

Tobacco and Other Smoking Products Amendment Bill 2023

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Submission to the Tobacco and Other Smoking Products Amendment Bill 2023

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Background

We welcome the new proposed regulatory reforms outlined in the Tobacco and Other Smoking Products Amendment Bill 2023.

We recognise these amendments represent a substantial advancement to tobacco and other smoking product regulation in Queensland. We strongly support the increased focus on smoke-free areas, the provisions to increase compliance with smoke-free areas and the development of a licensing scheme for tobacco retailers and wholesalers. However, there are still several areas where Queensland falls behind best practice nationally and internationally in how tobacco and other smoking products are regulated.

We welcome the opportunity to provide a further submission to the Health and Environment Committee. In this submission, we propose several ways the *Tobacco and Other Smoking Products Act 1998* could be further strengthened to bring Queensland closer to best practice in tobacco product regulation.

We have recently completed a review of state and territory laws throughout Australia. This review compares provisions in different jurisdictions for how well they protect children from exposure to tobacco product marketing. We have not included a copy of the review, which is yet to be published in a peer-reviewed journal, with this public submission, but we would be happy to supply an embargoed private copy to the Committee for their consideration.

Recommendations related to the proposed licensing scheme

We applaud the introduction of a tobacco retailer and wholesaler licensing scheme in these proposed reforms. However, we recommend several changes to the proposed amendment bill that we believe will strengthen and improve it. These recommendations are outlined below.

Recommendation to create specialist retail licence

We recommend distinguishing specialist tobacconists from general mixed business retailers by creating a *specialist retail licence* as a type of tobacco retail licence. If adopted, as we recommend, this change will need to be reflected in the other relevant sections of the Amendment Bill related to granting, suspending, and cancelling the licence, etc. All jurisdictions, with the sole exception of the ACT, that have implemented licensing schemes have maintained different licence categories for general mixed business retailers such as supermarkets and convenience stores and specialist tobacconist retailers. Differentiating specialist retailers allows for rapid identification of these different types of retailers and supports additional controls to be rapidly deployed to adjust to changing technological or market factors and/or target measures aimed at vulnerable groups such as minors.

Recommendation to impose conditions on specialist tobacco retailers

To prevent children from being attracted to, and entering, specialist tobacconists or specialist vaping product retailers (vape shops), we recommend that the following condition be imposed on specialist retailers:

- **Must not sell products or services for children or adolescents;**

We strongly support the intentions of the legislation to prevent the initiation and entrenchment of smoking and vaping by young people, which remains a priority not only in Australia but globally.¹ Research has demonstrated that the tobacco industry continues and their allies continue to target the youth market including by co-retailing products specifically designed to appeal to children such as toys and confectionary.² Strengthening the measures in the Bill to counteract these strategies would bring Queensland into line with other jurisdictions such as South Australia, Tasmania and Victoria. Indeed, Victoria's regime allows the Minister of Health to ban the co-sale of all products or services for children and adolescents including confectionary, toys, food and beverages other than low-risk shelf stable foods and beverages.

We recommend that a tobacco retail license should not be granted to retailers who primarily retail products or services designed or marketed for children. We believe this sends a strong message that tobacco products are not suitable for retailing in premises where children are the primary consumers and supports other provisions to prevent the sale or distribution of tobacco products to minors.

Furthermore, drawing on restrictions that prevent children from entering or remaining on premises that retail liquor or other adult products (e.g., R18+ adult shops), we recommend that children be prevented from entering or remaining on specialist tobacco retail licensed premises. Like alcohol, preventing them from entering the premises would send a strong message that these products are not suitable for children, and strengthen denormalisation strategies.

Recommendation to expand relevant products that can be supplied by a pharmacist without requiring a retail licence.

