



HEALTH AND ENVIRONMENT COMMITTEE

Members present:

Mr AD Harper MP—Chair
Mr R Molhoek MP
Mr SSJ Andrew MP
Ms JE Pease MP
Mr ST O'Connor MP

Staff present:

Ms R Easten—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Friday, 14 April 2023

Brisbane

FRIDAY, 14 APRIL 2023

The committee met at 1.35 pm.

CHAIR: Good afternoon. I declare open this public briefing for the Health and Environment Committee's inquiry into the Tobacco and Other Smoking Products Amendment Bill 2023. I am Aaron Harper, member for Thuringowa and chair of the committee. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are indeed fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all now share. With me today is Rob Molhoek, member for Southport and deputy chair; Joan Pease, member for Lytton; Sam O'Connor, member for Bonney; and Stephen Andrew, member for Mirani.

On 14 March 2023 the Hon. Yvette D'Ath, Minister for Health and Ambulance Services, introduced the Tobacco and Other Smoking Products Amendment Bill 2023 into the Queensland parliament and referred it to this committee for detailed consideration and report. The briefing today by representatives from Queensland Health is to respond to issues raised in submissions and in the public hearing for the inquiry.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath, but intentionally misleading the committee is a serious offence. Proceedings are being recorded and broadcast live on the parliament's website. I remind committee members that officers are here to provide factual and technical information. Questions seeking an opinion about policy should be directed to the minister or left for debate on the floor of the House.

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

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

WHITEHEAD, Ms Rebecca, Advanced Health Promotion Officer, Prevention Strategy Branch, Queensland Health

CHAIR: Welcome. Thank you all for being here today. Mark, I hand over to you for an opening statement.

Mr West: Thank you very much. Good afternoon, Chair and committee members. Thank you for this opportunity to further brief you on the Tobacco and Other Smoking Products Amendment Bill 2023 and to respond to issues raised by submitters. I would like to start by acknowledging the traditional custodians of the lands upon which we are meeting today, the Yagara and Turrbal people, and pay my respects to their elders past, present and emerging. My name is Mark West, Executive Director of Prevention Strategy Branch in Queensland Health. I am joined today by my Queensland Health colleagues Karson Mahler, Director of the Legislative Policy Unit, and Rebecca Whitehead, Advanced Health Promotion Officer from the Prevention Strategy Branch. Ms Jasmina Joldić, the associate director-general of Queensland Health, who appeared at the earlier public briefing, is travelling interstate and she sends her apologies for being unable to attend today.

This bill modernises Queensland's smoking products legislation and closes gaps in legislative coverage. The bill also increases regulatory oversight of the smoking product industry and strengthens deterrent measures to keep the industry honest and transparent. Most importantly, the bill enhances and extends public health protections for Queenslanders and particularly for families and children.

With the committee's permission, I will not again summarise the amendments in the bill. Instead, I would like to respond to some of the issues raised by submitters, both in person here today and in previous written submissions made to the committee. Before doing so, I would like to thank all individuals, groups and bodies who made submissions on the bill. This speaks to the wideranging community interest in smoking product reform, both as a health issue and from a business perspective.

Representatives of the retail smoking product industry supported the introduction of a licensing scheme. They saw it as a way of keeping unscrupulous suppliers from entering or remaining in the industry and reducing the trade in illicit tobacco. However, they also highlighted the need for a sufficient lead-in period to implement the reforms—for example, adequate time for retailers to become licensed and to accommodate the new prohibition on child employees supplying smoking products.

The licensing scheme will commence on assent. This means wholesalers and retailers may apply for a licence as soon as the online application portal goes live later this year. However, the offence for unlicensed sale will not commence until 1 September 2024. This gives businesses at least 12 months in which to become licensed before the penalties apply. The new prohibition on child employees supplying and handling smoking products will be delayed until 1 September 2024. This gives retailers 12 months to adjust their practices and staffing, including finding new roles for younger employees. For small businesses with fewer than 20 employees the commencement date will be later, on 1 September 2025. These deferred commencement dates also mean that many children employed today will have naturally aged out of this prohibition and not have their employment affected.

