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Reform of Queensland's Smoking Laws: The Tobacco and Other Smoking Products Amendment Bill 2004 (Qld)

The Tobacco and Other Smoking Products Amendment Bill 2004 (Qld) ('Bill') results from a review of the operation of the Tobacco and Other Smoking Products Act 1998 (Qld) ('Act'), and builds on significant amendments to the Act which commenced in May 2002.

The key amendments under the Bill are:

- *From 1 January 2005 – smoking will be banned in major sports facilities and at patrolled beaches, 'prescribed outdoor swimming areas', within four metres of entrances to non-residential buildings and within 10 metres of children's playground equipment.*
- *From 31 December 2005 – further restrictions will apply to the supply, advertising, display and promotion of smoking products, and a range of associated penalties will substantially increase.*
- *From 1 July 2006 – a total ban on smoking will apply to enclosed areas of licensed premises (to be phased in over 18 months from 1 January 2005), and smoking will be banned in outdoor eating and drinking places such as cafés and restaurants. An exception will apply for 'designated outdoor smoking area' in licensed premises.*

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Research Brief No 2004/15

Queensland Parliamentary Library
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ISSN 1443-7902

ISBN 0 7345 2897 3

NOVEMBER 2004

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EXECUTIVE SUMMARY

The Tobacco and Other Smoking Products Amendment Bill 2004 (Qld) ('Bill') was introduced into the Queensland Legislative Assembly on 20 October 2004 by the Hon G Nuttall MP, Minister for Health.

The Bill results from a review of the operation of the *Tobacco and Other Smoking Products Act 1998* (Qld) ('Act') (**page 3**), and builds on significant amendments to the Act which commenced in May 2002 (**pages 2-3**). It also addresses a notable increase in concern by the community and health groups on the effects of environmental tobacco smoke (**pages 3-4**).

The amendments under the Bill will be implemented in three stages over 18 months, commencing on 1 January 2005. The key changes are as follows:

- From 1 January 2005, smoking will be banned in certain outdoor areas:
 - major sports facilities (**pages 4-5**);
 - patrolled beaches (**page 7**);
 - 'prescribed outdoor swimming areas' (**page 8**);
 - within four metres of entrances to non-residential buildings (**pages 8-9**); and
 - within 10 metres of children's playground equipment (**page 9**).

Local governments will have a role in administering the new prohibitions in relation to patrolled beaches, prescribed outdoor swimming areas, entrances to non-residential buildings and children's playground equipment, but there will be no *duty* on local governments to enforce these provisions (**pages 6-7**).

- From 31 December 2005, further restrictions will apply to the supply, advertising, display and promotion of smoking products, and a range of associated penalties will also substantially increase (**pages 9-20**).
- From 1 July 2006, a total ban on smoking will apply to:
 - all enclosed areas of licensed premises, other than 'high roller' rooms of casinos (this will be phased in over 18 months commencing on 1 January 2005) (**pages 20-23**); and
 - outdoor eating and drinking places, such as cafés and restaurants (**pages 23-24**),
other than 'designated outdoor smoking areas' of licensed premises (**pages 24-26**).

This Research Brief also considers similar, but not identical, bans on smoking in enclosed areas of licensed premises that are proposed in New South Wales (**pages 30-35**), Victoria (**pages 35-36**) and Western Australia (**pages 36-38**).

1 INTRODUCTION

On 20 October 2004, the Hon G Nuttall MP, Minister for Health, introduced the Tobacco and Other Smoking Products Amendment Bill 2004 (Qld) ('Bill') into the Queensland Legislative Assembly. The Bill results from a review of the operation of the *Tobacco and Other Smoking Products Act 1998* (Qld) ('Act'), and builds on significant amendments to the Act which commenced in May 2002.

The amendments under the Bill will be implemented in three stages over 18 months, commencing on 1 January 2005. The key changes are as follows:

- From 1 January 2005 – smoking will be banned in certain outdoor areas (major sports facilities, patrolled beaches, 'prescribed outdoor swimming areas', within four metres of entrances to non-residential buildings and within 10 metres of children's playground equipment).
- From 31 December 2005 – further restrictions will apply to the supply, advertising, display and promotion of smoking products, and a range of associated penalties will substantially increase.
- From 1 July 2006 – a total ban on smoking will apply to enclosed areas of licensed premises¹ (this will be phased in over 18 months commencing on 1 January 2005), and smoking will be banned in outdoor eating and drinking places such as cafés and restaurants.

A principal aim of the Bill is to reduce the exposure of young people to smoking products. The amendments also seek to "combat smoking's death toll of more than 3,400 Queenslanders each year"² and the 30,000 smoking-related hospital admissions per annum.³ The Hon G Nuttall MP has said:⁴

In Queensland we want to achieve more than just banning smoking in public places. We want to change attitudes. We want to help people give up smoking. We want to save people from lung cancer, emphysema and debilitating heart problems.

¹ Note, however, that 'high roller' rooms in casinos will continue to be exempt from the prohibition on smoking. This is discussed in Part 3.3.1 of this Research Brief.

² Hon G Nuttall MP, Minister for Health, 'Beattie Govt details plan to limit lethal tobacco displays', *Ministerial Media Statement*, 20 September 2004. A copy of this Media Statement, and other Media Statements relevant to the Bill, are included in Appendix A of this Research Brief.

³ Hon P Beattie MP, Premier and Minister for Trade, 'Queensland to introduce nation's toughest smoking bans', *Ministerial Media Statement*, 6 September 2004.

⁴ Hon P Beattie MP, Premier and Minister for Trade, 'Premier: work with us on smoking bans to save lives', *Ministerial Media Statement*, 7 September 2004.

Similar, but not identical, bans on smoking in enclosed areas of licensed premises are proposed in other Australian jurisdictions. This Research Brief examines the position in New South Wales, Victoria and Western Australia.

2 BACKGROUND

An earlier publication of the Queensland Parliamentary Library contains a comprehensive chronology of the key events leading to the introduction of the Bill.⁵

By way of summary, the most significant steps are:

- the earlier reforms to the Act, which commenced in May 2002;
- the recent review of the operation of the Act; and
- a notable increase in concern by the community and health groups on the effects of environmental tobacco smoke.

2.1 EARLIER REFORMS

The amendments to the Act which commenced in May 2002:⁶

- further restricted the location of tobacco vending machines to casinos and bar and gaming machine areas of licensed premises;⁷
- placed new limits on the advertising and display of smoking products at retail outlets (generally restricting their location to point of sale), prohibited the promotion of smoking products and required a 'quit smoking' sign to be located at each point of sale and tobacco vending machine;⁸
- banned smoking in most 'enclosed places' (such as shopping centres, cinemas and most workplaces), with some exemptions (including private residences and motor vehicles; private living areas of boarding houses, nursing homes and hostels; 'high roller' rooms in casinos; prison facilities;

⁵ Renee Giskes, *Smoking Law Reforms*, Hot Topics 'In the News', Queensland Parliamentary Library, <http://www.parliament.qld.gov.au/ConcordDocs/HT0/HT040601RG01.HTM>. This publication also contains links to significant documents and further reading.

⁶ These amendments were made under the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001* (Qld).

⁷ Section 15 of the Act.

