

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

Submission No:	27
Submitted by:	The Australian Lottery and Newsagents Association (ALNA), the Australian Association of Convenience Stores (AACCS), and MGA Independent Businesses Australia (MGA)
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	



Queensland Parliament: Health, Environment, and Agriculture Committee

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

Via email: HEAC@parliament.qld.gov.au

Dear Madam/Sir

This is a combined submission on the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024, by the Australian Lottery and Newsagents Association (ALNA), the Australian Association of Convenience Stores (AACS), and MGA Independent Businesses Australia (MGA).

AACS, ALNA & MGA are strongly supportive of the draft amendments. They are timely and positive initiatives, and we appreciate the continued focused work of the Queensland Government to combat the scourge of illicit smoking products, particularly the outstanding work of the Queensland Health - Health Prevention Unit and their coordination with the Queensland Police Service.

We strongly support the objective of the Bill to ensure Queensland can appropriately enforce the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Commonwealth Bill) to ban the importation, manufacture, supply, and commercial possession of all disposable single use and recreational vapes. The package of initiatives introduced in this reform are meaningful and targeted. We have provided here an overview assessment of key reforms, as well as comments on areas where we believe there are further opportunities in the legislative framework. We believe they are steps that would further strengthen investigations and enforcement of the overall illicit smoking products market throughout Queensland and Australia.

We collectively feel strongly that the purpose of aligning the State legislation to the federal equivalent - and having uniform legislation across the states - are important and positive steps. But **underpinning all the comments and suggestions we make below, is the vital need for further and significant direct funding from the Federal Government to support Queensland's focused enforcement measures.** There has been a devolution of responsibility from the Federal Government to the states in resourcing the battle against illicit smoking products. Queensland and other states are required to take on more of the responsibility regarding coordination, investigations, enforcement, and operations. Notably, the Queensland Government has stepped up with additional funds to support its boosted legislative powers. But we strongly believe the Federal Government must provide direct and significant funding to Queensland to reward the State for its efforts and leadership, which are about preventing the massive social and health impacts of illicit products.

Assessment on proposed amendments and further suggestions:

1. **Definitions** – We support the move to expand definitions from tobacco to smoking products into legislation. Language should remain agile and be consistently reviewed to capture the full range of potential threats. Retailers are at the coalface in dealing with illicit smoking products. Almost every day we see something new emerge that is designed to be outside of the scope of legislation. Through more encompassing language, legislation can more effectively ensure enforceability under the Act. We cannot afford to be asleep at the wheel with criminal syndicates motivated to try and stay one step ahead of regulations and enforcement. Legislation will be better able to respond to the threat of novel products like pouches or future products that will emerge.

Many non-compliant retailers run sophisticated operations, continually exploring different loopholes so that authorities do not have the power to seize their products. One loophole has been to receive products that are not clearly labelled for retailing, which allows illegitimate retailers to claim an illicit product was received by error. We support changing the definition of 'supply' to an expanded term 'having available for supply' to enable authorities to capture more illicit products. Workarounds like a strict definition of supply must be closed.



