

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

**Submission No:** 24  
**Submitted by:** Shopping Centre Council of Australia  
**Publication:**  
**Attachments:**  
**Submitter Comments:**

28 June 2024

Health, Environment and Agriculture Committee  
Parliament of Queensland  
Cnr of George and Alice Streets  
Brisbane QLD 4000

By email: [heac@parliament.qld.gov.au](mailto:heac@parliament.qld.gov.au)

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

The Shopping Centre Council of Australia (SCCA) appreciates this opportunity to comment on the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Qld) (the Bill), tabled by the Hon Shannon Fentiman MP, Minister for Health, on 12 June 2024.

The SCCA is the industry group for shopping centre owners and operators in Queensland and across Australia.

#### **Position and interests**

Our sector is aware of issues relating to illicit tobacco and nicotine products.

Accordingly, the SCCA supports the objective of the Bill, being to enable the Queensland Government to enforce the intent of the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* (Cwlth) and so address the rising availability of illicit tobacco and nicotine products, ultimately improving health outcomes for Queenslanders, particularly children and young adults.

Our members' tenants include tobacconists and other businesses who are impacted by the increasing availability of illicit tobacco and nicotine products.

Our principal interest in the Bill relates to the proposed 'closure powers' (refer to Sections 209A and 209B), and how this could inadvertently impact an 'innocent bystander' landlord in relation to a potentially illegal operator.

To be clear, our sector would have no interest in having or retaining a tenant undertaking illegal activities, including where they may be unresponsive to initial enforcement action and continue to engage in the illegal trade of illicit tobacco and/or nicotine products. This would generally be a clear breach of their lease agreement.

The SCCA's concern is with the 'closure powers' that would be introduced through proposed amendments under the Bill, Sections 209A and 209B, in terms of how these would impact landlord rights and responsibilities and might intersect with the *Retail Shop Leases Act 1994* (Qld) (RSLA Act). While we agree with the intent of removing the capacity of a business within the premises to continue trading, for continued or egregious breaches of the *Tobacco and Other Smoking Products Act 1998* (Qld) (TOSPA Act), the current 'closure powers' transfer too much liability to shopping centre landlords and, correspondingly, would make the exercising of their normal rights more challenging.

We have discussed these issues with Queensland Health, after the Bill was referred to the Committee, and believe that further discussion and amendments to the Bill would be mutually beneficial.

#### **Recommendations**

1. Section 209A should be amended so that landlords are informed about any intent to issue a closure order.
2. Section 209B should be amended to enable a landlord to terminate a lease for continued or egregious breaches of the TOSPA Act prior to a closure order being served.

In a practical sense, the SCCA would welcome the opportunity to assist the Government on the operation of such a measure.

#### **Section 209A Interim closure of premises**

- We understand that it is envisaged that an interim closure order would be used when other enforcement measures (penalties, seizure of illicit products etc.) have not deterred non-compliant and illegal behaviour and the business located on the premises continues to sell illicit tobacco, illicit nicotine products, or operate without a required licence.
- We observe that a closure order could be made with a relatively low and inconclusive level of proof, c.f. 'the chief executive reasonably suspects illicit tobacco or illicit nicotine products are being supplied at the premises as part of a business activity' (Section 209A (1)(a)).
- A 72 hour closure would have a limited impact on the landlord and other tenants.

### Section 209B Long-term closure of premises

- We note that a longer-term closure order may be sought from a Magistrates Court if 'illicit tobacco or illicit nicotine products have been, or are likely to be, supplied at the premises as part of a business activity'.
- We accept the premise that this would disrupt the illegal trade of illicit tobacco and vaping products and the explanation that the imposition of higher penalties and jail terms alone may not suffice as prosecuting offences would be complex and time-consuming and not appropriate for every offence.
- This would then allow time for proceedings under the TOSPA Act to be initiated and finalised, ensuring that no illicit tobacco or illicit nicotine product are sold from the premises during this time.
- Our primary concern then becomes the ability to regain control of a tenancy in such circumstances as it is an undesirable and unacceptable outcome that a tenancy would remain idle for up to 6 months.
- In lieu of being a party to proceedings initiated under the TOSPA Act we submit that this process should be expedited.
- The Bill and Explanatory Notes do not reflect a desire by landlords to remain informed about and assist with enforcement at this juncture.
- Landlords should first be afforded the ability to terminate a tenants' lease for continued or egregious breaches of the TOSPA Act, prior to a closure order being issued.
- Our experience is that this would be more efficient and achieve Queensland Health's desired outcome if initiated under the RSLA Act.
- In a practical sense, the SCCA would welcome the opportunity to assist the Government on the operation of such a measure.

**Recommendation 1**      **Section 209A should be amended so that landlords are informed about any intent to issue a closure order.**

**Recommendation 2**      **Section 209B should be amended to enable a landlord to terminate a lease for continued or egregious breaches of the TOSPA Act prior to a closure order being served.**

### Next steps

Thank you for the opportunity to comment on the Bill.

We would welcome an opportunity to expand on this submission at a public hearing. Please do not hesitate to contact me on [REDACTED] or at [REDACTED] as required.

**James Newton**

Head of Policy and Regulatory Affairs, SCCA