



HEALTH, ENVIRONMENT AND AGRICULTURE COMMITTEE

Members present:

Mr AD Harper MP—Chair
Mr SSJ Andrew MP (teleconference)
Mr CD Crawford MP (videoconference)
Mr JR Martin MP
Mr R Molhoek MP

Staff present:

Dr A Cavill—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE TOBACCO AND OTHER SMOKING PRODUCTS (VAPING) AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

Monday, 24 June 2024

Brisbane

MONDAY, 24 JUNE 2024

The committee met at 2.39 pm.

CHAIR: Good afternoon. I declare open this public briefing for the inquiry into the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024. I am Aaron Harper, the member for Thuringowa and chair of the committee. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all now share.

Other committee members with me here today are Mr Rob Molhoek, the member for Southport and deputy chair; Mr James Martin, the member for Stretton; and joining us on videoconference is the Hon. Craig Crawford, the member for Barron River; and joining via teleconference is Mr Stephen Andrew, the member for Mirani. Mr Sam O'Connor, the member for Bonney, is unable to attend today and sends his apologies.

The purpose of today's briefing is to assist the committee with its examination of the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024. The bill was introduced into the parliament on 12 June 2024 by the Hon. Shannon Fentiman, Minister for Health, Mental Health and Ambulance Services and Minister for Women, and referred to this committee for detailed consideration and report. This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath, but intentionally misleading the committee is a serious offence. Proceedings are being recorded and broadcast live on the parliament's website. I remind committee members that officers are here to provide factual or technical information and questions seeking an opinion should be directed to the minister or left to debate on the floor of the House.

GOOD, Ms Elizabeth, Manager, Prevention Strategy Branch, Queensland Health

MAHLER, Mr Karson, Director, Legislative Policy Unit, Queensland Health

SANDERSON, Ms Kate, Manager, Legislative Policy Unit, Queensland Health

WEST, Mr Mark, Executive Director, Prevention Strategy Branch, Queensland Health

CHAIR: I welcome the witnesses from Queensland Health. Would you like to make an opening statement before we move to questions?

Mr West: Good afternoon, Chair and committee members. Thank you for this opportunity to brief you on the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024. I would like to start by acknowledging the traditional custodians of the lands on which we meet this afternoon, the Yagara and Turrbal people, and pay my respects to their elders past and present. I am Mark West, Executive Director of the Prevention Strategy Branch in Queensland Health, and I am joined today by my Queensland Health colleagues.

The bill amends the Tobacco and Other Smoking Products Act 1998 to respond to the vaping epidemic and ensure that Queensland is well positioned to implement the impending vaping ban. The bill responds to recommendations made by the former Health and Environment Committee in its report *Vaping: an inquiry into reducing rates of e-cigarette use in Queensland*. The bill also responds to significant concerns that the supply of cheap illicit tobacco is undermining decades of success in reducing smoking. It addresses concerns raised by small legitimate businesses about the negative financial impact on their trade.

As the committee is well aware, vaping has become a public health epidemic in Queensland. There has been a rapid uptake of vaping amongst young people, with around 30 per cent of adolescents aged 12 to 17 years having tried vaping. Research led by the Cancer Council found that 87 per cent of teenagers find access to vapes very easy. These vapes are filled with toxic chemicals that can lead to cancer and cause permanent damage to a user's lungs, heart and brain. We know

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that the majority of young people who are using vapes are not doing so to give up smoking. It is recreational, not therapeutic. Research also shows that young people who vape are three times more likely to go on to use tobacco.

Vaping is harmful to the safety of our communities. There is significant organised crime involvement in the vaping and illicit tobacco industries. Organised crime groups are generating immense profits from the illegal sale of these harmful products. Organised crime groups and other unscrupulous operators use a variety of blatant and deceptive techniques in response to enforcement, including keeping limited stock at the store, hiding stock to evade detection, continuing to supply illicit products following penalty, and instructing staff to provide limited information in response to requests.

The community and our enforcement officers are frustrated that, after seizing illicit tobacco and vapes from noncompliant operators, these operators are quickly restocking and trading again. We are routinely receiving repeated complaints about the supply of illicit tobacco in vapes, including to minors across Queensland. In 2023 the former Health and Environment Committee led an inquiry into vaping in Queensland. The committee acknowledged that there is a window of opportunity to have an impact on reducing the use of vaping products and minimising the health consequences, especially for young people. The committee made 14 recommendations which were all accepted by government.

