Queensland Government

Queensland Health

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Mr Aaron Harper MP
Chair
Health, Environment and Agriculture Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: heac@parliament.qld.gov.au

Dear Mr Harper

Thank you for the opportunity to respond to public submissions received by the Health, Environment and Agriculture Committee on the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024.

Please find enclosed Queensland Health's response, which addresses key themes and issues raised by submitters.

The Department of Health's contact for the Committee's inquiry is [redacted], Manager, Legislative Policy Unit. Should you require further information, [redacted] can be contacted on telephone [redacted] or [redacted].

Yours sincerely

[redacted]

Michael Walsh
Director-General

Health, Environment and Agriculture Committee inquiry into the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024

Departmental response to issues raised in written submissions

The Health, Environment and Agriculture Committee has made available 23 of 26 submissions as part of its inquiry into the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Bill). A list of the submissions published on the Committee's website, as at 5 July 2024, is provided in the table below.

Queensland Health has responded to the key themes and substantive issues raised in the submissions.

Sub. No	Submitter
001	Paul Creighton
002	Doug Gavel
003	Confidential
004	Super Vape Store
005	Kathy Young
006	Alcohol and Drug Foundation
007	TSG Franchise Management
008	Confidential
009	Health and Wellbeing Queensland
010	Queensland Network of Alcohol and Other Drugs Agencies Ltd
011	Name Withheld
012	Confidential
013	Queensland Catholic Education Commission
014	Australian Medical Association Queensland
015	Philip Morris Limited
016	Dr Matthew Rimmer
017	No More Butts
018	Heart Foundation
019	Pamela Wright
020	Queensland Nurses and Midwives' Union
021	Environmental Health Australia (Queensland) Incorporated
022	Cancer Council Queensland
023	Local Government Association of Queensland
024	Shopping Centre Council of Australia
025	National Centre for Aboriginal and Torres Strait Islander Wellbeing
026	Australian College of Nursing

Submitters	Issue	Department's response
General		
6. Alcohol and Drug Foundation (ADF) 9. Health and Wellbeing Queensland (HWQ) 10. Queensland Network of Alcohol and Other Drugs Agencies (QNADA) 13. Queensland Catholic Education Commission (QCEC) 14. Australian Medical Association Queensland (AMAQ) 15. Phillip Morris Limited (PML) 16. Dr Matthew Rimmer 17. No More Butts 18. Heart Foundation 20. Queensland Nurses and Midwives' Union (QNMU) 21. Environmental Health Australia (Queensland) Incorporated (EHA) 22. Cancer Council Queensland (CCQ) 23. Local Government Association of Queensland (LGAQ) 24. Shopping Centre Council of Australia (SCCA) 25. National Centre for Aboriginal and Torres Strait Islander Wellbeing Research	ADF supports amendments to restrict supply of unregulated vaping products through retail outlets. ADF reiterates support for measures that aim to ensure young people experiencing nicotine dependence can access vaping products as a smoking cessation tool. HWQ strongly supports the intent of this Bill to limit the availability and advertising of illicit vaping products, in the context of increased prevalence of use, particularly among children and young people. HWQ also strongly supports the amendments to the *Waste Reduction and Recycling Act 2011* and is committed to supporting other Queensland Government agencies to reduce the harms of tobacco and vaping. QCEC broadly supports the overall goals of the Bill to align with the Commonwealth amendments banning the supply and possession of vaping goods, as well as remedying other deficiencies with Queensland's regulatory environment. AMAQ supports the bulk of the proposals in the Bill but expresses concerns about the impact of the recent changes to the Commonwealth legislation to allow vaping goods to be purchased over the counter, and any proposal to allow children to be prescribed vaping goods. AMAQ remains concerned about the potential for the proposed prescription and pharmacy only approach to inadvertently legitimise vaping and other smoking products as proven cessation therapies when no such reliable evidence exists. PML supports the Bill, noting it presents a time-critical opportunity for Queensland to take national leadership in combatting illicit tobacco and illegal vaping, and future-proof the effectiveness of its tobacco product licensing scheme. PML recommends the Committee support the passage of the Bill and its amendments in full. Dr Rimmer supports the Bill and notes it will help ensure that Queensland can appropriately enforce the Commonwealth ban, and address concerns about the adverse impacts of e-cigarettes and vaping upon public health, children's rights and education, and the environment. No More Butts broadly supports the Bill, particularly the amendments to the Waste Reduction and Recycling Act. The Heart Foundation supports the aims and objectives of the Bill, noting legislation is needed to reduce the health burden from both tobacco and e-cigarettes. The Heart Foundation urges the Queensland Parliament to pass this important legislation at the earliest opportunity. QNMU broadly supports the Bill and its aim to improve Queensland's ability to take strong and decisive action to regulate vaping and address the high levels of uptake of vaping among young people. EHA welcomes and supports the proactive and multiple strategies that address the national public health crisis of vaping, in particular the proposed increased powers of entry for enforcement officers to investigate and act on tip-offs, complaints or suspicion of illegal activity, which could result in premise closure, fines and imprisonment options. CCQ strongly supports the overall objective of the Queensland Bill to aid effective implementation of the Commonwealth reforms by ensuring those reforms can be appropriately enforced in Queensland and commends the Queensland Government for its timely and decisive action in developing the Queensland Bill, and for its ongoing commitment to tackling the vaping crisis. LGAQ supports the objectives of the Bill as they aim to decrease the incidence of smoking and the use of illicit tobacco products through the appropriate management of smoking devices such as vapes. LGAQ strongly supports the Bill not imposing any additional compliance responsibilities on councils.	Noted.

