

Tobacco and Other Smoking Products Amendment Bill 2023

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Submitted by:	Lung Foundation Australia, National Heart
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Attachments:	Australia, Asthma Australia, The Thoracic Society
Submitter Comments:	of Australia and New Zealand, AMA Queensland and Australian Council on Smoking and Health



31st March 2023

Health and Environment Committee
Parliament House, George Street, Brisbane 4000
Via email: HEC@parliament.qld.gov.au

Dear Health and Environment Committee,

Re: Inquiry into the Tobacco and Other Smoking Products Amendment Bill 2023

Lung Foundation Australia, National Heart Foundation, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia & New Zealand, AMA Queensland and Australian Council on Smoking and Health are strongly supportive of the Tobacco and Other Smoking Products Amendment Bill 2023 (**Bill**). Tobacco smoking, e-cigarettes, liquid nicotine, and associated products (**smoking products**) continue to cause significant health burden for Queensland residents and more needs to be done to protect young children, non-smokers/vapers, and visitors to our state from harm, while continuing to encourage and support current smokers to quit.

Smoking in Queensland

As a collective of health-focussed organisations, we have been advocating for and supporting, a range of smoking products policy and programs, including providing feedback on the development and draft of this Bill. Queensland has a proud legacy as a national leader in many aspects of tobacco control. However, in 2022, Queensland received the Dirty Ashtray award (alongside Victoria) for being the only jurisdictions without smoking products licensing schemes.ⁱ The introduction of a wholesale and retail licensing scheme in Queensland, and the other amendments in the Bill, are essential to reduce the burden of disease caused by smoking, and to strengthen existing legislation to protect the health of Queenslanders.

Tobacco smoking increases the risk of multiple cancers, including lung, and cardiovascular diseases such as heart failure and stroke.ⁱⁱ Smoking also triggers and exacerbates asthma symptoms, may cause chronic bronchitis and chronic obstructive pulmonary disease, makes users susceptible to chest and lung infections and is the most common preventable risk factor for pregnancy complications.ⁱⁱⁱ The daily adult tobacco smoking rate in Queensland in 2020 was 10% (410,000 people) – 12% for males and 8.9% for females.^{iv} For Aboriginal and Torres Strait Islander Queenslanders in 2018-2019 the rate was 42%. Rates in Queensland have declined slower than in other Australian jurisdictions, with only a 1% decline occurring in the three years to 2019^v, demonstrating the need for reforms such as those included in the Bill. Reducing the smoking rate will reduce the tangible and intangible costs of smoking to Queenslanders and to the Queensland health system and economy. In 2015-16 the estimated cost of tobacco smoking in Queensland was \$27 billion dollars – this figure

included the cost of premature deaths, hospitalisations, other medical and social care costs, workplace absenteeism, tobacco spending, as well as pain and suffering.^{vi}

In addition, the uptake of e-cigarettes is also of great concern, particularly as they are being used by young people and non-smokers. E-cigarettes, and other smoking products, continue to be easily accessed by children despite legislation in place restricting their sale. The harms of vaping are considerable, with the Queensland Poisons Information Centre recording a 486% increase in calls since 2020 involving children exposed to e-cigarettes and vaping products.^{vii} We acknowledge that the Committee is also undertaking an inquiry into vaping, and we will address many of our concerns relating to these smoking products to that inquiry.

We were greatly encouraged when the Hon Yvette D'Ath, along with her fellow Australian Health Ministers, endorsed the National Tobacco Strategy at the Health Ministers' Meeting in February.^{viii} The National Tobacco Strategy aims to achieve a national daily smoking prevalence of less than 5% in Australia by 2030, in line with commitments of the National Preventive Health Strategy^{ix}, which Queensland took a leading role in developing. The Bill is a timely and important step for Queensland to help achieve this vital goal.

Feedback on the Bill

The new reforms bolster the objectives of the *Tobacco and Other Smoking Products Act 1998* to improve the health of Queenslanders by reducing their exposure to smoking products through restricting supply, advertising, and promotion; reducing exposure to second-hand smoke; and establishing monitoring, investigative and enforcement activities.^x The amendments in the Bill to enact a positive licensing scheme and place further restrictions on designated outdoor smoking areas at liquor licensed venues are particularly welcome. While we strongly support the legislative reforms proposed, we also want to highlight areas for further strengthening:

- 1) Remove the 'prevention measures defence' for suppliers in relation to child employees supplying and handling smoking products.
- 2) Bolster amendments on designated outdoor smoking areas, vending machines in liquor licensed venues, and licensing categories.
- 3) Omit an existing clause that inhibits controlled test purchasing that is an effective enforcement measure.

1) Remove the 'prevention measures defence' for suppliers in relation to child employees supplying and handling smoking products

We assert that **subsection (4) of Clause 10, section 11A**, the provision of a defence for suppliers to a charge under subsection (1) that they instructed the child employee not to supply smoking products, could effectively render subsection (1) meaningless. The supplier may merely verbally instruct the employee or obtain written acknowledgement from the employee that instructions and warnings were mentioned, whilst in practice turn a blind eye to the child employee selling cigarettes. We recommend **removing** this defence to improve the likelihood of compliance with section 11A.

Section 18A of the Tobacco Products Control Act 2006 (WA) 'No retail sale by person under 18 years' was introduced in 2018 and was the first of its kind in Australia. It reads: "The holder of a retailer's licence must not authorise or allow a person who has not reached 18 years of age to sell a tobacco product." This section does not provide a defence to the licensee and ensures the licensee is responsible for their employees.