⁸ Part 2A of the Act.

and licensed premises, other than dining areas where meals are served, bingo areas and gaming table areas of casinos);⁹

- increased the maximum penalties for various offences; and
- substantially revised the monitoring and enforcement provisions.

2.2 REVIEW OF THE OPERATION OF THE ACT

More than 1,300 submissions¹⁰ were received on a discussion paper¹¹ released by the Queensland Government in June 2004 as part of the review of the operation of the Act.¹²

The submissions indicated “overwhelming acceptance of a move to wider smoking bans”.¹³ In particular, there was “overwhelming public support for a ban on smoking in pubs and clubs” and “considerable public support for restricting the display of smoking products at retail outlets and banning smoking in some outdoor areas”.¹⁴

2.3 INCREASING CONCERN REGARDING THE EFFECTS OF ENVIRONMENTAL TOBACCO SMOKE

Since commencement of the earlier reforms in May 2002, community concern regarding the effects of environmental tobacco smoke has notably increased and has been affected by a range of factors, including:

- litigation by non-smokers who have been exposed to passive smoking;
- calls by health groups for a ban on smoking in public places;

⁹ Part 2B of the Act.

¹⁰ Hon G Nuttall MP, Minister for Health, Tobacco and Other Smoking Products Amendment Bill 2004 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 October 2004, pp 3046-3049, p 3047.

¹¹ Queensland Government, ‘The Tobacco and Other Smoking Products Act 1998 Review’, *Discussion Paper*, June 2004, <http://www.health.qld.gov.au/atods/Documents/23179.pdf>.

¹² The review was required under section 52 of the Act.

¹³ Hon P Beattie MP, Premier and Minister for Trade, Smoking Bans, Ministerial Statement, *Queensland Parliamentary Debates*, 18 August 2004, p 1862.

¹⁴ Second Reading Speech, p 3047.

- the public campaign by unions calling for the protection of hospitality workers who, unlike most other workers, have continued to be exposed to environmental tobacco smoke in their workplace; and
- the release of a number of studies which have examined the effects of exposure to passive smoking and the efficacy of designated ‘no smoking’ areas.¹⁵

3 TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2004 (QLD)

3.1 1 JANUARY 2005 – BAN ON SMOKING IN CERTAIN OUTDOOR AREAS

Clause 40 inserts **new Part 2C, Divisions 2 and 3** which ban smoking in the following areas from 1 January 2005:

- major sports facilities managed by the Major Sports Facilities Authority;
- patrolled areas of patrolled beaches;
- ‘prescribed outdoor swimming areas’ (such as artificial beaches);
- within four metres of non-residential building entrances; and
- within ten metres of children’s playground equipment located at a public place.

3.1.1 Major Sports Facilities

A person will be prohibited from smoking at a ‘major sports facility’ (**new s 26ZE(1)**). A maximum penalty of 20 penalty units (\$1,500) will apply for a contravention.

‘Major sports facility’ means a facility declared to be a major sports facility under the *Major Sports Facilities Act 2001* (Qld) (**new s 26ZD**). Currently, these include:¹⁶

- the Gabba;
- the Queensland Sport and Athletics Centre (formerly the QEII Sports Centre and ANZ Stadium);

¹⁵ Renee Giskes, *Smoking Law Reforms*, Hot Topics ‘In the News’, Queensland Parliamentary Library, <http://www.parliament.qld.gov.au/ConcordDocs/HT0/HT040601RG01.HTM>, contains links to some of these studies.

¹⁶ Major Sports Facilities Regulation 2002 (Qld), regulation 2.

- the Sleeman Centre;
- the Brisbane Entertainment Centre;
- Suncorp Stadium; and
- Dairy Farmers Stadium, Townsville.

It will not, however, be an offence to smoke in an area of a facility that may always be entered without payment of an entry fee (**new s 26ZE(2)**). An example of this situation is smoking in the general grounds of the Sleeman Centre, where outdoor recreation areas are used for picnics and other activities.¹⁷

A person who continues to contravene the prohibition when directed to stop doing so by an authorised person or an occupier of the facility (or by an employee or agent of the occupier) is liable for a maximum penalty of 20 penalty units (\$1,500) (**new s 26ZF**).

If a person contravenes the prohibition, the occupier of the facility commits an offence and is liable for a maximum penalty of 140 penalty units (\$10,500), unless they can prove:

- they were not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
- they (or their employee or agent) directed the person to stop smoking and told the person that it was an offence not to comply with such a direction (**new s 26ZG**).

Where part of a facility is leased to a food outlet, and the food outlet provides an outdoor eating or drinking place as part of its business, the lessee will be the ‘occupier’ for the purposes of any offence that is committed for allowing a person to smoke in that area.¹⁸ In all other cases, the Major Sports Facilities Authority will be the ‘occupier’.¹⁹

¹⁷ Tobacco and Other Smoking Products Amendment Bill 2004 (Qld), *Explanatory Notes*, pp 18-19.

¹⁸ The new ban on smoking in outdoor eating and drinking places is discussed in Part 3.3.2 of this Research Brief.

¹⁹ Explanatory Notes, p 19.

3.1.2 Other Outdoor Areas

Role of local governments

From 1 January 2005, both the State and local governments will have a role in administering the new prohibitions on smoking:

- in patrolled areas of patrolled beaches;
- in ‘prescribed outdoor swimming areas’;
- within four metres of non-residential building entrances; and
- within ten metres of children’s playground equipment located at a public place.

There will not, however, be any *duty* on local governments to enforce these provisions (**new s 26ZM**).²⁰ Despite this, the Minister for Health, the Hon G Nuttall MP, has indicated that he “look[s] forward to a high level of participation” by local governments.²¹

Where a local government does exercise its power to enforce these provisions, it may do so:

- for non-residential building entrances and children’s playground equipment – within the local government’s own area; and
- for a patrolled beach or prescribed outdoor swimming area – within the local government’s own area, or adjacent to its own area (**new s 26ZN**).

Further, any fines imposed by a court in proceedings for a contravention of these provisions which are taken by a local government must be paid to the local government (**new s 26ZP**). A maximum penalty of 20 penalty units (\$1,500) applies for a contravention of each of the prohibitions. A maximum penalty of 20 penalty units (\$1,500) also applies for failing to comply with a direction by an authorised person to stop a contravention (**new s 26ZL**).

To allow Queensland Health to collect information regarding which local governments decide to exercise their powers to enforce the smoking bans, and to monitor the overall enforcement of the bans,²² the chief executive of Queensland Health may, by written notice, require a local government to provide information

²⁰ Some local governments have indicated that they will not be enforcing the provisions (see, for example, Simone Knox, ‘Gestapo-style smoke bans not on: Byrne’, *Cairns Post*, 20 October 2004, p 3).

²¹ Second Reading Speech, p 3048.

²² Explanatory Notes, p 21.

about the local government's administration and enforcement of the prohibitions (**new s 26ZO**).

