

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

Submission No:	16
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Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

**HEALTH, ENVIRONMENT AND AGRICULTURE COMMITTEE
THE QUEENSLAND PARLIAMENT**

**A SUBMISSION ON THE *TOBACCO AND OTHER SMOKING
PRODUCTS (VAPING) AND OTHER LEGISLATION
AMENDMENT BILL 2024 (QLD)***



Queensland Health, 'There's Nothing Sweet about Vapes', Social Media Campaign, August 2023

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RECOMMENDATIONS

Recommendation 1

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) will complement the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)*, which has passed through both Houses of Federal Parliament.

Recommendation 2

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) is an effective response to the Health and Environment Committee's inquiry into vaping in the Queensland Parliament.

Recommendation 3

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) introduces a new definition of 'illicit nicotine product' and provides for the ability to prescribe other products by regulation.

Recommendation 4

Queensland Health and the Queensland Police Service have been carrying out law enforcement action over the illegal sales of e-cigarettes and vapes – often in partnership and collaboration with other key agencies, such as the Therapeutic Goods Administration, Australian Border Force, the Australian Taxation Office, and the Australian Federal Police. The enhanced enforcement action in respect of illicit e-cigarettes and vaping has been producing substantive outcomes.

Recommendation 5

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) provides for additional offences and enforcement measures in respect of the illicit trade in e-cigarettes and vaping. Such measures are necessary and justified given the adverse impacts of e-cigarettes and vaping upon public health, children's rights and education, and the environment.

Recommendation 6

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) provides for new offences for the display, advertising, and promotion of new illicit nicotine products. This framework is intended to apply to a broad range of media platforms, and extend to social media and other forms of advertising, promotion, and sponsorship.

Recommendation 7

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) provides for additional penalties for the provision of false and misleading information by suppliers of e-cigarettes. There should be further reporting obligations and information disclosure by the e-cigarette industry.

Recommendation 8

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) enhances human rights in Queensland – most notably, the right to life, the right to health services, the rights of children, the right to education, Indigenous rights, and the right to equality.

Recommendation 9

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) amends the *Waste Reduction and Recycling Act 2011* (Qld) to create a specific dangerous littering offence for depositing a vaping device or vaping accessory. This is an important initial step in addressing the environmental ill-effects of e-cigarettes and vaping.

Recommendation 10

Queensland's law reform in respect of e-cigarette regulation will help Australia fully implement the *WHO Framework Convention on Tobacco Control 2003*. The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) also answers the concerns of the World Health Organization about the need for strengthened action by state actors on e-cigarette regulation. Australia's law reform on smoking and vaping has been hailed as 'commendable and inspiring' by the World Health Organization.

EXECUTIVE SUMMARY

In 2024, the Health, Environment and Agriculture Committee of the Queensland Parliament has been asked to examine the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld). This inquiry builds upon a previous inquiry by the Health and Environment Committee of the Queensland Parliament in respect of the regulation of vaping in 2023 - *Vaping: An Inquiry into Reducing Rates of e-Cigarette use in Queensland*.¹ This inquiry also represents an opportunity for a state reflection and response to the Federal initiative of the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth) – which has been reviewed by an Australian Senate Committee, and is currently under consideration in the upper house of the Federal Parliament.²

The author of this submission has previously undertaken research on tobacco control and e-cigarette regulation. The author has written about the case for plain packaging of tobacco products,³ and the defence of that regime in the High Court of Australia,⁴ the World Trade Organization,⁵ and investor-state dispute settlement.⁶ The author has considered the comparative debates over plain packaging of tobacco products in various

¹ Health and Environment Committee, *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, Report No. 38, 57th Parliament, Queensland Parliament, 2023, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2023/5723T1212-BEB3.pdf>

² *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7169

³ Becky Freeman, Simon Chapman, and Matthew Rimmer, 'The Case for the Plain Packaging of Tobacco Products' (2008) 103 (4) *Addiction* 580-590.

⁴ Matthew Rimmer, 'The High Court of Australia and the Marlboro Man: The Battle Over The Plain Packaging of Tobacco Products', in Tania Voon, Andrew Mitchell, and Jonathan Liberman (Ed.) *Regulating Tobacco, Alcohol and Unhealthy Foods: The Legal Issues*, London and New York: Routledge, 2014, 337-360.

⁵ Matthew Rimmer, 'The Global Tobacco Epidemic, the Plain Packaging of Tobacco Products, and the World Trade Organization' (2017) 17 (2) *QUT Law Review* 131-160.

⁶ Matthew Rimmer, 'The Chilling Effect: Investor-State Dispute Settlement, Graphic Health Warnings, the Plain Packaging of Tobacco Products and the Trans-Pacific Partnership', (2017) 7 (1) *Victoria University Law and Justice Journal* 76-93.

jurisdictions.⁷ The author has considered the debate over tobacco control in the context of the *Trans-Pacific Partnership*.⁸ The author has considered proposals for a tobacco endgame in Australia,⁹ and elsewhere around the world.¹⁰ The author has engaged with policy debates in respect of e-cigarette regulation – especially as they raise parallel issues in respect of public health, intellectual property, and trade and investment law. This submission builds upon past submissions to Queensland and Federal parliamentary inquiries into the regulation of e-cigarettes and vaping.¹¹

This submission is supportive of efforts of the Miles Government to boost e-cigarette regulation in Queensland. It observes that the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) will help ensure Queensland can appropriately enforce the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth) to ban the importation, manufacture,

⁷ Matthew Rimmer (ed.), *The Plain Packaging of Tobacco Products*, Special edition of *QUT Law Review* (Vol. 17 (2)), Brisbane: QUT, 2017, <https://lr.law.qut.edu.au/issue/view/55>

⁸ Matthew Rimmer, 'Plain Packaging for the Pacific Rim: the Trans-Pacific Partnership and Tobacco Control', in Tania Voon (ed.), *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, 2013, 75-105; and Matthew Rimmer, *The Trans-Pacific Partnership: Intellectual Property and Trade in the Pacific Rim*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, December 2020.

⁹ Matthew Rimmer, 'The Tobacco Endgame Avengers: Strategies for a Smokefree Future in Australia' in Belinda Bennett and Ian Freckelton (ed.), *Australian Public Health Law*, Sydney: Federation Press, 2023, 361-385.

¹⁰ Matthew Rimmer, 'The Tobacco Endgame: Intellectual Property, Human Rights, and Sustainable Development' in Bitu Amani, Caroline B. Ncube, and Matthew Rimmer (ed.) *The Elgar Companion to Intellectual Property and the Sustainable Development Goals*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, 2024, 74-106.

¹¹ Matthew Rimmer, 'A Submission on Vaping and Reducing Rates of E-Cigarette Use in Queensland', Health and Environment Committee, Queensland Parliament, May 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242> QUT ePrints: <https://eprints.qut.edu.au/239457/> and Matthew Rimmer, 'A Submission on the *Therapeutic Goods and Other Legislation (Vaping Reforms) Bill 2024* (Cth)', Community Affairs Legislation Committee, Australian Senate, Canberra: Australian Parliament, 12 April 2024, Submission No. 98, pp. 192, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/VapingReformsBill QUT ePrints: <https://eprints.qut.edu.au/248243/>

supply, and commercial possession of all disposable single use and recreational vapes. This submission observes that the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* is an effective response to the Health and Environment Committee's inquiry into vaping in the Queensland Parliament. The regime will help address concerns about the adverse impacts of e-cigarettes and vaping upon public health, children's rights and education, and the environment.

This submission discusses the new definition of 'illicit nicotine product' and the ability to prescribe other products by regulation. It provides a snapshot of enforcement action over the illegal sales of e-cigarettes and vapes. This submission discusses the new offences and enforcement measures contained in the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*. It also explores the new offences for the display, advertising, and promotion of new illicit nicotine products under the Queensland bill. This submission highlights the need for greater transparency in respect of the operation of e-cigarette supplies. This submission maintains that the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* will promote and protect the human rights in Queenslanders. In particular, the measures will support the right to life, the right to health services, the rights of children, the right to education, Indigenous rights, and the right to equality. The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* is also innovative in tackling the environmental impacts of e-cigarettes and vaping. The legislation creates a specific dangerous littering offence for depositing a vaping device or vaping accessory.

Queensland's law reform in respect of e-cigarette regulation will answer the calls by the World Health Organization for strengthened action in this field. Queensland's innovative work on e-cigarette regulation and enforcement can inspire other jurisdictions to improve their regulatory frameworks for vaping.

1. Queensland State Government Response to the Federal Government's *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth)

In her explanatory speech to the Queensland Parliament, Health Minister Shannon Fentiman discusses how the state law reform is designed to complement national law reform contained in *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth).¹² She commented:

In 2024 the Commonwealth government took decisive action to address the issue of vaping by introducing a bill to ban the importation, manufacture, supply and commercial possession of all disposable single-use and recreational vapes. The Miles government is leading the charge as the first state to implement the Commonwealth ban through corresponding state legislation which will allow for effective and targeted enforcement.¹³

Fentiman added: 'We are taking strong and coordinated action to protect the health of Queenslanders, and this bill demonstrates a significant step forward in delivering this government's commitment to address the rising availability of illicit tobacco and vaping products on the market.'¹⁴

The proposed Federal legislation sought to amend the *Therapeutic Goods Act 1989* (Cth) to provide a national framework to regulate the importation, domestic manufacture, supply, commercial possession and advertisement of all vapes, irrespective of nicotine content or therapeutic claims.¹⁵ In his second reading speech,

¹² Hon. Sharon Fentiman, 'Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld)', Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹³ Ibid., 2073.

¹⁴ Ibid., 2073.

¹⁵ The author of this submission has written a more detailed account of the bill in another submission: Matthew Rimmer, 'A Submission on the *Therapeutic Goods and Other Legislation (Vaping Reforms) Bill 2024* (Cth)', Community Affairs Legislation Committee, Australian Senate, Canberra: Australian Parliament, 12 April 2024, Submission No. 98, pp. 192, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/VapingReformsBill QUT ePrints: <https://eprints.qut.edu.au/248243/>

the Health Minister Mark Butler explained that the legislative bill hoped to create a nationally consistent framework to the regulation of e-cigarettes:

The bill provides a single consistent framework that will apply nationally to the regulation of all vapes. The federal cooperative scheme between the Commonwealth, states and territories for the regulation of therapeutic goods will be extended to vaping goods to ensure comprehensive controls. The scheme is achieved through the application of corresponding laws enacted in each state and territory, with Western Australia having recently introduced legislation to their parliament to enact their own corresponding law. The extension of the Therapeutic Goods Act to vapes is appropriate and necessary in the circumstances and will facilitate a national approach by enabling all jurisdictions to use the same legislation.¹⁶

Butler also explained the division of responsibilities between the Federal Government, and State and Territory Governments. He observed: ‘Consistent with the federal cooperative scheme, the Commonwealth will take responsibility for enforcing importation, manufacture, sponsor supply and advertisement.’¹⁷ Butler noted: ‘The states and territories will take responsibility for enforcing wholesale supply, retail supply and commercial possession.’¹⁸ He commented: ‘The Australian Border Force will lead the enforcement at our border.’¹⁹ Moreover, ‘the Therapeutic Goods Administration and state and territory officers will exercise powers and functions, in concert with police authorities as required, and particularly when organised crime is involved.’²⁰

The Federal Bill was debated in the House of Representatives in March and May 2024. The Federal Bill was introduced in the Senate in May 2024 and debated in June 2024. It should be noted that the Federal Bill will be subject to a number of compromises, as a result of legislative wrangling between the Australian Labor Party and the Australian Greens in 2024 to secure the passage of the bill. The House of Representatives has

¹⁶ Hon. Mark Butler, ‘Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)*’, House of Representatives, Australian Parliament, 21 March 2024, 2.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

agreed to the Senate amendments on the 27 June 2024. The Federal bill has passed both houses on the 27 June 2024.

The Federal Minister for Health Mark Butler commented on the legislative compromise:

Our world-leading laws will return vapes and e-cigarettes to what they were originally sold to the Australian community and to governments around the world as: therapeutic products to help hardened smokers kick the habit. From Monday next week, it will be unlawful to supply, manufacture, import, and sell a vape outside of a pharmacy setting.²¹

He urged the Liberal and National opposition to back the laws: ‘These laws protect young Australians and the broader community from the harms of recreational vaping, while ensuring that those who really need access to a therapeutic vape for help to quit smoking, can get one from their local pharmacy.’²² The Minister also discussed the new compromise regime in a press conference on the 25th June 2024.²³

His cabinet colleague, the Environment Minister Tanya Plibersek, commented on the compromise:

Do we prefer our original package? Of course we do. But this whole package is absolutely world leading, and I think just as Australia led the world on plain packaging for tobacco, we'll be leading the world on turning around this trend of more and more young people getting hooked on nicotine. Pharmacists have very important health conversations with their customers all the time, about vapes in this instance but about things like the morning after pill.

²¹ Josh Butler, ‘Medicinal Vapes to be Sold over the Counter at Pharmacies after Labor and Greens Reach Deal’, *The Guardian*, 24 June 2024, <https://www.theguardian.com/australia-news/article/2024/jun/24/medicinal-vapes-sold-pharmacies-labor-greens-deal>

²² Ibid.

²³ The Hon. Mark Butler, ‘Press Conference’, Department of Health and Aged Care, Australian Government, 25 June 2024, <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/minister-for-health-and-aged-care-press-conference-25-june-2024?language=en>

These vapes will be behind the counter, they'll be treated in the same way as some of those stronger medications.²⁴

Senator Tony Sheldon observed in his second reading speech: ‘The Albanese government is backing these organisations in taking strong action to stamp out vaping through stronger legislation, enforcement, education and support.’²⁵

Greens Health Spokesman Jordon Steele-John outlined the position of the Greens in a second reading speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)*.²⁶ Steele-John commented:

Our goal through this process has been to ensure that we get vapes out of the hands of kids, while ensuring that adults can access therapeutic vaping product and guaranteeing that there is no chance that an individual is criminalised for possessing a personal vape. The Australian Greens felt that the original legislation proposed by the government did not meet these goals. This is why we have used our role in the Senate to chart a pathway away from a restrictive, costly policy to one that strikes a greater balance. The Greens have secured carefully crafted amendments that will enable the creation of an equally carefully regulated scheme that focuses on public health outcomes, reducing harm and minimalising use, particularly among children.²⁷

Greens Health Spokesman Jordon Steele-John maintained that ‘we have successfully secured changes to this legislation to ensure that vapes remain out of the hands of kids,

²⁴ Matthew Doran, ‘Greens Leader Adam Bandt Denies his Party Watered Down Government's Vaping Laws’, *ABC News*, 25 June 2024, <https://www.abc.net.au/news/2024-06-25/greens-adam-bandt-denies-watered-down-vaping-laws/104017826>

²⁵ Senator Tony Sheldon, ‘Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)*’, Hansard, Australian Senate, 25 June 2024, 94.

²⁶ Senator Jordon Steele-John, ‘Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)*’, Hansard, Australian Senate, 25 June 2024, 82.