We recommend amending the new text in new s 9B (2) (b) (i), s 11A (2) (b), s 12 (3) (b) (ii) to:

“the smoking product is a regulated substance **or intended to be used to administer a regulated substance**”. This is because supply of devices or device componentry that do not contain a regulated substance may need to be supplied by pharmacists to patients who are using these products with nicotine vaping liquid for smoking cessation purposes.

¹ Hawkins B, Oliver K. Select Committee Governance and the production of evidence: The case of UK E-cigarettes policy. In: Fafard P, Cassola A, de Leeuw E, eds. Integrating Science and Politics for Public Health. Cham: Springer International Publishing 2022:187-208.

² Brown JL, Rosen D, Carmona MG, et al. Spinning a global web: tactics used by Big Tobacco to attract children at tobacco points-of-sale. *Tob Control* 2022 doi: 10.1136/tobaccocontrol-2021-057095

We also recommend deleting subsections 9B(2) (b) (ii), s 11A (2) (c), and s 12 (3) (b) (iii) because empty devices and associated componentry are not sold under a prescription because they do not contain a regulated substance.

Recommendations related to term and renewal of licences

We strongly support limiting the term of a retail or wholesale licence (section 7L) to 1 year or a shorter period stated on the licence. An annual renewal provides an important opportunity for licensees to decide if they wish to continue supplying tobacco and other smoking products and for regular evaluation of the suitability of the licence.

We recommend that **section 7M(3) and 7N should be removed**. The onus should be on the licensee to maintain their licence and if it lapses it should require a full process to resubmit.

Recommendations for Subdivision 2 Changes made by Chief Executive

We recommend subsection 7V(b), be amended as follows:

(b) reasonably believes it is necessary in the circumstances, to ensure the health and wellbeing of customers of the licensee, **or to achieve the Object of the Act**, to take the following action instead of suspending or cancelling the licence—

Recommendations related to 7ZD Criminal history report

We suggest the **removal of s 7ZD (3)**. This section allows a loophole whereby licensees who are aware that they have been charged or convicted with one of the nominated offences are able to delay the processing of their renewal application by refusing to provide the information or consent and are able to continue trading under the old licence for up to 90 days until their “fit and proper person” status can be administratively assessed. An application for a licence should not be able to be submitted without provision of consent for such inquiries to be made (i.e., it should be a routine part of applying and holding a licence that consent for such criminal history checks to be allowed).

Recommendation to require regular reporting of tobacco supply

Accurate estimation of illicit tobacco supply requires accurate data on the licit tobacco supply volumes by area. We recommend that a requirement is added to all wholesale licences that they must supply information on a regular basis (e.g., quarterly), of quantities of tobacco and other smoking products supplied to each retailer in a prescribed format that enables regular monitoring by region.

Recommendations related to retail licence fees

The proposed license fee is much lower than liquor licences (generally) and lower than Tasmania's tobacco retail licence fee. Queensland Health should consider if the amount raised by the licence fees will be sufficient to adequately ensure compliance given the current concerns about a large and growing illicit nicotine vaping product and illicit tobacco market. For example, the TGA has advised that the cost of compliance enforcement for nicotine vaping products has been substantially higher than estimated due to the widespread non-compliance regarding nicotine vaping products. We believe that \$2000 is not an unreasonable licence fee considering the level of community concern about the problem of illicit nicotine vaping products and illicit tobacco products, the costs of monitoring and compliance activities, and is closer to the level for a liquor licence.

Recommendations relating to vending machines

The draft provisions allow the licensee to supply the tobacco product from a vending machine at any point of sale in the premises. This is inconsistent with other provisions in the Act which restrict supply to one point-of-sale in an outlet. We recommend section 16A (Supply of smoking products at liquor licensed premises from tobacco product vending machines) is changed to require all tobacco sales to be transacted through one point of sale only.