2) Bolster amendments on designated outdoor smoking areas, vending machines in liquor licensed venues, and licensing categories

Designated outdoor smoking areas

We strongly support the amendments in the Bill to restrict designated outdoor smoking areas (DOSAs) to adults and the further provisions on buffers. The implementation of smoke-free legislation is important to protect staff and patrons, including children, from the harmful health effects of second-hand smoke. For every eight smokers who die from a smoking-related disease, one non-smoker dies from second-hand smoke exposure.^{xi} Passive smoking can be particularly harmful to young children and lead to childhood respiratory problems, such as developing and triggering asthma, as well as other health conditions.

We also strongly recommend the prohibition of alcohol consumption in DOSAs. Research has demonstrated strong behavioural links between smoking and consuming alcohol.^{xii} Further, encountering smoke at liquor licensed venues is associated with smoking relapse.^{xiii} We also note that despite buffers, smoke-drift from DOSAs into other areas will continue to occur, with Queensland Health data finding that two in three patrons at liquor licensed venues reported smelling smoke in non-smoking areas.^{xiv} The amendments on DOSAs in the Bill are welcome but represent minimal changes to the existing legislation – further policy development is required.

Vending machines in liquor licensed venues

While the amendments in the Bill on vending machines in liquor licenced venues are a significant step forward, we again recommend stronger action – an outright ban of the sale of smoking products in liquor licenced venues. The ability to be able to continue to buy and sell cigarettes in these venues through a staff intervention mechanism increases the accessibility of smoking products, thereby making it more difficult for users who are trying to quit or have quit smoking/vaping to not smoke.^{xv} Further, the consumption of alcohol can interfere with an individual's decisions and willpower, which in conjunction with the sale/accessibility of smoking products in a liquor licenced venue, can lead to increased smoking.^{xvi}

Licensing categories

The introduction of a licensing scheme in Queensland is highly commended, and we hope to see swift implementation. The benefits of licensing are that it: enables effective communication with all businesses selling tobacco; facilitates compliance monitoring and enforcement of public health laws relating to the sale of tobacco products; potentially further increases the effectiveness of public health laws discouraging tobacco use; and reduces illicit tobacco sales.^{xvii}

We note that the Bill provides two license categories – wholesale and retail, with a retail license authorising the licensee to sell smoking products via one retail outlet and one associated online shop. Given the growing online market of smoking products, we believe the categories should expand to capture online shops separately. As an example, the *Western Australia Tobacco Products Control Act 2006*, implements three license categories: retail, wholesale sale and indirect (which covers sales from online shops).^{xviii} The current licensing of associated online shops under one fee does not adequately capture the online market nor accounts for the additional monitoring, compliance and enforcement that may be required. An online platform associated with a retail store provides an additional point of sale for smoking products and should be treated independently. Doing so would enable future opportunities to cap points of sale for licensees and provide a comprehensive

overview of the smoking products market. Additionally, vaping products continue to be accessed via online markets, including the illegal sale of nicotine e-cigarettes without a prescription), and we emphasise the importance of addressing this issue.

We note the *South Australia Tobacco and E-Cigarette Products Act 1997* prohibits the online sale of smoking products: “(1) a person must not sell a tobacco product if the order for the product has been placed by mail, telephone, fax, email, Internet or other electronic means and (2) a person must not sell an e-cigarette product if the order for the e-cigarette product has been placed by mail, telephone, fax, email, Internet or other electronic means”. This restriction provides further transparency of the smoking product market and reduces accessibility to smoking products. We highlight this as a potential future reform.

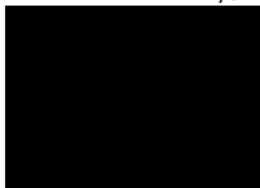
3) Omit an existing clause that inhibits controlled test purchasing that is an effective enforcement measure

Enforcement measures such as controlled test purchasing can be used to assess compliance with sales of smoking products to those aged 18 years and over. Clause 19A of the *QLD Tobacco and Other Smoking Products Act 1998* prohibits a person from falsely representing their age for the purpose of being supplied with a smoking product. This provision operates as a legal barrier to test purchasing programs, with Queensland the only State to include such a provision. We therefore suggest **omitting** this clause from the current legislation. Article 16 of the WHO Framework Convention on Tobacco Control (FCTC) requires parties to implement legislative, administrative, or other measures in order to ensure that prohibitions on the sale of tobacco products to minors are effective. Amending the Act to allow for controlled purchase operations would therefore be consistent with the Queensland Government’s obligations under the FCTC and would represent an important step in further protecting young Queensland residents from the dangers of using smoking products.

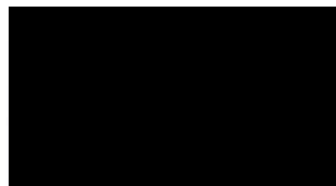
We note that South Australia supports controlled testing as outlined in their Tobacco and Control Strategy 2017-2020, which states “compliance testing by controlled purchase operations of at least 10% of all tobacco retail licence holders and publicise the outcomes of successful enforcement action”.^{xix} Controlled purchase operations can assist in enforcement of tobacco legislation and act as a deterrent for other tobacco retailers.

Lung Foundation Australia, National Heart Foundation, Public Health Association of Australia, Asthma Australia, The Thoracic Society of Australia & New Zealand, AMA Queensland, and Australian Council on Smoking and Health strongly support the Bill and urge its implementation as soon as possible. The reforms will bring Queensland back in line with other Australian jurisdictions and will have a marked impact on reducing the burden from smoking products. If you would like to discuss our response further, please contact Mark Brooke, CEO at Lung Foundation Australia on [REDACTED]

Yours sincerely,



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