²⁷ Ibid.

but adults can access them via a pharmacy, and there's no chance of individuals being criminalised for possessing a personal vape'.²⁸

The leader of the Australian Greens, Adam Bandt, defended the legislative compromises demanded by his party.²⁹ He maintained: 'History is replete with examples of politicians telling adults not to use certain drugs, only to find that that doesn't actually fix the problem.'³⁰ Bandt observed: 'The second motivation for us is that we said there is a real public health problem, and especially amongst children — the kind of flavoured vapes that children have been using, they're meant to [be] deliberately marketed to children — for us was something that we really wanted to tackle.'³¹ Bandt argued: 'But we wanted to make sure that it was treated as a health issue and kept out of the criminal justice system.'³²

The National Party were opponents of the original bill, and critics of the legislative compromise.³³ Senate leader for the National Party Bridget McKenzie commented: 'This is a classic case of the Labor Party trying to hide behind the white coat of the local pharmacists in this vain attempt to try and get vapes out of the hands of our children and out of our schools'.³⁴ The National Party have instead endorsed a commercial model for e-cigarettes and vaping – which has also been supported by tobacco companies and

²⁸ Jake Evans, 'Government Waters Down Vaping Ban to Win Support of Greens', *ABC News*, 24 June 2024, <https://www.abc.net.au/news/2024-06-24/vaping-ban-watered-down-greens-support/104016012>

²⁹ Matthew Doran, 'Greens Leader Adam Bandt Denies His Party Watered Down Government's Vaping Laws', *ABC News*, 25 June 2024, <https://www.abc.net.au/news/2024-06-25/greens-adam-bandt-denies-watered-down-vaping-laws/104017826>

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Joanna Guelas, 'Nationals back Vaping Access despite Health Experts', *The Canberra Times*, 21 March 2023, <https://www.canberratimes.com.au/story/8128702/nationals-back-vaping-access-despite-health-experts/>

³⁴ Matthew Doran, 'Greens Leader Adam Bandt Denies His Party Watered Down Government's Vaping Laws', *ABC News*, 25 June 2024, <https://www.abc.net.au/news/2024-06-25/greens-adam-bandt-denies-watered-down-vaping-laws/104017826>

the Australian Association of Convenience Stores.³⁵ The Australian Medical Association has been critical of the National Party serving the interests of the tobacco lobby.³⁶ The Public Health Association of Australia has also been critical of the National Party's policies on smoking and vaping.³⁷

The Liberal Party was initially uncommitted to a position on the bill. There has historically been a spectrum of opinions within the Liberal Party on the regulation of e-cigarettes – ranging from libertarians supporting a laissez-faire approach to e-cigarettes, to conservatives expressing a concern about the impact on children, and health professionals within the party who have preferred stronger regulation of e-cigarettes. In the end, the Liberal Party has supported a model in which vapes would be sold like cigarettes.³⁸

Shadow Health spokeswoman Anne Ruston has outlined the position of the Liberal Party on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth) in the Australian Senate.³⁹ Explaining the position of the Liberal Party, Shadow Health spokeswoman Anne Ruston said:

³⁵ Paul Sakkal and Natassia Chrysanthos, 'Vapes to be Sold Behind the Counter under Watered-Down Ban', *The Sydney Morning Herald*, 24 June 2024, <https://www.smh.com.au/politics/federal/vapes-will-be-sold-behind-the-counter-under-watered-down-ban-20240624-p5joaq.html>

³⁶ Josh Butler, 'Doctors Accuse Nationals of Serving Interests of Tobacco Lobby by Opposing Vaping Prohibition', *The Guardian*, 24 June 2024, <https://www.theguardian.com/society/article/2024/jun/24/national-party-serving-interests-of-tobacco-lobby-on-vaping-australian-medical-association-says-ntwnfb>

³⁷ Public Health Association of Australia, 'Nationals' policy will increase the vaping problem. Their History of Receiving Tobacco Industry Money means they're Irrelevant in any Vaping Discussion: PHAA', Public Health Association of Australia, 21 March 2023, <https://www.phaa.net.au/Web/Web/News/Media%20releases%202023/Nationals--policy-will-increase-the-vaping-problem.aspx>

³⁸ Ronald Mizen, 'Vapes would be sold like cigarettes under Coalition policy', *Australian Financial Review*, 25 June 2024, <https://www.afr.com/politics/federal/vapes-would-be-sold-like-cigarettes-under-coalition-policy-20240625-p5joo2>

³⁹ Senator Anne Ruston, 'Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth)', Hansard, Australian Senate, 25 June 2024, 80.

Australian children are getting ready access to flavoured vapes in colourful packaging because the law is not being enforced. The government has been doubling down on an approach that is simply not working. Now, they have even conceded their model is failing by making their last-minute, dirty deal with the Greens. This deal seeks to have vapes sold by completely unwilling pharmacists. We know pharmacists want to use their valuable time to provide primary care advice to the community, not become 'tobacconists and garbologists'.⁴⁰

The Liberal Party has pledged to expand the illicit tobacco taskforce, and use funding from excise tax in respect of law enforcement.

Annabel Crabb observed of this policy choice: 'This is the preferred model advanced by much of the National Party and the right wing of the Liberals, a pro-vape posse about 30 of whom in 2020 memorably overpowered their own colleague Greg Hunt.'⁴¹

One Nation has been a critic of the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth). Senator Malcolm Roberts was also critical of the amendments to the bill.⁴²

Independent Senator David Pocock did not speak to this bill. But elsewhere, he has expressed his concern about tobacco interference in policy-making in respect of tobacco control and e-cigarette regulation. Pocock has maintained that 'stakeholders must be transparent on the scope and scale of their relationships with the tobacco and e-cigarette industries so that senators can remain vigilant for any disguised influence from these industries.'⁴³ He has observed that 'Australia has irreconcilable differences with the

⁴⁰ Ibid.

⁴¹ Annabel Crabb, 'The Coalition Could Have Sat Back and Waited to Watch the Vaping Ban Unfurl, But Instead, They've Chosen Option Two: INHALE', *ABC News*, 26 June 2024, <https://www.abc.net.au/news/2024-06-26/coalition-response-to-vaping-ban/104018862>

⁴² Senator Malcolm Roberts, 'Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth)', Hansard, Australian Senate, 25 June 2024, 88.

⁴³ Senator David Pocock, 'Additional Comments on the *Public Health (Tobacco and Other Products) Bill 2023* (Cth)', https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/TobaccoandOtherProduct/Report/Additional_Comments_from_Senator_David_Pocock

tobacco industry and its agents'.⁴⁴ In his view, 'They are seeking to profit from harming our friends, family and neighbours, while we must be resolute in preventing new generations from taking up smoking and supporting current generations to quit.'⁴⁵

The Pharmacy Guild of Australia has opposed the legislative compromises wrought by the Australian Greens, observing:

Pharmacists are healthcare professionals who dispense medication that provides a proven therapeutic benefit. No vaping product has been approved by the Therapeutic Goods Administration based on its safety, efficacy or performance. No vaping product is listed on the Australian Register of Therapeutic Goods.⁴⁶

The Pharmacy Guild emphasized: 'Vaping has long-term patient harms, including cancer, lung-scarring and nicotine addiction.'⁴⁷ The Pharmacy Guild stressed vaping products were not proven effective as tobacco cessation aids: 'There is limited evidence to support the use of vaping products for smoking cessation and nicotine dependence.'⁴⁸ The Pharmacy Guild commented that the Senate decision was a bad one: 'The Senate's expectation that community pharmacies become vape retailers, and vape garbage collectors, is insulting.'⁴⁹ The Pharmacy Guild lamented: 'the Senate wants pharmacists to stock vapes next to children's Panadol, cold and flu medicine, and emergency contraception.'⁵⁰

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Pharmacy Guild of Australia, 'Not Tobacconists or Garbologists', Press Release, Pharmacy Guild of Australia, 24 June 2024, <https://www.guild.org.au/news-events/news/2024/not-tobacconists-or-garbologists> Widely quoted in the media - eg Josh Butler, 'Medicinal Vapes to be Sold over the Counter at Pharmacies after Labor and Greens Reach Deal', *The Guardian*, 24 June 2024, <https://www.theguardian.com/australia-news/article/2024/jun/24/medicinal-vapes-sold-pharmacies-labor-greens-deal>

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

The Pharmacy Guild complained that they had not been consulted on the Labor-Greens vaping deal.⁵¹ The guild's vice-president, Anthony Tassone, observed: 'We were gobsmacked, and after picking our jaws from the floor, we questioned why we were not involved in the conversation on this very, very important issue.'⁵² He commented: 'Nobody wants vapes in the hands of kids or teenagers, but this is rushed policy on the run.'⁵³ Tassone noted: 'These are not therapeutic products – we don't know the long-term effects of these products on health and safety.'⁵⁴ Tassone wondered: 'How can a pharmacist make an informed decision of its clinical appropriateness?' He concluded: 'We weren't asked, consumers didn't ask for it, patients didn't ask for this.'⁵⁵

The Australian Medical Association has also reflected upon the new bill.⁵⁶ AMA Queensland President Dr Nick Yim commented:

We definitely do support these laws being passed. We are seeing in Australia a big, big increase in the use of vapes, especially in the 14- to 25-year-old age group. And we have to remember going back, what was the reason for the introduction of vapes? It was from Big Tobacco to get a new generation addicted to their products. It was never designed to be a therapeutic good to help smoking cessation.⁵⁷

He told ABC Radio: 'We don't want people vaping for the rest of their lives'.⁵⁸ Yim observed: '[The bill] is designed from a long-term perspective to actually eventually get [people] off the vape products.'⁵⁹

⁵¹ Josh Butler and Melissa Davey, 'Pharmacists Say They Were Not Consulted on "Rushed" Labor-Greens Vape Deal', *The Guardian*, 25 June 2024, <https://www.theguardian.com/society/article/2024/jun/25/labor-greens-vape-deal-pharmacists>

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Australian Medical Association, 'Vaping Reforms a Huge Step for Australia', Press Release, Australian Medical Association, 25 June 2024, <https://www.ama.com.au/qld/news/Vaping-reforms-huge-step-for-Australia>

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

Commenting on the passage of the bill, Professor Becky Freeman from the University of Sydney observed: ‘Once passed it will put an end to convenience retailers, petrol stations, tobacconists and vapes shops openly selling illegal, lolly-flavoured vapes to young people.’⁶⁰ She noted: ‘Come 1 July, no vapes – regardless of their design or contents – will be permitted for general retail sale in Australia’.⁶¹ In spite of the changes to the bill, Freeman was of the view, ‘This is a win for public health, for parents, for teachers and for young people.’⁶² She maintained: ‘Ending easy access to vaping products is necessary if we want to prevent another generation from becoming addicted to harmful products.’⁶³ Freeman concluded: ‘Passing this bill is absolutely crucial to achieving this goal.’⁶⁴

The upshot of recent developments in Federal politics is that the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth) will pass Parliament, with the support of the Australian Greens, subject to amendments. The Queensland Parliament may need to ensure that their complementary legislation remains compatible with the amended Federal Bill.

Recommendation 1

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) will complement the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth), which has passed through both Houses of Federal Parliament.

⁶⁰ Becky Freeman, ‘Ending Easy Access to Harmful Vapes will prevent Another Generation of Australians Becoming Addicted’, *The Guardian*, 25 June 2024, <https://www.theguardian.com/commentisfree/article/2024/jun/25/harmful-vapes-australians-addicted-tocabbo-industry>

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

2. Queensland Government Response to the Parliamentary Inquiry into Vaping and Reducing Rates of E-Cigarette Use in Queensland

In her explanatory speech to the Queensland Parliament, Health Minister Shannon Fentiman also discusses how the bill is a response to the problem of vaping in the state of Queensland, as documented by the work of the Health and Environment Committee of the Queensland Parliament.⁶⁵ She noted: ‘The health and safety of Queenslanders is being put at risk by the increased criminal activity perpetuated by these organisations’.⁶⁶ Fentiman feared: ‘We are witnessing a new generation falling prey to nicotine addiction.’⁶⁷ She observed: ‘Since 2022, data collected through a joint project by Queensland Health, CSIRO and the University of Queensland shows that an average of 12 new suspect tobacco and vape stores open every month in Queensland.’⁶⁸ Fentiman commented:

This bill implements robust measures to curb the illegal trade of nicotine products, protect Queenslanders and ensure our enforcement framework is strong and effective. Vaping presents unacceptable health risks to our children and young adults and has become a significant problem in our schools, communities and homes. The reforms outlined in this bill will address the ongoing and alarming public health crisis and ensure these products are kept out of the hands of children. By tightening regulations and enhancing enforcement, the Miles government is taking bold and necessary steps to disrupt the flow of these dangerous products and to protect the health and future of our community.⁶⁹

Fentiman says: ‘Our bill aims to strike at the heart of this issue by supporting the implementation of the Commonwealth vaping reforms.’⁷⁰ She comments that the bill ‘aims to end the supply and possession of vaping products by businesses, bolster

⁶⁵ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld)’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

Queensland's resources and capabilities for compliance monitoring and enforcement, and ensure our legislation remains robust and effective in the face of emerging challenges.⁷¹

In March 2023, the Queensland Legislative Assembly agreed to a motion that the Health and Environment inquire into and report on reducing rates of e-cigarette use in Queensland. As part of the terms of reference, the committee will consider: (1) The current status in Queensland relating to the: (a) prevalence of e-cigarette use, particularly amongst children and young people; (b) risks of vaping harmful chemicals, including nicotine, to individuals, communities, and the health system; and (c) approaches being taken in Queensland schools and other settings relevant to children and young people to discourage uptake and use of e-cigarettes; (2) Opportunities to increase: (a) awareness of the harmful effects of e-cigarette use (with and without nicotine) to an individual's health, and the effectiveness of preventative activities; and (b) accessibility and effectiveness of services and programs to prevent uptake and continuing use of e-cigarettes; (3) Consideration of waste management and environmental impacts of e-cigarette products; and (4) A jurisdictional analysis of other e-cigarette use inquiries, legislative frameworks, policies and preventative activities (including their effectiveness in reducing e-cigarette use). The inquiry received 78 submissions – held 1 public briefing, and 4 public hearings. The author of this submission participated in the inquiry through a written submission⁷² and an oral presentation at a public hearing.⁷³

⁷¹ Ibid.

⁷² Matthew Rimmer, 'A Submission on Vaping and Reducing Rates of E-Cigarette Use in Queensland', Health and Environment Committee, Queensland Parliament, May 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242> QUT ePrints: <https://eprints.qut.edu.au/239457/>

⁷³ Matthew Rimmer, 'Appearance before the Health and Environment Committee of the Queensland Parliament on vaping and reducing rates of e-cigarette use in Queensland', Queensland Parliament, Brisbane, 22 May 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242>

In August 2023, the Health and Environment Committee of the Queensland Parliament published its report on vaping, and reducing rates of e-Cigarette use in Queensland.⁷⁴ The chair Aaron Harper MP – who was a paramedic in his previous professional capacity - observed in the foreword: ‘Following extensive community consultation there is no doubt that vaping is having a very concerning health impact on young people in Queensland communities’.⁷⁵ He commented: ‘A concerted joint effort between the Commonwealth and state is required to shut down the illegal selling of vapes that are impacting our young people, who perhaps cannot see the ongoing health risks as this trend continues’.⁷⁶ Harper warned: ‘As Chair, I echo the view of Queensland’s Chief Health Officer, Dr John Gerrard – now is the time to act – if not we will face a generation of nicotine-addicted adults in the years to come.’⁷⁷

The report resulted in a number of recommendations. Recommendation 1 provides: ‘The committee recommends that the Queensland Government investigate establishing a joint task force involving Queensland and Commonwealth agencies with the primary objective of ending the illegal retail supply of e-cigarettes, including online, especially to people under the age of 18.’⁷⁸ This key recommendation is certainly relevant to the bill contemplated by the Miles Government.

There were a number of recommendations focused on boosting education in respect of e-cigarettes and vaping. Recommendation 2 provided: ‘The committee recommends that the Queensland Government fund on-going research and data collection to obtain evidence of e-cigarette use in Queensland, to support the development of targeted preventive activities, programs, and support services.’⁷⁹ Recommendation 3 suggested: ‘The committee recommends that the Queensland Government fund on-going research,

⁷⁴ Health and Environment Committee, *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, Report No. 38, Health and Environment Committee, Queensland Parliament, August 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242>

⁷⁵ Ibid., iv.

⁷⁶ Ibid., iv.

⁷⁷ Ibid., iv.