Patrolled beaches

A person will be prohibited from smoking in a 'patrolled beach area' of a 'patrolled beach' (**new s 26ZH**). The ban will apply only while the beach is patrolled (that is, only while the flags are put up by the club or organisation providing the lifesaving services on the beach).²³

A 'patrolled beach' is 'a beach on which red and yellow flags mark the boundaries for safe swimming at the beach'. A 'patrolled beach area' is the "area bounded by four prescribed lines. ... [I]t is the area between these flags that extends, at right angles to the imaginary line between the flags, seaward for 50 metres and away from the sea, as far as beach continues until it reaches land that is no longer a part of the beach".²⁴

In relation to the ban, the Hon G Nuttall MP, Minister for Health, has said:²⁵

On crowded beaches it is not just smoke but the fact that thousands of cigarette butts with all their poisons are left in the sand.

Moves for similar bans on smoking at beaches have been made by some interstate local government areas, such as Manly Council²⁶ and Waverley Council.²⁷

²³ Explanatory Notes, p 19.

²⁴ Explanatory Notes, p 19. Land that is no longer part of the beach is any registered land (freehold or leasehold, or a road, reserve, trust land, licence, permit or State Housing lease) (**new s 26ZH(2)**).

²⁵ 'Premier: work with us on smoking bans to save lives', Ministerial Media Statement.

²⁶ For information on the bans by Manly Council see <http://www.manly.nsw.gov.au/Page.asp?z=1&c=22&p=126&x=2&id=158> (Manly Council's resolution of 17 May 2004 also extends to areas within ten metres of children's playground equipment under the Council's care, all Council playing and sporting grounds and all events run or sponsored by the Council. The ban has been extended to include areas within ten metres of entrances to Council owned or managed buildings and al fresco dining areas on public land).

²⁷ See 'Waverley Council moves to ban smoking on Bondi, Bronte and Tamarama Beaches', *Media Release*, 18 May 2004, <http://www.waverley.nsw.gov.au/info/media/2004/smokingban.html>.

Prescribed outdoor swimming area

A person will be prohibited from smoking in a ‘prescribed outdoor swimming area’ between sunrise and sunset (**new s 26ZI**).

A ‘prescribed outdoor swimming area’ is an area in, or adjacent to, a pool or other body of water used by the public for swimming, where the area, or part of the area, is prescribed under a regulation. An example is an artificial beach, such as South Bank Beach at the South Bank Parklands²⁸ and the Airlie Beach lagoon, and the prohibition will apply to the whole of the artificial beach during daylight hours.²⁹

The prohibition will not apply to a public swimming pool or a swimming pool on residential premises.³⁰

Within four metres of non-residential building entrances

A person will be prohibited from smoking within four metres of any part of the entrance to a building (subject to the exceptions listed below), unless the person has a ‘reasonable excuse’ (**new s 26ZJ**). The exceptions are:

- residential premises;
- multi-unit residential accommodation (such as motels, hostels, boarding houses, nursing homes and residential accommodation comprising lots in a community titles scheme); and
- premises which have a general licence or club licence under the *Liquor Act 1992* (Qld).

The prohibition also does not apply to a person in a motor vehicle, or in an outdoor pedestrian mall prescribed under a regulation. This will allow people to smoke within four metres of non-residential building entrances situated in malls, such as Brisbane’s Queen Street Mall and the Gold Coast’s Cavill Mall.³¹

The prohibition applies only while general access to the building is available by the entrance. For example, where the entrance is to a shop, smoking will be banned within four metres of the entrance only while the shop is open for business, and not after hours.

²⁸ Explanatory Notes, p 20.

²⁹ Second Reading Speech, p 3048.

³⁰ Explanatory Notes, p 20.

³¹ Explanatory Notes, p 20.

A person has a 'reasonable excuse' for smoking in contravention of the prohibition if they did not remain at or near the entrance, but were merely passing by.

Queensland Health will develop guidelines for the enforcement of this prohibition. Enforcement will focus on people who smoke while loitering near building entrances, and will discourage enforcement in circumstances such as where a smoker walking along a footpath stops briefly within the prohibition zone to greet someone or to put money in a parking metre.³²

Within ten metres of children's playground equipment

A person will be prohibited from smoking within ten metres of any part of children's playground equipment situated at a place that is ordinarily open to the public (**new s 26ZK**).

The prohibition will not apply to a person in a motor vehicle or a person at residential premises or on land on which residential premises are built or may lawfully be built. For example, a person will not contravene the prohibition if playground equipment is located within ten metres of their backyard and the person smokes in their backyard.³³

3.2 31 DECEMBER 2005 - INCREASED PENALTIES FOR A RANGE OF OFFENCES ASSOCIATED WITH THE SUPPLY OF SMOKING PRODUCTS

From 31 December 2005, there will be substantial increases to the maximum penalties for a range of offences associated with the supply of smoking products. The increases represent an "all-out assault on the death toll and illness caused by tobacco smoke".³⁴ In most cases, the maximum penalty will be doubled.

A primary focus of these changes is to reduce the exposure of young people to smoking products.

³² Second Reading Speech, p 3048.

³³ Explanatory Notes, p 21.

³⁴ The Hon P Beattie MP, Premier and Minister for Trade, 'Queensland Government doubles fines in crack-down on smoking', *Ministerial Media Statement*, 18 October 2004. This Media Statement also contains a comparison of the penalties for similar offences in different jurisdictions.

3.2.1 Failing to take 'Prevention Measures'

Under section 9A, a supplier of smoking products must take the following 'prevention measures' in relation to their employees:

- instruct them not to supply smoking products to children (even if the supply is, or is claimed to be, for an adult) and to sight acceptable evidence of the age of a person before supplying smoking products to them (unless the employee is satisfied the person is an adult);
- warn them that if they supply smoking products to children in disregard of these instructions they commit an offence against the Act; and
- obtain written acknowledgment from them that they have received these instructions and warnings (s 9).

Clause 4 doubles the maximum penalty for a supplier who fails to take these prevention measures, to 40 penalty units (\$3,000).

3.2.2 Supplying Smoking Products to Children

Clause 5 amends the existing section 10 by expanding the prohibition on suppliers who are natural persons from supplying smoking products to children, to include suppliers who are companies.³⁵

The maximum penalty for a contravention of this prohibition is currently 70 penalty units (\$5,250) for a first offence and 140 penalty units (\$10,500) for subsequent offences. The Bill increases these penalties to 140 penalty units (\$10,500) for a first offence, 280 penalty units (\$21,000) for a second offence and 420 penalty units (\$31,500) for subsequent offences.

3.2.3 Failing to Ensure Employees do not Supply Smoking Products to Children

Clause 6 increases the maximum penalties under section 11 for a supplier who fails to ensure that their employee does not supply a smoking product to a child:

- from 70 penalty units (\$5,250) for a first offence and 140 penalty units (\$10,500) for subsequent offences;
- to 140 penalty units (\$10,500) for a first offence, 280 penalty units (\$21,000) for a second offence and 420 penalty units (\$31,500) for subsequent offences.

³⁵ Explanatory Notes, p 8. Note that this change commences on assent. The increased penalties for a contravention, however, commence on 31 December 2005.

An employer who has taken ‘prevention measures’³⁶ in relation to the employee will, however, continue to be afforded protection from a contravention of this provision.

3.2.4 Employee who Supplies Smoking Products to a Child

Clause 7 increases the maximum penalties under section 12 for an employee, in relation to whom prevention measures have been taken, who supplies smoking products to a child in the course of their employment:

- from 10 penalty units (\$750) for a first offence and 20 penalty units (\$1,500) for a second offence;
- to 20 penalty units (\$1,500) for a first offence and 40 penalty units (\$3,000) for subsequent offences.