Submitters	Issue	Department's response
	SCCA supports the objective of the Bill. The National Centre for Aboriginal and Torres Strait Islander Wellbeing Research strongly supports the Bill, noting the expectation that governments act to protect the health and wellbeing of Aboriginal and Torres Strait Islander peoples, and all Australians, from harm-generating products like vapes by regulating retail sales. Super Vape Store does not appear to support the Bill, on the basis of inconsistency with laws relating to cigarettes, perceived issues relating to Queensland's parliamentary processes, bodies and political parties, and concerns that state level offences relating to vaping are premature because, at the time the submission was made, the Commonwealth reforms had not been passed. QNADA does not appear to support the Bill, expressing concerns that attempts to prohibit, criminalise and restrictively regulate access to substances leads to a range of adverse consequences and increases harm for individuals and communities.	
Illicit nicotine products		
10. Queensland Network of Alcohol and Other Drugs Agencies (QNADA)	QNADA does not support prohibiting vaping goods or other nicotine products such as pouches, noting the body of evidence which suggests their harm reduction potential and evidence that law enforcement strategies are ineffective are reducing rates of use and intentions to use for people who use substances. QNADA suggests this amendment may have the effect of encouraging existing users of e-cigarettes to transition – or return to use of traditional tobacco products.	The Bill mirrors Commonwealth controls which restrict supply of vaping goods to a pharmacy setting where products can be dispensed under clinical supervision. This allows vaping goods to form a part of the continuum of available options for reducing the harms of smoking product use, noting that clinical guidelines do not support these products as a first line treatment. There is no clear evidence that nicotine products such as vaping goods assist smokers to quit smoking and reduce harm. There is evidence that these products are often used alongside tobacco products leading to a continuation in nicotine dependency rather than cessation. There is strong evidence that vaping goods increase harms for young people including acting as a gateway to the use of tobacco products.
11. Name withheld	Submitter 11 notes strong support for increasing the penalties for businesses caught with illicit nicotine products and the new penalty on staff members also supplying these products.	Noted.
14. Australian Medical Association Queensland (AMAQ)	AMAQ rejects the proposal to enable prescribing or dispensing of vaping products to persons aged under 18 years.	The Bill does not expressly permit the supply of therapeutic vaping goods to persons under 18 as was proposed in the consultation paper. However, section 161A provides that the supply and possession offences do not apply if the conduct relevant to the offence would be subject to an exception under the *Therapeutic Goods Act 1989* (Cth) (TG Act). The *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (Cth) amends the TG Act to allow pharmacists and other health professionals to supply therapeutic vaping products for smoking cessation and nicotine dependence. The TG Act does not limit this exception to adults. Evidence is currently unclear as to whether it is ever clinically appropriate for therapeutic vaping devices to be prescribed to children. Further time is required to consider whether medical practitioners should be categorically prohibited from prescribing any therapeutic vaping products to children, or whether this matter is more appropriately dealt with in professional guidelines. If there is a need to expressly legislate prescribing restrictions, Queensland Health considers this should occur under the traditional Medicines and Poisons regulatory framework, not by subjecting medical practitioners to criminal offences under the *Tobacco and Other Smoking Products Act 1998*.
18. Heart Foundation	The Heart Foundation supports the proposed updated definition of *nicotine products* as this will help futureproof the legislation as new nicotine products emerge in the future.	Noted.