⁷⁸ Ibid., v.

⁷⁹ Ibid., v.

undertaken in partnership with Aboriginal and Torres Strait Islander communities, into e-cigarette use by Queensland's Aboriginal and Torres Strait Islander peoples.'⁸⁰ Recommendation 4 stated: 'The committee recommends that the Queensland Government cooperate with the Australian Government and all state and territory governments, in a national health campaign to inform the public of the facts about the potential risks of using e-cigarettes.'⁸¹ There has certainly been efforts by the Queensland Government and the Federal Government to boost their public health educational campaigns about e-cigarettes and vaping.

There were further recommendations focused on the disruptive impact of vaping on schools and public education – reflecting evidence from principals, teachers, students, and parents to the inquiry. Recommendation 5 observed: 'The committee recommends that the Department of Education assess the adequacy of the current vaping education resources for schools and supplement them where required to ensure that Queensland's schools have access to a package of high-quality, evidence informed, age-appropriate teaching resources, as well as access to professional training to assist in delivering the program effectively.'⁸² Recommendation 6 provided: 'The committee recommends that the Department of Education and Queensland Health prepare guidelines for all Queensland schools on interventions, such as interactive online courses, that can be used as an educative alternative for students found vaping or with vaping products, rather than pursuing punitive outcomes such as suspension'.⁸³ Recommendation 7 observed: 'The committee recommends that the Department of Education and Queensland Health prepare guidelines for all Queensland schools for identifying and supporting students who are nicotine dependent, including the use of support services and referrals to help students to quit vaping.'⁸⁴

Recommendation 8 supported a national approach to the regulation of e-cigarettes and vaping: 'The committee recommends that the Queensland Government support the

⁸⁰ Ibid., v.

⁸¹ Ibid., v.

⁸² Ibid., v.

⁸³ Ibid., v.

⁸⁴ Ibid., v.

implementation of measures, as proposed by the Australian Government, to: stop the importation of non-prescription e-cigarettes; increase the minimum quality standards for e-cigarettes including by restricting flavours, colours, and other ingredients; require pharmaceutical-like packaging; reduce allowed nicotine concentrations and volumes; ban all single use, disposable e-cigarettes and the sale of e-cigarettes in retail settings, such as convenience stores and other retailers; make it easier to get a prescription for legitimate therapeutic use of e-cigarettes.’⁸⁵

The Health and Environment Committee was also keen to help and assist Queenslanders to quit smoking and vaping. Recommendation 9 provides: ‘The committee recommends that Queensland Health assess the availability and capacity of services to support people to quit e-cigarettes and consider additional resourcing for these services, as required, so that vaping support is available in a variety of contexts and through a range of providers.’⁸⁶ Recommendation 10 observes: ‘The committee recommends that Queensland Health collaborate with health departments in other Australian jurisdictions and Quit Victoria to facilitate the development of a specialised service to provide tailored support to young people who want to stop vaping.’⁸⁷ Recommendation 11 comments: ‘The committee recommends that the Queensland Government consider extending the capacity of the Quitline service in Queensland, including to provide for engagement of additional counsellors with youth experience.’⁸⁸ Recommendation 12 observes: ‘The committee recommends that the Queensland Government consider a program to supply Nicotine Replacement Therapy at reduced cost to people who want to quit tobacco products or e-cigarettes’.⁸⁹

Recommendation 13 called for further enforcement action: ‘The committee recommends that the Queensland Government assess workforce requirements and assign necessary resources to support compliance monitoring and enforcement

⁸⁵ Ibid., v.

⁸⁶ Ibid., vi.

⁸⁷ Ibid., vi.

⁸⁸ Ibid., vi.

⁸⁹ Ibid., vi.

activities relating to e-cigarettes under the *Tobacco and Other Smoking Products Act* 1998 and the *Medicines and Poisons Act* 2019'.⁹⁰

The Health and Environment Committee were also concerned about the environmental dimensions of e-cigarettes and vaping. Recommendation 14 also noted: 'The committee recommends that the Queensland Government investigate: the feasibility of introducing a return and recycling scheme for vaping products; [and] the introduction of product design requirements that would facilitate recycling and/or safe disposal of e-cigarettes and their batteries.'⁹¹

There were also a statement of reservation from the deputy chair, the Hon. Robert Molhoek MP, the member for Southport, and representative of the Liberal National Party.⁹² He maintained: 'While there are many recommendations which I support in our attempts to reduce the rates of e-cigarette use in Queensland, such as recovery and management programs; there are a number of recommendations which I believe will be harmful to these attempts.'⁹³ Molhoek observed: 'Guided by my personal values of individual liberty, limited government intervention, and the pursuit of policies rooted in both historical lessons and practical realities, I feel compelled to give an alternate view to the outcomes of the report that balance the individual liberty and personal choice of all Queenslanders, while attempting to address a significant public health challenge.'⁹⁴ Molhoek wondered: 'It may be more effective to allow for the legal sale of vaping products, echoing similar regulations for tobacco products, especially through licensed tobacconists and/or licensed retailers.'⁹⁵ He added: 'I firmly support the Committee's non-prohibitive recommendations that target the reduction of vaping incidents, especially those focusing on public health campaigns and limiting access to children.'⁹⁶

⁹⁰ Ibid., vi.

⁹¹ Ibid., vi.

⁹² Ibid., 100.

⁹³ Ibid., 100.

⁹⁴ Ibid., 100.

⁹⁵ Ibid., 101.

⁹⁶ Ibid., 102.

In October 2023, the Queensland Government published its response to the report of the Health and Environment Committee of the Queensland Parliament on vaping and e-cigarettes.⁹⁷ The Queensland Government supported the recommendations of the Health and Environment Committee of the Queensland Parliament. The Queensland Government commented:

The Queensland Government agrees with the Committee that the window of opportunity to reduce e-cigarette use in Queensland is now and that a comprehensive, multi-strategy approach is needed. Such an approach must include regulation of e-cigarette supply with compliance monitoring and enforcement action, awareness raising public health campaigns, resources, guidelines and programs for schools, early intervention and cessation support programs to stop youth uptake and continued use of e-cigarettes, research to inform targeted preventive activities, and monitoring of e-cigarette use.⁹⁸

The Queensland Government highlighted that ‘it is already taking action on vaping, as acknowledged in the Committee’s Report’, including through the provision of ‘\$1.3 million for a new youth-focused public health campaign about the harms of vaping’, ‘\$3.9 million annually for Quitline to deliver nicotine dependence services to Queenslanders’, ‘\$5 million to provide all schools with access to an online interactive program on vaping, alcohol and other drugs to support student wellbeing and engagement from Term 4, 2023’; ‘a strengthened alcohol and drugs education program that is inclusive of vaping, made available to Queensland schools from early 2024’, ‘implementing laws that prohibit the retail sale of smoking products including e-cigarettes to children, and prohibit the supply of nicotine e-cigarettes without a prescription by non-pharmacy retailers’, the provision of ‘153 authorised officers to respond to community complaints, monitor compliance and take enforcement action on Queensland’s public health laws, including smoking and e-cigarette laws’; and ‘monitoring e-cigarette use among Queensland adults.’⁹⁹

⁹⁷ Queensland Government, *Response to Report No. 38, 57th Parliament, Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, 25 October 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242>

⁹⁸ Ibid.

⁹⁹ Ibid.

In August 2023, the Queensland Government launched the ‘There’s Nothing Sweet About Vapes’ public health educational campaign.¹⁰⁰ Targeting adolescents aged 12-17, the campaign sought to on platforms such as TikTok, Snapchat, YouTube, Twitch and Spotify. Premier Anastacia Palaszczuk explained this educational campaign:

Research shows adolescents who vape are three times more likely to take up smoking cigarettes. Vapes are also consciously and deliberately marketed to children and teenagers, with their bright advertising and maliciously deceptive packaging and flavours like fairy floss, cola, and ice cream. Our government is determined to stop this trend in its tracks, which is why I ordered the ongoing parliamentary enquiry into these addictive and sometimes poisonous devices. If we want to turn the dial on this growing issue, we need to take a fresh approach, and I thank the 50 young Queenslanders who helped develop this campaign.¹⁰¹

Queensland Minister for Health and Ambulance Services Shannon Fentiman added: ‘I urge all parents and guardians to use the research and tips from the website to start the important conversation with their children about the dangers of vaping.’¹⁰² Queensland Minister for Education Grace Grace commented: ‘We know vaping doesn’t start and finish at the school gate: it’s a broader public health issue and this excellent campaign will complement all of the extensive work the Palaszczuk Government is doing to tackle this insidious issue.’¹⁰³

In April 2024, there was parliamentary debate in Queensland on the Health and Environment Committee Report on Vaping.¹⁰⁴ There were various contributions from members of the Australian Labor Party and the Liberal National Party.

In this context, the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) represents part of the Queensland Government’s response to the inquiry of the Health and Environment Committee. In

¹⁰⁰ Queensland Government, ‘New Vaping Campaign to Target Young Queenslanders’, Press Release, 24 August 2023, <https://statements.qld.gov.au/statements/98511>

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ ‘Health and Environment Committee Report on Vaping’, Hansard, Queensland Parliament, 17 April 2024, 1068-1079.

particular, it seeks to strengthen the regulatory framework and enforcement mechanisms for vaping and e-cigarettes in the state. There was a common concern in the Health and Environment Committee inquiry that law enforcement efforts should be enhanced in respect of the illicit trade in e-cigarettes in Queensland.

Recommendation 2

***The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* is an effective response to the Health and Environment Committee's inquiry into vaping in the Queensland Parliament.**

3. New Queensland Definition of ‘Illicit Nicotine Product’

In her explanatory speech to the Queensland Parliament, Health Minister Shannon Fentiman discusses some of the definitional and interpretative changes introduced by the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*.¹⁰⁵ She reflected:

To effectively enforce the Commonwealth ban on vaping products, the bill introduces a new definition of ‘illicit nicotine product’. This includes vaping goods, devices, substances and accessories as defined in the Commonwealth definition, as well as any nicotine or harmful substances prescribed by regulation. The Commonwealth’s broad definition ensures all vapes are covered regardless of nicotine content or therapeutic claims. This is important because we know it is common for vaping products to be deceptively labelled as ‘nicotine free’ to circumvent current restrictions on the supply of nicotine without a prescription.¹⁰⁶

Fentiman also observed that ‘the ability to prescribe other products by regulation ensures we can address novel products as they emerge.’¹⁰⁷ She said that novel items included ‘nicotine pouches, the use of which is becoming widespread in Queensland including by children and young adults’ and ‘flavoured nicotine toothpicks’.¹⁰⁸ Fentiman commented: ‘This bill allows us to respond in an agile manner to prevent the harm these products can cause, particularly to children and young people’.¹⁰⁹

The explanatory notes explain further:

The Commonwealth definition of vaping goods is broad. For example, vaping device includes a device (whether or not filled with a vaping substance) that generates, releases or is designed or intended to generate or release, using a heating element and by electronic means, an aerosol, vapour or mist for direct inhalation by its user. Vaping substance means nicotine in solution

¹⁰⁵ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075 at 2074, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

in any concentration, or any liquid or other substance for use in, or with, a vaping device. This ensures that the enforcement framework applies to all vapes, irrespective of nicotine content or therapeutic claims, and includes, for example, a vape that is or is claimed to be nicotine-free.¹¹⁰

The explanatory notes comment: ‘The ability to prescribe products by regulation ensures that novel nicotine and related products can be captured within the prohibition as they arise, or their use becomes commonplace in Queensland.’¹¹¹

Accordingly, the Bill amends the *Tobacco and Other Smoking Products Act* 1998 (Qld) insert a definition of ‘illicit nicotine products’, capturing within that term, vaping goods (that is, vaping devices, substances and accessories, as defined in the Commonwealth Bill), as well as products containing nicotine or another substance detrimental to health that have been prescribed by regulation. The bill removes the definition of ‘personal vaporiser’ and incorporate relevant aspects of it within the definition of ‘vaping device’.

The bill amends the long title and objects of *Tobacco and Other Smoking Products Act* 1998 (Qld) to capture illicit nicotine products. The bill amends relevant references to ‘smoking product’ to also reference ‘illicit nicotine product’.

Recommendation 3

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill* 2024 (Qld) introduces a new definition of ‘illicit nicotine product’ and provides for the ability to prescribe other products by regulation.

¹¹⁰ Explanatory Notes to the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld), 5.

¹¹¹ Ibid. 5.

4. Queensland Enforcement Action in respect of E-Cigarettes and Vaping

In its response to the Queensland Parliamentary Health and Environment Committee inquiry into Vaping, the Queensland Government provided an update on its enforcement activities in respect of e-cigarette laws and regulations.¹¹² The Queensland Government observed: ‘In 2022-23, there was a significant amount of compliance activity under the *Tobacco and Other Smoking Products Act* 1998 (Qld) with 569 complaints recorded by Public Health Units, 453 inspections and 128 investigations undertaken by Public Health Units, and 404 enforcement actions including written warnings, improvement notices, on-the-spot fines and legal proceedings.’¹¹³ The Queensland Government commented: ‘Compliance activity under the Medicines and Poisons Act 2019 in 2022-23, included 107 recorded complaints, 618 inspections and 261 investigations undertaken by Public Health Units, and 120 enforcement actions.’¹¹⁴ However, those statistics covered a broad range of enforcement action – and were not necessarily specific to the supply of nicotine-containing e-cigarettes.

In March 2024, Health Minister Shannon Fentiman commented: ‘The Miles Government’s crackdown on illegal tobacco and vaping products is making significant inroads in targeting those flouting their obligations.’¹¹⁵ She added: ‘The Miles Government will not rest in our fight against illicit tobacco and vapes and will continue to pursue those who choose to break the law and show complete disregard for the health of Queenslanders.’¹¹⁶

¹¹² Queensland Government, *Response to Report No. 38, 57th Parliament, Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, 25 October 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242>

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Hon. Shannon Fentiman, ‘Dodgy Operators feel the pinch from Queensland’s Tough Tobacco Laws’, Press Release, Queensland Government, 24 March 2024, <https://statements.qld.gov.au/statements/99960>

¹¹⁶ Ibid.

In her explanatory speech to the Queensland Parliament in 2024, Health Minister Shannon Fentiman provides an update as to the enforcement action taken by Queensland Health in respect of nicotine vapes:

Queensland Health has instigated over 850 enforcement actions which included 475 on-the-spot fines and multiple prosecutions. Additionally, almost 20 million cigarettes, eight tonnes of loose tobacco and 171,000 nicotine vapes have been seized. But there remains a public health risk that is being exacerbated by the deliberate exploitation of gaps in state and national enforcement frameworks particularly by organised crime.¹¹⁷

She observed that the intent of the legislative reforms is to address some of the gaps and aporia in the enforcement regime.

There has been some enforcement action over illegal sales of e-cigarettes and vaporisers in Queensland. It is worthwhile providing some case studies to gain a sense of the nature and scope of enforcement actions in the jurisdiction of Queensland.

In April 2023, the Holland Park Magistrate's Court delivered a decision in respect of was a striking enforcement action against a Brisbane convenience store over the illegal sales of vapes with nicotine.¹¹⁸ Metro South Public Health Unit prosecuted M & R Trading Pty Ltd, which trades as Zam Zam Supermarket, a convenience store in Kuraby. Metro South Public Health environmental health officers along with the Queensland Police Service and the Australian Tax Office executed two warrants for properties in Kuraby on May 13, 2021. They seized 45,449 personal vaporisers and 33 e-liquids at the store and at storage premises. The company pleaded guilty to two charges of possession and sale of personal vaporisers and e-liquids containing nicotine when the matter was heard at Holland Park Magistrates Court on 18 April 2023. The

¹¹⁷ Hon. Sharon Fentiman, 'Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*', Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹¹⁸ Staff Writers, 'Brisbane Convenience Store to Pay over \$88,000 for Illegally Selling Vapes with Nicotine', ABC News, 11 May 2023, <https://www.abc.net.au/news/2023-05-11/brisbane-store-illegal-vapes-nicotine-fined-88000/102328362> and *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

Magistrate's Court recorded a conviction and ordered the company to pay a \$35,000 fine, almost \$51,000 in court costs, and more than \$2,800 in professional costs.