3.2.5 Prohibiting or Restricting Suppliers from Selling Smoking Products

Clause 8 replaces the existing section 13. Currently, section 13 provides that if a supplier is convicted of supplying smoking products to children or failing to ensure that their employee does not supply a smoking product to a child, and within two years after the conviction is again convicted of either offence, the court sentencing the supplier for the subsequent offence may make an order against the supplier:

- prohibiting the supply of all or stated smoking products by the supplier; or
- imposing conditions or restrictions on such supply,

for a period of between two months and one year. The order only applies to the particular outlet of the supplier where the offences occurred and a maximum penalty of 200 penalty units (\$15,000) applies for any contravention of the order.

Under the new section 13:

- an order may be made after only one contravention;
- the order may be for prohibition, conditional supply or restricted supply;
- the period for the order may be up to six months for a first offence, one year for a second offence and three years for any subsequent offence;
- the order may be made in addition to another penalty applicable to the contravention; and
- the maximum penalty for contravention of an order is 420 penalty units (\$31,500).

³⁶ ‘Prevention measures’ are discussed in Part 3.2.1 of this Research Brief.

3.2.6 Further Restrictions on Location of Tobacco Product Vending Machines

Clause 10(1) amends the existing section 15(2)(a) to require tobacco product vending machines in the bar areas of licensed premises to be located where their *use* can be easily observed by persons working behind the bar. Currently, it is sufficient just for the machine itself to be easily observed by persons working behind the bar. The amendment will overcome a vending machine being positioned so that only the back of the machine can be observed.³⁷

Currently, under section 15(2)(c), a tobacco product vending machine may be located in a gaming machine area provided each vending machine can be easily observed by employees of the person in charge of the vending machine. **Clause 10(2)** inserts an additional requirement that each vending machine be located not more than one metre from a gaming machine in the area.

3.2.7 Supply of Smoking Products by Adults to Children

Clause 11 doubles the maximum penalty under section 19 for an adult who supplies a smoking product to a child, to 140 penalty units (\$10,500).

3.2.8 New Offence for Children to Falsely Represent their Age to Obtain Smoking Products

Clause 12 inserts a **new section 19A** under which it is an offence for a person to falsely represent himself or herself to have attained 18 years of age for the purpose of being supplied with a smoking product. A maximum penalty of 20 penalty units (\$1,500) will apply for a contravention.

The Government states that:³⁸

Initial investigations of alleged breaches of this provision will be conducted by Queensland Health Environmental Health Officers. If it appears that an offence has been committed, Queensland Health will refer the alleged breach to the Queensland Police Service, which will assess what action is appropriate within the procedural requirements of the Juvenile Justice Act 1992. The Juvenile Justice Act 1992 provides for cautioning as a diversion from court proceedings.

³⁷ Explanatory Notes, p 9.

³⁸ Explanatory Notes, p 10.

3.2.9 Failing to Display Prohibition Signs

Clause 13 doubles the maximum penalty under section 13 for a supplier who fails to display a prescribed prohibition sign at the supplier’s point of sale, to 20 penalty units (\$1,500).

Clause 14 similarly doubles the maximum penalty under section 21 for a person in charge of a tobacco product vending machine who fails to attach or display a prohibition sign, also to 20 penalty units (\$1,500).

3.2.10 Loose Cigarettes, Herbal Cigarettes and Tobacco

Clause 15 doubles the maximum penalties under section 22 for a supplier who sells cigarettes or herbal cigarettes that are not in a package, or that are in a package containing less than 20 cigarettes, to 140 penalty units (\$10,500).

Clause 16 replaces the existing sections 23 and 23A to “correct an ambiguity which had unintentionally allowed the sale of small quantities of unpackaged loose tobacco to smoke in a hookah pipe”.³⁹ Under the amendments, loose tobacco and loose smoking blend may only be sold in packages, packed by the manufacturer or importer,⁴⁰ of not less than 25 grams. The maximum penalties for a contravention have also doubled, to 140 penalty units (\$10,500).

3.2.11 Supplying Food or Toys that Resemble Tobacco Products

Clause 17 doubles the maximum penalty under section 24 for a person who, as part of a business activity, supplies food or a toy that resembles a tobacco product, to 140 penalty units (\$10,500).

3.2.12 Amendments Relating to the Advertising, Display and Promotion of Smoking Products

Clauses 18 to 32 amend Part 2A, which is concerned with the advertising, display and promotion of smoking products.

³⁹ Explanatory Notes, p 10.

⁴⁰ Explanatory Notes, p 10.

‘Smoking product’ includes cigarette papers

Clause 18 amends the definition of ‘smoking products’, which is currently defined to mean a tobacco product, herbal cigarette or loose smoking blend, to also include cigarette papers.

The amendment will “prevent advertisements for cigarette papers acting as *de facto* tobacco advertisements, and prevent oversized packages of cigarette papers being displayed”.⁴¹

Advertising and display of smoking products

Clause 19 amends section 26A to clarify that a supplier commits an offence in both of the following circumstances:

- if the supplier advertises or displays, or causes to be advertised or displayed, a smoking product other than at a retail outlet; or
- if the supplier advertises or displays, or causes to be advertised or displayed, a smoking product at a retail outlet other than in a way specifically provided for by Part 2A Division 1.

A maximum penalty of 140 penalty units (\$10,500) will apply for each offence, which is double the current penalty.

Clause 25 inserts new provisions, however, so that:

- a supplier does not ‘advertise or display a smoking product’ simply by using a business name that includes a reference to a smoking product (**new s 26HA**); and
- a supplier who is a tobacconist⁴² does not ‘advertise or display a smoking product’ simply by using the word ‘tobacconist’ in an advertisement or display for the tobacconist’s business (**new s 26HB**).

Duty-free stores subject to same display and advertising restrictions as retail outlets

Clause 20 amends section 26B so that duty-free stores can no longer display smoking products anywhere in the store.

The effect of the change will be that in duty-free stores, as in other retail outlets, a display of smoking products may only be located:

⁴¹ Explanatory Notes, p 11.

⁴² The meaning of ‘tobacconist’ is discussed in footnote 44.

- at a point of sale; and
- either:
 - on the seller's side of the point of sale; or
 - above or below a counter where customers are served, in a way that the smoking products can not be accessed by customers without help from the supplier.

Similarly, smoking products in duty-free stores must not be located on a counter where customers are served at a point of sale.

Restrictions on smoking product displays

The Hon G Nuttall MP, Minister for Health, has said:⁴³

Currently under Queensland law there is no limit on the size of the display of tobacco products at retail outlets. As a result, tobacco retailers can display more than 1,000 packets of cigarettes, loose tobacco and cigars. Children are exposed, on almost every occasion on which they enter a retail outlet that sells tobacco products, to these power walls. These displays are a powerful advertisement for a product, albeit legal, that claims hundreds of lives across Australia every day. ... [The] proposals to reform ... are not about infringing on civil rights or about restricting the profit margins of retailers. This is about public health.