Organisations representing liquor licensed premises generally supported the bill while advocating for some additional changes to support the needs of their members. Firstly, as we heard earlier, Clubs Queensland recommended a simplified process for obtaining a retail licence. This would involve deeming a liquor licensee as suitable to hold the licence without them needing to apply. Our view is that the bill already provides a simplified process for liquor licensed premises. This includes an automatic grant of the licence upon initial application and with each annual renewal. There is also no associated licence fee for liquor licensed premises. The application and renewal processes ensure Queensland Health maintains accurate, up-to-date information about the businesses selling smoking products. This market oversight would be compromised if liquor licensees were exempt from the requirement to apply for a liquor licence, which would be the effect of the deeming provision.

Representatives of liquor licensed premises also raised the new prohibition on child employees supplying or handling smoking products. Although agreeing with this proposal, they submitted that a child employee at liquor licensed premises should be exempt. They note that these premises are already highly regulated and the staff are trained in responsible supply of alcohol and gambling products which is also restricted by law. The clear policy intent of the bill is to reduce children's exposure to smoking products. The bill does allow a narrow exemption for pharmacy employees under 18 so they can continue to dispense smoking products on prescription; however, there is no similar community health reason for also exempting child employees at liquor licensed premises. Even if these employees were provided with additional training, the harmful exposure to smoking products would remain.

Representatives for liquor licensed premises also noted that to meet the new buffer zone requirements for designated outdoor smoking areas, or DOSAs, significant construction work may be required in some venues. They requested an option for a liquor licensee to seek a 12-month extension if this work involved circumstances beyond their control such as council approvals or labour shortages. To allow affected stakeholders to make the structural and operational changes needed to comply with the new DOSA requirements before they become law, the buffer zone reforms do not commence until 1 July 2024. Given this delayed commencement, there is not expected to be any need to grant case-by-case extensions for them. They should be fine.

Finally, representatives from liquor licensed premises did not support the amendments in relation to tobacco product vending machines. They submitted that these reforms were unnecessary given the low prevalence of machines at liquor licensed premises and their equally low sales volume. Queensland Health estimates there are 800 tobacco product vending machines in liquor licensed premises across the state. They offer ease of access to smoking products which are known to trigger recent quitters to relapse and social smokers to increase their smoking. Given the strong association between alcohol and tobacco consumption, the presence of the machines in liquor licensed premises only exacerbates these risks. The bill does not prohibit tobacco product vending machines; however, to reduce the temptation they pose, the bill restricts the supply of smoking products at liquor licensed premises to a service area. This means any tobacco product vending machine at the premises must be moved to areas not accessible by patrons.

Bodies representing health professionals supported the bill; however, the Australian Medical Association Queensland raised concerns about pharmacies being exempt from the new prohibition on child employees supplying or handling smoking products. AMAQ believes that the exemption may contribute to normalising smoking for these child employees. The bill prohibits the retail sale of

smoking products unless the seller holds a retail licence; however, the bill exempts a pharmacy from this requirement where the only smoking product they sell has been prescribed by a medical practitioner to assist with smoking cessation.

As a complementary measure, the bill also exempts a pharmacy from the prohibition on child employees supplying or handling smoking products where the employee dispenses a smoking product on prescription. These exemptions for pharmacies are narrow and designed to facilitate access to a medically prescribed treatment. This includes ensuring pharmacies have sufficient available staff to service the health needs of their community, particularly in rural and remote areas. It is true that the exemption will allow child employees to handle and therefore be exposed to a very limited class of smoking products; however, this will only occur in a pharmacy setting and has been limited to products that are prescribed by a doctor and dispensed by a registered pharmacist for smoking cessation. This is not the same as allowing a child to sell smoking products to the general public and does not raise the same concerns about normalising smoking and smoking products. Indeed, pharmacy employees who are under 18 already dispense a variety of addictive substances on prescription in the ordinary course of their duties.

