of Smoking Bans) Amendment Bill
2015**

**Report No. 6, 55th Parliament
Health and Ambulance Services Committee
October 2015**

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Health and Ambulance Services Committee

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Ms Ros Bates MP, Member for Mudgeeraba
Members	Mr Steve Dickson MP, Member for Buderim Mr Aaron Harper MP, Member for Thuringowa Mr Joe Kelly MP, Member for Greenslopes Dr Christian Rowan MP, Member for Moggill
Committee Staff	Mr Brook Hastie, Research Director Ms Kathleen Dalladay, Principal Research Officer Ms Emily Booth, Principal Research Officer Ms Clare Keyes, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Mr Michael Gorringer, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact Details	Health and Ambulance Services Committee Parliament House George Street BRISBANE QLD 4000
Telephone	+61 7 3553 6626
Email	hasc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/hasc

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Abbreviations

Public Health Act	<i>Public Health Act 2005</i>
Bill	Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015
CHHHS	Cairns and Hinterland Hospital and Health Service
Committee	Health and Ambulance Services Committee
EHO	Environmental Health Officer
Explanatory Note	Explanatory Note for the Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015
Penalty Unit	means, at the date of this report, an amount of \$117.80 calculated in accordance with the Penalties and Sentences Amendment Regulation (No.1) 2015.
Tobacco Act	<i>Tobacco and Other Smoking Products Act 1998</i>

Chair's foreword

This Report presents a summary of the Health and Ambulance Services Committee's examination of the Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The primary objective of the Bill is to decrease the incidence of smoking in Queensland.

The Committee received sixteen written submissions and held a public hearing, where the Committee heard further evidence from invited witnesses.

The Committee made five recommendations, including that the Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015 be passed.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill and those who appeared at the Hearing. I also thank the Committee's Secretariat, and the Department of Health.

I commend this Report to the House.

A handwritten signature in black ink, reading "Leanne Linard". The signature is written in a cursive, flowing style.

Leanne Linard MP

Chair

Recommendations

Recommendation 1 **10**

The Committee recommends the Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015 be passed.

Recommendation 2 **19**

The Committee recommends the definition of Government building, what constitutes a building, and the requirements for signage be reviewed to ensure there is certainty to the area in which the ban is to operate.

Recommendation 3 **20**

The Committee recommends the Bill be amended to ensure there is consistency between the proposed provision banning smoking at or near a skate park and the existing provision banning smoking near children's playground equipment.

Recommendation 4 **22**

The Committee recommends the definition of 'public swimming pool' be reviewed to ensure the bans imposed under the Bill only refer to those areas to which it is intended to refer.

Recommendation 5 **26**

The Committee recommends the definition of 'public transport waiting point' be reviewed to ensure the bans imposed under the Bill extend to an appropriate area at or near the waiting point, where people may gather when waiting to use public transport.

1. Introduction

1.1 Role of the Committee

The Health and Ambulance Services Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility are health and ambulance services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015 (the Bill) was introduced into the House as a Private Members Bill by the Member for Caloundra and referred to the Committee on 14 July 2015.

In accordance with a resolution of the Legislative Assembly, the Committee was required to report to the Legislative Assembly by 16 October 2015.

1.2 Inquiry process

The Committee invited stakeholders and subscribers to lodge written submissions on the Bill and a total of 16 submissions were received. The Committee also invited the Member for Caloundra to brief the Committee on the Bill.

The Committee held a public hearing on 16 September 2015, where it received a briefing from the Member for Caloundra on the Bill and also the Department of Health on the operation of the existing smoking laws in Queensland. The Committee also heard from other witnesses at the hearing, including the Cancer Council, the Heart Foundation, the Local Government Association of Queensland and the Logan City Council.

1.3 Policy objectives of the Bill

The primary objective of the Bill as stated in the Explanatory notes is to decrease the incidence of smoking in Queensland. The Bill aims to achieve this objective by strengthening existing smoking bans in Queensland and extending smoking bans to the following areas:

- 5 metres within all State Government buildings;
- All transport waiting areas and pedestrian malls; and
- Public swimming pools and skate parks.

The Bill also bans the sale of cigarettes at pop up sales venues.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

At the public hearing, the Member for Caloundra advised the Committee that while there were specific measures or bans in the Bill designed to achieve the policy objective, the Bill did two things:

it provides an incentive for people who are smoking to reduce or cut their smoking to zero; and it provides for a reduction in passive smoking. Both of those are linked undoubtedly to cancer and to other ailments in the body—heart disease and the like—which kill thousands of Queenslanders every year.²

1.4 Consultation on the Bill

From the information contained in the explanatory note, only the Queensland Cancer Council was consulted on the preparation of the Bill. No results of the consultation with the Cancer Council were revealed in the explanatory note, however the Cancer Council also provided a submission to the Committee on the Bill and their views are set out later in this report.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

The Committee considered the primary objective of the Bill – namely to reduce the incidence of smoking in Queensland – was of the utmost importance, and fully supported the intent of the Bill. As summarised by Dr Jeanette Young, the State’s Chief Health Officer:

We are living longer and we are smoking less. Some 86 per cent of Queensland adults do not smoke any more. We are making a difference. Over the last decade in Queensland there has been a 26 per cent reduction in smoking and a significant reduction in the proportion of young people taking up the habit; however, tobacco smoking remains a leading health challenge. Tobacco related deaths and hospitalisations are still too high. Further reducing smoking rates remains a key focus.³

The Committee considered that any proposal to reduce the incidence of smoking must be evaluated on its merits and noted that this proposal had much support from the community and peak bodies, alike.

The Committee noted however there were a number of technical issues with the Bill that became apparent throughout its inquiry that may require the Bill to undergo further consideration prior to its second reading debate.

The Committee also notes the statement from the Minister for Health and Minister for Ambulance Services, on 21 September 2015, that the government is working on a range of initiatives to reduce smoking and that the Minister considers there is more that can be done.⁴

² Public Hearing - Transcript, page 1.

³ Transcript - Public Hearing, 16 September 2015, page 5.

⁴ *The Courier Mail*, More smoking bans on way, 21 September 2015, page 11.

The Committee recommends the Bill be passed, and considers that any technical matters may be addressed as the Bill progresses through the later stages of the legislative process and also that any additional measures brought forward by the Minister also be considered at that time.

Recommendation 1

The Committee recommends the Tobacco and other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015 be passed.

2. Background

For many years now, governments across Australia and around the world have been enacting legislation to ban the smoking of tobacco products in public places. As the former Health and Community Services Committee noted in its consideration of the last tranche of smoking bans introduced in Queensland in 2014:

Smoking tobacco is recognised as one of the largest preventable causes of death and disease in Australia. Each year, smoking kills an estimated 15,000 Australians and costs Australia \$31.5 billion in social (including health) and economic costs.

The Australian Government and state and territory governments, through the Council of Australian Governments, have committed by 2018, to reduce the national adult daily smoking rate to 10% and halve the Aboriginal and Torres Strait Islander adult daily smoking rate (from 47% in 2008).⁵

What started as a measure to address concerns about the liability of employers for work-place related exposure to second-hand smoke, has now evolved into a major public health initiative.

Australian States and Territories have taken different approaches with legislating against smoking in public places, however all states and territories have laws prohibiting smoking in cinemas and theatres, most forms of public transport and in food preparation areas.

Most jurisdictions have introduced broader bans on smoking in enclosed public places such as restaurants and shopping centres, pubs and clubs and in cars with children.

Some jurisdictions have bans in place on smoking in outdoor areas such as outdoor eating and drinking areas, entrances to buildings, sporting facilities and public beaches.

As noted by the Heart Foundation:

Tobacco legislative reforms have proven to be extremely effective public health measures, which is why the Heart Foundation supports further reforms. Reducing access to places where people can smoke provides a supportive environment for non-smokers, reducing their exposure to secondhand smoke. It also assists smokers to quit by providing a healthier environment in which smoking is less accessible and the healthy choice of not smoking is made easier.⁶

2.1 Incremental approach to smoking bans

Queensland, like the other states and territories, has favoured an incremental approach to smoking bans over a number of years. Initial bans were introduced restricting smoking in specified enclosed public places in 2001, progressing to the phased introduction of smoking bans at outdoor public places including eating and drinking places, entrances to public buildings, patrolled beaches, prescribed outdoor

⁵ Department of Health (Cth), Tobacco Control, <http://www.health.gov.au/tobacco> accessed August 2015.

⁶ Submission No. 13, Heart Foundation, page 1.

swimming areas, children's playgrounds and sports stadiums in 2005. Smoking indoors at liquor licensed venues, including specifically in poker machine areas, was also phased out over an 18-month period from early 2005.

In 2010, Queensland introduced smoking bans in cars carrying children under the age of 16 years and empowered local governments to play a role in creating smoke-free public places with inclusion in the *Tobacco and Other Smoking Products Act 1998* (the Tobacco Act) of an ability to regulate smoking in outdoor pedestrian malls and public transport waiting points through their own local laws.

The most recent reforms continued in 2014, when the Parliament passed the Health Legislation Amendment Bill 2014 (the 2014 Bill), which extended smoking bans to all health facilities, school grounds and in prisons. That Bill also ensured the existing tobacco smoking laws equally applied to personal vaporising devices or 'e-cigarettes'.