In response to the committee's report, the government committed to tackling the vaping crisis and supporting implementation of the Commonwealth government's vaping reforms. This includes discontinuing the sale of vaping products in retail settings, bolstering Queensland's resources and capabilities for compliance, monitoring and enforcement activities, and making legislative amendments as necessary. In March 2024 the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 was introduced in the Commonwealth parliament. If passed, this bill will ban the importation, manufacture, supply and commercial possession of all disposable and recreational vapes. States and territories will be responsible for enforcing the Commonwealth offences relating to supply and commercial possession. The Commonwealth bill will establish significant offences and penalties. However, these offences will not be suitable in every case. A robust state-level enforcement framework is necessary.

Returning now to the Queensland bill, it supports this objective by introducing a comprehensive suite of reforms targeting supply, promotion and accessibility of illicit smoking products like vapes. This includes new state-level offences that prohibit the supply and commercial possession of these products as well as new enforcement tools such as the closure powers and the ability to seek injunctive relief against noncompliant operators. The amendments in the bill create an escalating framework that will ensure proportionate and timely response can be taken in relation to vaping offences that may not meet the threshold for action under the Commonwealth legislation. The bill also addresses Queensland's significant ongoing problems with noncompliant retailers offering illicit tobacco by increasing the current penalties for supply and commercial possession of these products.

I will now briefly touch on some of the key reforms in the bill before welcoming the committee's questions. First, and most significantly, the bill makes it an offence to supply illicit nicotine products, including vaping devices, liquids and accessories. The maximum penalty for this offence is 2,000 penalty units, two years imprisonment or both. Also, a person must not, as part of a business activity, store or possess an illicit nicotine product. The maximum penalty is 12 months imprisonment, 1,000 penalty units or both. The bill does not criminalise personal possession and it is a defence for a person to prove that the product was for personal use or held on behalf of another person for whom the product was lawfully supplied. These penalties are significant. However, they are necessary and proportionate given the vast profits generated from the sale of these items and the public health harms being caused.

The second area of reforms concerns illicit tobacco which refers to illegally imported cigarettes and locally grown loose-leaf tobacco, often called chop-chop. The supply and commercial possession of illicit tobacco is already prohibited by state and federal laws. In Queensland the maximum penalties range from 300 penalty units for supply and 140 penalty units for possession. Despite these penalties and recent increases in enforcement efforts, the number of stores selling these products has grown, and without further measures this growth is expected to continue. This shows that the current penalties are not an effective deterrent. The bill increases the penalties for supplying and possessing illicit tobacco to align with significantly higher penalties proposed for illicit nicotine products, including the potential for imprisonment. This will provide a much stronger deterrent for businesses that are continuing to trade in these unlawful products.

Next, to effectively capture everyone involved in the illegal supply of these products, the bill creates a new offence relating to employees and others who supply illicit tobacco and illicit nicotine products in the retail environment. The bill also makes it an offence for adults to supply illicit nicotine

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products to children outside the retail setting. For example, an adult cannot supply an illicit nicotine product to a friend or family member who is under 18. The maximum penalty for both offences is 140 penalty units.

To address repeated noncompliance, the bill allows the chief executive to issue an interim closure order for up to 72 hours if there is reasonable suspicion of illicit trade. A magistrate can order closure of a premises for up to six months. The bill empowers the chief executive to seek injunctions from the District Court. If a person is supplying illicit products, the court can issue an injunction to stop the person from continuing their business.

It is beyond doubt that illicit nicotine products such as vapes are being promoted to children and young adults with the aim of creating a new generation of nicotine addicts. These products are promoted as cool and harmless with flavours designed to appeal to young people, like bubblegum and ice cream. To address this, the bill introduces new offences prohibiting the advertising, promotion and display of illicit nicotine products with penalties of up to 140 penalty units. The bill makes a number of other reforms aimed at improving our enforcement framework, ensuring swift action can be taken to address the current public health crisis. We would be happy to provide further information on any of these other reforms. Thank you, Chair, for the opportunity to address the committee. We would be pleased to take questions.