Clause 21 inserts a **new section 26CA**, which allows only one smoking product display per retail outlet, and a **new section 26CB**, which limits the surface area of the display to one square metre (three square metres for a tobacconist).⁴⁴

Smoking products will be taken to be displayed at more than one place if the display is not continuous, and the requirement that there be only one display will be breached irrespective of whether the total surface area of all the displays is less than the allowed maximum (one square metre, or three square metres for a tobacconist). Note, however, that cigars may still be displayed in a humidified container that is separate from the rest of a display, but any surface of the container through which customers can see the contents will form part of the surface area of the display.

⁴³ Hon G Nuttall MP, Minister for Health, Smoking Bans, Ministerial Statement, *Queensland Parliamentary Debates*, 29 September 2004, p 2471.

⁴⁴ 'Tobacconist' is defined as a person who conducts a business selling smoking products by retail if at least 80% of the average gross turnover of the business is derived from the sale of smoking products and the business is conducted separately from, not in conjunction with, and not within the premises of, any other business (**cl 47(7)**). These restrictions are placed to prevent a large retail store subletting shop space with the intent of establishing a 'tobacconist' within the store and overcome the general one square metre restriction (Explanatory Notes, p 12).

A tobacco vending machine will not constitute a display, or part of a display, and neither will cigars in a humidified room provided customers are not able to see into the room.

The surface area of a display of smoking products will be taken to include the whole of the area within the perimeter of the display.

The Government has indicated that there is no requirement for a one square metre display to be in a display *unit* of that size. Further, retailers will be able to comply with the surface area restrictions in a number of ways, such as by covering any part of an existing display that exceeds the display restriction.⁴⁵

The Opposition has raised concerns regarding the impact of these restrictions on small business.⁴⁶ The Queensland Retailers and Shopkeepers Association have said that “retailers [are] being unfairly targeted by the crackdown. Retailers had been willing to compromise on cigarette advertising but limiting their displays would have an adverse financial impact on thousands of small to medium-sized businesses”.⁴⁷

The restrictions on display were discussed at a meeting between the Government and retailers on 10 September 2004.

Prohibition on immediate packages in a stack display being arranged as a display panel

Clause 22 amends section 26D to further restrict the manner of display of an immediate package of smoking products, to prevent smoking products in a stack dispenser being arranged as a display (or feature) panel. This restriction will be breached if:

- the packages are arranged in a way that highlights the immediate packages to a person facing the stack dispenser, including by leaving spaces between the packages; and
- the packages in the stack dispenser visible to a person facing the dispenser are considerably less in number than the packages that could be fitted into the same area of a stack dispenser that is designed to maximise the number of packages in the area visible to a person facing the dispenser.

⁴⁵ Explanatory Notes, p 11.

⁴⁶ See, for example, Mr H Hobbs MP, Tobacco and Other Smoking Products Act, Matters of Public Interest, *Queensland Parliamentary Debates*, 28 September 2004, pp 2387-2388, p 2387.

⁴⁷ Rosemary Odgers and Patrick Lion, ‘Beattie tells retailers to butt out’, *Courier Mail*, 22 September 2004, p 3.

The Government has been concerned that display panels have been developed to highlight smoking products to make them more appealing to customers.⁴⁸

Display of cartons of smoking products prohibited

Clause 23 removes the existing section 26F, with the result that the display of cartons of smoking products will be prohibited.

Health warning to be displayed on humidified container and humidified room

Clause 23 also inserts a **new section 26F** which requires a health warning to be displayed on humidified containers and humidified rooms.

A humidified container or humidified room at a retail outlet must, on the container or the door to the room, have the same warning message and explanatory message that must appear on a retail package containing cigars under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* (Cth).

Display of retail prices of smoking products

Clause 24 amends section 26H by restricting the content of price displays of smoking products to only the price itself, with the effect that words like ‘discount’ or ‘special’ can not be included in a price display.⁴⁹

Failing to display mandatory quit smoking sign

Clause 26 doubles the maximum penalty under section 26I for a supplier who fails to display a prescribed ‘quit smoking’ sign at their point of sale, to 20 penalty units (\$1,500).

Supply of an object or entitlement that promotes a smoking product

Clause 27 doubles the maximum penalty under section 26L for supplying an object or entitlement that promotes:

- a smoking product;
- a trademark or brand name of a smoking product; or
- the name or interests of a manufacturer or distributor of a smoking product in association with the smoking product,

⁴⁸ Explanatory Notes, p 12.

⁴⁹ Explanatory Notes, p 12.

to 140 penalty units (\$10,500).

Supplying an object or entitlement in association with the sale or consumption of a smoking product

Clause 28 doubles the maximum penalty under section 26M for supplying an object or entitlement in association with the sale or consumption of a smoking product, or of smoking products generally, to 140 penalty units (\$10,500).

Currently, it is a defence if the defendant proves that the person receiving the object or entitlement would have received the same had they bought goods of whatever kind, other than a smoking product, to the same value as the smoking product (s 26M(3)).

Under clause 28, this defence will not apply if the object or entitlement would have been received by the person only if the person had bought the goods from the defendant or from a supplier nominated by the defendant.

The limitation on this defence will enable smoking products to be excluded from ‘shopper loyalty’ schemes, which are considered to “indirectly promote smoking products by offering incentives for customers to purchase the products from retailers in the scheme (e.g. receiving discount petrol vouchers from purchasing smoking products).” It is said that these “schemes are controlled at point of sale and existing technology can be used to remove the cost of smoking products from the total expenditure at the retail outlet”.⁵⁰

The Bill, however, “does not remove the defence for credit card rewards schemes, because these are not controlled at point of sale, and a credit card provider has no way of distinguishing the purchase of ... smoking products from any other goods”.⁵¹

Smoking product giveaways

Clause 29 doubles the maximum penalty under section 26N for the supply of a smoking product for free, if the supply promotes the sale of a smoking product, to 140 penalty units (\$10,500).

⁵⁰ Explanatory Notes, p 13.

⁵¹ Explanatory Notes, p 13.

Competition that promotes smoking products

Clause 30 doubles the maximum penalty under section 26O for conducting a competition that promotes:

- a smoking product;
- a trademark or brand name of a smoking product; or
- the name or interests of a manufacturer or distributor of a smoking product in association with the smoking product,

to 140 penalty units (\$10,500).

Conduct of a competition in association with smoking product sale or consumption

Clause 31 doubles the maximum penalty under section 26P for conducting a competition that has an association with the sale or consumption of a smoking product, or of smoking products generally, to 140 penalty units (\$10,500).

New offence of displaying an image of consumption of a smoking product

Clause 32 inserts a **new section 26PA** under which it is an offence for a supplier, at a retail outlet, to display an image that promotes a person or thing consuming, using or being otherwise associated with, a smoking product.⁵²

A maximum penalty of 140 penalty units (\$10,500) applies for a contravention.

It is said that this provision will prevent the promotion of smoking products through images that may not be considered advertisements or displays. It will not, however, apply, for example, to a newsagent that displays oversized magazine covers that contain an image of someone smoking.⁵³

3.2.13 Amendments to *Tobacco and Other Smoking Products Regulation 1998 (Qld)*

Clause 48 and the **schedule** amend the Tobacco and Other Smoking Products Regulation 1998 (Qld) in the following key respects:

⁵² Note that the provision will not apply to trademarks.

⁵³ Explanatory Notes, p 13.