While all *enclosed* areas of health facilities and schools were prohibited by the Tobacco Act, prior to the 2014 Bill, the reforms in the 2014 Bill extended smoking bans to all public health land, including hospitals, community health centres, health clinics or rehabilitation centres, other than in a nominated smoking place.⁷

2.2 Multi-strategy approach

The introduction and extension of smoking bans is not the only method the Government has used to tackle smoking. As highlighted by the Chief Health Officer at the public hearing:

Over many years Queensland has implemented a proven multistrategy approach which aims to increase protection from second-hand smoke, support smokers to quit and prevent youth uptake. Our strategies include: creating smoke-free environments by law and policy; implementing quit-smoking campaigns to remind smokers of the dangers of smoking and encourage them to take action; providing tailored quit-smoking advice through the Quitline service—33,000 people call that line each year and we know that we have retention rates for their program of 68 per cent and quit rates of 45 per cent six months after program completion; targeting our quit-smoking programs to reach those with higher rates of smoking; preventing young people from taking up smoking through retail sale and display restrictions; and providing school based education to get healthy messages to children early.

Taken all together, these strategies have been proven to influence healthier behaviours and strengthen community expectations for more smoke-free environments. Indeed, three-quarters of Queenslanders tell us that they actively avoid places where they are exposed to other people's smoke. I would like to provide a bit

⁷ Report No. 59, Health and Community Services Committee (54th Parliament), *Health Legislation Amendment Bill 2014*, page 19.

more detail at this point about Queensland's current tobacco laws, in particular the smoking bans for public places.⁸

In addition to bans, national legislation has focussed on tobacco advertising, providing health warnings and implementing pricing measures. This includes bans for tobacco advertising on television, radio and in print, graphic health warnings which appear on packs of cigarettes, and plain packaging requirements for the sale of tobacco products.⁹

The Tobacco Act also contains prohibitions on the display of smoking products, retail prices for the products, the use of certain business names and the requirement to keep smoking produces out of sight of customers.¹⁰ All these measures work together to reduce the incidence of smoking.

⁸ Transcript - Public Hearing, 16 September 2015, page 5.

⁹ Transcript - Public Hearing, 16 September 2015, page 6.

¹⁰ Part 2A, Tobacco Act.

3. Achievement of the Policy objective

The Tobacco Act, as it currently operates, contains a number of Parts and Divisions which regulate smoking and the tobacco industry and sets out a number of specific areas in which smoking is banned. The relevant parts of the Tobacco Act are as follows:

- Part 2 – Supply of smoking products
- Part 2A – Advertising, display and promotion of smoking products
- Part 2B – Smoke-free enclosed places
- Part 2BA – Smoke-free motor vehicles
- Part 2C – Smoke-free outdoor places
- Part 2D – Prohibited products

The Bill aims to extend the existing smoking bans to five areas which are considered separately below. The first four areas focus on outdoor places and are dealt with by amendment, replacement and insertion of provisions into Part 2C - Smoke-free outdoor places. The fifth area deals with Part 2 – Supply of smoking products and includes extensions to the current bans dealt with in that Part.

Stakeholder support for the extension of smoking bans

The Bill received widespread support from submitters in its intent to decrease the incidence of smoking in Queensland. Individual submitters, peak bodies and other organisations all considered there was definite merit in extending smoking bans.¹¹

Submitting in her capacity as a member of the Queensland population, Ms Kristen Miller stated:

I write as a member of the Queensland population to provide huge support of the proposed extension of smoking Bans. Australia is a leader in tobacco control yet we continue to allow members of the Queensland public to be exposed to second hand smoke in public spaces that should foster a safe and hazard free environment. There is no safe level of second hand smoke and the number of times a day I have to walk through smoke clouds just to go about my day to day activities is atrocious.

As Queensland continues to grow and attract global attention, particularly with international events such as the annual Gold Coast Marathon, V8 Races and upcoming 2018 Commonwealth Games, this is a huge opportunity to show the world that Queensland is serious about Tobacco Control and doing everything it can to reduce smoking related morbidity and mortality.

¹¹ See generally all submissions received.

In a tight economic climate, this extension of smoking Bans not only provides social benefits, but a sound economic policy. Imagine how the current \$6.1 billion a year could be invested for Queensland if it wasn't needed for preventable tobacco-related illness.¹²

The Queensland Catholic Education Commission noted while the Bill did not have a direct impact on Catholic schools, it supported the intent of the Bill to decrease the incidence of smoking in Queensland.¹³

In its submission, the Cancer Council Queensland set out the facts on smoking in Queensland, stating:

Tobacco smoking is a leading cause of preventable death and disease, and health inequality in Queensland. One third of smokers die in middle age losing at least 20 years of life (42% of lung cancer deaths occur in the 45–64 year old age group, and 18% of COPD deaths). Current smokers will die an average of 10 years earlier than non-smokers, with mortality rates increasing substantially with the increased intensity of smoking. Smoking accounts for 1 in 7 deaths in Queensland with 3700 Queenslanders dying annually from tobacco related conditions. About one-third of these were of working age. One in 10 people who die from smoking-related diseases have never smoked themselves.

Prevalence has decreased by 26% over the decade since 2004, but the rate of decrease has slowed over recent years – new measures are now urgently required to continue historical rates of progress.¹⁴

A number of submissions considered the bans did not go far enough.¹⁵ Consideration of further proposals is considered at Part 5 of this Report. Other submissions provided qualified support and highlighted what they considered were flaws in the proposed legislation.¹⁶

In particular, issues relating to enforcement by local government were raised by a number of submitters. Consideration of enforcement issues is dealt with at Part XX of this Report.

A number of other technical issues were identified in submissions¹⁷ and were discussed at the public hearing. The Chief Health Officer was asked if the Department [of Health] supported the Bill.

¹² Submission No. 3, Kristen Miller.

¹³ Submission No. 5, QCEC.

¹⁴ Submission No. 8, Cancer Council Queensland, page 2.

¹⁵ See for example: Submission No. 2, Phil Browne; Submission No. 8, Cancer Council Queensland; Submission No. 13, Heart Foundation; Submission No. 10, Public Health Association Queensland.

¹⁶ See Submission No. 1, Hans Jakobi.

¹⁷ See Submission No. 9, Cairns and Hinterland Hospital and Health Service.

Dr Young responded:

*We do. We support anything that increases smoke-free places. There are some technical issues that would be good to get amended just for clarification, but overall, yes, we certainly support the intent.*¹⁸

Each of the individual proposals is considered below.

3.1 Banning smoking within 5 metres of all State Government Buildings – new ban

Clause 5 of the Bill proposes to insert a new division, *Division 2B - Government Buildings*, into the existing Part 2C – Smoke-free outdoor places.

The proposed new Division 2B contains a new ban in proposed section 26ZGG of ‘Smoking near particular government buildings’. New section 26ZGG states:

A person must not smoke on land within 5 metres of a Government Building that has both of the following types of signage, on the outside of the building, at or near a public entrance to the building –

- (a) signage identifying the building as a government building;*
- (b) a no smoking sign.*

An exception to this new offence is that it will not apply to any person who is (within the 5 metre area) on land that is not a public place or in a motor vehicle passing the government building.¹⁹

The new offence carries a maximum penalty of 20 penalty units.²⁰

A government building is defined as a building in which:

- the majority of space is leased or occupied by a department or part of a department; or
- a building in which a court or tribunal is situated; or
- a building in which the Legislative Assembly is situated; or
- if prescribed by regulation, a public sector unit is situated.

For the purposes of this offence, a government building does not include a building on health facility land or school land.

¹⁸ Transcript – Public Hearing, page 10.

¹⁹ Proposed section 26ZGG(2).

²⁰ Proposed section 26ZGG(1).

Proposed new section 26ZGH requires that for the purposes of 26ZGG, a public sector unit, responsible for the maintenance of a building to which that section applies, must ensure no smoking signs are displayed at each entrance to the building and at a place on each side and floor of the building that a member of the public may walk past.

Stakeholder response

Submitters were generally supportive of the bans relating to smoking within 5 metres of a government building however a number of issues were raised relating to enforcement, signage and consistency with existing provisions.

The Cancer Council considered that banning smoking around buildings discouraged smokers from clustering around building entrances and lessened the exposure of people to second-hand smoke.²¹ The Heart Foundation considered the ban was a 'reasonable extension of the current law requiring smoking to occur outside the five metre boundary of school and hospital grounds', and that it would create a state-wide consistent approach for all government buildings.²²

Both the Cancer Council and the Heart Foundation considered the ban should be extended to all non-residential buildings as well as multi-unit residential buildings.