Submitters	Issue	Department's response
26. Australian College of Nursing (ACN)	ACN notes that the term 'illicit nicotine product' should future proof the legislation and allow new products like nicotine pouches and nicotine toothpicks to be dealt with.	Noted.
Employee supply		
20. Queensland Nurses and Midwives' Union (QNMU)	QNMU considers the Bill should provide adequate consideration and safeguards to ensure that enforcement action is only taken against individuals, such as employees, who are knowingly supplying illicit products.	Queensland Health intends to take an educative approach in the first instance in relation to this offence, focusing on informing and educating before moving to penalties. Penalties would only be applied where a person has first been warned and then continues supplying.
Supply by other adults		
26. Australian College of Nursing (ACN)	ACN notes this offence is critical to protecting those under 18 and urges Queensland Health to consider how this might be monitored and enacted.	This offence replicates section 82 of the Tobacco and Other Smoking Products Act, which applies to the supply of smoking products to children by an adult. The offence sends a clear message to the community that adults should not be supplying children with illicit nicotine products or smoking products. In addition, the Queensland and Commonwealth Governments are investing in educational materials to ensure that all adults have clear information about harms of vaping and other nicotine products, especially for children and youth.
Closure powers		
11. Name withheld	Submitter 11 supports authorities having the ability to close down illegal premises for up to 72 hours as they see stores open the day after they have been raided, continuing to sell illicit products.	Noted.
24. Shopping Centre Council of Australia (SCCA)	SCCA expresses concerns about potential impact of a long-term closure order under section 209B on landlords. SCCA considers that section 209B should be amended so that landlords are informed about any intent to issue a closure order, and to enable a landlord to terminate a lease for continued or egregious breaches of the TOSPA Act prior to a closure order being served.	Queensland Health has committed to working with SCCA to ensure landlords are given appropriate notice of offending behaviour by their tenants and are able to exercise contractual powers of termination where appropriate.
26. Australian College of Nursing (ACN)	ACN supports the new powers that will initially enable the closure of a business for up to 72 hours, with the magistrate enabling a more extended shutdown of six months or more.	ACN's support for closure powers is noted. The Bill will allow a magistrate to order closure of a premises for no longer than 6 months. The Bill does not prevent the chief executive from seeking a further closure order at the expiry of the 6-month period if necessary.
Entry, seizure and forfeiture powers		
7. TSG Franchise Management	TSG Franchise Management suggests the amendment 'seized goods to be returned within six months with a requirement that they be returned within 12 months', be reconsidered and further amended to allow for the destruction of seized goods within 60 days, as storing seized goods for 12 months may place an undue burden on the state, and returning prohibited products to their source may lead to further incriminating acts under the legislation. TSG Franchise Management considers that once evidence of products seized is obtained and documented, this should act as appropriate evidence without the need to store physical goods.	The Tobacco and Other Smoking Products Act currently allows for the forfeiture of seized illicit tobacco. The Bill further allows for the forfeiture of seized illicit nicotine products and prohibited products such as ice-pipes and bongs. The amendment requiring seized goods to be retained for 12 months, rather than 6 months, would apply to products other than illicit tobacco, illicit nicotine, ice-pipe and bongs. This would include, for example, products such as flavoured cigarettes and smokeless tobacco products which are only forfeited following prosecution. These products are now required to be held for 12 months, instead of 6 months, to align with the time frame for prosecution. This enables robust consideration of the merits of commencing a prosecution without unnecessary time pressures. The products are only returned if the matter does not proceed to prosecution, or if the court orders the products to be returned.
20. Queensland Nurses and Midwives' Union (QNMU)	QNMU seeks confirmation that existing right of entry safeguards under the Tobacco and other Smoking Products Act will continue to operate under the new provisions.	Section 181(1) of the Tobacco and Other Smoking Products Act empowers an authorised person to enter a place with consent or pursuant to a warrant. Section 181(2) further provides that an authorised person may, without the occupier's consent or a warrant, enter a public place when the place is open to the public; or an outlet of a supplier of a smoking product or liquor licensed premises when it is open for carrying on a business. The Bill amends section 181(2) to clarify that an authorised person may also enter a place without the occupier's consent or a warrant if the place is a premises at which illicit nicotine products are available for sale by retail when the premises are open for carrying on a business; a premises for which a closure order is in effect under new division 4A; or a premises for which an injunction is in effect under new division 4B.