Magistrate Young observed that there had been complaints to Queensland Health over a 15-year old and a 13-year old purchasing a vaporizer from the defendant from a parent, and a deputy principal of a state high school. Magistrate Young noted that the company had been previously warned of the conduct of selling vaporisers. Magistrate Young also highlighted the sheer volume of vaporisers seized in the matter – showing an obvious ongoing commercial operation.

Magistrate Young observed that such conduct was to be denounced by the court, 'particularly due to the risks of nicotine use, and particularly to young people.'¹¹⁹ Magistrate Young referred to the work of the World Health Organization, which 'makes it clear that the use of personal vaporisers containing nicotine exposes people generally, and young people particularly, to health risks that are otherwise avoidable.'¹²⁰ Magistrate Young emphasized that 'the protection of the community' is a consideration relevant to sentencing.¹²¹ Magistrate Young said that it was appropriate to record a conviction as 'part of the denunciation of this conduct and particularly so where there is a significant moral culpability upon the company having previously been warned about this conduct and there being some information before the Court that vaporisers were sold to a 13 and 15 year old.'¹²² Magistrate Young emphasized that there is a 'need to protect young people from themselves.'¹²³ Magistrate Young explained that the

¹¹⁹ *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

¹²⁰ *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

¹²¹ *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

¹²² *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

¹²³ *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate's Court, Magistrate Young, 18 April 2023).

‘recording of a conviction forms part of the Court’s strong denunciation of this conduct.’¹²⁴

The public health unit noted: ‘During sentencing, the magistrate referenced statements indicating that children had purchased vapes from the business and denounced the conduct for exposing young people to health risks that are avoidable.’¹²⁵ Metro South Health Director of Environmental Health Melinda Lennon hopes the successful prosecution and penalty deters others from engaging in the illegal supply of vapes containing nicotine.¹²⁶ ATO Assistant Commissioner Jade Hawkins said that partner agencies in creating ‘a level playing field in the retail sector’.¹²⁷ She commented: ‘Retailers choosing to become involved in the sale of illegal tobacco products gain an unfair price advantage over honest businesses who are doing the right thing.’¹²⁸

The Queensland Government observed that it has been working on further joint operations to disrupt the illegal supply on illegal e-cigarettes and tobacco products.¹²⁹

The Queensland Government refers to Operation Harvesthome.¹³⁰ On 8 August 2023, Queensland Health and the Queensland Police Service worked with Australian Border Force (ABF), Australian Federal Police, Therapeutic Goods Administration (TGA), Victoria Police and New South Wales Police Force (NSWPF) to execute warrants at 11 properties across South-East Queensland, Tweed Heads and Coffs Harbour regions. An estimated street value of \$5.3 million of suspected nicotine vaping products were seized

¹²⁴ *Police v. M&R Trading Pty Ltd* MAG-00076351/22 (8) (Holland Park Magistrate’s Court, Magistrate Young, 18 April 2023).

¹²⁵ Staff Writers, ‘Brisbane Convenience Store to Pay over \$88,000 for Illegally Selling Vapes with Nicotine’, ABC News, 11 May 2023, <https://www.abc.net.au/news/2023-05-11/brisbane-store-illegal-vapes-nicotine-fined-88000/102328362>

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Queensland Government, *Response to Report No. 38, 57th Parliament, Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, 25 October 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242>

¹³⁰ Ibid.

by Queensland Health, TGA and NSWPF. Significant amounts of cash and illicit tobacco were also seized.

The Queensland Government also notes Operation Aberdeen.¹³¹ On 29 August 2023, more than 150 officers across the Crime and Corruption Commission, Queensland Police Service, Queensland Health, Australian Taxation Office, TGA and ABF executed warrants at 15 residential, retail and commercial locations in Logan, the Redlands and Ipswich. More than 60,000 e-cigarettes with an estimated street value of \$1.8 million were seized. Significant amounts of cash and illicit tobacco were also seized.

The Crime and Corruption Commission Queensland chair, Bruce Barbour, commented on Operation Aberdeen:

Organised crime will permeate and infiltrate industries to exploit opportunities where there is the potential or actual realisation of securing massive profits from their illegal activities. There has been well-documented infiltration and involvement of criminal syndicates in other industries over the years and it is concerning to see evidence of criminal activity manifesting in the tobacco and vape industry.¹³²

Barbour noted: ‘Many in the community may not realise when purchasing cheap or under the counter tobacco products or vapes that they could be funding organised crime, who then go on to use these ill-gotten financial gains to fund other criminal enterprises’.¹³³

There were further reflections on Operation Aberdeen by various participants in the action. QPS Major and Organised Crime Squad Detective Acting Inspector Russell Joyce commented that inter-agency collaboration is crucial in dismantling alleged criminal syndicates: ‘This result is an example of how a unified investigation can take

¹³¹ Ibid.

¹³² Crime and Corruption Commission Queensland, ‘Multi-million-dollar money laundering investigation smashes illicit tobacco and vape supply’, Press Release, 31 August 2023, <https://www.ccc.qld.gov.au/news/multi-million-dollar-money-laundering-investigation-smashes-illicit-tobacco-and-vape-supply>

¹³³ Ibid.

illicit products off our streets and put alleged offenders before the court.’¹³⁴ Australian Border Force Commander Special Investigations Penny Spies praised the effective and close multi-agency collaboration: ‘It is critical that we continue to work together to shatter the business model of these syndicates – particularly given the serious criminal activity that they fund through the sale of such products.’¹³⁵ Australian Tax Office Deputy Commissioner John Ford said growing or selling illicit tobacco is a serious offence: ‘We are committed to removing funds that are gained from criminal activities, including growing illicit tobacco.’¹³⁶ Professor Anthony Lawler, Deputy Secretary of Health Products Regulation at the Department of Health and Aged Care, and head of the TGA said: ‘The TGA is working with state regulators and other federal agencies as part of strong action to combat the supply of unlawful vaping products.’¹³⁷

In August 2023, the Therapeutic Goods Administration seized 40,000 vapes as part of a multi-agency operation in Queensland.¹³⁸ This action was part of a major crime investigation into money laundering, illicit tobacco and nicotine vaping products involving the Queensland Crime and Corruption Commission, Queensland Police, Queensland Health, Australian Border Force and the Australian Taxation Office.

The Therapeutic Goods Administration has also been taking legal action in respect of unlawful advertising of e-cigarettes. In the case of *Secretary, Department of Health and Aged Care v Vapor Kings Pty Ltd* [2023] FCA 1297, Abraham J of the Federal Court of Australia ordered Vapor Kings Pty Ltd to pay \$4.9 million for unlawfully advertising nicotine vaping products, in breach of the *Therapeutic Goods Act* 1989 (Cth).¹³⁹ The court also ordered Mr Kandakji, the Director of Vapor Kings Pty Ltd, to pay \$100,000 in penalties for failing to prevent Vapor Kings’ breaches of the Act. Reflecting on the case, Professor Anthony Lawler, Deputy Secretary of Health Products Regulation and

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Therapeutic Goods Administration, ‘TGA seizes 40,000 vapes as part of multi-agency operation in Queensland’, Press Release, 31 August 2023, <https://www.tga.gov.au/news/media-releases/tga-seizes-40000-vapes-part-multi-agency-operation-queensland>

¹³⁹ *Secretary, Department of Health and Aged Care v Vapor Kings Pty Ltd* [2023] FCA 1297.

head of the Therapeutic Goods Administration (TGA) at the Department of Health and Aged Care, said: ‘The TGA is working with state and territory regulators and other federal agencies as part of strong action to combat the unlawful advertising, import and supply of vaping products.’¹⁴⁰

In April 2024, Australian Border Force reported on its efforts in Queensland to reduce the trade in illicit vape products under new Federal regulations.¹⁴¹ Australian Border Force officers in Queensland have stopped almost 180,000 vape devices and 25,000 vape products from entering Australia. ABF Acting Commander Queensland Operations Jim Ley commented:

It is well established that the vast majority of vapes contain highly addictive nicotine. With flavours such as blueberry, mango and cola, and packaging featuring cartoon characters, they are deliberately marketed towards children and young adults. All Australian suppliers of vaping products should heed this notice. If you attempt to conceal imports of vapes, we will detect and intercept them.¹⁴²

The Australian Border Force noted the national figures in terms of border seizures: ‘Nationally, the ABF has seized more than 611,900 vape devices with an estimated street value in excess of \$16.7 million, in addition to more than 76,080 vape accessories.’¹⁴³

Recommendation 4

Queensland Health and the Queensland Police Service have been carrying out law enforcement action over the illegal sales of e-cigarettes and vapes – often in partnership and collaboration with other key agencies, such as the

¹⁴⁰ Therapeutic Goods Administration, ‘Vapor Kings Pty Ltd and a Director penalised a total of \$5 million for Advertising Nicotine Vaping Products’, Press Release, Department of Health and Aged Care, 27 October 2023, <https://www.tga.gov.au/news/media-releases/vapor-kings-pty-ltd-and-director-penalised-total-5-million-advertising-nicotine-vaping-products>

¹⁴¹ Australian Border Force, ‘Queensland ABF officers help stem the flow of vapes into Australia’, Australian Border Force, 26 April 2024, <https://www.abf.gov.au/newsroom-subsite/Pages/Queensland-ABF-officers-help-stem-the-flow-of-vapes-into-Australia.aspx>

¹⁴² Ibid.

¹⁴³ Ibid.

Therapeutic Goods Administration, Australian Border Force, the Australian Taxation Office, and the Australian Federal Police. The enhanced enforcement action in respect of illicit e-cigarettes and vaping has been producing substantive outcomes.

5. e-Cigarette Liability - New Offences and Enforcement Measures

Article 19 of the *WHO Framework Convention on Tobacco Control* 2003 provides: ‘For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.’¹⁴⁴ The Panama COP has established an expert group to examine the liability of the tobacco industry to better support parties in the implementation of Article 19 of the *WHO Framework Convention on Tobacco Control* 2003.¹⁴⁵

There has been extensive litigation over e-cigarettes and vaping in jurisdictions around the world. In the United States, there has been concerted action by State Attorney-Generals against the e-cigarette company Juul.¹⁴⁶ There have been major settlements, involving a number of states, including New York, Illinois, California, North Carolina, and Chicago. There has been legal action by school districts against Juul because of concerns about the impact of vaping on the health and education of children. There is also a multi-district litigation involving 5,100 lawsuits – involving class actions and individual personal injury cases.¹⁴⁷ There have also been lawsuits relating to how e-cigarette companies have targeted Indigenous First Nations in the United States.

In Canada, there has been ongoing litigation against Juul over the harm caused by e-cigarettes and vaping.¹⁴⁸ In 2019, a class action was filed against Juul Labs Canada Ltd

¹⁴⁴ Article 19 of the *WHO Framework Convention on Tobacco Control* 2003, Opened for Signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) <http://www.who.int/fctc/en/>

¹⁴⁵ World Health Organization, ‘WHO FCTC COP moves forward with decisions on human rights, liability, the environment, digital media, and the future of tobacco control’, 11 February 2024, <https://extranet.who.int/fctcapps/fctcapps/fctc/kh/legalchallenges/news/who-fctc-cop-moves-forward-decisions-human-rights-liability>

¹⁴⁶ Lauren Etter, *The Devil's Playbook: Big Tobacco, Juul, and the Addiction of a New Generation*, New York: Crown, 2021.

¹⁴⁷ ‘Status of Juul Lawsuits’, <https://www.drugwatch.com/e-cigarettes/lawsuits/>

¹⁴⁸ CBC News, ‘Lawsuit filed in B.C. Supreme Court seeks class action, damages against e-cigarette giant Juul’, *CBC News*, 30 September 2019, <https://www.cbc.ca/news/canada/british-columbia/lawsuit-filed-in-b-c-supreme-court-seeks-class-action-damages-against-e-cigarette-giant-juul-1.5303154>

and Juul Labs Inc. in the Supreme Court of British Columbia led by plaintiffs Jaycen Stephens and Owen Mann-Campbell.¹⁴⁹ The statement of facts related: ‘The Plaintiffs had been using a JUUL brand e-cigarette (‘Vaping’) since 2018 and subsequently experienced adverse health conditions as a result of vaping, including pulmonary disease.’¹⁵⁰

In Australia, the Federal Government, and State and Territory Governments have been seeking to enhance the range of offences and enforcement measures relating to e-cigarettes and vaping.

The new proposed Federal regime ‘introduces new offences and civil penalty provisions relating to the importation, domestic manufacture, supply, commercial possession and advertisement of vaping goods to support the reforms’.¹⁵¹ Moreover, ‘Exceptions to the offences and civil penalty provisions specify the circumstances in which importation, domestic manufacture, supply and commercial possession of legitimate therapeutic vaping goods for smoking cessation and the management of nicotine dependence is permitted in Australia’.¹⁵² According to the revised explanatory memorandum, ‘The intention of the new offences and civil penalty provisions is to deter unlawful conduct, arrest the alarming increase in the use of vapes in Australia, particularly among youth and young adults, and prevent a new generation of persons being exposed to dangerous chemicals, and developing nicotine dependence.’¹⁵³

The explanatory notes to the Queensland legislation observe: ‘Against the backdrop of this growing public health crisis, recent increases in enforcement efforts, including joint operations with co-regulators of illicit tobacco and vaping products, have revealed alarming information about the state of the illicit tobacco and vape trade and the tactics

¹⁴⁹ *Stephens and Mann-Campbell v. Juul Labs Canada, Ltd. and Juul Labs Inc.* (2019) Supreme Court of British Columbia, Action No. S 19110927.

¹⁵⁰ *Stephens and Mann-Campbell v. Juul Labs Canada, Ltd. and Juul Labs Inc.* (2019) Supreme Court of British Columbia, Action No. S 19110927.

¹⁵¹ Replacement Explanatory Memorandum for the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth).

¹⁵² Ibid.

¹⁵³ Ibid.

involved in illegal supply.’¹⁵⁴ The explanatory notes express about whether the current regime for enforcement provides adequate deterrence: ‘Gaps in state and national enforcement frameworks are being systematically exploited by serious organised crime groups, exposing the lack of any meaningful deterrence under current laws.’¹⁵⁵

In her explanatory speech to the Queensland Parliament, Health Minister Shannon Fentiman discusses the range of new offences and enforcement measures regarding e-cigarettes and vaping.¹⁵⁶ She comments:

The bill addresses the illegal trade of illicit nicotine products by prohibiting people supplying these products as part of a business activity. This includes all commercial operations from wholesalers and retailers to online businesses. Committing this offence can result in penalties of up to two years imprisonment or 2,000 penalty units, or both. The bill will prohibit people from possessing illicit nicotine products as part of a business activity. This offence is broad and will capture suppliers and wholesalers using underhanded and deceptive tactics to store illicit nicotine products at other locations, such as storage vehicles or sheds located near the retail store, to evade enforcement action. The penalty for possession is up to 12 months imprisonment or 1,000 penalty units, or both.¹⁵⁷

Fentiman noted: ‘The bill contains limited exceptions for certain suppliers, such as pharmacists, medical practitioners and nurse practitioners, who are permitted under the Commonwealth’s framework to possess or supply therapeutic vaping goods.’¹⁵⁸

Health Minister Shannon Fentiman observes that the bill seeks to align the penalties for the commercial supply and possession of illicit tobacco with those for illicit nicotine products:

¹⁵⁴ Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld), 1.