The Cairns and Hinterland Hospital and Health Service (CHHHS) provided a detailed and considered submission highlighting a number of potential issues with the Bill to which further consideration may need to be given. The CHHHS queried whether the term 'building' was clear enough without any formal definition of the term, and asked whether the building itself included attachments such as awning, walkways, and undercover driveways.²³

The CHHHS also queried whether this provision created a double standard when compared with the 2014 amendments which banned smoking completely on health facility land and school land. An example was provided where a person must be further than 5 metres from the school boundary in order to smoke, however a person may be on land within the parliamentary precinct and be able to smoke, as long as they are not within 4 metres of an enclosed area, 5 metres from a building and not in a public access area.²⁴

The CHHHS also submitted there was an inconsistency with the existing provisions relating to the requirement for signage, i.e. there is no requirement under the Tobacco Act for signage to be displayed around health facility land and school land. For consistency, the CHHHS considered either the requirement for signage on government buildings be removed or be added to the existing provisions relating to school and health facility land.

²¹ Submission No.8, Cancer Council Queensland, page 3.

²² Submission No. 13, Heart Foundation, page 2.

²³ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 4.

²⁴ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 4.

Also in relation to signage, the CHHHS raised the potential for a building to be occupied by a department and meet the requirements of a government building, but if there was no requirement for the public sector unit to be responsible for the maintenance of the building, there could be issues with who is responsible to ensure signage is present.²⁵

At the public hearing, Dr Young stated currently there is no requirement for there to be no smoking signage before prosecuting someone for smoking in a non-smoking area. Dr Young considered the requirement for signage to be present could be detrimental to the intent of the Bill as it could result with an alleged offender saying 'I did not see that sign. It was around the corner and it wasn't visible.' Dr Young indicated that the public had been generally good in complying with existing legislation and that rather than these reforms being positive, issues like arguing over whether a sign was visible may be construed as a negative.²⁶

Committee Comment

The issues relating to what constitutes a building need to be clarified as there is a real possibility for uncertainty as to what constitutes a part of a government building and where the 5 metre boundary ends. There are many government buildings, not just in the Brisbane CBD but throughout the State, that have overhanging awnings etc and outdoor landings or walkways, that a reasonable person may consider to be part of the building.

It may be possible for examples to be included in the Bill to further clarify the intent of the provision or amend the definition to be more exhaustive of what constitutes a government building and the 5 metre area that surrounds it.

The Committee is not satisfied the issue of requiring signage is detrimental to the Bill, however it may be the requirement for signage may also need to be reviewed to ensure that signage is visible from areas in which people may smoke that are within the 5 metre boundary.

In relation to potential double standards, the Committee agrees that the Parliament should lead by example and considers the smoking bans could easily be extended to land that is within the Parliamentary Precinct as defined in the *Parliamentary Service Act 1998* and 5 metres around it, and also within 5 metres of any electorate office.

The Committee notes the potential for issues to arise about who is responsible for the erection of signage in the instance where a public sector unit occupying the building is not responsible for the maintenance of the building, however does not consider this issue will be widespread and may be dealt with by the relevant department or public sector unit to ensure that the spirit and intent of the Bill is achieved.

²⁵ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 4.

²⁶ Public Hearing - Transcript, page 11.

As stated by the Member for Caloundra when he briefed the Committee:

The rule of five metres is to prevent clustering and prevent passive smoking. There will be issues as we go forward but we can address them as we go forward. I think the principle here is: let us start with a premise and then work through that as time goes by. I think when we consider the implications of what we are talking about, we need to be cognisant of issues that may arise but deal with them as they do arise. There are those out there who want to ban smoking entirely. That is simply a nonsense argument. You cannot do that. We have learned in the past that banning a legal item actually creates more problems. So let us deal with what we have and try to reduce the incidence of smoking even further. Yes, every bill has, when it becomes an act, issues to be dealt with. That is what this House is all about.²⁷

Recommendation 2

The Committee recommends the definition of Government building, what constitutes a building, and the requirements for signage be reviewed to ensure there is certainty to the area in which the ban is to operate.

3.2 Banning smoking at skate parks – new ban

Clause 7 of the Bill proposes to insert a new section, section 26ZKA – Person must not smoke at skate park, into the existing Part 2C – Smoke-free outdoor places. New section 26ZKA states:

- (1) *A person must not smoke at a skate park.*
- (2) *A person must not smoke on land within 5 metres of a skate park.*

The two new offences carry a maximum penalty of 20 penalty units.²⁸

An exception to the new offences are they will not apply to any person who is on land (within the 5 metre area) that is not a public place or in a motor vehicle passing the skate park.²⁹

Stakeholder response

Submitters were also generally supportive of the bans relating to smoking at or within 5 metres of a skate park. A number of submitters considered however that for consistency with the existing ban on smoking near children's playground equipment, which has a 10 metre limit, the distance for smoking near a skate park be increased to 10 metres.³⁰

²⁷ Public Hearing - Transcript, page 4.

²⁸ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 4.

²⁹ Proposed section 26ZKC(3).

³⁰ Submission No.8, Cancer Council Queensland, page 4; Submission No. 13, Heart Foundation, page 4.

At the public hearing, Dr Young indicated the Department would also consider it easier for consistency in messaging if the ban was within 10 metres similar, to that of a children's playground. Dr Young also indicated that a skate park could even be considered a playground.³¹

The CHHS also considered a skate park could be interpreted as a children's playground, which was already covered by the Tobacco Act, and that a definition for children's playground be developed to assist in the administration of the proposed new provision.³²

Committee comment

The Committee supports the intent of the new provision and understands that imposing the ban at or near skate parks is targeting a particular demographic and aiming to reduce the incidence of smoking for young people.

The Committee notes the issues raised by stakeholders and the Department and considers that at a minimum, the provision should be amended to reflect a distance of 10 metres, to ensure consistency with the existing ban on smoking near children's playground equipment. Alternatively, as suggested by the CHHS, the existing section 26ZK could be amended to ensure a definition of children's playground equipment includes a ramp or other similar structure that is used for skateboarding.

Recommendation 3

The Committee recommends the Bill be amended to ensure there is consistency between the proposed provision banning smoking at or near a skate park and the existing provision banning smoking near children's playground equipment.

3.3 Banning smoking at public swimming pools - amendment to ban

Clause 6 of the Bill proposes to replace the existing section 26ZI - *Person must not smoke at a prescribed outdoor swimming area* with a revised section – *Person must not smoke at public swimming pool*.

Existing provisions

The existing provision provides a person must not smoke at a prescribed 'outdoor swimming area' between sunrise and sunset and carries a maximum penalty of 20 penalty units.³³

An 'outdoor swimming area' means an area in, or adjacent to, a pool or other body of water used by the public for swimming.

³¹ Public Hearing – Transcript. page 10.

³² Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 9.

³³ Section 26ZI(1), Tobacco Act.

There are currently six prescribed outdoor swimming areas:

- Airlie Beach Lagoon
- Bluewater Lagoon (Mackay)
- Esplanade Lagoon (Cairns)
- Rockpool (Townsville)
- Settlement Cove Lagoon (Redcliffe)
- Streets Beach—South Bank (Brisbane)³⁴

New provisions

The Bill proposes to remove the existing offence and the six prescribed outdoor swimming areas and broaden the ban as follows:

*A person must not smoke at a public swimming pool or its associated area.*³⁵

The revised ban will carry the same maximum penalty of 20 penalty units.

A ‘public swimming pool’ is defined to mean a pool or other body of water that is open to the public for swimming, whether or not on payment of money.³⁶

An ‘associated area’ for a swimming pool is proposed to mean any of the following:

- (a) *an area rising from within the pool or a platform over the pool;*
- (b) *an area providing access to the water in the pool;*
- (c) *an area adjacent to the pool provided for persons to observe swimmers in the pool;*
- (d) *an area containing diving boards or water slides for the pool;*
- (e) *an artificial beach adjacent to the pool;*
- (f) *if the area surrounding the pool is enclosed by a fence or wall—the area enclosed by the fence or wall.*³⁷

³⁴ Section 14 and Schedule 1, Tobacco and Other Smoking Products Regulation 2010.

³⁵ Proposed section 26ZL(1).

³⁶ Proposed section 26ZL(2).

³⁷ Proposed section 26ZL(2).

Stakeholder response

Again, stakeholders were supportive of extending smoking bans to public swimming pools.³⁸ However, as pointed out by Dr Young at the public hearing and also by the CHHHS in its submission, there are potential issues with the definition of 'public swimming pool'.

As drafted the term 'other body of water' in the definition of public swimming pool could be interpreted to include any part of a beach, lake, dam, creek or river throughout Queensland.³⁹

Committee Comment

Similar to the previous provision, the Committee supports the intent of the amended provision and understands that imposing the ban at swimming pools and associated areas will benefit young people in particular as they are more likely to frequent outdoor swimming areas.

The Committee notes the issues raised by stakeholders and the Department and considers the definition of public swimming pool should be reviewed to (a) ensure it captures all outdoor swimming areas that it is intended to capture and (b) does not capture other bodies of water throughout the State that it is not intended to capture.

As suggested by the Heart Foundation and the Cancer Council, it is possible the ban could even refer specifically to outdoor aquatic recreational facilities to ensure it has the desired effect.

Recommendation 4

The Committee recommends the definition of 'public swimming pool' be reviewed to ensure the bans imposed under the Bill only refer to those areas to which it is intended to refer.