CHAIR: Thank you very much. This builds on the piece of work that the committee undertook last year. Across our communities more and more of these pop-up stores are appearing. Our very first recommendation in the report was to establish a joint taskforce to investigate and close them down. We understood the TOSPA and the Medicines and Poisons Act did not really work together well. Has that improved to this point and how are we going to enforce this? It goes a little bit further. We are seeing vapes being displayed in petrol stations. How are we going to inform the retail sector to cast the net broadly that it is illegal and people will lose their jobs and there are lots of penalties involved? How do we get that across?

Mr West: There are probably a couple of questions there. In relation to the first one, you are correct: there is the Tobacco and Other Smoking Products Act, which operates already in the space of vapes, and we have our Medicines and Poisons Act as well in Queensland that also operates with vapes. Under the Medicines and Poisons Act, you need to have the presence of nicotine in the vape. That means our enforcement officers, when they go and use that act, have to seize and then test all the items. It is a very cumbersome and timely process to go and test and fill our scientific services with these vapes. We know that when they are tested 80 per cent to 90 per cent will come back with nicotine in them anyway. This bill changes that. Karson, do you want to talk to the technicality of that?

Mr Mahler: Since the committee's inquiry and recommendations there have not been any changes to the Medicines and Poisons Act or TOSPA, so this is the first opportunity we have had to actually amend the primary legislation to address those recommendations. A significant focus of this bill is on aligning those two pieces of legislation. I think, as Mark has alluded to, you have different regulatory frameworks. The Medicines and Poisons Act is really not suited to investigating and prosecuting what is essentially an illicit product. For the most part it is not a therapeutic good. These things are already banned—nicotine vapes. The Medicines and Poisons Act is really about regulating healthcare providers and the dealings that they have with medicines and poisons. At the same time, TOSPA as originally conceived has not really been set up to deal with vapes as a standalone smoking product. It has historically regulated them as other types of smoking products, so limiting them to people over the age of 18. As you know, the Commonwealth has come out with a strong national ban and so these products are, by and large now, illegal across Australia. Really, the question is how you enforce this national ban. That is really the focus of this bill.

To answer the question about the alignment around the Medicines and Poisons Act and TOSPA, the Tobacco and Other Smoking Products Act, the basic approach is to locate all of the vaping prohibitions within TOSPA itself so that you have one act where authorised persons have clear guidance as to what their powers are, what the prohibitions are, you have clear prohibitions on vaping products and you have appropriate enforcement tools so that those authorised persons can go into retail establishments. If they see vapes they do not have to worry about thinking, 'Am I entering under the Medicines and Poisons Act? Do I need to be testing for nicotine?' They are simply going in and they are able to say, 'Okay, there are vapes here. Those are prohibited, so we can take action.'

Those powers will then be complemented under the bill by a range of other enforcement tools as well to make sure that we are dealing with, as I think Mark alluded to in his opening remarks, a lot of the tactics that we are seeing from some of these pop-up vape shops and from some of these other establishments that are selling these products knowing that they are illegal—that is, some of the very deceptive and very wilful kinds of violations that are happening where they are restocking, where they

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are keeping stock offsite and they are recidivist offences and those sorts of things and making sure that TOSPA itself has adequate enforcement powers such as, for example, closure orders where that is appropriate, stiff penalties with imprisonment and an escalating penalty and enforcement framework so that you can go in as an authorised person, you can give a warning and then that can be escalated up to deal with those more intractable operators that we are seeing that are just not getting the message, frankly.

Mr MOLHOEK: I would suggest that that last statement of yours that they are not getting the message is something of an understatement. Just to be clear, the amendments to the Tobacco and Other Smoking Products Act will cover all of these issues that we have around enforcement so we will not be reliant at all on the Medicines and Poisons Act. Moving on from that, does that mean that we will be able to go in very directly and deal with these brazen retailers? The other night I happened to walk from Railway Street up to Davenport Street in Southport because I had a function down the bottom end and I needed to go to another one up the other end. I walked past four shops, all with bold signage: 'supervape', 'vape kingdom', 'tobacco and vape'. There was one in Railway Street in Southport where I peered in through the front entrance. There were probably four or five people coming and going. When I went and saw this particular store a year ago when we did this report there was just two old steel cabinets in the front with the doors shut and a glass top counter with nothing in it and some guy just sitting on a chair out the back on his phone. If you went in and asked for something he then opened a cupboard and there were about six packets of cigarettes on one shelf and a few vapes. The other night when I walked past and peered in there was a dump bin down the front with a sign, 'Three vapes for \$50'. It was bargain price city. How will this legislation change our ability to simply go in and act directly with those sorts of retailers that are being that brazen?