¹⁵⁵ Ibid., 1.

¹⁵⁶ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld)’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

To address these concerns, the bill aligns the penalties for commercial supply and possession of illicit tobacco with those for illicit nicotine products. This means a maximum of two years imprisonment or 2,000 penalty units, or both, for supply and up to 12 months imprisonment or 1,000 penalty units, or both, for possession.¹⁵⁹

The bill amends section 161 to provide that a person must not as part of a business activity, supply or possess illicit tobacco, to align it with the new provision regulating the supply and possession of illicit nicotine products. Fentiman commented: ‘By addressing the illicit tobacco trade, we are not only protecting public health but also weakening the grip of organised crime on our communities.’¹⁶⁰

The bill address the supply and possession of vaping products and other nicotine products. The bill seeks to insert new offences relating to the supply and possession of illicit nicotine products. The bill seeks to increase the current penalties for persons who supply and possess illicit tobacco as part of a business activity. The bill clarifies that the prohibition on commercial possession extends to an off-site premises, such as a storage shed or vehicle, if the premises is used for the purpose of storing or possessing illicit tobacco or illicit nicotine products. The bill include additional circumstances where an authorised person may, without the occupier’s consent or a warrant, enter a place.

Fentiman also noted that the bill sought to ensure that the various participants in the supply of illicit nicotine products were held accountable:

The bill will make it an offence for an employee to supply illicit nicotine products. This will also capture someone who claims not to be in an employment relationship—for example, a friend of the business owner working in the business. The bill also makes it an offence for adults to supply illicit nicotine products to children outside of a retail setting. For example, an adult cannot supply an illicit nicotine product to a friend or family member who is under 18. This ensures every person involved in the supply of these harmful products will be held accountable.¹⁶¹

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

The bill creates a new offence for an employee or a person acting on behalf of another person (for example, a family member or friend of the business owner working in the business) to supply illicit tobacco or illicit nicotine products in retail and wholesale outlets. The bill also creates a new offence for supplying illicit nicotine products to a child. The explanatory notes comment: ‘This offence is consistent with the main purpose of the Bill, which is to arrest and reverse the increasing uptake and use of recreational illicit nicotine products, especially among children, to protect them from the exposure and easy access to addictive and unsafe products.’¹⁶²

The Queensland bill will also introduce executive liability offences to ensure that executive officers of corporations who supply illicit tobacco and illicit nicotine products, and commit other key offences under TOSPA, can be held liable. The explanatory notes explain that this is a significant gap in the legislation at the moment:

There are currently no executive liability provisions within TOSPA. There are significant public health implications stemming from the commercial supply of illicit tobacco and illicit nicotine products. Attaching liability to a corporate supplier or wholesaler is not likely on its own to sufficiently promote compliance and have the desired deterrence effect. Anecdotally, non-compliant suppliers frequently act to obscure the responsible entities for offences in various ways, including through establishing complex business structures or changing corporate entities.¹⁶³

The explanatory notes explain: ‘It is appropriate to extend executive liability to these offences, as there is significant public harm caused by corporate offending as a result of the supply and possession of illicit nicotine products and illicit tobacco, the unlicensed supply of smoking products, and the supply of smoking products to children.’¹⁶⁴

¹⁶² Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld), 10.

¹⁶³ Ibid., 11.

¹⁶⁴ Ibid., 11.

Health Minister Shannon Fentiman observes that the bill will provide a power to close business premises, which continue trading in illicit nicotine products:

The current act lacks the power to close business premises. Seizing illicit products often fails to deter noncompliant suppliers, particularly those linked to organised crime who simply restock almost immediately and continue trading. To address this, the bill introduces a power allowing 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 extend this closure for up to six months. To further combat recidivist suppliers of illicit tobacco and nicotine products, the bill also empowers the chief executive to seek injunctions from the District Court. If a person is found supplying illicit products and it is deemed necessary in the public interest, the court can issue an injunction to stop the person from continuing their business.¹⁶⁵

The bill creates a power for the chief executive to order the interim closure of a premises from which illicit tobacco or illicit nicotine products are being supplied as part of a business activity, or from which a business is being carried on without a licence. The bill creates a power for the Magistrates Court to order closure for a longer stated period of up to six months, and ancillary offences relating to violating closure orders. The bill creates a power for the District Court to grant an injunction against a person who supplies illicit tobacco or illicit nicotine products as part of a business activity.

The explanatory notes to the legislation explain: ‘The power to order an injunction is intended to be a last resort tool to deal with those who continue to be non-compliant and when all other enforcement mechanisms have been exhausted’.¹⁶⁶ The explanatory notes observe: ‘This will restrain those operators from continuing to trade in illicit tobacco or illicit nicotine products pending the outcome of proceedings under TOSPA, noting the harm that can result in intervening months.’¹⁶⁷

¹⁶⁵ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld)’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹⁶⁶ Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld), 11.

¹⁶⁷ Ibid., 11.

The bill has a number of other minor, miscellaneous amendments to support enforcement. The bill provides that ice pipes and bongs, which are prohibited items under *Tobacco and Other Smoking Products Act 1998 (Qld)*, may be forfeited after seizure. The bill replaces the current requirement for seized goods to be returned within six months with a requirement that they be returned within 12 months. The bill seeks to clarify that for enforcing the illicit tobacco and illicit nicotine product provisions, police officers may exercise all the powers of an authorised person under the *Tobacco and Other Smoking Products Act 1998 (Qld)*. The bill also aims to clarify that section 234 of the *Tobacco and Other Smoking Products Act 1998 (Qld)*, which provides that only the chief executive of Queensland Health may commence a proceeding, refers to prosecutions, not other enforcement powers.

Recommendation 5

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* provides for additional offences and enforcement measures in respect of the illicit trade in e-cigarettes and vaping. Such measures are necessary and justified given the adverse impacts of e-cigarettes and vaping upon public health, children’s rights and education, and the environment.

6. Advertising, Promotion, and Sponsorship of Illicit Nicotine Products

Article 13 of the *WHO Framework Convention on Tobacco Control* 2003 promotes a comprehensive ban on tobacco advertising, promotion, and sponsorship: ‘Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.’¹⁶⁸

There has been a concern that the branding and marketing tactics employed in respect of smoking have been repurposed and deployed in respect of e-cigarettes and vaping. Dr Vinayak Prasad of the World Health Organization has observed: ‘The tobacco industry markets these products [e-cigarettes] just as they marketed traditional tobacco products decades ago – misleading the public about the associated risks and preying on children and adolescents.’¹⁶⁹ There has been a host of legal cases in a variety of jurisdictions (in the United Kingdom, the United States, Australia, and Canada), in which e-cigarette purveyors have been accused of making misleading and deceptive claims in respect of their products. Regulators have been increasingly taking action in respect of false advertising relating to e-cigarettes and vaping.

Australia’s National Tobacco Strategy 2023-2030 has a chapter focused on the elimination of all tobacco-related advertising, promotion, and sponsorship (Priority Area 6).¹⁷⁰ It also has a chapter dedicated to the topic of the regulation of e-cigarettes and vaping (Priority Area 9). The Strategy highlights that ‘the tobacco industry has continued widespread marketing of tobacco and novel nicotine products to non-smokers, contrary to this ‘harm reduction’ messaging’.¹⁷¹ The Strategy notes: ‘E-cigarette advertising occurs across a range of media channels that have broad reach

¹⁶⁸ Article 13 of the *WHO Framework Convention on Tobacco Control* 2003, Opened for Signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) <http://www.who.int/fctc/en/>

¹⁶⁹ Shanti Dad and Jon Ungeod-Thomas, ‘Lobbyists with Links to Big Tobacco fund Pro-Vaping Facebook Campaigns’, *The Guardian*, 18 June 2023, <https://www.theguardian.com/society/2023/jun/18/lobbyists-with-links-to-big-tobacco-fund-pro-vaping-facebook-campaigns>

¹⁷⁰ Department of Health and Ageing, *National Tobacco Strategy 2023–2030*, Canberra Australian Government, 2023, <https://www.health.gov.au/resources/publications/national-tobacco-strategy-2023-2030>

¹⁷¹ *Ibid.*, 24.

among young people, including print, websites and social media, and in retail stores.’¹⁷² The Strategy observes: ‘Among adolescents, there is evidence that exposure to e-cigarette marketing via social media is associated with an increase in e-cigarette uptake/initiation.’¹⁷³ Recommendation 9.6 requests Australian Governments to ‘prohibit advertising, promotion and sponsorship relating to e-cigarettes and other new and emerging products’.¹⁷⁴

In his second reading speech on the federal bill, the Hon. Mark Butler MP highlighted the false and misleading advertising being used to promote e-cigarettes and vaping:

Vapes are being deliberately marketed and supplied to young Australians, with colours, flavours and packaging specifically designed to attract them. Vaping goods are aggressively promoted by the vaping industry in online advertising and other youth focused media channels. Many vapes are deliberately mislabelled as containing 'no nicotine' or 'zero nicotine' or even unlabelled to avoid detection and seizure. However, the Therapeutic Goods Administration, our TGA, has reported that approximately 90 per cent of all tested vapes are found to contain nicotine, no matter what appears on the label.¹⁷⁵

Butler stresses that ‘advertising of vapes to the public will be banned in almost all instances.’¹⁷⁶ He observed: ‘Offences and civil penalties will apply to this conduct and operate in conjunction with bans on advertising in the new tobacco control laws that this parliament passed last year.’¹⁷⁷

The proposed Federal bill prohibits any advertising relating to vaping goods, unless an exception applies, or an authorisation is given by the Secretary of the Department of Health and Aged Care. The Federal offences carry a maximum penalty of 5,000 penalty units, 7 years imprisonment, or both.

¹⁷² Ibid., 24.

¹⁷³ Ibid., 24.

¹⁷⁴ Ibid., 25.

¹⁷⁵ Hon. Mark Butler MP, ‘Second Reading Speech on the *Therapeutic Goods and Other Legislation (Vaping Reforms) Bill 2024 (Cth)*’, Hansard, House of Representatives, Australian Parliament, 21 March 2024, 2.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

The Queensland Parliament's Health and Environment Committee discussed the need for greater regulation of e-cigarette advertising.¹⁷⁸ The Committee was of the view that there could be improvements in regulation of e-cigarette advertising in law and in practice. The Committee explored comparative experiences. The Committee observed: 'Research suggests that there is a significant degree of non-compliance with existing bans on advertising e-cigarettes via social media.'¹⁷⁹ The Committee noted: 'For example, a recent study in New Zealand found that despite the new advertising ban, e-cigarette and tobacco companies 'still use social media to stimulate co-created content, reward referrals and maintain associations with youth-oriented events, such a music festivals'.¹⁸⁰ The Committee noted: 'A recent study from the UK found that although there is a high level of compliance with their advertising ban in traditional advertising channels, compliance with regards to social media advertising was poor.'¹⁸¹

Since the publication of the report, it should be noted that the Therapeutic Goods Administration has markedly ramped up action against the unlawful advertising of nicotine vaping products.¹⁸²

In her introductory speech to the Queensland bill, the Health Minister Shannon Fentiman expresses concern over advertising, promotion and display of illicit nicotine products:

The rise of illicit nicotine products has led to increased advertising efforts targeting children and young adults. These products are often promoted as fun and cool, with attractive

¹⁷⁸ Health and Environment Committee, *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, Report No. 38, 57th Parliament, Queensland Parliament, 2023, 83-84, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2023/5723T1212-BEB3.pdf>

¹⁷⁹ Ibid., 84.

¹⁸⁰ Ibid., 84.

¹⁸¹ Ibid., 94.

¹⁸² See for instance - *Secretary, Department of Health and Aged Care v Vapor Kings Pty Ltd* [2023] FCA 1297, and Therapeutic Goods Administration, 'Vapor Kings Pty Ltd and a Director penalised a total of \$5 million for Advertising Nicotine Vaping Products', Press Release, Department of Health and Aged Care, 27 October 2023, <https://www.tga.gov.au/news/media-releases/vapor-kings-pty-ltd-and-director-penalised-total-5-million-advertising-nicotine-vaping-products>

packaging and flavours like bubblegum, ice cream and tutti-frutti. Evidence shows that advertising makes children and young adults more likely to try these products and lowers their perception of associated risks. To combat this, the bill introduces new offences specifically prohibiting the advertising, promotion and display of illicit nicotine products, with penalties up to 140 penalty units.¹⁸³

The explanatory notes observe: ‘It is important that the public’s exposure to the advertisement, promotion and display of illicit nicotine products, which poses a serious risk to public health, is limited to combat the sale and uptake of these products.’¹⁸⁴

The explanatory notes comment: ‘The Bill therefore amends TOSPA to provide new offences for a person, who as part of a business activity, displays, advertises, or promotes illicit nicotine products.’¹⁸⁵ The explanatory notes observes: ‘Each offence carries a maximum penalty of 140 penalty units.’¹⁸⁶ The explanatory notes comment: ‘This new framework is designed to protect consumers from the advertisement of illicit nicotine products and is intended to apply to a broad range of media platforms, extending to social media and other forms of advertising, promotion and sponsorship.’¹⁸⁷

The explanatory notes also comment: ‘The Bill provides that these offences do not apply if the act constituting the offence is authorised or permitted under the Commonwealth Therapeutic Goods Act.’¹⁸⁸ Moreover, ‘Authorised advertisements under that Act include if the Secretary of the Department of Health and Aged Care authorises advertising or specified representations on labels or packaging.’¹⁸⁹

¹⁸³ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld)’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

¹⁸⁴ Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld), p. 12.

¹⁸⁵ Ibid., 12.

¹⁸⁶ Ibid., 12.

¹⁸⁷ Ibid., 12.

¹⁸⁸ Ibid., 12.

¹⁸⁹ Ibid., 12.

In the Statement of Compatibility with Human Rights, Fentiman observed: ‘The limitation on the freedom of expression imposed by the Bill will achieve the purpose of protecting public health by ensuring action can be taken against those who advertise and promote illicit nicotine products with the aim of increasing and normalising their use.’¹⁹⁰ She comments: ‘This prohibition is intended to reduce the prevalence and effectiveness of these promotional activities, reduce the perception that illicit nicotine products are “cool” and harmless, and ultimately reduce their use and the resultant adverse public health impacts.’¹⁹¹ It has long been recognized that governments can take regulatory action to deal with misleading and deceptive advertising under consumer law, health law, and media law, and other regulatory fields.

Recommendation 6

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) provides for new offences for the display, advertising, and promotion of new illicit nicotine products. This framework is intended to apply to a broad range of media platforms, and extend to social media and other forms of advertising, promotion, and sponsorship.

¹⁹⁰ Statement of Compatibility with *Human Rights for Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld).

¹⁹¹ Ibid.

7. Transparency of the Tobacco Industry and e-Cigarette Entities

The tobacco industry has often acted as ‘Merchants of Doubt’ – trying to undermine scientific evidence and public health research in order to forestall or block regulatory reform.¹⁹² The tobacco industry has often lacked transparency about its operations.

Article 10 of the *WHO Framework Convention on Tobacco Control* 2003 deals with regulation of tobacco disclosures: ‘Each Party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products.’¹⁹³

The Federal Government has sought to mandate greater transparency in respect of the operations of the tobacco industry. Chapter 5 of the *Public Health (Tobacco and Other Products) Act* 2023 (Cth) deals with reporting and information disclosure. Such measures will provide much needed transparency about the operation of the Australian tobacco market – particularly in respect of its data on sales volumes, pricing for specific brands and products, and information on tobacco advertising, promotion, and sponsorship activities.

Section 215 of the *Tobacco and Other Smoking Products Act* 1998 (Qld) provides that if an authorised person reasonably believes an offence under the Act has been committed and a person may be able to give information about the offence, the authorised person may require the person to give information about the offence to the authorised person. It is an offence to fail to comply with this requirement. Under section 216, it is an offence to provide false or misleading information to an authorised person. The penalty under both provisions is a maximum of 50 penalty units.