3.4 Banning smoking at all transport waiting areas and pedestrian malls – re-classification of bans

Existing provisions

The existing Division 4 of Part 2C – Smoke-free outdoor places, creates a regime where local governments make local laws prohibiting smoking at the following areas within that local government's local government area:

- a public transport waiting point that is not in an enclosed place (if the place is under local government control); and
- an outdoor pedestrian mall.⁴⁰

³⁸ Submission No.8, Cancer Council Queensland, page 4; Submission No. 13, Heart Foundation, page 4.

³⁹ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 5; Transcript - Public Hearing, page 10.

⁴⁰ Section 26ZPB, Tobacco Act.

The local government may provide for a penalty of not more than 20 penalty units to be paid, for a contravention of the local law.

A public transport waiting point is defined to mean any of the following:

- (a) a transit terminal for public passenger services;
- (b) a ferry terminal, jetty, pontoon or landing for ferry services;
- (c) a bus stop, bus shelter, bus station or bus lay-by;
- (d) a taxi rank, limousine rank or limousine standing area.⁴¹

An outdoor pedestrian mall is defined to mean any of the following:

- (a) a mall established under the *Local Government Act 1993*;
- (b) the Chinatown Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*;
- (c) the Valley Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*;
- (d) the Queen Street Mall established under the *Local Government (Queen Street Mall) Act 1981*.

In essence, a local council can 'opt in' to make local laws banning smoking in the above areas and if a court imposes a fine for the offence, the fine must be paid to the local government.⁴²

Existing Division 4 also enables the chief executive of the Department of Health to require a report from the local government about the local government's administration and enforcement of the law. If a request is made, the local government must comply with the request.⁴³

New provisions

Clauses 7 and 11 of the Bill will work together to remove the existing provisions from the 'opt in' regime contained in Division 4 of Part 2C (deleted in its entirety by clause 11) and insert similar provisions into Division 3 of Part 2C of the Tobacco Act.

The effect of moving the provisions from Division 4 to Division 3 is that a local government will now no longer have the ability to 'opt in' to make local laws banning smoking in the relevant areas, as it will already be an offence under the Tobacco Act for a person to do so.

⁴¹ Section 26ZPA, Tobacco Act.

⁴² Section 26ZPE(2), Tobacco Act.

⁴³ Section 26ZPD, Tobacco Act.

The two new offences are simply:

A person must not smoke at an outdoor pedestrian mall.⁴⁴

A person must not smoke at a public transport waiting point.⁴⁵

There are minor differences to each of the two banned areas from the existing Division 4, as follows:

- the definition of 'outdoor pedestrian mall' will also include a mall established under the *City of Brisbane Act 2010*.⁴⁶
- All public transport waiting points are now included and there is no requirement that the waiting point is not in an enclosed space or that it be under local government control.

Both new offences carry a maximum penalty of 20 penalty units.

Stakeholder feedback

Once again, there was much support from stakeholders for imposing bans for smoking in malls and at public transport waiting points throughout the State. Mr David Swan provided strong support for this prohibition stating:

This is an important and necessary action to be taken by the Parliament and is consistent with other action taken to prevent the known negative impacts of cigarette smoke.

...

Action has been taken to protect individuals from regular exposure to cigarette smoke at work places, whilst travelling on public transport, in some cases within cars and even as they walk through the door of their workplace. But they have no protection from being exposed on a twice daily basis to cigarette smoke at their bus stop.⁴⁷

David Swan continued his support stating:

There is no safe level of exposure to second-hand cigarette smoke. Action has been taken to protect individuals in circumstances where it is difficult or impossible to avoid second-hand smoke. Waiting at bus stops is a very common situation where regular involuntary exposure has not been addressed.

⁴⁴ Proposed Section 26ZKA(1).

⁴⁵ Proposed Section 26ZKB(1).

⁴⁶ Proposed Section 26ZKA(2).

⁴⁷ Submission No. 6, David Swan.

*The Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill provides Parliament with the opportunity to remove that gap in Queensland's public health policy.*⁴⁸

The Heart Foundation, Cancer Council and the LGAQ all supported the intent of relocating the provisions to Division 3 of Part C of the Tobacco Act, as it will provide for consistency in approach throughout the State as to where smoking is permitted.⁴⁹

The Heart Foundation confirmed it had been advocating for a state-wide law to ban smoking at public transport waiting points for many years. Similar to the views expressed by Mr Swan, the Heart Foundation considered these areas were places where 'people gather in close proximity, and unless they are smoke-free areas, young people are at risk from involuntary exposure to second-hand smoke.'⁵⁰

In its submission, the Council of the City of Gold Coast confirmed it had considered whether to implement smoking bans in its malls and public transport waiting points in 2010 and again in 2012 and stated:

*It was noted as part of these considerations that whilst this might reduce the incidence of passive smoking within the designated areas such as a mall, the associated problem would likely be only relocated onto areas directly adjacent to controlled areas, creating "choke points". Many other logistical and enforcement issues were also identified at the time resulting in a decision to not take up the voluntary provisions.*⁵¹

In relation to relocating smokers to an area adjacent to a bus stop, David Swan's submission directed the Committee to the New South Wales legislation, which has an expanded definition of its public transport waiting points to include the waiting point and 'any area where persons queue or gather when waiting' at the relevant waiting point.⁵²

In both submissions to the Committee and at the public hearing, the LGAQ and the Logan City Council raised issues relating to enforcement of these provisions in particular. The Committee has considered issues relating to monitoring and enforcement at Part 4 of this Report.

Committee Comment

Subject to the issues discussed at Part 4, relating to monitoring and enforcement, the Committee considers that implementing State-wide bans for smoking in malls and at public transport waiting points is a step in the right direction.

⁴⁸ Submission No. 6, David Swan.

⁴⁹ Submission No.8, Cancer Council Queensland, page 4; Submission No. 13, Heart Foundation, page 3; Submission No. 15, LGAQ, page 1.

⁵⁰ Submission No. 13, Heart Foundation, page 3

⁵¹ Submission No. 4, Council of the City of Gold Coast.

⁵² Section 6A, *Smoke-free Environment Act 2000* (NSW)

The Committee is satisfied that banning smoking at these outdoor places outright and removing the ability for Councils to make local laws in their own local government areas sends the right message to the public that it is simply not acceptable to smoke in these areas. As highlighted by Ms Anne Savage of the Cancer Council at the public hearing:

Our view is that these proposed reforms will generally be accepted by the community who feel that they should have been in place for a while anyway. You consider smoking at bus stops and places where you are among other pedestrians. The level of understanding is pretty good among the general population, but what definitely needs to continue is those very targeted campaigns—not necessarily about this bill—to help people with quitting and to stop the intergenerational trend of their children taking it up. That is where those risks are. My view is that this bill and the legislation that has been proposed will probably be normalised quite quickly. People will very quickly understand that it is not acceptable or legal anymore to smoke at a bus stop. Many of these reforms will be accepted without question and people will fall into line and, hopefully, more people will quit.⁵³

The Committee notes the definition of public transport waiting point in the Bill is consistent with the current definition used in the Tobacco Act, however considers there is merit in reviewing the definition to ensure the ban is effective and achieves its intended purpose. The Committee notes provisions in other jurisdictions such as Tasmania impose a ban within a distance of 3 metres of bus shelters⁵⁴ and as stated above New South Wales extends the definition of its waiting points to include not just the point itself, but the area where persons queue or gather when waiting.

Queensland has had a history of leading the nation with its stance on smoking bans in outdoor places and should continue to lead the way into the future.

Recommendation 5

The Committee recommends the definition of 'public transport waiting point' be reviewed to ensure the bans imposed under the Bill extend to an appropriate area at or near the waiting point, where people may gather when waiting to use public transport.

3.5 Banning the sale of cigarettes from a vehicle and at 'pop up' sales venues

Clause 4 of the Bill proposes to insert two new offences into Part 2 of the Tobacco Act which deals with the supply of smoking products. The two new offences relate to the supply of smoking products from a vehicle and from a pop-up store.

⁵³ Transcript – Public Hearing, page 23

⁵⁴ *Public Health Act 1997* (Tas)

The first new offence is:

A supplier must not sell smoking products from a vehicle.

The offence is proposed to carry a maximum penalty of 40 penalty units.⁵⁵

A vehicle will include a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.⁵⁶

The second offence is:

A supplier must not sell smoking products from a pop-up store.

The offence is also proposed to carry a maximum penalty of 40 penalty units.⁵⁷

A pop-up store is defined to mean: a temporary stall or counter; or a retail outlet where smoking products are available for sale only during an event such as a concert, fete, festival, show or sporting event.

Stakeholder Response

This ban also received positive support from stakeholders, with the Heart Foundation submitting that pop-up or temporary sales venues have long been utilised by the tobacco industry and retailers to undermine the laws on restricting the sale and display of cigarettes. The Heart Foundation considered pop-up venues were mostly targeted at public events such as music festivals, concerts or sporting events where there are many young people who are vulnerable to being influenced to smoke. They considered this was a loophole in the law that needed to be closed.⁵⁸

The CHHHS again raised some technical issues with the proposed bans for consideration by the Committee. With respect to the offence of selling smoking products from a vehicle, the CHHHS considered it would be of assistance to authorised officers under the Tobacco Act, to have the power to stop a vehicle.⁵⁹ The CHHHS pointed to legislation where environmental health officers had such a power i.e. Food, Pest Management, Health, Public Health and Radiation Safety Acts.⁶⁰

In relation to the pop-up stalls, the CHHS submitted that even with the new bans, vending machines would still be able to be used within the bar area of a licenced premises and could be used at fetes, festivals or concerts. The CHHHS considered that it would be more effective for a ban at events such as this if it was extended to prohibiting vending machines as well.