Mr Mahler: We as the department have heard the message loud and clear that enforcement is not working. There is a variety of reasons for that. I suppose what I could say is that this bill does not contain half-measures. These are very potent enforcement tools. They have been designed that way for a reason. You have probably seen that the Commonwealth has introduced nationally some of the strictest penalties and the strictest enforcement framework around vaping, compared to other legislation, we have seen in a very long time—terms of imprisonment up to seven years and up to 7,000 penalty units in some cases. The penalties in our bill are very significant as well.

Penalties are one thing, increasing the deterrent effect. Right now there are effectively very limited penalties for vaping so traders are seeing that, I think, as a cost of doing business. I think there is also an element of waiting for some enforcement action to actually happen before the message gets out there. At the moment you are seeing the lack of a credible deterrent. Again, this bill has a broad spectrum of powers and tools which are going to add up to a much more credible deterrent effect: you have penalties and you have far more flexibility for authorised persons to enter these retail establishments, search the retail establishments, go into the back rooms, go into the filing cabinets or wherever they are trying to conceal the product—

Mr MOLHOEK: Without consent?

Mr Mahler: Without consent, yes. If there is a reasonable suspicion that the premises is stocking or trading in illicit vapes then authorised persons have broad powers to question and to search other parts of the premises that are open to the public and the associated parts of the premises where they might be hiding these sorts of things.

Part of it, too, is the interaction with the Commonwealth legislation. It is really important to recognise that the difficulty so far has been around—as Mark said, there is a lack of clarity around the distinction between nicotine and non-nicotine vapes—different enforcement frameworks applying and having to test vapes for nicotine. An authorised person in the past has gone into a store and has not necessarily been able to say, 'This is an illicit product,' because it might be labelled as nicotine free. Then they may have to go and get a warrant or take other steps in order to take action. Now, with the Commonwealth banning essentially all non-therapeutic vapes, it will be perfectly clear to an enforcement officer going into a retail establishment: if they are stocking vapes, they are illegal. There will be no circumstance where a 7-Eleven or a pop-up vape shop can lawfully sell a vape in Queensland. That will be the effect of the Commonwealth legislation and of this complementary legislation, which will implement that Commonwealth ban. That simplification of the enforcement picture for authorised persons—making it much easier to identify where the illegal activity is occurring, not having questions on legal technicalities about whether they can investigate and seize product and those sorts of things—combined with stiffer penalties, we believe, cumulatively will have a very significant impact and make it much easier to enforce the prohibitions.

Mr MOLHOEK: So you will not have to seize vapes, test them and prove that they have nicotine? You will now be able to seize them because they are vapes?

Mr Mahler: That is right.

Mr MOLHOEK: What about the other illicit tobacco products—the cigarettes that are coming in from other countries that are being sold for \$20 a packet? Does this legislation cover that or is there already enough cover in the existing legislation to deal with that?

Mr Mahler: This legislation does cover illegal tobacco. In developing this bill we took a hard look at this: if we are introducing this series of reforms around vapes, does it make sense to have a different regime for illicit tobacco? The conclusion the department has come to is no. Ultimately, we are looking at the same businesses—the same, frankly, organised criminal elements—that are dealing with these products. If you are dealing in vapes, you are likely dealing in chop-chop as well and vice versa. The illicit tobacco market clearly has not gotten the message either. The same types of offences, the same penalties—everything will be aligned. Again, that goes to the simplification of the enforcement framework so that authorised persons are not having to go in and do a kind of forensic analysis of the legislation and what certain products fall under it: ‘That is illicit tobacco but these are vaping products.’ That streamlining of the framework we think will make it much easier on the ground.