CHAIR: Mark, maybe pause because 15 minutes is a long time to speak. I will ask a question and you can continue after. You mentioned the vending machines. You are asking that they be moved away from where patrons can access them. I have the practical question of how people are going to pay for them if they are behind a service counter and they cannot access them. What is the situation there?

Mr West: They will purchase them through a staff member at the bar.

CHAIR: The vending machines are still accessible?

Mr West: Accessible behind the bar, and the staff member at the bar will do the transaction. They will ask for ID if that is required, of course, because of the law around sales to minors. They can do that as well.

CHAIR: Excellent. Please continue.

Mr West: To ensure the community need to access prescribed treatment is balanced against protecting children from exposure to smoking products, the exemptions in the bill were developed in consultation with affected stakeholders. The Queensland branches of the Pharmacy Guild of Australia and the Pharmaceutical Society of Australia both support the proposed exemptions. It is worth reiterating that the exemptions would only apply to a pharmacy selling non-prescribed smoking products such as recreational e-cigarettes.

Public health advocacy groups strongly support the bill. This is not surprising, given the serious health risks of smoking, including e-cigarette use, are well known, as are the dangers of the exposure to second-hand smoke which we heard about earlier. As such, feedback from these groups focused primarily on how the reforms in the bill could be strengthened. Firstly they suggested improving enforcement of the act by introducing controlled purchase operations, which we heard about. The act prohibits the sale of smoking products to children. Controlled purchase operations involve a person under 18 years purchasing smoking products to catch out a noncompliant retailer. Such operations do not happen in Queensland as it is an offence for a child to falsely represent their age to purchase smoking products. Although Queensland Health will continue to take strong action against retailers selling smoking products to children, our compliance strategy does not include controlled purchase operations. Instead, Queensland Health implements other enforcement strategies to assess the supply of smoking products to children such as surveillance of retailers suspected of being noncompliant.

Public health advocacy groups also suggested banning online sales of smoking products and banning all non-prescription e-cigarettes. Queensland's smoking product legislation does not take away a person's choice to smoke or to purchase smoking products. Instead, the act and the bill aim to balance this choice with the public health imperative to protect the broader community. Outright prohibitions on specific products or ways of purchasing them would have significant impacts on businesses and consumers. Also, any unintended consequences would need to be considered such as further increasing the appeal of illicit smoking products. Also introducing a ban or significant restrictions on e-cigarette sales could pre-empt the outcome of this committee's ongoing vaping inquiry and the work being done at the national level to determine a coordinated state and federal response to regulating e-cigarettes.

Public health advocacy groups also suggested a complete smoking ban at all family oriented outdoor events. The act already prohibits smoking at a range of locations where families gather. The bill extends these prohibitions to include outdoor markets, the perimeter of an outside eating or

drinking place, organised children's outdoor activities and car parks adjacent to schools. It is anticipated that this will cover the community areas where there are most likely to be families and children. The bill also allows the person in charge of an outdoor market or outside eating or drinking place to set aside a smoking area within the market or place. However, rather than reducing protections for families, this allowance is intended to contain smoking within a specific area—so you can have a smoking area. The added requirement for clear signage will ensure smoking areas can be easily avoided by non-smokers. Also, the buffer requirement around these smoking areas will prevent second-hand smoke drift impacting patrons and vendors in other parts of the outdoor eating or drinking place.

Another additional amendment suggested by public health advocacy groups concerned liquor licensed premises, for example, banning drinking in a DOSA or removing the DOSA entirely. We heard about that as well. Other examples were prohibiting supply from tobacco product vending machines by either banning the machines or not granting a retail licence to venues which only supply smoking products via these machines. For patrons wanting to smoke at liquor licensed premises, a DOSA allows for this to occur in a contained area away from patrons. However, to further protect patrons and staff from exposure to second-hand smoke, the bill requires a buffer zone between the DOSA and the enclosed area of the premises. The bill also requires the liquor licensee to ensure a child does not remain in the DOSA.