⁵⁵ Proposed Section 13C.

⁵⁶ Proposed Section 13C(2).

⁵⁷ Proposed Section 13C.

⁵⁸ Submission No. 13, Heart Foundation, page 3

⁵⁹ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 2.

⁶⁰ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page 2.

Committee comment

The Committee is satisfied the proposed bans on supplying smoking products from vehicles and pop-up sales venues will make a valuable contribution to the reduction of smoking in Queensland. The figures provided by the Cancer Council in its submission were startling – with the highest rate of smoking being among young to middle-aged adults (25-44 years), with about 1 in 5 smoking daily in 2014.⁶¹ These bans will effectively target this age group and hopefully discourage young people from smoking.

As raised by the CHHS, further consideration should be given to the powers available to authorised officers under the Tobacco Act to ensure they are appropriately supported in their role. The Committee considers the Department of Health could review the current powers available to officers generally under the Tobacco Act and bring forth any amendments in tandem with any further reforms introduced by the Government.

⁶¹ Submission No. 8, Cancer Council, page 3.

4. Monitoring and Enforcement

Much was said about enforcement in submissions on the Bill from both the perspective of the entities responsible for enforcement and the public expecting the laws to be enforced. There seemed to be some general confusion as to who will be responsible for enforcing the new bans which may have arisen from the lack of information in the explanatory note accompanying the Bill about the changes to the outdoor smoking bans and how they would be enforced.

The Logan City Council considered there was no clear responsibility regarding enforcement jurisdiction in the Bill and that the State needed to provide clear and consistent messages as to who would be responsible for enforcement of the new sections.⁶² The QCEC also queried who would be responsible for enforcing the bans at outdoor swimming pools and skate parks stating that as schools used both of these facilities it would be important to have clarity around who has the power to direct and to stop smoking if this occurs in the presence of students.⁶³

4.1 Summary of enforcement regime

As shown in the table at Appendix A of this Report, there are a number of agencies responsible for enforcement – Hospital and Health Services, Local Governments and the Queensland Police Service.

As set out on the Queensland Health website, smoking bans are primarily enforced by Queensland Health Environmental Health Officers (EHOs), who, as authorised persons under the Tobacco Act can:

- issue individuals warnings and on-the-spot fines;
- issue businesses improvement notices, warnings and on-the-spot fines;
- initiate legal proceedings for breaches of the tobacco laws;
- respond to complaints;
- inspect premises; and
- provide advice about the tobacco laws.⁶⁴

Authorised Persons

Part 3 of the Tobacco Act – Monitoring and Enforcement deals with who may be appointed as an authorised person under the Tobacco Act. The chief executive of the Department of Health may appoint the following people as authorised persons:

- Public services officers or employees;
- Health service employees; and
- A person prescribed under a regulation (there are currently no classes of people prescribed under the Regulation).⁶⁵

⁶² Submission No. 7, Logan City Council, pages 2, 3.

⁶³ Submission No. 5, QCEC, page 5.

⁶⁴ <https://www.health.qld.gov.au/public-health/topics/atod/tobacco-laws/penalties/default.asp>

⁶⁵ Section 28(1), Tobacco Act.

Within a local government area, the chief executive officer of a local government area may also appoint the following people to be an authorised person for that area:

- Employees of the local government;
- If another local government consents – employees of the other local government; and
- A person under contract to the local government.⁶⁶

A health service chief executive may also appoint a person as an authorised person for particular matters relating to smoking on health facility land.⁶⁷

For a person to be appointed as an authorised person, the relevant chief executive must be satisfied the person is qualified for the appointment because they have the necessary expertise or experience.

Roles and Responsibilities and how they would change under the Bill

As stated above, currently authorised persons by the chief executive (EHOs) have an enforcement role for all offences contained in the Act - except for public transport waiting points and pedestrian malls as these are currently offences created by local councils under local laws.

Under the Bill, EHOs would commence having an enforcement role for the two new supply offences, the new bans on smoking in skate parks and outdoor swimming pools and with the relocation of the two bans on smoking at public transport waiting points and designated malls from Division 4 (repealed) to Division 3 of the Act, EHOs would commence having a role for enforcement of smoking bans at public transport waiting points and pedestrian malls throughout the State.

Section 26ZM of the Tobacco Act provides both the State and local governments have a role in administering Division 3 – Other outdoor places. Under the Bill, authorised persons by local government chief executives would commence having an enforcement role for the new bans on smoking in skate parks and outdoor swimming pools and all local governments would commence having a role for enforcement of smoking bans at public transport waiting points and pedestrian malls.

The role of a health service chief executive appointed person would not change under the Bill (limited to enforcing bans on smoking on or near health facility land) and the role of the Queensland Police Service would similarly not change (limited to enforcing the ban on smoking in vehicles with a person under 16 present).

4.2 Optional Role of Local Governments

Distinct from a local government's current ability to 'opt in' to make or create a local law in existing Division 4 of the Tobacco Act (proposed to be repealed), the enforcement regime in the Tobacco Act does not compel local governments to take an active enforcement role.

⁶⁶ Section 28(2), Tobacco Act.

⁶⁷ Section 28(4), Tobacco Act.

As set out above, while local governments have a role in administering the Division 3 – Other outdoor places only, the Tobacco Act provides that nothing in that division imposes a duty on a local government to enforce the division.⁶⁸

Essentially, if a local government chooses to exercise its enforcement role, it may do so within the boundaries of its local government area and if it chooses not to exercise the role, it is not required to take enforcement action against any person smoking in banned areas within its local government area.

It is this optional role of local governments (which remains largely unchanged by the Bill) which has drawn the most criticism of the smoking ban regime.

Stakeholder views

Hans Jakobi, submitting in his private capacity, considered giving councils the option to enforce the bans under the Tobacco Act was a fundamental flaw in the legislation and that the Bill did nothing to rectify it. Mr Jakobi considered the bans were only effective in Brisbane and South East Queensland as no regional councils had chosen to implement the smoking bans in their local government area. Further, Mr Jakobi submitted the bans were not really the nation's toughest if bans at outdoor places were not being enforced effectively.⁶⁹

Mr Jakobi advised the Committee he had spoken to his local council and he considered they had no interest in erecting no smoking signs or enforcing bans within its local government area.⁷⁰

The Council of the City of Gold Coast considered that although there was no duty on a local government to enforce smoking bans in outdoor areas, by making the provisions available to local government on an "opt in" basis, it raised a community expectation for local governments to provide what they considered to be an essentially unfunded new service to the community.⁷¹

The Gold Coast Council submitted:

*It is considered unfunded as educational and enforcement costs would be considerable whereby recovery of costs via fines would be comparatively minimal. The new proposed service is considered to be a state government responsibility, whereby significant funding is received through tobacco taxes and hence the proposed laws are considered to be cost shifting from the State government to local government.*⁷²

The Gold Coast Council went so far as to recommend local governments be removed from having the ability to implement smoking bans in public places.

⁶⁸ Tobacco Act, section 26ZM(2).

⁶⁹ Submission No . 1, Hans Jakobi.

⁷⁰ Submission No . 1, Hans Jakobi.

⁷¹ Submission No. 4, Council of the City of Gold Coast.

⁷² Submission No. 4, Council of the City of Gold Coast.

The Logan City Council also considered that due to the wording in the explanatory note “that the Bill imposed a state wide smoking ban, without qualification”, there was a risk the community expectation would be that local government would enforce the provisions.⁷³

The LGAQ considered that flexibility and discretionary powers for councils to take enforcement action is required and deemed most appropriate to allow for differing circumstances across local government areas. The LGAQ submitted that many of Queensland's local governments simply don't have the resources to enforce the legislation or expand their existing enforcement practices in their own local government areas.⁷⁴

In relation to resourcing in particular, the Logan City Council raised challenges with enforcement of the bans at public transport waiting points and at skate parks:

- *Smoking is a transient behaviour and for short periods. It takes approximately 6 minutes or less to smoke a cigarette. Programmed attendance is warranted and collection of data for "hot spot" locations is critical to coincide with a reasonable education and awareness strategy.*
- *Identification of an offender for determination of an offence is problematic for local government authorised officers. Whilst information can be requested, local government officers have no powers to detain persons where they are uncooperative. Also, where an alleged offender is a minor, a parent or guardian would need to be present for the gathering of evidence. In these cases, without Police assistance, a Council officer would simply only be able to ask the smoker to stop smoking or remove themselves from the area. However, this would not necessarily result in compliance.*
- *Council has undertaken preliminary costings as part of the consideration of accepting the provisions of the current Act at section 26ZPB and these are considerable. A recent exercise for Logan City Council illustrates that costs are significant and would involve approximately the following for Logan City Council to take up section 26ZPB:*
 - *\$270,000 to \$320,000 in no smoking signage at some 1156 bus stops;*
 - *\$130,000 in education and awareness for the community on the no smoking requirement for public transport waiting points; and*
 - *\$155,000 in officer resources as part of programmed attendance at public transport waiting points for the first twelve months.*⁷⁵

⁷³ Submission No. 7, Logan City Council, page 2.