¹⁹² Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming*, New York: Bloomsbury Press, 2010.

¹⁹³ Article 10 of the *WHO Framework Convention on Tobacco Control* 2003, Opened for Signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) <http://www.who.int/fctc/en/>

The Queensland Government has sought to increase penalties for the provision of false or misleading information, and failing to give information. The explanatory notes observe:

Queensland Health Public Health Units advise that staff working in premises selling illicit tobacco and vaping products routinely claim to have only just commenced working, or that they are temporarily volunteering, and do not know their employer or who they are helping, how to contact them or the details about any persons, processes or suppliers connected with the business.¹⁹⁴

The explanatory notes observe: ‘To provide further deterrence against this behaviour, and enable prosecutions against wilfully non-compliant suppliers, the Bill increases the penalties for these offences from a maximum of 50 penalty units to a maximum of 100 penalty units.’¹⁹⁵

Given the lack of co-operation that it has received from the e-cigarette industry, the Queensland Government should contemplate further reporting obligations and information disclosure by the e-cigarette industry. Such measures will provide much needed transparency about the operation of the Australian e-cigarette market – particularly in respect of its data on sales volumes, pricing for specific brands and products, and information on advertising, promotion, and sponsorship activities.

Recommendation 7

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) provides for additional penalties for the provision of false and misleading information by suppliers of e-cigarettes. There should be further reporting obligations and information disclosure by the e-cigarette industry.

¹⁹⁴ Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*.

¹⁹⁵ Ibid.

8. Human Rights and e-Cigarette Regulation

At the 10th Conference of the Parties for the *WHO Framework Convention on Tobacco Control* in Panama City in February 2024, there was a human rights decision on the contribution of the WHO FCTC to the promotion and fulfilment of human rights.¹⁹⁶ It recognized ‘the obligation of States to respect, protect, promote and fulfil the human rights of everyone, including by preventing and addressing the health, social, environmental and economic consequences resulting from the tobacco consumption and exposure to tobacco smoke, as well as its supply.’¹⁹⁷

There has been a Statement of Compatibility regarding human rights produced for the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*.¹⁹⁸ The Minister for Health Shannon Fentiman observed: ‘In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019 [Qld]*.’¹⁹⁹ There are a number of human rights mentioned as relevant to the bill – including the right to freedom of movement; the right to property; the right to privacy and reputation; the right to liberty and security of person; the right to a fair hearing; and rights in criminal proceedings. Fentiman notes: ‘Where rights are potentially limited by the Bill, I have provided an analysis of the justification.’²⁰⁰ After engaging in an analysis of various rights, Fentiman concludes: ‘In my opinion, the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* is compatible with human rights under the *Human Rights Act* because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act*.’²⁰¹

¹⁹⁶ *Contribution of the WHO FCTC to the Promotion and Fulfillment of Human Rights*, FCTC/COP10(20), 10 February 2024.

¹⁹⁷ Ibid.

¹⁹⁸ Statement of Compatibility with *Human Rights for Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)*.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

It should also be noted that the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) enhances human rights – particularly the right to life, the right to health, children’s rights, Indigenous rights, as well as a number of other fundamental rights.

The Queensland Human Rights regime recognizes a right to life. Section 16 of the *Human Rights Act 2019* (Qld) provides: ‘Every person has the right to life and has the right not to be arbitrarily deprived of life.’ The right to life requires public entities to protect the right to life. The right to life has been interpreted broadly in legal disputes. In *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21,²⁰² Kingham observed that the right of life was seen as ‘the supreme right’ and ‘under international law it is absolute.’ The right to life is informed by Article 6 of the *International Covenant on Civil and Political Rights (ICCPR)*. The global tobacco epidemic has posed a threat to the right to life, arbitrarily ending the lives of millions. There has been a steep rise of hospitalizations linked to the use of vaping products – including a number of deaths.²⁰³

Queensland has a right to health services – rather than a full right to health. Section 37 of the *Human Rights Act 2019* (Qld) deals with the right to health services. The Queensland Human Rights Commission says that the right could be relevant to ‘access to information on the health and well-being of families’, ‘access to health facilities, goods’, and ‘health services for particular groups.’²⁰⁴ Conceivably, the right to health services could include services related to tobacco control and e-cigarette regulation, and the provision of accurate information about the health impacts of tobacco use and e-cigarette use. The right to health under Article 12 of the *ICESCR* is more broadly framed. The Queensland Government should contemplate the full recognition of the right to health in the future. The *Tobacco and Other Smoking Products (Vaping) and*

²⁰² *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21

²⁰³ Yale Medicine, ‘E-cigarette, or Vaping Product, Use Associated Lung Injury (EVALI)’, <https://www.yalemedicine.org/conditions/evali>

²⁰⁴ Queensland Human Rights Commission, ‘Right to Health Services’, <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-health-services>

Other Legislation Amendment Bill 2024 (Qld) is very much squarely concerned with the promotion and the protection of the public health of Queenslanders.

The Queensland Human Rights Regime recognizes the rights of children (section 26 of the Act). Action in respect of tobacco control and e-cigarette regulation reflects the obligation to ensure the survival and development of children under Article 6(2) of the *Convention of the Rights of the Child* (CRC); and the obligation to protect children from illicit use of narcotic drugs and psychotropic substances under Article 33 of the *Convention of the Rights of the Child*.

Federal Health Minister Mark Butler has commented that the vaping industry and the tobacco industry have been targeting children and youth to create ‘a new generation addicted to nicotine’.²⁰⁵ Senator Tony Sheldon of the Australian Labor Party has warned: ‘Big tobacco is moulding the minds of our children, one puff at a time.’²⁰⁶

State Health Minister Shannon Fentiman has told Queensland Parliament: ‘For too long vape manufacturers have run rampant, peddling their poisonous products to children.’²⁰⁷ The Statement of Compatibility with Human Rights for the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) highlights a strong focus on the protection of the rights of children and young adults:

Vaping has emerged as a significant public health concern, particularly among children and young adults. Mounting evidence suggests that vaping poses serious health risks, including respiratory illness, cardiovascular problems, and addiction to nicotine. In 2023, results from the Australian Secondary Students’ Alcohol and Drug Survey confirmed there has been a rapid uptake of vaping among adolescents, with use in the 2022/23 survey quadrupling since data

²⁰⁵ Natasha May, ‘Health Minister accuses Vaping Lobby of Targeting Children after Industry Ad Campaign against Ban’, *The Guardian*, 17 February 2024, <https://www.theguardian.com/society/2024/feb/17/health-minister-accuses-vaping-lobby-of-targeting-children-after-industry-ad-campaign-against-ban>

²⁰⁶ Senator Tony Sheldon, ‘Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth)’, Hansard, Australian Senate, 25 June 2024, 94.

²⁰⁷ Hon. Shannon Fentiman, ‘Ministerial Statement: Vaping’, Hansard, Queensland Parliament, 24 August 2023, 2379.

was last collected in 2017. Thirty percent of people aged 12-17 have tried vaping. For the first time in 30 years, the survey shows young people's susceptibility to smoking has increased.²⁰⁸

There was testimony from children, youth, teachers, principals, and parents at the Health and Environment Committee inquiry into vaping as to how e-cigarette use was adversely affecting children's rights. The Queensland Youth Policy Collective, for instance, sought 'to give voice to that silent majority by arguing for the increased regulation or banning of these products on the basis that e-cigarettes are harmful to health, harmful to young people in particular and damage the environment.'²⁰⁹ In this context, the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) represents an effort by the Queensland Government to provide for the effective protection of children's rights from the purveyors of e-cigarettes.

It should also be noted that the Queensland Human Rights regime recognizes a right to education under section 36 of the *Human Rights Act 2019* (Qld). There have been persistent complaints that e-cigarette use has been disruptive of education and schooling in Queensland, and elsewhere in the country. As State Education Minister, Grace Grace observed: 'Often our young people have absolutely no idea about the dangerous and toxic substances hidden inside vapes, which are shamelessly targeted at children with colourful packaging and sweet flavours.'²¹⁰ She commented:

I am working with my department to ensure it and schools across the state are playing their vital role when it comes to tackling this scourge. Vaping is already banned in all Queensland state schools and within five metres of their boundaries. We also recently passed legislation to strengthen tobacco laws and increase smoke-free places, which will include school car

²⁰⁸ Statement of Compatibility with *Human Rights for Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld).

²⁰⁹ Queensland Youth Policy Collective, 'Submission to *Vaping – An Inquiry into Reducing rates of e-Cigarette use in Queensland. An Aboriginal and Torres Strait Islander Perspective*', Submission No. 70, Health and Environment Committee, Queensland Parliament, 2023.

²¹⁰ Hon. Grace Grace, 'Ministerial Statement: Vaping', Hansard, Queensland Parliament, 24 August 2023.

parks, but we do not hide from the fact that vaping is happening in our schools and we are doing all we can to combat it.²¹¹

She discussed state and Federal efforts to provide public health education in respect of e-cigarettes: ‘I have discussed vaping with my ministerial student advisory council and, at the national level, education ministers have agreed to work with health ministers on a national campaign educating young people on the harms posed by the marketing and use of e-cigarettes.’²¹²

At a Federal level, Senator Marielle Smith (ALP, South Australia) – the chair of the Federal inquiry into vaping - has highlighted the negative impact of vaping upon school students:

Big tobacco is setting our kids up to become addicted. It's a business model rolled out before, with devastating consequences and devastating harm, and it is not okay. Our committee heard from teachers and principals about the impact of nicotine addiction on their students—how it impacted their learning, how it impacted school harmony—and the burden it was placing on teachers because of the enforcement role required of them and because of having to deal with this in their classrooms. Teachers told us that they were struggling. They didn't want to be policing the schoolyard for these vapes. They didn't want to be experiencing the disharmony in schools. We heard from health experts about the impact of nicotine addiction on the health of young people, and of how it can manifest in things like aggression, anxiety, sleeplessness and depression. These are terrible consequences being borne by our youngest citizens.²¹³

She emphasized that law reform is ‘fundamentally it is about protecting young Australians from the dangers of nicotine and the harms of addiction’.²¹⁴ She stressed: ‘Those harms are real, they are present and they are hurting young people in Australia and their families.’²¹⁵

²¹¹ Ibid.

²¹² Ibid.

²¹³ Senator Marielle Smith, ‘Second Reading Speech on the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Cth)’, Hansard, Australian Senate, 25 June 2024, 90.

²¹⁴ Ibid.

²¹⁵ Ibid.

The Queensland Human Rights regime also recognizes Indigenous rights. Section 28 of the *Human Rights Act 2019* (Qld) focuses on cultural rights of Aboriginal and Torres Strait Islander peoples. Amongst other things, ‘Aboriginal peoples and Torres Strait islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.’ The Queensland Aboriginal and Islander Health Council and the National Centre for Aboriginal and Torres Strait Islander Wellbeing Research at the Australian National University made a submission to the Queensland inquiry into vaping and e-cigarettes.²¹⁶ The submission commented that e-cigarette use was destructive of Indigenous health, culture, and the environment:

For Aboriginal and Torres Strait Islander peoples, good health is more than the absence of disease. Health is a holistic concept that includes physical, social, emotional, cultural and spiritual wellbeing, for both the individual and the community. E-cigarettes present many significant harms to the health and wellbeing of Aboriginal and Torres Strait Islanders, including poisoning, lung injury, nicotine addiction, as well as the burns and injuries from the lithium batteries that power these devices. This is on top of the unacceptable risk that vaping may lead to the uptake of smoking. Further, Caring for Country is often undermined through the disposable nature of e-cigarettes, and tobacco filters as the most commonly littered item worldwide, with 4.5 trillion filters littered in the environment each year.²¹⁷

The submission observed: ‘Aboriginal and Torres Strait Islander peoples are disproportionately harmed by commercial tobacco, and directly targeted by the Tobacco Industry in promoting e-cigarettes.’²¹⁸ The submission emphasized: ‘Strong commitment by the Queensland Government to support and enforce the e-cigarette regulation as described is critical to preventing additional harms, including further uptake of e-cigarettes by nonsmokers.’²¹⁹ In other words, legislative action on tobacco control and e-cigarette regulation will help protect the human rights of Indigenous Queenslanders.

²¹⁶ Queensland Aboriginal and Islander Health Council and the National Centre for Aboriginal and Torres Strait Islander Wellbeing Research at the Australian National University, ‘Submission to *Vaping – An Inquiry into Reducing rates of e-Cigarette use in Queensland. An Aboriginal and Torres Strait Islander Perspective*’, Submission No. 77, Health and Environment Committee, Queensland Parliament, 2023.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

Section 15 of the *Human Rights Act* 2019 (Qld) provides for the right to recognition and equality before the law. The *Convention on the Elimination of All Forms of Discrimination against Women* provides that State Parties shall take appropriate measures to eliminate discrimination against women in the field of health care. Kelsey Romeo-Stuppy and colleagues have observed that ‘the tobacco industry violates the human rights of women and girls.’²²⁰ There has also been concern as to how the e-cigarette industry has targeted women and girls in its advertising and other marketing.

Recommendation 8

The Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld) enhances human rights in Queensland – most notably, the right to life, the right to health services, the rights of children, the right to education, Indigenous rights, and the right to equality.

²²⁰ Kelsey Romeo-Stuppy and others, ‘Women, Tobacco and Human Rights’ (2021) 19 *Tobacco Induced Diseases* 48.

9. The Environmental Impacts of E-Cigarettes

Article 18 of the *WHO Framework Convention on Tobacco Control* 2003 discusses the importance of the protection of the environment: ‘In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.’²²¹

At an international level, the World Health Organization has been concerned not only with the public health harms of smoking, but also its ill environmental effects.²²² Likewise, the World Health Organization has been worried about the public health consequences of vaping and e-cigarettes – as well as its environmental impacts.²²³ Dr Vinayak Prasad – programme manager of the WHO Tobacco Free Initiative – and Andy Rowell – a senior research fellow at the University of Bath – have sought to analyse the greenwashing tactics and strategies of Big Tobacco.²²⁴ Prasad and Rowell commented: ‘Vaping, electronic tobacco and nicotine products are creating a new wave of pollution, from the mining of materials for batteries to metal and plastic waste leaching into soil and water.’²²⁵

At a Federal level, the Australian Government’s Environment Minister Tanya Plibersek has expressed her concerns about the negative environmental impact of e-cigarettes and vaping. In 2023, Plibersek encouraged Australians to give up vaping – not only on health grounds, but because of environmental concerns: ‘Obviously it’s bad for your

²²¹ Article 18 of the *WHO Framework Convention on Tobacco Control* 2003, Opened for Signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) <http://www.who.int/fctc/en/>

²²² World Health Organization, ‘WHO raises alarm on Tobacco Industry Environmental Impact’, Press Release, World Health Organization, 31 May 2022, <https://www.who.int/news/item/31-05-2022-who-raises-alarm-on-tobacco-industry-environmental-impact>

²²³ World Health Organization, *Tobacco: Poisoning Our Planet*, Geneva: World Health Organization, 2022, <https://www.who.int/publications/i/item/9789240051287>

²²⁴ Vinayak Prasad and Andy Rowell, ‘Big Tobacco is Killing the Planet with Plastics. No Smokescreen should be allowed to Hide That’, *The Guardian*, 26 May 2022, https://www.theguardian.com/global-development/2022/may/26/big-tobacco-is-killing-the-planet-with-plastics-no-smokescreen-should-hide-that-acc?CMP=share_btn_tw

²²⁵ Ibid.

health, but it's also terrible for the environment.'²²⁶ Plibersek observed: 'Every vape that goes into landfill dumps plastic, poisons, nicotine salts, heavy metals, lead, mercury, and flammable lithium-ion batteries into the environment.'²²⁷ She called for Australians to 'stop a new generation from picking up a habit that is even worse for the environment than tobacco'.²²⁸ Environmental groups have supported this call, asking for urgent action on hazardous waste from e-cigarettes.²²⁹

In 2024, Tanya Plibersek discussed her concerns about the health and environmental impacts of e-cigarettes and vaping in a second reading speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth).²³⁰ She expressed her worries about the environmental impacts of e-cigarettes and vaping:

There is no safe way of dealing with the waste that is created by these single-use vapes. The lithium-ion batteries and the chemical contamination of the devices mean that they can't be recycled. You'd need to manually disassemble them to remove the lithium-ion batteries. You can't do that. Without banning them, they will continue to end up in landfill. In landfill, the plastic will last for a thousand years. The toxic chemicals leach into the soil and the waterways, the devices degrade and microplastics enter the environment. The average Australian consumes a credit card's worth of microplastics every week.²³¹

Plibersek observed: 'People "wisecycle" the vapes into the plastic, thinking that they'll be recycled.'²³² She commented: 'Instead what happens is that they're compacted in the recycling equipment, the lithium-ion batteries explode and the recycling facility catches

²²⁶ Josh Butler, 'Australia is "Losing the Public Health Battle" against Vaping, AMA says', *The Guardian*, 17 January 2023, <https://www.theguardian.com/australia-news/2023/jan/17/australia-is-losing-the-public-health-battle-against-vaping-ama-says>

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Henry Belot, 'Environment Groups call for Urgent Action on Hazardous Waste from E-cigarettes', *The Guardian*, 13 February 2023, <https://www.theguardian.com/australia-news/2023/feb/13/environment-groups-call-for-urgent-action-on-hazardous-waste-from-e-cigarettes>

²³⁰ Hon. Tanya Plibersek MP, 'Second Reading Speech on the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cth)', Hansard, House of Representatives, Australian Parliament, 27 March 2024, 101.