- the maximum size for a price ticket for a smoking product at a retail outlet and on a tobacco product vending machine is decreased from 100mm x 80mm to 80mm x 40mm;
- the maximum size of a price board is halved from one square metre to 0.5 square metres; and
- a price board can no longer display the number of items in an immediate package in a product line or the price of an immediate package of a product line (such that only the name of a product line, the number of packets in a carton, the price of a carton and its country of origin may be displayed).

3.3 1 JULY 2006 – BAN ON SMOKING IN LICENSED PREMISES AND OUTDOOR EATING OR DRINKING PLACES

3.3.1 Ban on Smoking in Enclosed Places Extended to Licensed Premises

Ban on smoking in enclosed places of licensed premises

Clause 34 removes the current exemption for certain parts of licensed premises⁵⁴ from the prohibition on smoking in enclosed places under section 26R. The result is that, from 1 July 2006, smoking will be banned in all enclosed places of licensed premises.⁵⁵

The licensee of licensed premises must, from 1 July 2006, under an amended section 26S, display a ‘no smoking’ sign at the entrance of the premises, otherwise a maximum penalty of 20 penalty units (\$1,500) will apply (**cl 36**).

⁵⁴ Note that, currently, smoking in licensed premises is prohibited only in dining areas while meals are available for consumption or being consumed, bingo areas during and 30 minutes immediately before a bingo session, and gaming table areas of a casino.

⁵⁵ Note, however, that ‘high roller’ rooms in casinos will continue to be exempt, similar to the exemptions for interstate high roller rooms. The basis for this exemption has been said to be the ‘international market’ in which high roller rooms operate (see, for example, CCH Australia Limited, ‘Vic: smoking bans extended to Vic pubs and bars’, *News Headlines*, 12 October 2004). Further, the definition of ‘multi-unit residential accommodation’ is also amended to include hotel accommodation (with the effect that the prohibition on smoking will not apply inside individual hotel rooms) (**cl 33(3)**).

In relation to concerns regarding impacts of this ban on the pub and club industry, the Premier, the Hon P Beattie MP, has said:⁵⁶

I have to say to critics of our plans that there was widespread criticism in Ireland before the Irish Government introduced smoking bans on March 29 this year.

There were many pessimists who predicted a revolt by pubs and who forecast the death of the pub and club industry.

Two months after the bans were introduced the Irish Office of Tobacco Control reported that in 97% of premises inspected no-one was smoking and there was no evidence of anyone having broken the law.

Clubs, pubs and restaurants should be heartened by the fact that Irish Government surveys revealed that before the bans 68% of those surveyed said that had visited a pub in the previous fortnight.

After the bans, the figure actually rose to 71%.

The increase in pub visits was accounted for by an increase in the number of non-smokers while the number of smokers did not drop off.

The official surveys showed the number of restaurant visits was virtually unchanged.

Despite the bans, a licensee may designate a part of the outdoor area of their premises as an area in which smoking is allowed ('designated outdoor smoking areas' are discussed below in Part 3.3.2 of this Research Brief). Allowing smoking in designated outdoor smoking areas has been described as a "sensible compromise" by the Premier and is viewed as a "major concession to pubs and clubs who were concerned by the potential financial impact of the new laws".⁵⁷

Phasing in of the ban under a regulation

A transition to this prohibition will commence on 1 January 2005, and will be achieved under a **new section 26RA (cl 35)**.⁵⁸

The **new section 26RA** provides for a regulation, which will expire on 30 June 2006, for the phasing in of the ban. The regulation may:

⁵⁶ Smoking Bans, Ministerial Statement. For a discussion on similar bans in New York, see Philip Coorey, 'Smoke bans won't end the world as we know it', *Courier Mail*, 22 October 2004, p 21.

⁵⁷ Sean Parnell, 'Pub smokers get outside help', *Courier Mail*, 19 October 2004, p 2.

⁵⁸ Page 14 of the Explanatory Notes states that, although phase-in dates have been approved, the details of the phase-in are still to be determined. It is anticipated that on 1 January 2005, one-third of the indoor area of licensed premises, including one-third of all gaming machines at the premises, will be non-smoking, followed by two-thirds of the premises on 30 September 2005, and a complete ban by 1 July 2006.

- require the licensee to progressively set aside parts of the licensed premises, which are currently exempt from the prohibition, as parts in which a person must not smoke; and
- prescribe matters relating to the implementation and enforcement of the ban.

Without limiting the above, the regulation may also do one or more of the following:

- state the proportion⁵⁹ of the whole of the area of the enclosed places at the premises which must be set aside as an area(s) in which a person must not smoke;
- state the period for which the proportion of the area must be set aside;
- state the proportion of the total number of gaming machines in the premises that must be situated in an area where a person must not smoke;
- prescribe the no smoking signs the licensee must display, and the way they are to be displayed;
- state that a person must not smoke in an area set aside, and that a licensee must ensure that a person does not smoke in such an area;
- impose a penalty of not more than 20 penalty units (\$1,500) for a contravention of the regulation.

Occupier must not provide food or drink to a person who fails to comply with a direction to stop a contravention

Section 26U currently provides that a person who contravenes the ban on smoking in an enclosed place must comply with a direction to stop the contravention by an authorised person or the occupier of the enclosed place (or their employee or agent).

Clause 38 amends this section by also requiring the occupier not to provide food or drink to a person who does not comply with a direction to stop the contravention, if the person is at a place where food or drink is provided. An occupier faces a maximum penalty of 140 penalty units (\$10,500) for failing to do so.

⁵⁹ The proportion must be less than the whole area of all enclosed places at the licensed premises (**new s 26RA(3)**). This is so that the regulation does not provide for a total ban on smoking in licensed premises prior to the 1 July 2006 commencement stated in the Act.

Increased penalty for offence by occupier

Clause 39 increases the current maximum penalty for the occupier of an enclosed place where a smoking ban is contravened, from 20 penalty units (\$150) to 140 penalty units (\$10,500) (which is a seven-fold increase).

The defences to this section remain unchanged.

3.3.2 Ban on Smoking in Outdoor Eating or Drinking Places

Clause 40 inserts a **new Part 2C Division 1** which bans smoking in outdoor eating or drinking places from 1 July 2006.

The Hon G Nuttall MP, Minister for Health, has said:⁶⁰

When it comes to outdoor dining areas it should be obvious to anyone who has sat down to enjoy a meal in the fresh air that cigarette smoke can be extremely objectionable as well as being a health hazard.

There would have been a risk that if bans were not introduced for outdoor dining areas they would become even more polluted by smokers unable to smoke indoors.

Prohibition on smoking in outdoor eating or drinking places

A person will be prohibited from smoking in an ‘outdoor eating or drinking place’, other than a ‘designated outdoor smoking area’ (**new s 26X**). A maximum penalty of 20 penalty units (\$1,500) will apply for a contravention of this prohibition.

An ‘outdoor eating or drinking area’ is a place, other than an ‘enclosed’ place,⁶¹ which is provided by a person conducting a business for the consumption of food or drink provided from the business, while:

- food or drink is being provided from the business; or
- food or drink provided from the business is being consumed at the place (**new ss 26W(1)-(2)**).