Mr West: Since the inquiry, the department is spending \$5 million per annum, recurrently, on more enforcement officers. We are putting more enforcement officers on the ground across all of the hospital and health services in Queensland. We also have a new centralised compliance team—or flying squad, if you like—of ex-police. It is a small group, but they are coming together and they will be able to enforce the legislation more across the state.

CHAIR: That was the vision we had for the ‘untouchables’: to close them down.

Mr West: Yes, close them down.

CHAIR: Something we picked up on was that the public health units differed—the amount of staff in Townsville versus the Gold Coast. The Gold Coast were doing some pretty good work. However, the elephant in the room is the online. I asked this question last time. If I am on the IGETs, I can buy mango, vanilla—anything. How do we stop that online? Are other jurisdictions doing anything? What are nicotine pouches, because they are pivoting, aren’t they? They are moving away from vapes to these. Who can best describe that?

Ms Sanderson: In terms of online supply, the bill is drafted really broadly. The offences relating to the supply of illicit nicotine products and illicit tobacco both apply to a person who supplies as part of a business activity. That is going to capture bricks-and-mortar stores—it is going to capture tobacco retailers, a newsagent, a convenience store—or an online store. These penalties, including the terms of imprisonment, will apply to any person who is doing that as part of a business activity.

In terms of nicotine pouches, we understand that they are a type of pouch that is placed under your lip against your gum. It is filled with synthetic nicotine and there are flavours like cherry, bubblegum, ice cream and mint. We know that they are becoming a fairly widespread problem nationally and in Queensland, even with schoolchildren. They are easy to hide; they are easy to use. We are also aware that there are other new nicotine products hitting the market—things like nicotine toothpicks that are flavoured and nicotine pearls, which are a bit like a Tic Tac. The bill is very much drafted to target novel products as well as what we know is on the market already.

The definition of illicit nicotine product is quite broad. It will capture all vaping goods—that is, vaping devices, accessories and the substances, so the vape juice—regardless of whether they have nicotine or claim to be nicotine free. It will also capture products that are prescribed by regulation that contain nicotine or another substance that is harmful to health. The intent is that, in due course, products like nicotine pouches will be prescribed under the Tobacco and Other Smoking Products Regulation and captured within that definition.

CHAIR: I will go to the members on the phone. Gentlemen, do you have any questions?

Mr CRAWFORD: Thank you, Chair. I did have questions, but they have all been answered. I wanted to ask about the online movement, organised crime and pivoting. They have done very well for a long time in a range of things. I was going to ask questions about the enforcement officers, but you have answered that as well. The question I have in terms of pivoting is this: are you happy that this bill will do what we need to do for the pivoting and the changes? We are going to see a shift in the way it is marketed, sold, seen and everything like that. They are not going to be called vapes anymore; they will be called something different. Are you happy that the bill goes far enough to capture those, certainly up to a point of time in the future when we might need to make amendments to catch anything that comes untoward to us?

Mr West: Yes, we are happy. We have spent a long time reviewing the application of Queensland law, national law and international law. There are international frameworks that operate in this space as well. There is great concern in the public health community around all things nicotine. As Karson mentioned earlier, what is common is nicotine in products. We have a definition—the drafters I think have done a fantastic job—around an illicit nicotine product which will cover a range of different products that will come onto the market. With the regulation it is possible to list them in terms of futureproofing the business. I have been in this tobacco business for 28 years and there has never been a time when there has been so much diversity in the product. We used to be up against just traditional cigarettes or cigarettes and loose tobacco, but now big business, including big tobacco, is operating in this space where they are after consumers to be addicted to nicotine.

CHAIR: You just nailed it. That is exactly right.

Mr MOLHOEK: Does that mean no nicotine brownies?

Mr West: No.

Mr ANDREW: Now that we have established that there is a wide range of ways to go to market and everything else, the questions are all really valid. What I want to know is this: when can we assure the retailers and also the parents whose kids have become addicted or are starting to become addicted to this stuff that we are going to say, 'No more' and stop it? Do we have a date that we are going to go out there and arrest or shut these shops? How are we going to go about it?