Submitters	Issue	Department's response
		The existing protections in part 11 of the Tobacco and Other Smoking Products Act will otherwise continue to apply.
Disposal of vaping goods		
17. No More Butts	No More Butts supports the Bill but expresses concerns that neither the Commonwealth, or State government has introduced any legal instrument or scheme to deal with vaping disposal.	This is outside the scope of the Bill. However, it is noted that the Therapeutic Goods Administration has made transitional arrangements to allow for retailers to return or surrender lawfully imported goods for a short period.
23. Local Government Association of Queensland (LGAQ)	LGAQ seeks the support of the State Government to advocate for the further expansion of the National Return and Disposal of Unwanted Medicines Program, to include vaping devices, both legal and illicit, and provide a safe collection and disposal environment for these products.	
Waste amendments		
9. Health and Wellbeing Queensland (HWQ)	HWQ supports the amendments to the Waste Reduction and Recycling Act.	Noted.
17. No More Butts	No More Butts supports the amendments to the Waste Reduction and Recycling Act.	
26. Australian College of Nursing (ACN)	ACN supports the amendments to the Waste Reduction and Recycling Act.	
Impact on Aboriginal and Torres Strait Islander communities		
25. National Centre for Aboriginal and Torres Strait Islander Wellbeing Research	The National Centre for Aboriginal and Torres Strait Islander Wellbeing Research submitter notes that Aboriginal and Torres Strait Islander peoples are disproportionately harmed by commercial tobacco use. The current uptake of vaping among youth is a significant risk to the success of Aboriginal and Torres Strait Islander tobacco control. Strong commitment and decisive action against the commercial Tobacco Industry is necessary to prevent further harms to Aboriginal and Torres Strait Island peoples, communities, and all Australians from commercial tobacco and nicotine products. The National Centre for Aboriginal and Torres Strait Islander Wellbeing Research strongly supports restricting the commercial supply of vapes in general retail settings and the related penalties, without targeting individual users that may now be nicotine dependent. This ensures the focus remains on structural actions against a commercial industry that has been profiting at the expense of the health of Australians, and minimises the risk of over-policing population groups, such as Aboriginal and Torres Strait Islander peoples and communities.	Noted.
Enforcement		
7. TSG Franchise Management	TSG Franchise Management considers that current laws are not sufficiently enforced. While the approach to licensing is commendable, without appropriate enforcement these efforts will do little to curb the influence of illicit tobacco and vape product sales in the Queensland community. TSG Franchise Management considers that Queensland Health is inadequately resourced to provide investigative and enforcement services to the out-of-control illicit tobacco and vape market. TSG Franchise Management supports the proposed amendments to the Tobacco and Other Smoking Products Act, recognising police officers as authorised persons under TOSPA, provided adequate funding is available. A simplified framework is necessary to address regulatory hurdles and enable effective enforcement that uses police resources efficiently.	Queensland is progressing an uplift in enforcement action. In 2023-2024, the Queensland Government provided an additional $1.73 million to enhance compliance and enforcement in smoking product retail supply settings, with a further with a further $4.5 million in recurring funding (from 2024) provided to directly to enforcement teams. The increase in funding has bolstered the number of officers authorised to undertake enforcement of controls on the supply of illicit tobacco and vaping products. In addition, a centralised team has been established to bolster enforcement action and support compliance capability and activity around the state. Queensland Health is also working closely with law enforcement agencies to enhance the response at both the state and national level, including planning and executing joint enforcement activity.
11. Name withheld	Submitter 11 notes that retailers need more support from federal and state governments with stronger and dedicated enforcement resources whose sole focus is to target, investigate and seize illicit nicotine products, and deter illegal black-market operators. Submitter 11 suggests that enforcement responsibility should be moved from the Department of Health to a better equipped department that is responsible for adult consumer products such as liquor, and additional enforcement funding should be considered. Submitter 11 refers to South Australia moving enforcement responsibilities from the Health Department to the Consumer Affairs Commission, with additional funding and resources.	