While we acknowledge the policy decision not to ban vending machines, we are concerned about the draft provisions for vending machines. Currently, vending machines are limited to bar areas or gambling areas. The draft provisions appear to widen those provisions to any area of a premises, providing they are only accessible by staff. This suggests that vending machines could be placed in restaurant or family areas of licenced premises, providing opportunities to continue normalising the purchase of tobacco products through the visual cues afforded by tobacco product vending machines, which can trigger unplanned purchases. Hence, we recommend that vending machines also be required to be located such that they are not visible to the public.

Recommendations for Amendment of Part 2D of the Act

Recommendation to ban mint and menthol flavoured cigarettes

When Canada banned menthol cigarettes federally in 2017, this measure increased quitting among people who smoked menthol cigarettes.³ We note that the Federal

³ Fong GT, Chung-Hall J, Meng G, *et al* Impact of Canada's menthol cigarette ban on quitting among menthol smokers: pooled analysis of pre–post evaluation from the ITC Project and the Ontario Menthol Ban Study and projections of impact in the USA *Tobacco Control* Published Online First: 28 April 2022. doi: 10.1136/tobaccocontrol-2021-057227

Minister for Health and Aged Care announced an intention to ban flavoured cigarettes, including menthol as part of proposed federal tobacco control reforms. However, Queensland could also implement a menthol ban now. This would be consistent with how fruit and confectionary flavoured cigarettes were banned via State laws. This could be achieved by deleting s 26ZT(2).

Recommendation to add ban orders

We recommend a provision be added to Part 2D to allow ban orders to be implemented by the Minister for Health to ensure that technological and product changes are able to be addressed rapidly and flexibly without further legislative changes.

Recommendations concerning strengthening compliance monitoring and enforcement

We agree with previous submissions to consultations on the proposed regulatory reforms that “suggested that resources beyond the estimated \$1.6m – \$1.92m would be required to regulate, investigate, and prosecute annually.”

We also “recommend that the Act be amended to allow for stronger monitoring, compliance, and enforcement, including covert operations (which may include allowing young people to be involved in testing compliance), and that the amendment should include seizure of tobacco products not meeting plain-packaging requirements or without mandatory graphic health warnings”, and “that additional resources be provided to ensure regular (proactive) compliance checks occur”.

Covert operations using young people as authorised officers occur routinely in other states. For example, the Western Australian Tobacco Products Control Act 2006 allows for children to be authorised to be controlled purchase officers for testing compliance of retailers for laws prohibiting supply of tobacco products to children. We recommend that Queensland also adopts legislative provisions to allow such covert controlled purchase operations to monitor and test compliance. This change to enforcement and compliance activities would bring Queensland in line with best practice in other states. In South Australia, Tasmania, Victoria and Western Australia for example, a legislative framework ensures that young people are legally protected and supported through education and training while still doing this important work to identify retailers who fail to comply with the current provisions. It is also successful, and the schemes not only support compliance with the current laws but also act as a deterrent. Although public enforcement action data is lacking in completeness, media

reports demonstrate the success of such compliance activities, which have been used in other jurisdictions for over 20 years.⁴

Recommendation for strengthening s 33 (Entry of places by authorised persons)

We agree with the recommendation to support compliance actions by authorised persons, however, the section is unclear about whether these powers would also apply to wholesale premises, given the definition of supplier in the legislation. To avoid doubt, we suggest making this explicit.

Recommendation to regulate delivery of tobacco and other smoking products

Currently the act is silent on delivery of tobacco products. Given that the Consultation Paper has identified areas for modernisation, we recommend updating the Act to include clauses to regulate an emerging channel for young people to access tobacco and smoking products via home delivery. Again, this would ensure Queensland is in line with other jurisdictions.

Recommendation to protect the public and employees in premium gaming rooms

We strongly recommend that s 26R (2) (c) of the current Act is deleted. People in premium gaming rooms, including employees should be protected from exposure to secondhand smoke. The exclusion of this commercial indoor space from smoke-free provisions is inconsistent with the Object of the Act.

⁴ Herald Sun, Undercover teens used in tobacco sting, 3 June 2019

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