Mr Mahler: Step 1 will be for parliament to pass the bill. At that point, provisions will commence by proclamation. We will be looking tentatively at the end of the year to align with Commonwealth legislation. I think our intention would be to move with all deliberate speed.

Mr West: We have enforcement boots on the ground now. The money is coming through this financial year. They are recruiting enforcement officers across the state. My team is working very closely with the public health units on the information around this bill and they are waiting.

CHAIR: Well done. There is really good progress. We saw some gaps.

Mr MARTIN: I will follow on from what every other member has asked, which is about closure of the stores. I want to clarify a couple of things. You still really need the Commonwealth legislation to come through banning all vapes before you can essentially have an efficient way of closing stores; is that correct?

Mr Mahler: That is not quite right. This bill stands alone. While it does complement the Commonwealth enforcement framework, hypothetically, if the Commonwealth were not to proceed with its legislation, this bill has been designed in a way that it is freestanding. Queensland has within its prerogative to regulate vapes. That does not mean that, obviously, you would not have some challenges around vapes being sold in other states and potentially brought in, but, in terms of what we can control in Queensland and shutting down stores in Queensland, this bill will prohibit the retail supply of all vapes. It will have those closure powers, those equitable powers, for courts to be able to issue injunctions. All of those powers would apply as state-level enforcement tools. It is not unusual. We already have a state-level tobacco act; we regulate tobacco at the state level as it is. If for some reason the Commonwealth did not proceed or was not proceeding as quickly, there is nothing to stop Queensland taking action to protect our communities while further work is done at the federal level.

Mr MARTIN: In an answer to one of the other questions, you mentioned the Commonwealth bill. If this bill is passed and the department gets a complaint, investigators go out and it proceeds down the track of closing the store, what is the difference under this bill compared to the Commonwealth bill? I understand that bill makes it a bit simpler because it is all vapes whether or not they contain nicotine.

Mr Mahler: I apologise. Just to clarify, my comment was about the approach that the Commonwealth has taken around simplifying the way we think about vapes. At the federal level they have already implemented importation controls and some manufacturing controls. Essentially, the state of play now is that, unless the vape is imported and the TGA has been notified and allowed the product to come into the country, it is already an illicit product. Our bill mirrors that and takes that Commonwealth approach and codifies it into state law.

Mr MARTIN: If this bill is passed we will have it all ready to go before they—

Mr Mahler: This bill replicates essentially what the Commonwealth has proposed in its proposed legislation. I apologise if I am not being entirely clear. In this bill we have taken the Commonwealth's proposed model and we have implemented it in our own legislation. Effectively, we have mirrored to some extent what the Commonwealth has proposed to do. If their legislation did not

proceed, that clarity that I was talking about would still be there because we are amending our tobacco legislation to define vapes in that same way that I was discussing. It will not matter whether they are nicotine or non-nicotine vapes for the purposes of Queensland's TOSPA—

Mr MARTIN: We will not have to wait for the feds then?

Mr Mahler: No.

Mr MARTIN: That is good. For the benefit of the committee and me can you describe what are the problems you have been having closing down stores under the current regime and how do you feel this bill will then help your department shut down stores under the powers you have here?

Mr West: We do not currently have closure or shutdown provisions in the tobacco act. The enforcement officers would go in. We have seizure in that they can access the place without a warrant and seize product. We can do all of those things, but we are finding that after that happens the shop restocks again the next day and they are up and they are off. We then have to go back again. We have repeated concerns from the public in letters to the minister about pop-up shops near schools. We go out and the enforcement officers seize a lot of product—illicit tobacco and vapes—but within the next day they are up and running again. We thought long and hard about what the opportunities were in these amendments to strengthen the response for the enforcement officers and that is where the closure powers come in.

Mr MARTIN: That closure power gives the chief executive the ability, if they feel this is a recalcitrant shop, to shut it down and then after that it goes off to a magistrate. Is that how it works?

Ms Sanderson: Yes, that is correct. The chief executive can impose an interim closure order for a period of up to 72 hours. The chief executive can also apply to the Magistrates Court for a closure order for up to six months. The Magistrates Court order is not dependent on there having been an interim order first; they can go straight to the court and ask for that longer term order. The short-term order is to deal with those emergency situations where really urgent action needs to be taken.

Mr MARTIN: It also gives that six-month option that was not there before?