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15. Phillip Morris Limited (PML)	PML suggests that enforcement responsibility be transitioned from Queensland Health to Business Queensland, the body also responsible for liquor and gaming licensing enforcement.	
19. Pamela Wright	This submitter expresses concerns that current enforcement powers are not deterring illegal trade of illicit tobacco and vapes.	It is recognised that Queensland's current regulatory framework is not sufficiently deterring the supply of illicit tobacco and vaping goods. The Bill provides stronger penalties and enforcement powers, by prohibiting the sale of illicit nicotine products (which include vaping goods, regardless of whether they are or claim to be nicotine free), significant financial penalties and terms of imprisonment for supply and commercial possession of illicit nicotine products and illicit tobacco, new employee supply offences, closure powers, the power for the District Court to impose injunctions against recidivist operators, executive liability offences and enhanced seizure and forfeiture powers. These penalties and powers will operate alongside the substantial penalties and terms of imprisonment set out in the TG Act in relation to vaping goods, allowing enforcement officers in Queensland to select from graduated enforcement options the most efficient and effective approach, and ensure a proportionate and timely enforcement response can be taken.
21. Environmental Health Australia (Queensland) Incorporated (EHA)	EHA raises concerns about the safety of authorised officers in light of new enforcement powers, including the introduction of imprisonment. EHA suggests a stronger coordination mechanism and more resources are required to improve engagement and collaboration among local, state, and federal authorities to manage criminal illicit tobacco activity. EHA advocates for the adequate and proportionate increase of enforcement officers and the additional training and support that these officers require as State legislation is aligned to Commonwealth legislation.	In relation to concerns about safety of enforcement officers, Queensland Health notes that there are various protections across the statute book to protect staff enforcing offences in the Tobacco and Other Smoking Products Act. For example, section 340(2AA) of the *Criminal Code* makes it an offence for a person to unlawfully assault, or resist or wilfully obstruct, a public officer while the officer is performing a function of the officer's office. The maximum penalty for this offence is seven years imprisonment. Queensland Health is a key member of national enforcement groups aimed at ensuring a consistent and coordinated approach to enforcement. Queensland Health works closely with all partner agencies in relation to the enforcement of illicit nicotine products, the Bill will complement and facilitate cooperation between agencies. Queensland has increased enforcement to assist with the implementation of vaping reforms. A series of risk mitigation strategies and resources have been provided to current and recently onboarded officers. In addition, a centralised intelligence and reporting function has been established to coordinate enforcement efforts, and this, along with maturing relationships with law enforcement agencies, is assisting in ongoing monitoring and response to risk assessment. Queensland enforcement officers will be provided with training on both the reforms in the Bill and the Commonwealth legislation.
26. Australian College of Nursing (ACN)	ACN suggests investigating the possibility of better aligning enforcement powers contained within the *Medicines and Poisons Act 2019* with those of the Tobacco and Other Smoking Products Act to enable searching for and removing products that do not contain leaf nicotine, namely pre-filled vapes and nicotine pouches, without having to obtain a warrant.	The Bill's definition of *illicit nicotine products* means that products that do not contain leaf nicotine, including pre-filled vapes, will fall under the Tobacco and Other Smoking Products Act and enforcement can occur under that Act, instead of the Medicines and Poisons Act. The definition of *illicit nicotine products* also allows for products to be prescribed by regulation. This will allow products such as nicotine pouches to be prescribed by Regulation and included in the definition, again, enabling enforcement under the Tobacco and Other Smoking Products Act.
Implementation issues		
11. Name withheld	Submitter 11 suggests that convictions handed out should be reported on annually as a measure of the Bill's success. Submitter 11 also suggests that authorities should hand down penalties quickly in the early days after the Bill passing as a show of force against illegal operators.	Queensland Health's annual report outlines aggregated enforcement activity for breaches of laws on tobacco and vaping supply and this is publicly available on the Queensland Health website. Operational approaches to enforcement will be determined during implementation.