²³¹ Ibid.

²³² Ibid.

fire.’²³³ Plibersek commented: ‘The National Waste and Recycling Industry Council has indicated that an average of three fires per day in Australia are attributed to batteries being incorrectly disposed off.’²³⁴ She warned: ‘Lithium ion batteries create intense and persistent fires that are difficult and dangerous for firefighters to extinguish.’²³⁵ Plibersek concluded: ‘When these items enter our environment, they are environmentally catastrophic.’²³⁶

At a State level, the Health and Environment Committee of the Queensland Parliament focused in particular on the environmental impacts of e-cigarettes and vaping.²³⁷ Chapter 7 of *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland* focuses on waste management and the environmental impacts of e-cigarette products.²³⁸ The Committee commented: ‘The committee notes that the Queensland Government may need to take steps to reduce the environmental impact of e-cigarettes, and manage e-cigarette waste effectively, even with the implementation of the proposed ban on disposable e-cigarettes announced by the Australian Government in May 2023.’²³⁹ The Committee also commented: ‘The committee also notes the opportunities created by the introduction of a licensing scheme for the sale of smoking products under the *Tobacco and Other Smoking Products Act 1998* [Qld], as well as the potential to connect efforts to reduce the environmental impact of e-cigarettes with prevention and cessation campaigns.’²⁴⁰ The Committee observed: ‘The committee considers that there would be significant value in exploring the feasibility of introducing a deposit, return and recycling scheme for prescription vaping products, and the introduction of product design requirements that would facilitate recycling and/or safe disposal.’²⁴¹ Under

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Health and Environment Committee, *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*, Report No. 38, 57th Parliament, Queensland Parliament, 2023, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2023/5723T1212-BEB3.pdf>

²³⁸ Ibid.

²³⁹ Ibid., 66-67.

²⁴⁰ Ibid., 67.

²⁴¹ Ibid., 67.

Recommendation 14, ‘The committee recommends that the Queensland Government investigate: ‘the feasibility of introducing a return and recycling scheme for vaping products’ and ‘the introduction of product design requirements that would facilitate recycling and/or safe disposal of e-cigarettes and their batteries.’²⁴²

In response to the inquiry report, the Queensland Government noted the ‘environmental impact of electronic cigarettes.’²⁴³ The Queensland Government also noted ‘the Australian Government’s plans to ban disposable and single use vapes and introduce stricter product standards for all e-cigarettes.’²⁴⁴ The Queensland Government observed: ‘The *Waste Reduction and Recycling Act* 2011 (Qld) contains provisions that allow for the development of voluntary, co-regulatory or mandatory product stewardship schemes in Queensland.’²⁴⁵ The Queensland Government also commented: ‘Queensland Health will explore options for safe disposal of e-cigarettes that are seized by Queensland Health during compliance and enforcement action.’²⁴⁶

To help address the issue of vape littering, the Bill also amends the *Waste Reduction and Recycling Act* 2011 (Qld) to create a specific dangerous littering offence for depositing a vaping device or vaping accessory (as defined under TOSPA).

The explanatory notes to the bill highlight the empirical evidence of the latest *2023 Clean Up Australia Report*:

According to the *2023 Clean Up Australia Report*, vapes were collected at 22 percent of surveyed sites, an increase from 2022 where vapes were found at only 10 percent of surveyed sites. Additionally, litter audits conducted across more than 300 sites in Queensland indicate that between November 2022 (when vapes were added as a litter category) and October 2023,

²⁴² Ibid., 67.

²⁴³ Queensland Government, ‘Response to Health and Environment Committee, Report No. 38, 57th Parliament, *Vaping: An Inquiry into Reducing Rates of e-Cigarette Use in Queensland*’, 25 October 2023, <https://documents.parliament.qld.gov.au/tp/2023/5723T1738-22D3.pdf>

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

the occurrence of vape littering has doubled in metropolitan areas, with the highest concentration occurring in car parks, residential areas, near waterways and along highways.²⁴⁷

The explanatory notes also discuss the environmental dangers of e-cigarettes and vaping:

Littered vaping devices and vaping accessories are known environmental hazards as they contain toxic chemicals and heavy metals that can leach into the environment, entering waterways and soil. Many vaping devices are brightly coloured, making them potentially attractive to children, which creates a health and safety risk from possible leaking chemicals, heavy metals and battery electrolytes if picked up. Vaping devices also contain lithium-ion batteries and other electronic componentry that can cause fires.²⁴⁸

The explanatory notes explain the regulatory response: ‘To help address the issue of vape littering and to make it clear that depositing a vaping device or a vaping accessory is dangerous littering, the Bill amends the *Waste Reduction and Recycling Act* to create a specific dangerous littering offence for depositing a vaping device or vaping accessory (as defined under TOSPA).’²⁴⁹

In her explanatory speech to the Queensland Parliament, Health Minister Shannon Fentiman discusses this environmental initiative.²⁵⁰ She comments: ‘Littered vaping devices and accessories pose significant environmental hazards, containing toxic chemicals and heavy metals that can leach into our waterways and soil.’²⁵¹ Fentiman observed: ‘To tackle this issue, the bill amends the *Waste Reduction and Recycling Act* 2011 to deem the littering of vaping devices and accessories to be a ‘dangerous littering

²⁴⁷ Explanatory Notes to the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill* 2024 (Qld).

²⁴⁸ Ibid.

²⁴⁹ Ibid.,

²⁵⁰ Hon. Sharon Fentiman, ‘Introduction of the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill* 2024 (Qld)’, Legislative Assembly, Queensland Parliament, 12 June 2024, 2073-2075 at 2075, https://documents.parliament.qld.gov.au/events/han/2024/2024_06_12_WEEKLY.pdf#page=33

²⁵¹ Ibid.

offence’, with a maximum penalty of 40 penalty units.’²⁵² She commented that the new offence ‘will help protect both our environment and public health.’²⁵³

Recommendation 9

The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) amends the *Waste Reduction and Recycling Act 2011* (Qld) to create a specific dangerous littering offence for depositing a vaping device or vaping accessory. This is an important initial step in addressing the environmental ill-effects of e-cigarettes and vaping.

²⁵² Ibid.

²⁵³ Ibid.

10. The World Health Organization

Queensland's law reform in respect of e-cigarette regulation will help the Australian Government fully implement the *WHO Framework Convention on Tobacco Control* 2003, and respond to the growing concerns of the World Health Organization about e-cigarettes and vaping.

The *WHO Framework Convention on Tobacco Control* 2003 (FCTC) lays down a comprehensive framework for tobacco control.²⁵⁴ The agreement is clearly relevant to the regulation of e-cigarettes and vaping. The World Health Organization (WHO) has expressed increasing concern about the proliferation of e-cigarettes, and their impact upon public health and the environment.

There has been discussion as to whether the framework should be further expanded to deal with e-cigarettes.²⁵⁵ Tanya Buchanan, Kylie Lindorff, and Kristin Carson-Chahhoud have commented: 'The WHO FCTC is not only relevant, but crucial when considering how e-cigarettes should be regulated.'²⁵⁶ They recommend that 'all governments who are signatories must urgently accelerate implementation and prioritize health over the tobacco industry's pursuit of profit.'²⁵⁷ They observed: 'As part of their FCTC obligations, governments should take all regulatory measures available to them to prevent e-cigarette use by young people and non-smokers.'²⁵⁸

Some scholars have been critical that WHO has been slow to respond to electronic nicotine delivery devices. Margherita Melillo comments: 'Despite having been marketed for years, and posing important challenges to tobacco control, the FCTC

²⁵⁴ *World Health Organization Framework Convention on Tobacco Control*, Opened for Signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) <http://www.who.int/fctc/en/>

²⁵⁵ Tanya Buchanan, Kylie Lindorff, and Kristin Carson-Chahhoud, 'E-cigarette Regulation: Is it time for a new Framework Convention on Tobacco Control?' (2023) 28 (3) *Respirology* 220-222 <https://onlinelibrary.wiley.com/doi/full/10.1111/resp.14466>

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

regime has not yet adopted a satisfactory legal framework to regulate ENDS and HTPs.²⁵⁹

In 2020, the WHO has emphasized that ‘e-cigarettes are harmful to health.’²⁶⁰ WHO noted that ‘the long-term effects of using e-cigarettes or being exposed to them are yet unknown’.²⁶¹ WHO observed nonetheless:

Nevertheless, the evidence is clear that the aerosols of the majority of electronic nicotine delivery systems (ENDS) contain toxic chemicals, including nicotine and substances that can cause cancer. ENDS on their own are associated with increased risk of cardiovascular diseases and lung disorders and adverse effects on the development of the fetus during pregnancy. ENDS are undoubtedly harmful, should be strictly regulated, and, most importantly, must be kept away from children. Nicotine is highly addictive and found in most e-cigarettes. Both tobacco products and e-cigarettes pose risks to health and the safest approach is not to consume either.²⁶²

WHO was worried: ‘It is of particular public health concern that increasingly children and adolescents take up the use of e-cigarettes in some countries’.²⁶³ WHO observed that ‘there is a growing body of evidence in some countries that never-smoker adolescents who use ENDS at least double their chance of starting to smoke cigarettes later in life’.²⁶⁴ WHO warned: ‘Exposing children and adolescents to nicotine can have long-lasting, damaging effects on brain development and lead to nicotine addiction.’²⁶⁵

The *WHO Report on the Global Tobacco Epidemic 2021* has a focus on addressing new and emerging products.²⁶⁶ The report begins with the headline message: ‘Electronic

²⁵⁹ Margherita Melillo, *Weaponising Evidence: A History of Tobacco Control in International Law*, Cambridge: Cambridge University Press, 2024, 169.

²⁶⁰ World Health Organization, ‘E-cigarettes are Harmful to Health’, 5 February 2020, <https://www.who.int/news/item/05-02-2020-e-cigarettes-are-harmful-to-health>

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ World Health Organization, *WHO Report on the Global Tobacco Epidemic 2021*, Geneva: World Health Organization, 2021, <https://www.who.int/publications/i/item/9789240032095>

Nicotine Delivery Systems (ENDS) are addictive and not without harm.’²⁶⁷ The report recommends that new and emerging products should be included in a comprehensive approach to tobacco control. The report highlights how tobacco manufacturers have entered the market for e-cigarettes and vaping. The report recognizes that Electronic Nicotine Delivery Systems vary greatly and are evolving rapidly. Likewise, there is a huge diversity in e-liquids and their contents. The report observes that there is growing evidence of harmful effects of Electronic Nicotine Delivery Systems. It reiterates that Nicotine is ‘highly addictive’ and ‘deleterious to adolescent brain development and poses risks during pregnancy.’²⁶⁸ Moreover, other e-liquid components can also be harmful to health. The report maintains that the emergence of Electronic Nicotine Delivery Systems presents important threats and challenges to tobacco control.

WHO highlights that there are many regulatory mechanisms and options to protect populations against Electronic Nicotine Delivery Systems. The report encourages national states to ‘ensure continued focus on comprehensive evidence-based tobacco control measures to reduce nicotine addiction and tobacco use through all provisions of the WHO FCTC.’²⁶⁹ The international institution observes: ‘Where manufacture, sale and distribution of ENDS is not prohibited, adopt appropriate regulatory options to achieve the key objectives of protecting the population from potential health risks; preventing unproven claims being made about ENDS; and protecting tobacco control activities from commercial interests.’²⁷⁰ WHO asks nation states to ‘consider prohibiting the sale of ENDS that the user can modify (either its features or e-liquid ingredients).’²⁷¹ WHO observes: ‘Where a ban on manufacture, sale and distribution of ENDS is the preferred regulatory approach to protect the health of a country’s population (in the wider context of tobacco control, and based on the specific domestic regulatory environment), countries should strictly implement the ban without any interference from the industry to ensure a high degree of protection for children and

²⁶⁷ Ibid., 2.

²⁶⁸ Ibid., 36.

²⁶⁹ Ibid., 43.

²⁷⁰ Ibid., 43.

²⁷¹ Ibid., 43.

adolescents’.²⁷² The World Health Organization calls for monitoring and surveillance of Electronic Nicotine Delivery Systems to enable evidence-based policy regulation.²⁷³

In his foreword to the report, Dr Tedros Adhanom Ghebreyesus – the Director-General of WHO – reflected upon the threat posed by e-cigarettes and vaping.²⁷⁴ He highlighted: ‘While framing these products as a contribution to global tobacco control, the tobacco and related industries employ the same old marketing tactics to promote new tools to hook children on nicotine and circumvent tobacco legislation.’²⁷⁵ Dr Tedros observed: ‘At the same time, they continue to fight measures and legislation designed to protect people from the many harms of tobacco across the globe.’²⁷⁶ In other media commitments, Dr Tedros highlighted the harm of e-cigarettes.²⁷⁷ He observed that ‘Nicotine is highly addictive’ and ‘Electronic nicotine delivery systems (ENDS) are harmful, and must be better regulated.’²⁷⁸ Dr Tedros recommended: ‘Where they are not banned, governments should adopt appropriate policies to protect their populations from the harms of ENDS, and to prevent their uptake by children, adolescents and other vulnerable groups.’²⁷⁹

WHO is underwhelmed about the utility of e-cigarettes for the purposes of tobacco cessation: ‘To date, evidence on the use of ENDS as a cessation aid is inconclusive.’²⁸⁰ The institution observed: ‘In part due to the diversity of ENDS products and the low certainty surrounding many studies, the potential for ENDS to play a role as a population-level tobacco cessation intervention is unclear.’²⁸¹ WHO recommends:

²⁷² Ibid., 43.

²⁷³ Ibid., 43.