⁷⁴ Submission No. 15, LGAQ, page 1.

⁷⁵ Submission No. 7, Logan City Council, pages 2 -3.

The LGAQ also submitted there would be significant infrastructure costs associated with the extension of smoking bans in additional public places, to ensure infrastructure supported the smoke free areas: for example, signage to delineate smoke free areas. The implications of the Bill would have significant impacts on councils in removing existing infrastructure (eg. "butt bins"), relocating infrastructure to suitable/permitted areas and installing revised/new signage to proposed extension areas.

The LGAQ recommended a further analysis of the infrastructure costs on local governments and that adequate resourcing is available to offset associated cost impacts.

No estimate of costs was included in the explanatory note. At the public hearing, the Member for Caloundra agreed to take on notice, a question about why there were no estimated costs for the implementation of the Bill included. The Member for Caloundra responded:

It is anticipated that the costs associated with the implementation of this Bill will be minimal, and would be met from within existing budget allocations.⁷⁶

Committee comment

The Committee notes the issues raised by stakeholders and acknowledges the potential challenges that have been raised by local councils in enforcing the bans. Regardless of whether a local council chooses to enforce the laws or not, the Committee accepts it would not be possible for authorised persons (either EHOs or council employees) to actively patrol every bus stop or park throughout the local government area to ensure the bans are enforced. That is not the intent of the enforcement regime.

No regime is perfect and even if a council chose to actively enforce smoking bans, it may be difficult for officers to respond to a specific complaint about a smoker at a suburban bus stop in time to take action. This does not mean authorised officers cannot engage in co-ordinated activities across their relevant jurisdictions to target individual hot spots where smoking in banned areas is known or suspected to occur.

Similar to random breath test sites and speed cameras set up by police, and operations of public transport transit compliance officers on buses and trains, the Committee considers it would be possible for authorised officers to participate in effective enforcement activities to support the bans. With the ability to issue on the spot fines, via infringement notices or requiring a person to appear before a court in more serious offences, there is opportunity for the existing enforcement regime to be effective.

The Committee also notes the evidence at the public hearing from Ms Anne Savage of the Cancer Council:

...the introduction of legislation such as this has been demonstrated to exert greater social pressure on people not to smoke when they are conscious that they are impacting on others. Our great hope is that the outcome of this legislation will be to increase and amp up that social pressure even more so that whenever smokers are knowingly smoking in the company of others who are non-smokers and do

⁷⁶ Correspondence from the Member for Caloundra dated 8 October 2015.

*not appreciate the second-hand smoke then perhaps they will be discouraged from doing so.*⁷⁷

The Committee agrees that the primary intent of the Bill is to ban smoking in the relevant areas and create an environment where smokers get the message that smoking in banned areas is not just unacceptable, it is an offence. Enforcement by EHOs or council staff is a necessary step that needs to occur, but it should be considered to be a supporting effort and not the main effort.

The Committee shares the view of the Heart Foundation and the Cancer Council from the public hearing and considers the proposed reforms will generally be accepted by the community and the conduct of smokers in the new banned areas will probably be normalised quite quickly. As with the implementation of existing bans, it is hopeful that smokers will very quickly understand that it is not acceptable to smoke in banned areas and will accept the reforms without question. As a result, the bans will not cause smokers to find places to smoke but hopefully cause more people will quit smoking altogether.

Given the apparent level of confusion however with which body is responsible, the Committee considers the State government, through the Department of Health should take steps to engage with Local Governments across the State to ensure they are aware of their responsibilities under the Tobacco Act in relation to enforcement.

4.3 Improved Signage and education

Related to the enforcement of smoking bans is the requirement for improved signage and education of the public about not just where smoking is banned, but to continually emphasise smoking is harmful to smokers and to others.

Stakeholder views

The LGAQ considered a State-wide education and awareness campaign was needed to ensure success with behaviour change.⁷⁸

The QCEC considered the extension of smoking bans may be helpful in achieving the intended policy objective but, in the case of school-age children and young people, the provision of effective education programs and following the example of significant adults (to children) will continue to be more powerful factors in preventing them from acquiring the smoking habit.⁷⁹

At the public hearing, Ms Alison Durham of the Heart Foundation spoke strongly about the need for an education program stating:

...the committee could also recommend that the government properly fund education to support this legislation. Definitely the legislation needs education, campaigns and support to go around it. I think that the Chief Health Officer and the prevention health

⁷⁷ Transcript – Public Hearing, page 22.

⁷⁸ Submission No. 15, LGAQ.

⁷⁹ Submission No. 5, QCEC.

branch are very dedicated and have shown a lot of leadership in this area of tobacco control with the advances that we have made in Queensland. I think that the committee could make a strong recommendation that this be supported with education and campaigns.⁸⁰

The views of the Member for Caloundra as the sponsor of the Bill were sought at the public hearing. In relation to the requirement for additional signage and education, the Member for Caloundra stated:

First of all, ignorance of the law is no excuse. We do not have signs for everything we do in this state. We do not have signs everywhere that you cannot relieve yourself, shall we say, in public or you cannot jaywalk or you cannot litter.

The education of people in regard to smoking in the past has been run by the Quit campaign, which is an ongoing campaign. In addition to that, it is quite readily picked up by the public who become the enforcers themselves in relation to where people can and cannot smoke.

I am not convinced that we need to have signage in relation to an issue of this nature. First, people know that smoking is bad for you; second, people are quite readily able and do point out to people who are smoking where they should not be to stop smoking; thirdly, people are acutely aware of passive smoking, particularly when they are not a smoker themselves, obviously. I do not believe that there needs to be a major education program.

The simple reason is this: if we put in place an education program for every bill that passes through this House the cost would simply be astronomical. There is no doubt that the public is attuned to the issues around smoking.

I think the issues in relation to smoking outside public hospitals and schools have been picked up by the public very readily.⁸¹

As mentioned above, it was the view of the Member for Caloundra that implementation of the Bill would have minimal cost to Government and would be met within existing budget allocations.⁸²

Committee comment

The Bill imposes new smoking bans, but does not specifically deal with any additional signage or any associated education strategy. The Committee accepts such a strategy should not necessarily be contained in the Bill itself and also accepts that as a Private Members Bill, the member introducing it cannot commit government funding to accompany the Bill. Also, the Committee accepts the

⁸⁰ Transcript – Public Hearing, page 22.

⁸¹ Transcript – Public Hearing, page 3.

⁸² Correspondence from the Member for Caloundra dated 8 October 2015.

Government should have a continuing role of promoting the health and wellbeing of its citizens and continue its multi-strategy approach to encourage people to stop smoking.

However, the Committee considers that with the introduction of new bans and the change in status of existing bans from certain local government areas only, to state-wide bans, there is a need for an education program and this should have been recognised when the Bill was introduced. Further, some investigation as to the cost to Government should also have occurred prior to introduction of the Bill.

The Committee notes the Government has committed to provide additional funding of \$420,000 to deliver on its election commitment to provide incentives for local governments to create local smoke-free laws and initiate community consultation to assess further strategies to prevent passive smoking.⁸³

The Committee considers that an appropriate education program is required to accompany the implementation of the bans. As a consequence, the Government's allocated funding would need to be re-evaluated to ensure that it deals with the bans contained in the Bill in addition to any program or reforms being brought forward by the Government.

⁸³ 2015-16 Queensland State Budget – Service Delivery Statements – Queensland Health, page 7.

5. Additional measures to those in the Bill

As stated earlier, the Bill received positive support from submitters and stakeholders across all areas. However a number of submitters considered that the bans contained in the Bill did not go far enough and identified further areas where smoking bans could be implemented.

The Heart Foundation stated:

There are still a number of public places in Queensland where people gather in close proximity and are routinely exposed to second-hand smoke. These loopholes need to be closed. Exposure to second-hand smoke remains a health risk, and it is our responsibility as a community to protect the vulnerable.

...

The Heart Foundation is seeking greater smoke-free areas and restrictions on sales and licensing of tobacco products, to reduce all people's exposure to smoking. Passive smoking causes coronary heart disease and lung cancer in non-smokers. Smoking bans have been linked to lower hospitalisations for heart attacks and lung disease⁸⁴.

*It is important that these smoking reforms be considered in the context of Queensland having the second highest rate of smoking in Australia, next to the Northern Territory. We also have the most regionalised population in Australia, and smoking prevalence is greater in the regions compared to urban areas. In major cities 12.9% of people are daily smokers, while in regions it is 15%, increasing to 20% in very remote areas¹.*⁸⁴

The Committee notes the Minister for Health has indicated the Government is working on examining what further work can be done to reduce the incidence of smoking in Queensland, and sets out a range of potential areas for consideration.