Submitters	Issue	Department's response
13. Queensland Catholic Education Commission (QCEC)	QCEC acknowledges the importance of Queensland Health conducting a comprehensive education and awareness campaign to accompany any change to the regulation of vaping. Clear articulation of the health risk associated with vaping and other illicit smoking products will be needed, informed through input from health and other experts. QCEC suggests that education and awareness focuses on assisting parents and carers to fulfil their responsibilities in guiding and directing children and young people in making informed choices to protect their health and wellbeing. QCEC looks forward to further consultation on these important matters and possible involvement in targeted education and awareness initiatives.	Education and awareness campaigns will be undertaken during implementation of the Bill. Queensland and Commonwealth Governments are investing in educational materials to ensure that all adults have clear information about harms of vaping and other nicotine products, especially for children and youth. This includes collaboration with stakeholders in the development and dissemination of materials.
20. Queensland Nurses and Midwives' Union (QNMU)	QNMU recommends that the Queensland and Commonwealth Governments continue to monitor the use of e-cigarettes, and emerging evidence following the implementation of these measures, to evaluate reform measures and ensure their appropriateness and effectiveness in reducing the use of e-cigarettes. QNMU suggests a review of the framework in three to five years would be appropriate to assess whether the legislation meets the intended aims.	Queensland, along with other Australian jurisdictions are investing in ongoing research and monitoring approaches that measure the population and sub-population rates of use and health impacts vaping goods. Evaluation of enforcement, policy and program delivery is also being progressed to ensure that measures remain effective. The National Vaping Enforcement Framework has been agreed which details a shared and united approach to the enforcement of the vape reforms across Australia, the framework includes a series of indicators to which jurisdictions will contribute. Queensland Health will monitor and evaluate the impact of the reforms in the Bill on an ongoing basis through a variety of mechanisms, including, for example, by reviewing information on complaints received and enforcement action pursued. It is not proposed to include a statutory review period within the Bill. The Queensland Government recognises the significant investment by the Australian Government in the Tackling Indigenous Smoking (TIS) program and is engaging with providers under this program. TIS is a key program engaging Aboriginal and Torres Strait Islander communities with population health approaches that prevent or reduce tobacco or vaping product use. The program includes a coordinated evaluation undertaken in conjunction with research consortiums that assesses program delivery and measures the impact of the program on reducing tobacco and vape use. .
25. National Centre for Aboriginal and Torres Strait Islander Wellbeing Research	The National Centre for Aboriginal and Torres Strait Islander Wellbeing Research considers there is a need for local, regional and national public health and health promotion strategies to promote and support being nicotine free. This should be developed, implemented, and evaluated with Aboriginal and Torres Strait Islander peoples and communities. It is important to carefully monitor and evaluate the impact of the state and commonwealth legislative changes, particularly among the Aboriginal and Torres Strait Islander population. Governments must ensure that data collected is of sufficient quality to ensure efficacy for monitoring and evaluation of the impact and outcomes.	
26. Australian College of Nursing (ACN)	ACN recommends a review of the Bill within 12 to 18 months.	
Other issues		
1. Paul Creighton	This submitter suggests the legal age for all recreational products should be raised to 21 years.	The Bill, in conjunction with the recent amendments to the TG Act, bans the retail sale of recreational vaping goods to a person of any age. Under the TG Act, therapeutic vaping goods will be available in pharmacies. A person under the age of 18 will only be able to obtain therapeutic vaping goods from a pharmacy pursuant to a prescription.
2. Doug Gavel	This submitter states that all vaping products should be banned.	
4. Super Vape Store	This submitter states that the Committee is dominated by a Labor majority and as it follows mandates of the Labor Party at federal and state levels the process is biased, and any discussion on vaping is futile. As Queensland Parliament does not have two houses, it operates with little to no checks and balances.	This is outside the scope of the Bill.
5. Kathy Young	This submitter asserts that the Bill should not prohibit the supply of refillable cartridge vapes from the market as they are needed for administration of legal medical marijuana.	The definition of *vaping device* in section 7 of the Bill excludes a device included in the register under the TG Act, other than a device designed for use by a person for smoking cessation or management of nicotine dependence. This means that a device designed for using with medicinal cannabis to manage certain medical conditions, that is recorded on the register under the TG Act, will not be a vaping device and is not prohibited under the Bill.
15. Phillip Morris Limited (PML)	PML recommends that penalties within the Queensland legislation be amended for consistency with federal legislation, both with respect to illicit tobacco and vaping.	The Bill is intended to create a tiered enforcement response which will operate with the Commonwealth legislation to enable enforcement officers in Queensland to determine the most appropriate enforcement option, having regard to the circumstances surrounding the offence. Aligning the penalties in the Bill with the Commonwealth penalties would not achieve this outcome.