²⁷⁴ World Health Organization, *WHO Report on the Global Tobacco Epidemic 2021*, Geneva: World Health Organization, 2021, 15, <https://www.who.int/publications/i/item/9789240032095>

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ France 24, ‘WHO Sounds the Alarm on “Harmful” e-cigarettes’, *France 24*, 27 July 2021, <https://www.france24.com/en/live-news/20210727-who-sounds-the-alarm-on-harmful-e-cigarettes>

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ World Health Organization, ‘Tobacco: E-cigarettes’, 25 May 2022, <https://www.who.int/news-room/questions-and-answers/item/tobacco-e-cigarettes>

²⁸¹ Ibid.

To truly help tobacco users quit and to strengthen global tobacco control, governments need to scale up policies and interventions that we know work. Tried and tested interventions, such as brief advice from health professionals, national toll-free quit lines and cessation interventions delivered via mobile text messaging are recommended. Where economically feasible, governments should also consider promoting nicotine replacement therapies and non-nicotine pharmacotherapies for cessation.²⁸²

WHO has also warned about e-cigarette purveyors and tobacco companies making false and misleading health and therapeutic claims about their products.

In December 2023, WHO reiterated that urgent action was needed to prevent the uptake of e-cigarettes.²⁸³ Dr Tedros Adhanom Ghebreyesus commented: ‘Kids are being recruited and trapped at an early age to use e-cigarettes and may get hooked to nicotine.’²⁸⁴ He recommended: ‘I urge countries to implement strict measures to prevent uptake to protect their citizens, especially their children and young people.’²⁸⁵ Dr Ruediger Krech, WHO Director for Health Promotion, added: ‘E-cigarettes target children through social media and influencers, with at least 16 000 flavours.’²⁸⁶ Krech observed: ‘Some of these products use cartoon characters and have sleek designs, which appeal to the younger generation.’²⁸⁷ Krech warned: ‘There is an alarming increase in the use of e-cigarettes among children and young people with rates exceeding adult use in many countries.’²⁸⁸

In this December 2023 advice, WHO maintains that ‘urgent measures are necessary to prevent uptake of e-cigarettes and counter nicotine addiction alongside a

²⁸² Ibid.

²⁸³ World Health Organization, ‘Urgent Action needed to Protect Children and Prevent the Uptake of e-Cigarettes’, Press Release, 14 December 2023, <https://www.who.int/news/item/14-12-2023-urgent-action-needed-to-protect-children-and-prevent-the-uptake-of-e-cigarettes>

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

comprehensive approach to tobacco control, and in light of national circumstances.’²⁸⁹ WHO observes: ‘Where countries ban the sale of e-cigarettes, [states should] strengthen implementation of the ban and continue monitoring and surveillance to support public health interventions and ensure strong enforcement.’²⁹⁰ WHO notes: ‘Where countries permit commercialization (sale, importation, distribution and manufacture) of e-cigarettes as consumer products, [states should] ensure strong regulations to reduce their appeal and their harm to the population, including banning all flavours, limiting the concentration and quality of nicotine, and taxing them’.²⁹¹ WHO notes: ‘Cessation strategies should be based on the best available evidence of efficacy, to go with other tobacco control measures and subject to monitoring and evaluation.’²⁹² WHO observes: ‘Based on the current evidence, it is not recommended that governments permit sale of e-cigarettes as consumer products in pursuit of a cessation objective.’²⁹³ WHO comments: ‘Any government pursuing a smoking cessation strategy using e-cigarettes should control the conditions under which the products are accessed to ensure appropriate clinical conditions and regulate the products as medicines (including requiring marketing authorization as medicines).’²⁹⁴ WHO, in its present advice, is doubtful of the therapeutic value of e-cigarettes.

WHO warns of tobacco interference in policy-making in respect of the regulation of e-cigarettes: ‘The tobacco industry profits from destroying health and is using these newer products to get a seat at the policy-making table with governments to lobby against health policies.’²⁹⁵ WHO cautions: ‘The tobacco industry funds and promotes false evidence to argue that these products reduce harm, while at the same time heavily promoting these products to children and non-smokers and continuing to sell billions of cigarettes.’²⁹⁶

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

This call to action on e-cigarettes was supported by a technical note.²⁹⁷ The technical note observed: ‘There is an increased uptake of electronic cigarettes among young people.’²⁹⁸ The technical note stressed: ‘Disposable electronic cigarettes, particularly popular among youth, have increased in size, contain much more nicotine than before and are increasingly cheaper and accessible.’²⁹⁹ On the basis of scientific evidence, the technical note stressed that ‘electronic cigarettes are harmful.’³⁰⁰ The technical note commented: ‘Electronic cigarettes as actually used in the population as consumer products have not been proven to be effective for cessation at the population level and may lead to ongoing nicotine dependence.’³⁰¹ The technical note observed: ‘There is a wide diversity of electronic cigarettes, many of which allow the user to customise the products, including increasing nicotine uptake, and/or the level of toxicants.’³⁰² The technical note commented that ‘studies have found that labelling is not consistently a reliable indicator of nicotine content and mislabelling is a common issue.’³⁰³ The technical note observes that ‘Commercial and other vested interests related to e-cigarettes harm public health.’³⁰⁴

The technical note laments that there has been insufficient country level action on the regulation of e-cigarettes:

Very few countries have measures in place to protect children from e-cigarettes. E-cigarettes also carry the additional risk of renormalizing smoking behaviour, particularly among younger populations. 88 countries, covering a population of 2.3 billion people, have no minimum age at which these products can be bought and 74 countries, with over 2 billion people, have no regulations in place addressing e-cigarettes. These products are regulated in some way in 121 countries, including 34 countries that have banned their sale and 4 that ban all flavours.³⁰⁵

²⁹⁷ World Health Organization, *Technical Note on Call to Action on Electronic Cigarettes*, <https://www.who.int/publications/m/item/technical-note-on-call-to-action-on-electronic-cigarettes>

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid,

The technical note concludes that ‘the measures recommended... to strengthen action on e-cigarettes should form part of a comprehensive approach to tobacco control and should be implemented in line with national circumstances, including existing tobacco control measures.’³⁰⁶

This call to action by WHO has been seen as an endorsement of Australia’s approach to the regulation of e-cigarettes.³⁰⁷ ANU Associate Professor Raglan Maddox, comments: ‘This call to action from WHO is a clear vote of confidence in Australia’s current evidence-based and precautionary approach to e-cigarettes.’³⁰⁸ He observed: ‘These measures will be fiercely opposed by the tobacco and e-cigarette industry and their allies.’³⁰⁹ Maddox noted: ‘They have been saying this is all about smoking cessation while shamelessly targeting and addicting the next generation of users: kids across the world.’³¹⁰

In May 2024, Saia Ma'u Piukala of Tonga, the Regional Director of the World Health Organization, praised Australia’s leadership on addressing smoking and vaping.³¹¹ He commented: ‘Australia's leadership in tobacco control is both commendable and inspiring, demonstrated by their sustained efforts to reduce tobacco use.’³¹² Saia Ma'u Piukala observed: ‘Their strengthened regulation of e-cigarettes is a significant step forward for public health in the region and highlights their commitment to preserving tobacco control progress and protecting children and future generations from harmful

³⁰⁶ Ibid.

³⁰⁷ ANU, ‘WHO Call to Arms on e-Cigarettes a Win for Kids and Australia’, National Centre for Epidemiology and Population Health, ANU College of Health and Medicine, 15 December 2023, <https://nceph.anu.edu.au/news-events/news/who-call-arms-e-cigarettes-win-kids-and-australia>

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ ‘Australia's Leadership on Smoking and Vaping commended by the World Health Organization’, Press Release, Department of Health and Ageing, Australian Government, 30 May 2024, <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/australias-leadership-on-smoking-and-vaping-commended-by-the-world-health-organization>

³¹² Ibid.

and addictive products.’³¹³ He reflected: ‘These approaches offer valuable lessons that can be adapted to suit diverse contexts within our region.’ Saia Ma’u Piukala feared: The use of e-cigarettes among young people is increasing at an alarming rate, negatively impacting communities and societies.’³¹⁴ He recommended: ‘The World Health Organization urges Member States in the Western Pacific Region to either ban or stringently regulate e-cigarettes as part of a comprehensive tobacco control strategy.’³¹⁵

Federal Health Minister Mark Butler noted: ‘Not only are the states and territories, peak medical bodies and the World Health Organization supportive of stronger controls on e-cigarettes – other governments are following Australia’s lead and taking their own action.’³¹⁶ He observed: ‘The world is watching, and the passage of our vaping legislation is being followed with great interest by other governments around the world.’³¹⁷

Recommendation 10

Queensland’s law reform in respect of e-cigarette regulation will help Australia fully implement the *WHO Framework Convention on Tobacco Control 2003*. The *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 (Qld)* also answers the concerns of the World Health Organization about the need for strengthened action by state actors on e-cigarette regulation. Australia’s law reform on smoking and vaping has been hailed as ‘commendable and inspiring’ by the World Health Organization.

³¹³ Ibid.

³¹⁴ Ibid

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

BIOGRAPHY

Dr Matthew Rimmer is a Professor in Intellectual Property and Innovation Law at the Faculty of Business and Law, at the Queensland University of Technology (QUT). He has published widely on copyright law and information technology, patent law and biotechnology, access to medicines, plain packaging of tobacco products, intellectual property and climate change, Indigenous Intellectual Property, and intellectual property and trade. He is undertaking research on intellectual property and sustainable development (including the debate over the right to repair); greenwashing; intellectual property, access to essential medicines, and public health (particularly looking at the COVID-19 crisis), and tobacco endgame policies. His work is archived at QUT ePrints, SSRN Abstracts, Bepress Selected Works, and Open Science Framework.

Rimmer has published four major research monographs. Rimmer is the author of a research monograph, *The Trans-Pacific Partnership: Intellectual Property and Trade in the Pacific Rim* (Edward Elgar, 2020), *Intellectual Property and Climate Change: Inventing Clean Technologies* (Edward Elgar, 2011), *Intellectual Property and Biotechnology: Biological Inventions* (Edward Elgar, 2008), and *Digital Copyright and the Consumer Revolution: Hands off my iPod* (Edward Elgar, 2007). His *PhD Dissertation* is on *The Pirate Bazaar: The Social Life of Copyright Law* (UNSW, 2001).

Rimmer has also edited a number of collections. In collaboration with Bitu Amani and Caroline B. Ncube, Rimmer is the editor of *The Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar, 2024). Along with Dinusha Mendis and Mark Lemley, Rimmer is the editor of the collection, *3D Printing and Beyond: Intellectual Property and Regulation* (Edward Elgar, 2019). Rimmer is the editor of the collection, *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice* (Springer, 2018). Rimmer has edited a special issue of the *QUT Law Review* on the topic, *The Plain Packaging of Tobacco Products* (2017) - which featured a foreword by former Minister for Health and Attorney-General Nicola Roxon. Rimmer is the editor of the collection, *Indigenous Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar, 2015). Rimmer is also a co-editor of *Intellectual Property and Emerging Technologies: The New Biology* (Edward Elgar, 2012), and *Incentives for Global Public Health: Patent Law and Access to Essential*

Medicines (Cambridge University Press, 2010). Rimmer edited the thematic issue of Law in Context, entitled *Patent Law and Biological Inventions* (Federation Press, 2006).

Over the past two decades, Rimmer's research has been supported by a number of nationally competitive research grant applications. Rimmer has been a chief investigator in an Australian Research Council Discovery Project, 'Gene Patents In Australia: Options For Reform' (2003-2005), an Australian Research Council Linkage Grant, 'The Protection of Botanical Inventions' (2003); an Australian Research Council Linkage Grant, 'Unlocking IP' (2006-2008) and an Australian Research Council Discovery Project, 'Promoting Plant Innovation in Australia' (2009-2011). He was an Australian Research Council Future Fellow, working on Intellectual Property and Climate Change from 2011 to 2015. Rimmer was a Chief Investigator on an ARC Discovery Project on 'Inventing The Future: Intellectual Property and 3D Printing' (2017-2021). He is a chief investigator of the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame (CREATE) (2020-2025). He is a co-director of the legal project of the research network. Rimmer has experience in directing large-scale collaborative research projects on intellectual property and global challenges.

Rimmer is a chief investigator in the QUT Centre for Behavioural Economics, Society, and Technology (QUT BEST); and the QUT Australian Centre for Health Law Research (QUT ACHLR). He is a member of the QUT Centre for Justice, the QUT Digital Media Research Centre (QUT DMRC), and the QUT Centre for Clean Energy Technologies and Processes. Rimmer is a chief investigator, and co-director of the legal program in the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame (CREATE) (2020-2025) - a transnational research network. Rimmer was previously the leader of the QUT Intellectual Property and Innovation Law Research Program from 2015-2020 (QUT IPIL). He was also a member of the QUT Digital Media Research Centre (QUT DMRC), the QUT Centre for the Digital Economy, the QUT Centre for Justice, the QUT Centre for Clean Energy Technologies and Processes, and the QUT International Law and Global Governance Research Program.

Dr Matthew Rimmer holds a BA (Hons) and a University Medal in literature (1995), and a LLB (Hons) (1997) from the Australian National University. He received a PhD

in law from the University of New South Wales for his dissertation on *The Pirate Bazaar: The Social Life of Copyright Law* (1998-2001). Dr Matthew Rimmer was a lecturer, senior lecturer, and an associate professor at the ANU College of Law, and a research fellow and an associate director of the Australian Centre for Intellectual Property in Agriculture (ACIPA) (2001 to 2015). He was an Australian Research Council Future Fellow, working on Intellectual Property and Climate Change from 2011 to 2015. He was a member of the ANU Climate Change Institute.

THE AUSTRALIAN CENTRE FOR HEALTH LAW RESEARCH (ACHLR)

The Australian Centre for Health Law Research (ACHLR) is a research centre based at the Faculty of Business and Law at the Queensland University of Technology (QUT).

ACHLR is celebrating ten years of making a difference to health law. Health law is critical to support and regulate health systems, the delivery of health services and positive health outcomes for individuals and society. ACHLR is internationally recognised as a leading health law research centre, with 38 academic members, 20 PhD students and 20 esteemed Adjunct Professors in the field of health law from across the globe. ACHLR researchers undertake innovative interdisciplinary research into current and emerging health law challenges in Australia and globally to produce an evidence base to properly address complex problems in the field of health and inform reforms to health law, policy and practice in the context of constant societal change.

ACHLR's research critically evaluates the legal, ethical, policy and regulatory frameworks, both conceptual and practical, which support and regulate the delivery of health services in diverse contexts. It distils the links between historical and current law, and its informing ethical and social realities and principles. We employ a range of research methods, including doctrinal, ethical, and empirical approaches. Our research explains for academic, professional and community audiences why the law takes its current form, how it can be critiqued, and how it might be reformed.

During its ten year history, ACHLR researchers have published 784 articles and book chapters; 25 books or edited collections; produced 82 reports/policy briefings and submissions to government enquiries or royal commissions; and graduated 30 PhD students. ACHLR researchers have been awarded \$56million in grant funding during this time.

ACHLR's health law researchers draw on disciplines including ethics, philosophy, medicine, nursing, psychology, economics, sociology and social work to address practical problems that arise in the health context. Our researchers have a strong track record of undertaking high impact research in health law, policy, ethics, and regulation. Our focus is not only on quality scholarship, but generating new knowledge, evidence,

and insights to enhance health and legal policy and practice, and to improve health outcomes. This research serves the interests of the individuals, communities, and institutions that deliver and benefit from health services and other interventions that aim to improve health locally and globally.

Our research has had significant impact: our recommendations have been adopted by parliaments, courts and tribunals, and law reform commissions. Our work has also influenced state and national policy, prompting changes to clinical education in universities, hospitals and health departments. ACHLR has a strong international focus and presence. We actively continue to build and maintain relationships with external partners to facilitate opportunities for research collaborations, funded and unfunded, and to build and maintain our profile as a leading health law centre globally.