Although neither the act nor the bill remove a person's choice to smoke, they do include measures designed to limit the time smokers spend in a DOSA and their access to smoking products. The act prohibits food and drink being served in a DOSA or entertainment being offered there. In 2022, the consultation regulatory impact statement sought community feedback on a proposal to also prohibit drinking in a DOSA. To allow further policy development and industry engagement on this reform, it is not being progressed in this suite of amendments. However, another proposal from the consultation process which is proceeding in the bill is the requirement to only sell smoking products from the service area of a liquor licensed premises. The amendment limits access to smoking products by requiring a tobacco product vending machine to be moved behind the counter of the venue and only be operated by staff.

Several submitters today raised the issue of banning online sales of smoking products. Queensland Health would support action to improve the regulation of online sales, particularly safeguards to prevent children purchasing the smoking products. However, this is predominantly a national issue. Queensland would be pleased to collaborate with the Commonwealth in developing workable measures that would operate effectively across borders. It is certainly a cross-border issue when it comes to online sales. The bill allows a licence to be granted for online shops. The prevalence of online selling makes it necessary for bricks-and-mortar stores to also maintain an associated online presence. The licensing scheme will give Queensland Health a detailed oversight of the smoking product industry, including online shops. This will enable targeted monitoring and enforcement actions to be implemented, including the suspending or cancelling of a licence of an online retailer caught selling smoking products to children. Thank you, Chair, for the opportunity to address the committee. I would be pleased to take questions.

CHAIR: Thank you very much, Mark. The department's feedback is certainly appreciated. In Townsville we heard concerns around accessing stores to do the compliance checks and things like that by staff—a complete flip to the Gold Coast hearing, where they sees thousands of vapes tested and they have a slightly larger workforce. Both indicated that there needed to be a better alignment of the TOSPA Act and the Medicines and Poisons Act—that there were some restrictions on going into these places if they did not. It is a bit complicated. Would you like to comment on that? What would be your view for the committee to consider?

Ms Whitehead: The TOSPA, the Tobacco and Other Smoking Products Act, deals with tobacco products and other smoking products such as e-cigarettes to the extent of whether or not they contain nicotine. The Medicines and Poisons Act deals with prohibited products like nicotine—it schedules nicotine. The same workforce can go into stores and take enforcement action—have a look at what is going on and decide what they need to do. The way they go into those stores is a matter that we can operationally work through to ensure they can go in. There are ways that we can work through that process to ensure they are going in with another colleague, they are going in under both acts and then that action can be taken. There are available mechanisms that we can already use to make sure that works.

CHAIR: Is that with police as well, generally?

Ms Whitehead: Police may have a role to come along, but they might be there for other purposes.

CHAIR: There was a request that they had to get consent from the vendor to go in and they were just automatically saying no unless they had a warrant.

Ms Whitehead: Under the Medicines and Poisons Act? I am probably not best placed to speak at length about the Medicines and Poisons Act. I work on the Tobacco and Other Smoking Products Act. I am aware that there are different arrangements between TOSPA and the Medicines and Poisons Act, but, as I said, we are aware of ways that we can work through those processes within the available legislative framework.

Ms PEASE: Another matter raised in Townsville was the car parks adjacent to schools. You mentioned it again, saying that you are going to be enforcing that. What about day care centres? Will that fall under 'organised children's activities' or will they just be silent?

Ms Whitehead: This particular approach to include the school car parks that are adjacent picks up on a loophole that arose with the 2016 laws that were implemented. 'Education' became the land on which schools are situated. You cannot smoke there or within five metres. What happens is: often there are car parks that are local government land that are provided for the school use—

Ms PEASE: They give it back so it can be policed, I understand.

Ms Whitehead: That is right. The buffer would go five metres in. What we heard about—and this is particularly in response to noncompliance we heard about, with people sitting in cars smoking and sometimes that smoke drifting into the school. Kids are seeing it. It would depend where that car park is at an early childhood education and care centre. We have the same sort of ban there, too; there is a ban on that land and then a five-metre buffer around it. It would depend on where that car park was situated. If it was on their land, it would probably be captured already.