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16. Dr Matthew Rimmer	This submitter notes that amendments were made to the Commonwealth legislation prior to passage and that the Queensland Parliament may need to ensure their complementary legislation remains compatible with the amended Federal Bill. The Queensland Government should contemplate further reporting obligations and information disclosure by the e-cigarette industry.	The Bill is designed to operate in conjunction with the Commonwealth legislation. For example, the Bill provides that the supply and possession offences relating to illicit nicotine products do not apply if an exception under the Commonwealth legislation would be available. From 1 July 2024, vaping goods are only permitted to be sold in pharmacies pursuant to the TG Act. Queensland Health understands that a range of reporting and record-keeping occurs under the TG Act and that this is monitored by the Commonwealth Government.
17. No More Butts	This submitter considers the Bill should mandate sales reporting on the distribution and retail sale of vaping devices and products across Queensland.	
19. Pamela Wright	This submitter expresses concerns that current enforcement powers are not deterring illegal trade of illicit tobacco and vapes. This submitter recommends: closure and seizure powers, heavy fines, imprisonment, charging staff who are paid cash with tax evasion, charging complicit landlords for taking proceeds of crime.	It is recognised that Queensland's current regulatory framework is not sufficiently deterring the supply of illicit tobacco and vaping goods. The Bill provides stronger penalties and enforcement powers, by prohibiting the sale of illicit nicotine products (which include vaping goods, regardless of whether they are or claim to be nicotine free), significant financial penalties and terms of imprisonment for supply and commercial possession of illicit nicotine products and illicit tobacco, new employee supply offences, closure powers, the power for the District Court to impose injunctions against recidivist operators, new executive liability offences and enhanced seizure and forfeiture powers. These penalties and powers will operate alongside the substantial penalties and terms of imprisonment set out in the TG Act in relation to vaping goods. The proposals relating to tax evasion and proceeds of crime are outside the scope of the Bill.
20. Queensland Nurses and Midwives' Union (QNMU)	QNMU recommends the need for greater investment into funding of primary health services and preventative healthcare to meet the needs of populations and provide adequate support services and early intervention for people trying to quit vaping. Funding should be provided to facilitate more nurse and midwife-led models of care, increase the number of nurse practitioners and nurse practitioner candidates in alcohol and other drugs services, facilitate access to support services for target populations and vulnerable and marginalised populations, and support vaping and other drug and alcohol education programs in schools. QNMU advocates for increased training for healthcare professionals, including nurses and midwives, to better support health services to manage e-cigarette use in the community. QNMU advocates for the involvement of School-Based Youth Health Nurses in strategies to prevent e-cigarette use, such as the provision of educational programs for students about the risks and health effects of e-cigarettes.	Queensland Health are investing in an expansion of prevention and quit support measures including: inclusion of support to quit vaping in the Quitline service, messaging to the community about the benefits of quitting, trialling a pilot program in schools to support vape cessation (which engages with the school-based youth health nurses), and training for health professionals in brief intervention and supporting clients with quit vaping messaging and referral.
25. National Centre for Aboriginal and Torres Strait Islander Wellbeing Research	This submitter recommends retail supply should be eliminated and after this time, pharmacy supply of vaping products should also be phased out as they will no longer be required as a cessation product. This submitter suggests there should be an inquiry into the commercial tobacco industry and their associates.	The Bill, in conjunction with the recent amendments to the TG Act, bans the retail sale of vaping goods other than in pharmacies. 'Phasing out' of vaping goods for therapeutic purposes would be a matter for the Commonwealth and is outside the scope of the Bill.
Possession/personal use		
6. Alcohol and Drug Foundation (ADF)	ADF raises concerns that possession of vaping products containing nicotine without a prescription remains an offence under the Medicines and Poisons Act. The ADF recommends that possession of vaping products containing nicotine is not criminalised. ADF acknowledges and supports Police Drug Diversion Program for possession of small amounts of illicit drugs, which will cover possession of a nicotine vaping product without a prescription.	The Bill does not criminalise possession of vaping products - the possession offence applies only to a person who possesses illicit nicotine products as part of a business activity and specific defences are included in that offence relating to personal use. However, it is acknowledged that an offence exists under the Medicines and Poisons Act in relation to the possession of nicotine (an S4 medicine) without a prescription. This issue is outside the scope of the Bill. However, it is noted that Queensland Health officers and Queensland Police Service take an educative approach in relation to the Medicines and Poisons Act offence.
10. Queensland Network of Alcohol and Other Drugs Agencies (QNADA)	QNADA expresses strong opposition to policies which intentionally or inadvertently focus on criminalising personal possession.	The offences in the Bill relating to the possession of illicit tobacco and illicit nicotine products apply only to a person who possesses those goods as part of a business activity and specific defences are included in those offences relating to personal use. The Bill does not criminalise personal possession.