Ms Sanderson: No, neither of the options were there before. There were no closure powers. There are no closure powers in the current legislation.

Mr MARTIN: Part of the issue has been with landlords as well. At the moment I think they feel there is not much of a threat. If they know that one of their shops that they are leasing out can be shut for six months, I think that is a really strong enforcement power. Thank you.

CHAIR: My other question is around waste. Once you have seized tonnes and tonnes of products—and I can remember seeing a figure with the former inquiry of some 90 million units coming through per annum—where does it go? You might not want to disclose the location. How is it disposed of? Does the committee need to do anything else to make sure we have the capacity to do that in Queensland?

Ms Good: At the moment every public health unit can dispose of it in different ways. A lot of it is done by deep burial and they liaise with the council to do that. We also have set up a statewide procurement system with five different providers that will pick up the product, whether it is illicit tobacco or vapes, and then they will destroy them appropriately. Vapes are a lot more challenging because you have to pull them apart to get rid of the battery whereas illicit tobacco is easier to either bury or incinerate. They are doing that now. They are seizing a very large number. Since July we have had 22 million cigarettes seized and 8.6 tonnes of loose tobacco—it is a huge amount—and 221,000 vapes. There are not as many vapes because of some of the issues with compliance that this bill will address because of the dual powers or having to test vapes.

CHAIR: I am available on weekends to help pull things apart.

Mr West: One part of that procurement process was looking at recycling, so pulling apart the plastic, taking the battery out, which is dangerous, and looking at recycling the products because it is a lot of product that is in Queensland.

CHAIR: That is a huge amount. Well done! Keep going. This is about our future and our kids. I can remember the Chief Health Officer sitting there saying we have a position to do something now.

Mr MOLHOEK: There are some operators—maybe not stores or retailers so much but individuals—who are acquiring quantities and then selling them through direct messaging and other means on Instagram and other social media channels and then they deliver. People will send them a message and they turn up at their front door—

CHAIR: Almost like an Uber.

Mr MOLHOEK: Yes, or an Uber driver turns up with them. Do these proposed changes deal with people who do that as well where it is not overtly online; it is just a person-to-person business?

Ms Sanderson: Yes. As I mentioned earlier, the new provision, which is proposed new section 161A, prohibits the supply of illicit nicotine products as part of a business activity. It is broad enough to capture that kind of activity.

Mr MOLHOEK: Even if it is not a registered business?

Ms Sanderson: Absolutely, yes. It is certainly intended to capture those kinds of online suppliers that we are seeing advertising through means like Facebook and Instagram. The bill also prohibits the advertising, promotion or display of illicit nicotine products, and that is through any means, as part of a business activity. That is a really broad provision as well.

Mr Mahler: The actual advertisement of it on Facebook or Marketplace would be advertising—promoting—so it is an additional tool. You would not even have to necessarily wait to catch them in the act of supply. Simply offering vapes to the public online would be a breach and they would be subject to the various stiff penalties that would apply.

Ms Good: The challenge is that online or on Facebook they are not advertising them necessarily as a vape; they are advertising them as a fruit. The people who are looking for the product know that that is how they are being advertised. That will be a challenge for us. We have previously met with Meta around Facebook Marketplace to try to get their self-regulation controls to remove those ads. It is a challenge because that is how most products are being advertised.

Mr MOLHOEK: If they call it something else but they are still selling an illegal vape—they call it a ‘candy wand’ or whatever—do you still have the powers to prosecute them?

Ms Sanderson: Certainly for the supply we would. The supply offence would still apply. Whether the advertising or promotion or display offence could be made out would depend on the circumstances of the case. That would be a matter for the court to determine in a prosecution as to whether that was seen to be advertising of that product despite whatever tactics they are using to evade it and make it less obvious.

Mr MOLHOEK: Perhaps the definitions in the legislation need to take into account the Urban Dictionary in terms of definitions. Maybe we should make provision for that.

CHAIR: I think every time we move it pushes things further underground and they find another way, so we will keep on keeping on. There being no further questions, we will conclude this hearing. Thank you very much for a very informative and detailed briefing. We appreciate it. I now declare this public briefing closed.

The committee adjourned at 3.36 pm.