5.1 Ban the sale of tobacco products from vending machines altogether

Both the Heart Foundation and the Cancer Council have been advocating strongly for the ban of selling smoking products in vending machines for a number of years. The Heart Foundation stated:

In the same way that pop-up or temporary sale venues are proposed to be banned, so should the sale of tobacco products from vending machines. The current law allows tobacco products to be sold from vending machines if they are in a licensed bar or gaming machine area.

This exemption to sell tobacco products from a vending machine needs to be removed altogether to reduce the availability of tobacco products, to stop undermining the resolve of ex-smokers and to remove this avenue of tobacco advertising and

⁸⁴ Submission No. 13, Heart Foundation, page 1.

*promotion. The law may need to also specify that personal vaporiser devices for e-cigarettes cannot be sold from vending machines.*⁸⁵

The Cancer Council considered vending machines go largely unmonitored, and banning them would prevent children from illegally obtaining smoking products.⁸⁶ Both the Cancer Council and the Heart Foundation confirmed the World Health Organisation's Framework Convention on Tobacco Control, to which Australia is a signatory, recommends a total ban on tobacco vending machines.⁸⁷

As discussed earlier, the CHHHS also considered a ban on vending machines at concerts, fetes, shows or sporting events, (which might be considered an intermediate stance rather than a full ban) would be of great benefit to achieving the policy objective of reducing the incidence of smoking.⁸⁸

5.2 Ban the sale of tobacco products by people under the age of 18 years

Although the Tobacco Act has restrictions on people under 18 buying cigarettes, it does not prohibit people under 18 years of age from selling cigarettes. Both the Cancer Council and the Heart Foundation submitted this was an anomaly that needed to be rectified and cited research that minors are more likely to sell cigarettes to other minors than adults were. This is another ban that the World Health Organisation's Framework Convention on Tobacco Control supports.⁸⁹

5.3 Remove the exemption to smoke indoors in premium gaming rooms

One of the few areas where people can still smoke indoors are 'premium gaming rooms' or 'high roller rooms'. This is contained in an exemption to the general ban on smoking enclosed places.⁹⁰ The effect of this is that staff and non-smoking patrons in premium gaming rooms continue to be exposed to second-hand smoke. As highlighted by the Heart Foundation, *'the health consequences of exposure to second-hand smoke are not lessened because the smoking is occurring inside a gaming room that attracts wealthy gamblers'*.⁹¹

Both the Heart Foundation and Cancer Council advocated for the removal of this exemption.⁹²

5.4 Removal of Designated Outdoor Smoking Areas

Another area where submitters considered an existing exemption ought to be removed was in relation to designated outdoor smoking areas or DOSAs. Section 26AZ of the Tobacco Act currently allows a licenced premises to designate an outdoor area of not more than 50% of the total outdoor licenced area, as a DOSA.

⁸⁵ Submission No. 13, Heart Foundation, page 4.

⁸⁶ Submission No. 8, Cancer Council, page 5.

⁸⁷ Submission No. 13, Heart Foundation, page 4; Submission No. 8, Cancer Council, page 5.

⁸⁸ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page, 2.

⁸⁹ Submission No. 13, Heart Foundation, page 4; Submission No. 8, Cancer Council, page 5.

⁹⁰ Section 26R, Tobacco Act.

⁹¹ Submission No. 13, Heart Foundation, page 5.

⁹² Submission No. 13, Heart Foundation, page 5; Submission No. 8, Cancer Council, page 6.

Mr Phil Browne submitted the effect of allowing DOSAs to operate was that large numbers of Queenslanders were able to effectively bypass the intention of the tobacco control legislation. Mr Browne considered this undermined the effectiveness of the Tobacco Act and (similar to the issues raised above with respect to gaming rooms) placed staff in known danger from passive smoking.⁹³

The Heart Foundation and the Cancer Council similarly supported the complete removal of DOSAs from licenced premises.⁹⁴ The Heart Foundation stated:

Smoking needs to be banned on licensed premises in the same way that smoking is banned in public stadiums and at restaurants and cafes. The removal of DOSAs in pubs, clubs and licensed venues would reduce the exposure of non-smokers in or near these DOSAs to second-hand smoke. Patrons would be required to move off-site to a distance of 4 to 5 metres from the premises.

*DOSAs continue to allow smoking in outdoor areas in pubs, clubs and licensed areas. These areas have become party zones, with groups of people, smokers and non-smokers, gathering together in large numbers and being exposed to tobacco smoke for hours. Banning smoking altogether from licensed premises will remove this exposure to smoking. People will need to remove themselves from the venue to smoke, which is now common practice in Queensland and expected by the community.*⁹⁵

The Cancer Council raised similar issues and also noted the following points:

A 2008 Queensland Health research study found that 68% of patrons who regularly attend licensed venues are non-smokers.

A total ban on smoking in licensed premises would bring licensed premises into line with all other businesses in Queensland, including restaurants, cafes and sporting facilities.

Queensland Health research suggests that the continuation of designated outdoor smoking areas is reinforcing cigarette smoking among existing smokers by providing them with a legally sanctioned zone in which to continue the habit.

Queensland Health research also shows that second-hand smoke from designated outdoor smoking areas drifts into non-smoking areas of licensed venues, exposing other patrons to the harmful effects of tobacco.

The CHHHS submitted that consideration should be given to the function of DOSAs and the effect they may be having on the health of staff, non-smokers and smokers. The CHHHS also raised issues of staff

⁹³ Submission No. 2, Mr Phil Browne.

⁹⁴ Submission No. 13, Heart Foundation, page 5; Submission No. 8, Cancer Council, page 6.

⁹⁵ Submission No. 13, Heart Foundation, page 5.

having to enter DOSAs to retrieve glasses and that the removal of permitting drinks into DOSAs would in effect turn DOSAs into smoking areas. This would decrease the risk to venue staff and patrons may be more unlikely to spend extended periods of time in smoking only areas if drinking was not permitted.⁹⁶

The CHHS also raised the issue that presently, children are permitted to enter a DOSA (providing liquor licence provisions permit it) as well as a smoking only area. The CHHS stated that:

Not only are children exposed to the harmful effect of tobacco smoke produced by their guardians but by other smokers as well.

*Consideration should be given to restricting access to smoking areas further supporting current restrictions on smoking in a vehicle with a person under 16 present.*⁹⁷

Phil Browne submitted that in addition to the removal of DOSAs from licenced premises, designated outdoor smoking areas should be removed from TAFE colleges and universities. Mr Browne considered that extension of smoking bans to colleges and universities as places of education was consistent with the recent bans, prohibiting smoking on school land.⁹⁸

5.5 Bring in a “positive” licensing scheme for retailers with a licensing fee; and a searchable public register of current licence holders

The Cancer Council, Heart Foundation and the Public Health Association of Australia (Queensland Branch) (PHAA (Qld)) all strongly submitted that the sale of tobacco products in Queensland should be regulated by a licencing scheme.⁹⁹

The Heart Foundation considered that under a licencing scheme, retailers would be required to pay a licensing fee to sell tobacco products, would face fines and the removal of a licence for breaches. Fees would be used to run the licensing scheme and also provide a revenue stream to support education, monitoring and enforcement programs.¹⁰⁰

The Committee notes this is not a new initiative as a number of other states and territories currently have licencing schemes in operation.

As submitted by the Heart Foundation:

The ACT, Northern Territory, South Australia, Tasmania and Western Australia all have positive licensing schemes, with an annual fee ranging from \$200 to \$300. Western Australia raised \$832,000 (2010-2011) from nearly

⁹⁶ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page, 8.

⁹⁷ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page, 8.

⁹⁸ Submission No. 2, Mr Phil Browne.

⁹⁹ Submission No. 13, Heart Foundation, page 5; Submission No. 8, Cancer Council, page 6; Submission No. 10, Public Health Association of Australia (Queensland Branch), page 5.

¹⁰⁰ Submission No. 13, Heart Foundation, page 6.

3,800 licensees and have a searchable public register of current licence holders at <http://www.tobaccocontrol.health.wa.gov.au/licensing/receiptregister.cfm>.¹⁰¹

Both the Heart Foundation and the Cancer Council submitted Queensland has an estimated 13,000 retailers with no record of licence holders or fees collected. As submitted by the PHAA (Qld), a tobacco licencing structure would:

...improve data on tobacco supply to the community, for example opening up opportunities for the mapping of outlet density and possibly the volume of sales. Additionally there would be clear advantages in identifying unlicensed supply.¹⁰²

5.6 Other areas for consideration

Smoking near childcare centres

One issue was brought to the attention of the Committee through the Member for Gladstone, who passed on an email from one of his constituents. The email referred to people smoking along the fence line in an area adjacent to the childcare centre of which the constituent's children attended.

In examining the current bans which were designed to protect children from the effects of passive smoking in parks, and schools and the extensions proposed in the Bill, the constituent considered it would be prudent for bans to be put in place to protect the State's younger children who attended childcare centres. It was noted that more often than not, childcare centres contained playgrounds and playground equipment but this was not covered by the existing bans in the Tobacco Act, as they were not ordinarily open to the public.