2. **New offences for persons other than ‘supplier’** - The illicit nicotine market must be viewed as a sophisticated supply chain with participants’ profiting at each stage of the process. The current penalties that punish the supply and possession of illicit nicotine are somewhat inflexible and can ignore the reality of how non-compliant retailers operate. We support an offence that allows enforcement action to be taken against individuals who are not suppliers but are knowingly supplying illicit products at a retail or wholesale outlet. We must not allow an individual stage of the illicit nicotine supply chain to be used inappropriately as a barrier to prosecution. Those knowingly working in a non-compliant store and peddling illicit nicotine products should be held responsible by the law to deter participation. This includes people who are acting on behalf of another person such as a family member or friend. We also support the clarification in the Bill 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. It is important to ensure that any potential gaps are closed in the ability to identify and prosecute anyone who is knowingly supplying illicit products in any setting.
3. **Dedicated QPS Taskforce** - We would like to see the funding for a dedicated Queensland Illicit Smoking Products Taskforce inside the QPS, like exists in Victoria. Taskforce Viper, inside the Victorian Police Force, proactively investigates and targets anyone at any level across the state who is involved in the distribution and sale of illicit smoking products. This taskforce also enables for better coordination between State departments and the Federal Police, the Australian Border Force's Illicit Tobacco Taskforce the Therapeutic Goods Association (TGA) and the Australian Tax Office (ATO). We understand the multiple and continued pressures on Queensland Police, and we appreciate existing policies that are boosting enforcement, but the cost of action is significantly lower than the costs in inaction. This has been raised as an opportunity by the Queensland Parliamentary Health and Environment Committee and it is a wise and sensible move that retailers would strongly support. This is one area where additional Federal Government direct funding would be utilised to great effect.
4. **Increase penalties for supply and possession** – We support increasing the upper limit of the maximum penalty for the illicit smoking market, to provide further deterrence to illegal operators. There must be material business and financial repercussions when you decide to break the law and sell illicit products in direct competition with legitimate retailers. Failing to address the inequality through appropriate fines will entrench the current two-tier retail sector, where those breaking the law have a competitive advantage by avoiding government tax and regulation.
5. **Closure and injunction powers** - The inability of the current legislation to interrupt and deter the operations of non-compliant retailers is contributing to the widespread availability of illicit smoking products. Non-compliant retailers have proven effective at organising their operations to quickly re-open following a seizure. There are countless anecdotes of non-compliant retailers in Queensland, re-opening shortly after a seizure and selling the same illicit smoking products almost without delay. In general, we support strengthened closure powers. Any amended closure powers must prevent retailers re-opening for a significant period and certainly not the following day, as is observed. To complement closure powers, we support expanded search and seizure powers. As cited in the Consultation Paper, one way in which non-compliant retailers can re-open quickly following a seizure, is by storing inventory outside of the premises. These stocking methods ensure the business never loses more than one day of illicit inventory. Queensland authorities must be empowered to seize all contravening illicit smoking products to prevent them from being sold. Despite the importance of the above measures, closure and seizure powers will not sufficiently deter some operators. Often, it is the non-compliant retailers with close links to criminal networks who will be agile and continue to find new ways to re-open operations. We support the proposed injunction powers to remove operators that continually flout the laws. Injunction powers will be far more effective in removing non-compliant retailers who have a disregard for the law, than attempting to legislate against every tactic.
6. **Executive Liability** – There remains a risk, even with the current legislation and proposed amendments, that criminal organisations will attempt to use a corporate structure to avoid liability. We support the change to enable an executive officer of a corporation to be held liable for certain offences, like unlicensed supply, supplying to children, and supplying illicit smoking products. Corporate structures should not be shielded against law breaking and selling illicit nicotine.



7. **Landlords** – As above, we support 209A and 209B in relation to closure powers. Giving magistrates the power to close a business for up to six months will help prevent organized crime groups simply restocking products and continuing to trade. However, we also support a further strengthening of the proposed amendments by providing the Queensland Government greater powers concerning landlords of tenants selling illicit nicotine. Most leases will carry a provision, which outlines the permitted usage of the tenancy and if a Tenant conducts the sale of a product or service, outside of that, then they are breaching their Lease and can have their Lease terminated. A Landlord should rely on this, if they find out that a Tenant is undertaking criminal activities, as you would assume that those activities are outside of the permitted use. Landlords who allow non-compliant retailers to continue to sell illicit nicotine on their premises, either deliberately or with willful blindness, are profiting from businesses flouting the law. We encourage the government to explore a process where landlords are notified when tenants are caught contravening illicit nicotine laws and to better educate landlords about overlooking illicit trade, and new penalties that might occur. Specifically, in the event that the Landlord failed in their recognition of these illegal activities, or after having them brought to their attention, they ignored it, that after a certain window of time they were able to be fined. The fine would be sufficient to deter the Landlord from ignoring it, and potentially the local authority could force a lease termination of the offending Tenant. While landlords should not be responsible for all conduct of their tenants, repeat notifications should result in financial punishment. This policy would create another line of deterrence by making landlords reasonably responsible for the business occurring on their premises, and clearly through notification of repeated offence, know clearly that that business is conducting illegal operations.
8. **National Commissioner** – The additional enforcement focus and penalties would be even better supported by the announcement of the promised National Commissioner for illicit smoking products. This would allow for national leadership and coordination, as well as providing a conduit for coordination between state jurisdictions and for cross boarder operations and investigations. We encourage the QLD government to seek assurances from the Federal Government that this appointment will not be delayed any further.
9. **Reporting** – This enhanced range of measures also underline the positive work already underway regarding enforcement in Queensland. This is underpinned by a positive licensing scheme, which while adding some costs to business, is supported due to the enhanced capability of authorities to crack down on illegal activities. However, a suggestion from many retail members across all our organisations is that they would appreciate regular direct updates on the effectiveness of enforcement activities. This could include a dashboard with quarterly reporting on the number of licenses, and for example, licenses closed due to regulation and enforcement. This is an initiative retail peak bodies look forward to discussing with the Queensland Government.

The Australian Lottery and Newsagents Association, the Australian Association of Convenience Stores & MGA Independent Businesses Australia, applaud the Queensland Government's and Queensland Health - Health Prevention Unit's proactive approach taken with the Bill.

Yours faithfully

Ben Kearney
CEO
Australian Lottery and
Newsagents Association
M: [REDACTED]
E: [REDACTED]

Theo Foukkare
CEO
Australian Association of
Convenience Stores
M: [REDACTED]
E: [REDACTED]

David Inall
CEO
Master Grocers Australia
M: [REDACTED]
E: [REDACTED]

