

Health Legislation Amendment Bill 2025

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**Queensland Parliament - Health, Environment and Innovation Committee:
Inquiry into the Health Legislation Amendment Bill 2025**

Dear Members of the Health, Environment and Innovation Committee

Re - Submission on Health Legislation Amendment Bill 2025 to amend the *Tobacco and Other Smoking Products Act 1998* (Qld)

We would like to thank the Committee for the opportunity to respond to the proposed amendments to the abovementioned legislation.

We commend the Queensland Government for addressing the issue of illicit vaping product supply and for the recent increase in penalties for commercial possession and sales of illicitly traded tobacco and vaping products. Removing these illegally traded products from Queensland retail outlets through strong enforcement action and adequate penalties is critical to protecting the health of Queenslanders.

In addition, the proposed amendments are consistent with the World Health Organization's recommendations under the *Framework Convention on Tobacco Control Protocol to Eliminate Illicit Trade in Tobacco Products*,¹ a key international UN treaty aimed at combating the global illicit tobacco trade. The provisions stipulated under Article 16 (*Prosecutions and sanctions*) of the Protocol, encourages nations to adopt measures that subject offenders to “*effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions*”. While Australia is not currently a Party to this treaty, aligning Queensland's approach with international best practices through this amendment reinforces the state's commitment to mitigating the trade in illicit tobacco and nicotine products.

Our submissions are as follows:

- (1) We support in principle the insertion of CI 20 – Section 205B Forfeiture of Vaping Goods.
- (2) The widespread selling of vaping products illicitly creates a public health risk, particularly for young people.² It is imperative that strict legislative provisions are enacted to ensure that there is no risk of seized illicit vaping products finding their way back into the illicit vaping market. Such a risk is antithetical to the objects of the Principal Act, which are achieved through

¹ WHO Framework Convention on Tobacco Control. *Protocol to Eliminate Illicit Trade in Tobacco Products*. World Health Organization; 2013.

² Australian Institute of Health and Welfare. Young people's use of vapes and e-cigarettes [Internet]. Canberra: Australian Institute of Health and Welfare, 2024 [cited 2025 Apr. 6]. Available from: <https://www.aihw.gov.au/reports/smoking/young-peoples-vapes-e-cigarettes>

'restricting the supply and possession of ... illicit nicotine products' (s 4(b)). The insertion of s 205B would ensure that the object of the Principal Act is achieved.

- (3) We recommend that the provision in Section 205B(3) - CI 20 of the Health Legislation Amendment Bill 2025—which states that *"the chief executive is not required to provide procedural fairness in giving the written notice"*—be extended and explicitly incorporated into Section 205 (*Forfeiture of illicit tobacco or illicit nicotine product*), that is, all powers exercised by the Chief Executive in determining whether a thing seized will be forfeited to the State. The expedited forfeiture process should apply to both illicit tobacco and vaping products, which tend to be seized together during routine compliance operations.
- (4) Further to this, we recommend that s 205B(3) makes it explicitly clear that parliament intends to abrogate the right to procedural fairness under this provision, to provide clarity to the courts should they be called upon to consider this issue.³
- (5) We commend and support the inclusion of CI 24 – s 223A Recovery of Cost from Convicted Person. Storage and destruction of vapes is extremely costly for the State, with the Minister for Health and Ambulance Services highlighting that the cost alone for one specialised storage unit to store vapes costs the State of Queensland tens of thousands of dollars.⁴
- (6) This amendment is necessary to ensure that the financial burden of pursuing the offence under the judicial process is borne by the offender rather than Queensland taxpayers. Requiring the offender to cover the costs incurred during prosecution will not only hold the individual financially accountable for the offence, but also promote deterrence with proportionate and dissuasive legal sanctions to discourage repeat offending. Further, this amendment will enable Queensland Health to financially recover a portion of the expenditure on pursuing the offence, ensuring that funds are reinvested into enhanced and continued enforcement practices.
- (7) Furthermore, the environmental risk created by this hazardous waste stream must be adequately and safely managed. The amendment will assist with ensuring there are adequate funds for safe storage and disposal through a cost-recovery process. Section 233A(2) lists matters the court may have regard to when deciding to exercise the power conferred under s 233A(1). The list of matters provided in s 233A(2) should be expanded upon to ensure that additional matters are considered when determining if an order under s 233A(1) should be made. Deterrence should be listed as a matter courts should have regard to.

³ *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40, [30] (Kiefel, Bell and Keane JJ); Australian Law Reform Commission, *Traditional Rights and Freedoms-Encroachments By Commonwealth Laws* (ALRC Report 129, January 2016) Ch 14.

⁴ Parliament of Queensland, *Hansard*, Legislative Assembly, 14 March 2024, 507-08 (TJ Nicholls, Minister for Health and Ambulance Services).