Ms PEASE: It would be?

Ms Whitehead: It could be. It would depend on where that car park was.

Ms PEASE: That was something that was raised.

Mr MOLHOEK: Mark, for the sake of clarity, in respect of the penalties that are proposed in the legislation, how much is a penalty unit currently, approximately? Is it about \$1,500 per penalty unit?

Ms Whitehead: It is about \$143.

Mr MOLHOEK: Division 8 of the explanatory notes talks about the obligations of licensees. I could not find in the document what penalties related to people outright selling product illegally. It talks about noncompliance with allowing someone to come in and inspect, and it talks about if they get caught selling to a minor, or if their licence is not on display. If you are actually selling product illegally, what are the penalties that apply and how are they calculated in that respect, both for licensed vendors and illicit retailers?

Mr Mahler: It depends on the circumstance. The sale of a smoking product without a licence—that is 1,000 penalty units. Wholesale sale of a smoking product to an unlicensed retailer—that is 1,000 penalty units. The supply of a smoking product by a child—that is 140 penalty units first offence, 280 penalty units for a second offence and 420 penalty units for a third offence. The supply of a smoking product to a child by a parent or guardian is 140 penalty units. Supply of smoking products at liquor licensed premises other than at a service area—that is 140 penalty units. I think those are probably the main offences. Supply of illicit tobacco—that is 300 penalty units.

Mr MOLHOEK: It is a significant increase. I think one of the things we heard yesterday was that there was not much incentive to not sell illegal products when the fine is only \$600, but that was more to do with vapes.

Mr West: We need significant penalties to act as a deterrent.

Mr MOLHOEK: Previously, was there a schedule of penalties in place but lesser, or are most of these penalties that are being introduced new?

Mr West: Most are new. We have a penalty regime across the whole act that has been there since the beginning. Sale to minors has always been a high penalty, as it should be, and supply of illicit tobacco now is a high penalty as well.

Mr MOLHOEK: Is it your department within Queensland Health that does the inspections and issues the penalties, or is it a different department? The group we met with yesterday down the coast were from poisons and—

CHAIR: Public health unit.

Mr MOLHOEK: I think they are from a different section within Queensland Health; is that correct?

Mr West: It is a different part of Queensland Health. It is from our hospital and health services, HHSs. They have public health units that do a range of work, and they include the environmental health officers who enforce the tobacco act.

Mr MOLHOEK: So those officers work across a range of enforcement areas?

Mr West: Yes, they do.

Mr MOLHOEK: They would be the same officers potentially that would be enforcing this?

Mr West: Absolutely. They are highly skilled at a range of enforcement measures across different acts, including the tobacco act.

Mr MOLHOEK: Perhaps as a question on notice, could we ask for some information about how many penalties have been issued in the last, say, couple of years—a little bit more information on some of the compliance activities of Queensland Health in respect of existing—

Mr West: I would be pleased to. For the period of the last two years we will give an update on the enforcement activity.

Mr ANDREW: We have had some very interesting information shared with us over the past couple of days. Principal Sheehy from AB Paterson College came up with some brilliant stuff. I know we are going a fair way to look at penalties, licensing and everything else. My concern is around the public safety of the children and everything else that needs to be considered as well. Would the health department look at subsidising or helping schools install these vape sensors in toilets and these areas to try to prevent schoolkids from taking this up? It is great to try to stop it at that end, but what are we doing for the health and safety of these young people?

Mr West: We talked about this last time a little. We are partnering with Education Queensland on practical strategies that they can implement to educate children about what is going on and to take action locally. It is a school and a principal issue about whether they install equipment.

Mr ANDREW: The lady was very comprehensive in what she told us yesterday and what she had reduced. The reduction in the amount of harmful vape products in her school is outstanding.

Mr West: Wow!

Mr ANDREW: It definitely needs to be taken into consideration. I implore the department to go and see these people and talk to them about how they implemented these practical measures to reduce the harm to children.