Examples include an open beer garden, footpath dining areas and the open decks of restaurants.⁶²

⁶⁰ ‘Premier: work with us on smoking bans to save lives’, Ministerial Media Statement.

⁶¹ ‘Enclosed’ place is defined in the existing section 26Q.

⁶² Explanatory Notes, p 16.

Food or drink will be taken to be ‘provided from a business’ irrespective of whether it is served to a person in the outdoor eating or drinking place, or whether it is taken by the person from the business for consumption in that place (**new s 26W(3)**).

A person who contravenes the prohibition must comply with a direction to stop the contravention by an authorised person or the occupier of the place where the contravention is happening (or their employee or agent). A maximum penalty of 20 penalty units (\$1,500) will apply for failing to comply with such a direction (**new s 26Y(1)**). Further, if a person does not comply with such a direction, the occupier must not provide food or drink to the person while the contravention continues. A maximum penalty of 140 penalty units (\$10,500) will apply for an occupier who breaches this provision (**new s 26Y(2)**).

If a person contravenes the smoking ban in an outdoor eating or drinking place, the occupier of the place also commits an offence, punishable by a maximum penalty of 140 penalty units (\$10,500), unless the occupier can prove:

- they were not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
- they (or their employee or agent) directed the person to stop smoking and told the person that it is an offence not to comply with such a direction (**new s 26Z**).

Designated outdoor smoking areas

Under a **new section 26ZA**, a licensee of premises to which a general licence or club licence under the *Liquor Act 1992* (Qld) applies⁶³ may designate a part of the outdoor area of the premises as an area in which smoking is allowed (a ‘designated outdoor smoking area’). It has been described as a “business decision” for a licensee to determine whether such a designation is made.⁶⁴

If licensed premises have a designated outdoor smoking area, the licensee must not allow anyone to smoke in an outdoor area of the premises other than the designated area, otherwise a maximum penalty of 140 penalty units (\$10,500) will apply (**new s 26ZB(5)**).

The designation occurs by the licensee posting a diagram or other notice which clearly shows the limits of the area. There may be more than one designated

⁶³ A general licence usually applies to hotels, whereas a club licence applies to premises such as RSL clubs and sporting clubs (Explanatory Notes, p 17).

⁶⁴ Second Reading Speech, p 3047.

outdoor smoking area at the premises; however the total area that is designated must not exceed 50% of the whole outdoor area of the premises.

Each designated area must have 'buffers' on its perimeter wherever it is adjacent to other parts of the outdoor area ordinarily accessed by patrons. Each buffer must be:

- a screen, impervious to smoke, which is at least 2.1 metres high; or
- an area, at least two metres wide, in which patrons are not permitted to eat, drink or smoke (at least half of this area must be taken from the area that that would otherwise form part of the designation).

The Bill provides examples of an acceptable buffer, such as a thick screening hedge or artificial screen, both 2.1 metres high, or a garden or pathway which is two metres wide.

It is anticipated that the buffer "help identify the designated outdoor smoking area and minimise patrons' immediate exposure to tobacco smoke coming from the outdoor smoking area" of licensed premises.⁶⁵

A licensee who designates a part of the outdoor area of their premises other than in compliance with the new section 26ZA faces a maximum penalty of 140 penalty units (\$10,500).

A licensee must ensure that the total area that is designated does not exceed 50% of the whole outdoor area of the premises, and that the buffer requirements are complied with, otherwise a maximum penalty of 140 penalty units (\$10,500) will apply. The Minister for Health has been quoted as saying that he does not "expect a building boom in the industry" and that the Government was "very mindful about the fact that [it] did not want pubs and clubs to move their entire business outside. That's why [the Government has] said there will be no entertainment, there'll be no gambling, there'll be no eating so it's very restrictive".⁶⁶

In a designated outdoor smoking area, a licensee must ensure that:

- no food or drink is served;
- no food is consumed;
- no entertainment is offered; and
- there are no gaming machines,

otherwise a maximum penalty of 140 penalty units (\$10,500) will apply. Note that a customer may still consume a drink in the designated area, provided it was

⁶⁵ Explanatory Notes, p 17.

⁶⁶ 'Pub smokers get outside help', *Courier Mail*.

purchased in another part of the premises. The Minister for Health has explained that this will “prevent unattended glasses being spiked with drugs”.⁶⁷

The licensee must also prepare, and keep up-to-date, a ‘smoking management plan’, and display a notice in or near the designated area stating that the plan is available for perusal by patrons on request. If such a request is made, the plan must be made available by the licensee for perusal. The plan must also be produced by the licensee for inspection, if requested by an authorised officer. A contravention of any of these requirements will attract a maximum penalty of 70 penalty units (\$5,250).

A ‘smoking management plan’ is a document, prepared for premises at which there is a designated outdoor smoking area, stating how smoking is managed at the premises with the aim of reducing smoking at the premises. The plan must:

- identify the designated outdoor smoking area;
- identify the outdoor areas where food is provided;
- identify the required buffers;
- state how the licensee will minimise the exposure of staff and patrons to environmental tobacco smoke;
- describe the training or instruction given to staff to ensure the Act and the plan are complied with;
- provide for signage that clearly identifies where smoking is or is not allowed; and
- include any other matters prescribed under a regulation (**new s 26ZC**).

The Minister for Health has said:⁶⁸

Through the development of a smoking management plan, licensees will be able to adopt measures to manage and minimise smoking in a way that suits their particular business. I expect that licensees will work in a constructive way with staff and unions in developing their plan to minimise staff exposure to environmental tobacco smoke in the designated outdoor smoking area.

3.4 POWER TO REQUIRE DETAILS OF RETAIL SUPPLIERS

Clause 9 inserts a **new section 13A**, commencing on assent, which applies where the chief executive of Queensland Health reasonably believes a manufacturer or wholesaler of smoking products has supplied smoking products to suppliers for sale at retail outlets.

⁶⁷ ‘Pub smokers get outside help’, *Courier Mail*.

⁶⁸ Second Reading Speech, p 3047.

The chief executive may, by written notice to the manufacturer or wholesaler, require all or any of the following information for each supplier to which the manufacturer or wholesaler has supplied smoking products:

- the name of the supplier and any business name under which the supplier trades;
- the address of the supplier's retail outlet; and
- the supplier's postal address, telephone number, fax number and email address.

Information may be required for a stated period, of not more than 12 months prior to the date of the notice, and must be provided within 28 days (or such longer period stated in the notice).

A maximum penalty of 70 penalty units (\$5,250) will apply for non-compliance with such a notice.

The information that is provided may be used only for the purpose of monitoring or enforcing compliance with the Act, or compiling and keeping a list of suppliers to whom advice about matters relating to the Act, including the requirements applying to suppliers, may be provided.

3.5 AUTHORISED PERSONS

Clause 41 replaces the existing sections 27 to 30 with **new sections 27 to 30E** which govern the appointment and powers of 'authorised persons'. These new provisions will commence operation on 1 January 2005.

3.5.1 Appointment by Chief Executive of Queensland Health or Chief Executive Officer of Local Government

Under a **new section 28**, 'authorised persons' may be appointed by either the chief executive of Queensland Health or the chief executive of a local government.⁶⁹

The chief executive of Queensland Health may appoint any of the following persons as an authorised person:

- a public service officer or employee;
- a health service employee; or
- a person prescribed under a regulation.