Submitters	Issue	Department's response
	QNADA notes that limited personal use exemptions and significant criminal and civil penalties for possession of vaping goods in the draft Bill risk a range of adverse consequences for people who use e-cigarettes and then become engaged with law enforcement and justice systems. QNADA raises concerns over the threshold quantities to distinguish between possession for the purpose of personal use and possession for the purpose of supply of illicit substances. Evidence shows these amounts do not reflect usage patterns in the community or account for other factors. QNADA submits that the intention of this amendment can be strengthened by removing threshold amounts which define possession for personal use and replacing these with broader personal use exemptions that are not contingent on the quantity of vaping devices or products a person possesses.	The Bill does not set threshold quantities for personal use of illicit nicotine products. As such, a person could technically claim the personal use exception for any quantity of illicit nicotine products. Various factors would be relevant as to whether the offence is made out and whether the defence of personal use is available including, for example, the number of products held, the condition of the products (for example, are they new and labelled with price tags, or used), whether the person has a prescription, and other evidence of intent to supply commercially (for example, advertisements and communications relating to proposed supply). The *Tobacco and Other Smoking Products Regulation 2021* prescribes "commercial quantity" of illicit tobacco. The Bill does not alter this definition.
13. Queensland Catholic Education Commission (QCEC)	QCEC acknowledges the importance of the proposed new offence of supplying illicit smoking products not criminalising possession of smoking, tobacco or vaping products for personal use. QCEC notes in many cases young people or children may be in possession of such items and their actions need to be addressed in a supportive and holistic manner, rather than through the blunt instrument of criminal sanction.	The offences in the Bill relating to the possession of illicit tobacco and illicit nicotine products apply only to a person who possesses those goods as part of a business activity. Personal use exceptions apply. As such the Bill does not criminalise personal possession. A key focus of the Bill is preventing children from accessing vaping products, by prohibiting commercial supply and possession. Significant investment is underway to ensure that children have information on the harms of using vaping and tobacco products and can access to support to quit.
Impact of criminalisation/regulation of substances		
6. Alcohol and Drug Foundation (ADF)	ADF considers that criminalisation of health issues like vaping have been proven ineffective at preventing and reducing use and lead to further harms for individuals affected. ADF reiterates support for measures that aim to ensure that young people experiencing nicotine dependence can access vaping products as a smoking cessation tool.	The offences in section 161A of Bill relating to illicit nicotine products apply only to a person who supplies or possesses those goods as part of a business activity. Personal use exceptions apply. As such, the Bill does not criminalise personal possession. The Bill will allow supply of therapeutic vaping devices by a pharmacist as this is permitted under the TG Act. Under the TG Act, a person under 18 would require a prescription. The Bill, and the recent Commonwealth reforms, recognise that Australia is facing a significant public health crisis, particularly among children and young adults. Research shows that most young adults find vaping goods easy to access. The Bill, alongside the Commonwealth reforms, will reduce this ease of access by prohibiting the commercial supply of these products outside of a pharmacy. Significant investment is underway to ensure that children have information on the harms of using vaping and tobacco products and can access to support to quit. This includes through school-based education programs, Quitline counselling services and campaign materials as well as the development of new quit approaches designed and targeted for a young audience.
10. Queensland Network of Alcohol and other Drugs Agencies Ltd (QNADA)	QNADA considers that criminalising and overly restrictive regulation of substances leads to adverse consequences for individuals and communities, while failing to reduce use. The criminalisation of vapes will likely lead to a worsening of the potential inhalational harms associated with vapes. QNADA raises concerns about the departure from Australia's well established harm reduction approaches associated with alcohol and other drug use. Evidence strongly points to the harm reduction potential of nicotine vaping products as substantially less harmful than tobacco and positively association with success in smoking cessation. The risk of criminalisation may discourage people from seeking support for vaping-related harms for fear of prosecution and stigma of engaging in criminalised activity.	
Inconsistency with regulation of tobacco products		
4. Super Vape Store	This submitter suggests that it is laughable to consider banning an entire industry (vaping) while cigarettes remain available at every corner store.	The option of regulating vaping goods like other nicotine products such as tobacco is not available to Queensland given the Commonwealth's nation-wide vaping ban. This option would also fail to address the widespread availability of harmful nicotine vaping products, particularly to children and adolescents.
10. Queensland Network of Alcohol and other Drugs Agencies Ltd (QNADA)	QNADA considers the proposed amendments relating to illicit nicotine products are inconsistent with the regulation of other nicotine containing products in the community, with cigarettes available to people over 18 and nicotine replacement products readily available without prescription (with associated restrictions on advertisement and plain packaging). QNADA states that this is the preferred approach, as this approach would help mitigate the potential harms associated with poor quality products and ensure appropriate restrictions are in place, while avoiding inadvertently causing harms to the community by imposing civil or criminal penalties.	