- (8) Additional matters that may be included in s 233A(2) could be, for example: 1) the quantity of illicit items seized; 2) the overall scale of the offending; and 3) the harm the offending caused to the community and the environment. We submit that consideration of any matters listed in s 233A(2) should be at the court's discretion, consistent with the current drafting of this provision, *'[i]n deciding whether to make the order, the court may have regard to—'*.
- (9) We recognise the focused scope of the current consultation related to forfeiture of illicit vaping products but would like to also bring the attention of the committee to the following issues related to illicit trade in tobacco and vaping products that are beyond the current amendments under consideration. The following recommendations should be given consideration for future reforms to Queensland laws to control and manage the risks associated with illegal trade in tobacco and vaping products.
- (10) Under the Principal Act, illicit tobacco is defined as a 'smoking product that does not comply with any of the following requirements applying to the product—
- (a) a tobacco product requirement;
 - (b) health warning requirement;
 - (c) another requirement under a law of the Commonwealth prescribed by regulation.¹⁵
- (11) The 'tobacco product requirement[s]' and 'health warning requirement[s]' are included in the *Public Health (Tobacco and Other Products) Act 2023* (Cth).⁶ Currently, the *Tobacco and Other Smoking Products Regulation 2021* (Cth) has not prescribed another requirement under a law of the Commonwealth to expand the definition of illicit tobacco.
- (12) We submit that the Parliament of Queensland consider extending the definition of illicit tobacco under the *Tobacco and Other Smoking Products Act 1998* (Qld) to include prohibited goods under the *Customs Act 1901* (Cth) and excisable goods under the *Excise Act 1901* (Cth) for which no excise has been paid. This could be achieved through amending the Regulations.
- (13) The illicit tobacco trade is a lucrative industry. Criminals engaged in the illicit tobacco trade will find ways to make detection of their products more difficult. This may include selling illicit products in retail packaging that is compliant with the tobacco product packaging requirements and health warning requirements. We are aware of such packs that have been supplied in Australia. Therefore, it is imperative that the regulations are also able to capture illegally traded tobacco products that are sold in compliant packaging.

⁵ *Tobacco and Other Smoking Products Act 1998* (Qld) Sch 1 definition of 'illicit tobacco.'

⁶ See Ch 3.

- (14) Expanding the definition of illicit tobacco to include prohibited goods under the *Customs Act 1901* (Cth) and Excisable Goods under the *Excise Act 1901* (Cth) for which excise has not been paid, would assist with closing an identifiable gap in the existing legal framework.
- (15) We also recommend the inclusion of a minimum retail price for the sale of tobacco products be inserted into Queensland's tobacco retailing licences as a licence condition and that selling (or offering for sale) tobacco products for less than the minimum price should incur penalties that are equivalent to those for sale of illicit tobacco. This will assist with identifying products that have likely evaded paying all the required taxes and excise but may be packaged in compliant packaging. It also protects the intention of tobacco taxation policy, which is to raise the price of tobacco products to discourage purchasing, which is particularly effective for preventing uptake of smoking among young people.
- (16) A minimum retail price would ensure that tobacco that is imported illegally into, or illegally grown domestically in, Australia then sold in Queensland in compliant packaging, are still deemed illicit tobacco, and therefore, come within the scope of the illicit tobacco offence provisions of the *Tobacco and other Smoking Products Act 1998* (Cth).
- (17) In South Australia, a similar provision exists in the *Tobacco and E-Cigarette Products Act 1997* (SA) s 32, which makes it an offence to 'sell or supply tobacco products that the person knows or ought reasonably to know ... are prohibited goods [under] the *Customs Act* ... or excisable goods [under] the *Excise Act* ... on which excise duty has not been paid.'⁷ While the South Australian Act operates differently to the Queensland Act, we recommend that the Parliament of Queensland consider expanding the definition of illicit tobacco through regulation, consistent with our recommendations.
- (18) We recommend that all illicit tobacco and vaping products that are seized are systematically documented in a database, including images and detailed information on the quantity and type of product seized, prior to being destroyed in accordance with state law. This should ideally be in a format that could be shared with university researchers to allow research on the types of products circulating in the illicit market, which will help with identifying temporal trends or changes in these products over time, and allow triangulation with other research data to provide a fuller picture of the illicit tobacco and vaping product market.

⁷ S 32(a), (b).

(19) In terms of monitoring and enforcement, we also recommend the use of controlled purchase operations as part of the compliance monitoring programs for both underage sales and supply of illicitly traded tobacco and vaping products, which is considered best practice.⁸

Again, we would like to commend the Queensland Government for their strong leadership on the issue of controlling the illicit trade in tobacco and vaping products. We would be pleased to present at the committee hearing at the Committee's request.

Yours sincerely

Dr Michaela Okninski, Ms Isabel Meciar, Dr Cheneal Puljevic, Professor Coral Gartner

NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame

The School of Public Health

Faculty of Health, Medicine and Behavioural Sciences

The University of Queensland

⁸ <https://www1.health.gov.au/internet/publications/publishing.nsf/Content/tobacco-res-access-minors~tobacco-res-access-minors-appendixc~tobacco-res-access-minors-appendixc-ikkeyelements>