Mr West: That is a very good idea.

Mr O'CONNOR: AB Paterson College it was.

Mr West: AB Paterson College on the Gold Coast?

Mr O'CONNOR: Arundel on the Gold Coast.

Mr MOLHOEK: She indicated that they had developed a whole curriculum around it and they were happy to share the resources.

Mr O'CONNOR: Independent schools.

Mr West: We are talking with the independent schools as well.

Mr ANDREW: That is one of the matters I really wanted to get to. It is good to have all these other measures in place, but we have to start with helping the kids now.

Mr O'CONNOR: Under the current act, a lot of the illicit tobacco sales, particularly the vape sales, would not be prohibited because 'smoking product' includes e-cigarettes within the definition?

Mr West: That is correct.

Mr O'CONNOR: But they are everywhere, so how confident are you that the compliance will be able to keep up? I know it is one thing for penalties, but in Townsville we heard of the six staff from the public health unit, the environmental health officers that they have. On the Gold Coast it was 12, I think. How confident are you that you will have the enforcement that you need to make sure that people are deterred?

Mr West: It is very challenging. We are up against a system of retail supported by the tobacco industry to move product, including vape products. It is very difficult and we are doing our best.

CHAIR: There was a comment made in Townsville that I will share with you. There was a deliberate overwhelming from the illicit and other products industry—and it is an industry—to overwhelm the estate agencies and have them everywhere. We are hearing about these products being sold at a service station counter. They are just everywhere.

Mr West: We want the measures in this bill to be put in place to support enforcement the best we can, and then we will do that.

CHAIR: It is a big job.

Mr West: Yes.

Mr O'CONNOR: In your opening statement you touched on the online sales. Do you have any data on what sales would be online, or is it just really impossible to quantify because so much of it is hard to—

Ms Whitehead: Are we talking in Queensland?

Mr O'CONNOR: Yes.

Ms Whitehead: When we talk about online sales, an important aspect to remember is that the internet is not necessarily dictated by borders.

Mr O'CONNOR: With regard to Queensland sales of these products, do you have any idea of how much would be online?

Ms Whitehead: We do not have a licensing scheme yet, so the bill brings into play a really important piece of data gathering for us to know who is supplying, where they are supplying and who they are supplying to. We will be able to look at wholesalers and how they supply to retailers. We will be able to ask them about that supply. We will then be able to start to get a better picture of exactly who is supplying and the kinds of products they are supplying. To go back to the point around illicit sales, to make it clear, there are currently no controls at a state level under the Tobacco and Other Smoking Products Act on illicit tobacco. We cannot currently take any action on those products; the bill will enable that to happen.

Mr MOLHOEK: Will the provisions of this legislation in respect of illicit tobacco cover illicit vapes as well?

Mr O'CONNOR: That is more what I meant—the nicotine-containing vapes which we heard yesterday is 83 per cent of those that they have tested on the Gold Coast.

CHAIR: I think we also had a submission saying there are 90 million units coming in annually.

Ms Whitehead: With regard to nicotine products—the Medicines and Poisons Act that you mentioned earlier—that is where the nicotine component is. When it comes to the Tobacco and Other Smoking Products Act, that applies to the display, advertising and promotion of the product, regardless of whether or not there is nicotine present.

Mr MOLHOEK: Including vapes?

Ms Whitehead: The nicotine component of it is covered under the act which is complementary and also involves the same workforce.

Mr ANDREW: Yesterday one of the vape juice manufacturers told us about the Juul and the lawsuit that is in place at the moment. I am not sure if you knew about that. It is another jurisdiction obviously, but maybe this can apply. I am not sure exactly the ins and outs of it. We were told a basic 650 or however many million and the damage it has done. Maybe that is helpful, too.

Mr West: Thank you.

CHAIR: There being no further questions, we thank you very much for your information today and for responding to the submissions as well. It has been very informative. I will now close this hearing.

The committee adjourned at 2.09 pm.