Smoking near outdoor eating places

The CHHHS raised the issue that currently a smoker is able to stand outside, but immediately next to an outdoor eating and drinking area and comply with the restrictions in the Tobacco Act. For patrons in the area, the smoke is relatively the same as if the person was in the area. The CHHHS provided the example that in some cases, smokers even reached in to the area to eat or drink while remaining outside the banned area. The CHHHS considered this defeated the intent of the Tobacco Act and that consideration should be given to prohibiting smoking within a certain distance of the outdoor eating and drinking place.¹⁰³

The Committee considers the above additional measures are worthy of consideration by policy makers and may form the basis for either amendments to the Bill currently under consideration or be included in the next tranche of reforms brought forward by the Government.

¹⁰¹ Submission No. 13, Heart Foundation, page 6.

¹⁰² Submission No. 10, Public Health Association of Australia (Queensland Branch), page 5.

¹⁰³ Submission No. 9, Cairns and Hinterland Hospital and Health Service, page, 8.

6. Compliance with the *Legislative Standards Act 1992*

6.1 Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- The rights and liberties of individuals, and
- The institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

Rights and Liberties of Individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

The concept of liberty requires that an activity (including business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

Cigarette smoking is not generally an unlawful activity, albeit the circumstances of a particular act of smoking may be (eg. if done in a hospital or school). In the case of legislation restricting smoking in various public and semi-public places, imposing restrictions on the liberty of smokers to smoke as and where they like is generally considered justified in the public interest given the known deleterious health impacts from smoking and inhalation of ‘second-hand smoke’/environmental exposure to smoke. Those health impacts are also considered sufficient to justify legislation that places restrictions on when and where tobacco products can be promoted, sold or supplied.

Restrictions on personal behaviour and business trading obviously raise issues in terms of the Bill’s effect upon the rights and liberties of smokers and tobacco merchants. Not taking legislative action impacts on the right of non-smokers to not be involuntarily exposed to health risks associated with exposure to environmental smoke.

Committee Comment

Legislation regulating the consumption of tobacco and other smoking products is long-established and aimed at combating the known deleterious impacts of smoking and passive smoking.

Short term effects of exposure to environmental/‘second-hand’ smoke include temporary aggravation of respiratory conditions such as asthma, whilst extensive research has identified links between ‘passive’ smoking/exposure to ‘second-hand smoke’ and increased incidences of cancer and respiratory ailments.

Accordingly, many jurisdictions world-wide have introduced legislation that limit the public places where smoking may lawfully occur in an acknowledged attempt to both reduce demand for cigarettes and to limit the exposure to second-hand smoke for persons in and around those public places. Limiting the avenues of sale for cigarettes is also commonly done to restrict easy access to tobacco products and hopefully thereby reduce demand for them.

The Committee is satisfied the smoking and tobacco sale prohibitions in the Bill are justified in light of their furtherance of public health protection measures.

6.2 Explanatory Notes

Section 22 of the *Legislative Standards Act 1992* (LSA) requires a Member, when introducing a Bill to circulate an Explanatory Note for the Bill.

The requirements for the explanatory note are contained in section 23 of the LSA and state:

- (1) An explanatory note for a Bill must include the following information about the Bill in clear and precise language—
 - (a) the Bill's short title;
 - (b) a brief statement of the policy objectives of the Bill and the reasons for them;
 - (c) a brief statement of the way the policy objectives will be achieved by the Bill and why this way of achieving the objectives is reasonable and appropriate;
 - (d) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives and why the alternative was not adopted;
 - (e) a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs but not the cost of developing the Bill;
 - (f) a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency;
 - (g) a brief statement of the extent to which consultation was carried out in relation to the Bill;
 - (h) a simple explanation of the purpose and intended operation of each clause of the Bill;
 - (i) if the Bill is substantially uniform or complementary with legislation of the Commonwealth or another State—
 - (i) a statement to that effect; and
 - (ii) a brief explanation of the legislative scheme.
- (2) If the explanatory note does not include the information mentioned in subsection (1), it must state the reason for non-inclusion.

The *Guidelines for the preparation of explanatory notes* available on the website of the Department of Premier and Cabinet state explanatory notes need to be clear, precise and informative as they are used to:

- inform Cabinet decision making;
- contribute to informed debate in Parliament;
- ensure effective Parliamentary scrutiny of bills and subordinate legislation;
- assist in the interpretation of legislation, including by practitioners, lawyers and courts;
- make legislation more accessible by assisting people to understand the effect on their rights and obligations imposed by legislation; and
- inform public discussion about legislation, including whether the legislation has sufficient regard to rights and liberties of individuals and democratic principles.

Committee Comment

A number of issues identified with the explanatory note are set out below:

The short title of the Bill was incorrectly described.

With respect to the requirement in section 23(1)(e) of the LSA that the notes give ‘a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs’, the notes merely state ‘*cost estimates have not been included in this*’.

No explanation for the omission of this information is given, despite the obligation imposed by section 23(2) of the LSA, which requires that where an explanatory note does not include the information mentioned in section 23(1), the note must state the reason for the non-inclusion.

Section 23(1)(h) of the LSA requires explanatory notes to contain ‘a simple explanation of the purpose and intended operation of each clause of the Bill’. These notes do not address every clause nor do they provide an appropriate narrative to explain the purpose or operation of each clause.

The notes were minimal and did not contain all of the information required by Part 4 of the LSA.

Explanatory Notes are often used to help the reader of a Bill understand the technical aspects of the Bill in addition to understanding the policy trying to be implemented. The note did not make any reference to the repeal of Part 2C, Division 4 of the Tobacco Act, which currently enables local councils to opt in to create local laws banning smoking. It became evident from submissions that there was confusion about who was responsible for enforcement of the new provisions with the reclassification of provisions from Division 4 to Division 3 in the Act.

In summary, there were numerous typographical and grammatical errors throughout the explanatory note which were not acceptable for a document designed to assist legal practitioners and courts in interpreting legislation. Explanatory notes are often used to help the reader of a Bill understand the technical aspects of the Bill in addition to understanding the policy trying to be implemented.

Given the importance of explanatory notes, the Committee considers care must be taken by all Members when preparing material that accompanies a Bill. The explanatory note, as tabled, did not meet the standard required by the *Legislative Standards Act 1992*.

6.3 Penalties

The Bill contains a number of new or amended offences each carrying a maximum penalty set out below. Clause 18 of the Bill proposes to add each of the new offences to Schedule 1 of the State Penalties Enforcement Regulation 2014 which enables them to be dealt with by way an infringement notice (on the spot fine, rather than being dealt with by a court) and carries a lesser penalty.

A table of offences, maximum penalties and infringement notice penalties is set out below:

Clause	Offence	Proposed maximum penalty	Infringement Notice penalty
4	New s.13C(1) - Sale by a supplier of smoking products from a vehicle.	40 penalty units	4 penalty units
4	New s.13D(1) - Sale by a supplier of smoking products from a pop-up store.	40 penalty units	4 penalty units
5	New s.26ZGG(1) - Smoking on land within 5m of a government building.	20 penalty units	2 penalty units

Clause	Offence	Proposed maximum penalty	Infringement Notice penalty
6	Replacement s.26ZI(1) - Smoking at a public swimming pool or its associated area.	20 penalty units	2 penalty units
7	New s.26ZKA(1) - Smoking at an outdoor pedestrian mall.	20 penalty units	2 penalty units
7	New s.26ZKB(1) - Smoking at a public transport waiting point.	20 penalty units	2 penalty units
7	New s.26ZKC(1) - Smoking at a skate park.	20 penalty units	2 penalty units
7	New s.26ZKC(2) - Smoking on land within 5m of a skate park.	20 penalty units	2 penalty units

In relation to penalties, the LGAQ submitted:

The proposed penalty for a person (i.e. 20 penalty units) is considered by some councils as excessive. Some councils currently provide a 10 penalty unit fine for a person smoking in a smoke free area. Unpaid fines are referred to SPER and as such a higher penalty amount would likely mean a greater proportion of unpaid fines being transferred to SPER.

Additionally, the proposed penalty unit provision for suppliers (i.e. 40 penalty units) could be considered to be too low given the commercial nature of the activity and the need to provide a deterrent to the suppliers.¹⁰⁴

Committee comment

The proposed penalties in the Bill are consistent with the existing penalties in the Tobacco Act. The Committee considers the penalties to be appropriate and notes that the amounts set out in the Bill are maximum penalties.

The Committee also notes the ability for infringement notices to be issued for the new offences and considers the ability for them to be dealt with under the State Penalties Enforcement Regulation is also appropriate.

¹⁰⁴ Submission No. 15, LGAQ, page 2.

Appendix A – Queensland Tobacco Legislation Enforcement by Agency

Queensland Tobacco Legislation Enforcement by Agency

Section of Tobacco Act	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	

Appendix B— List of Submissions

Sub #	Submitter
001	Hans Jakobi
002	Phil Browne
003	Kristin Miller
004	Council of the City of Gold Coast
005	Queensland Catholic Education Commission
006	David Swan
007	Logan City Council
008	Cancer Council Queensland
009	Cairns and Hinterland Hospital and Health Service
010	Public Health Association of Australia
011	Goondiwindi Regional Council
012	National Stroke Foundation
013	Heart Foundation
014	Australian Medical Association (Queensland)
015	Local Government Association Queensland
016	Australian Primary Health Care Association