⁶⁹ Note that the **new section 29** provides that a person may only be appointed as an authorised person if they have the necessary expertise or experience.

The chief executive officer of a local government may appoint any of the following persons as an authorised person:

- an employee of the local government;
- if another local government consents – an employee of the other local government; or
- another person under contract to the local government.

Further, the chief executive officers of two or more local governments may appoint an employee of, or another person under contract to, one of the local governments to be an authorised officer for the local governments' areas.⁷⁰

3.5.2 Powers

A **new section 27** provides that authorised persons have the powers given under the Act, however are subject to the directions of their appointing officer in exercising those powers.

An instrument of appointment of an authorised person may also limit the authorised person's powers under the Act (**new s 30**).

3.5.3 Identity Card

Under a **new section 30A**, an authorised person must be issued with an identity card which:

- contains a recent photograph of the authorised person, and a copy of their signature;
- identifies the person as an authorised person under the Act; and
- states an expiry date for the card.

The identity card may be used for purposes other than those provided for by the Act. For example, the same card could be issued by a local government under the Act and also to allow the person to issue parking tickets under the *Local Government Act 1993 (Qld)*.⁷¹

In exercising a power in relation to another person under the Act, the authorised person must produce their identity card for inspection by the other person before

⁷⁰ Some local governments in Queensland share employees or contractors (Explanatory Notes, p 22).

⁷¹ Explanatory Notes, p 23.

exercising the power, or have their identity card displayed so that it is clearly visible to the other person when exercising the power (**new s 30B**).

3.6 COMPENSATION

Clause 42 expands the existing section 48, which allows a person to claim compensation from the State for loss or expense that they incur because of the exercise, or purported exercise, of a power under Part 3 (which relates to monitoring and enforcement).

An amendment to this provision is necessary because, under the Act, enforcement powers are provided to local governments in relation to patrolled beaches and ‘prescribed outdoor swimming areas’, entrances to non-residential buildings and children’s playground equipment.⁷² Accordingly, the amended section 48 will also allow a claim to be made from a local government, for the exercise or purported exercise of a power by or for the local government.

3.7 CLARIFICATION THAT THE ACT DOES NOT CREATE OR PRESERVE A RIGHT TO SMOKE

A **new section 51C**, inserted by **clause 43**, specifically provides that the Act does not create or preserve a right for a person to smoke in or at any place. This removes any doubt that, although the Act may not contain a specific prohibition on smoking at a particular place, a person does not have a ‘right’ to smoke at that place.⁷³

Further, the **new section 51C** provides that nothing in the Act affects the operation of another Act, to the extent that the other Act prohibits smoking at any place.⁷⁴

⁷² For a discussion of these powers, see Part 3.1.2 of this Research Brief.

⁷³ By way of example, page 23 of the Explanatory Notes states that the proprietor of a zoo could place signs at the entrance to the zoo, indicating that it is a condition of entry that smoking is not permitted on the premises. Just because smoking at a zoo is not addressed by the Act, this does not mean that the proprietor cannot prohibit smoking at the zoo. Similarly, a person visiting the zoo cannot claim that the omission of a specific prohibition on smoking at a zoo by the Act preserves their right to smoke at the place.

⁷⁴ By way of example, page 23 of the Explanatory Notes discusses the prohibition on smoking in trains under the Transport Infrastructure (Rail) Regulation 1996 (Qld). The absence of a similar prohibition in the *Tobacco and Other Smoking Products Act 1998* (Qld) (as amended) does not effect or limit the prohibition under the Transport Infrastructure (Rail) Regulation 1996 (Qld).

This provision will commence on 1 January 2005.

4 POSITION IN OTHER AUSTRALIAN JURISDICTIONS

This part of the Research Brief discusses the status of legislation in New South Wales, Victoria and Western Australia in relation to smoking in licensed premises and eating and drinking places, such as restaurants and cafes.⁷⁵

4.1 NEW SOUTH WALES

On 12 October 2004, the New South Wales Government jointly announced with the Victorian Government that smoking will be banned in all enclosed areas of pubs, clubs and other licensed premises from 1 July 2007, with a gradual phase in of the ban from 1 July 2005. A Bill to give effect to these changes was introduced on 27 October 2004.⁷⁶

Similar to the amendments under the Tobacco and Other Smoking Products Amendment Bill 2004 (Qld), smoking will still be allowed in outdoor and non-enclosed areas of licensed venues, such as beer gardens,⁷⁷ and the 'high roller' rooms of Star City Casino. Unlike the position in Queensland, however, smoking will not be banned in al fresco café and restaurant dining areas, and smoking may still continue in venues which are privately hired for functions such as weddings.⁷⁸

Clubs NSW chief executive, Mr David Costello, has responded to the proposed changes by saying that 3,000 jobs were lost in Victoria following the introduction of partial smoking bans in clubs in that State in September 2002, and that similar losses might also result in New South Wales.⁷⁹

⁷⁵ Due to time restraints, the comparative analysis of legislation in other jurisdictions has been restricted to these issues, and these jurisdictions.

⁷⁶ Smoke-free Environment Bill 2004 (NSW). The Bill is discussed in Part 4.1.3 of this Research Brief.

⁷⁷ CCH Australian Limited, 'NSW: Carr releases long-awaited smoking plan', *News Headlines*, 12 October 2004.

⁷⁸ Morgan Mellish, 'Drinkers face a breath of fresh air', *Australian Financial Review*, 13 October 2004, p 5.

⁷⁹ Michael Bachelard and Megan Saunders, 'Smoking ban in pubs, clubs', *Courier Mail*, 13 October 2004. In another article, Mr David Costello estimated that the job losses resulting from the ban in New South Wales could be in the order of 6,000 to 8,000 jobs ('Smoking ban could cost 8,000 jobs', *Sydney Morning Herald*, 13 October 2004, p 1).

4.1.1 Current Legislative Position

The *Smoke-free Environment Act 2000* (NSW) came into effect on 6 September 2000 and prohibits smoking in enclosed public places (s 7).⁸⁰

A ‘public place’ is a place or vehicle that the public (or a section of the public) is entitled to use or that is open to, or is being used by, the public (or a section of the public), whether on payment of money, by virtue of membership of a club or other body, or otherwise (s 4). Examples of smoke-free enclosed public places, listed in the schedule to the Act, include:

- shopping centres, malls and plazas;
- restaurants, cafes, cafeterias, dining areas and other eating places (but not al fresco eating areas);
- schools, colleges and universities;
- professional, trade, commercial and other business premises;
- community centres or halls and places of public worship;
- theatres, cinemas, libraries and galleries;
- trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels;
- common areas in hostels and motels;
- fitness centres, bowling alleys and other sporting and recreational facilities;
- childcare facilities; and
- hospitals.

The following premises are exempt from the prohibition (other than any part of the premises required to be designated as smoke-free under the regulations):

- hotels, other than dining areas while meals are being ordered, served and consumed at tables (compliance with the ban in these areas was required by 6 September 2001);
- registered clubs, other than dining areas while meals purchased on the premises may be consumed at tables and areas used for functions at which food is served (compliance with the ban in these areas was required by 6 September 2001);
- nightclubs, other than dining areas while meals purchased on the premises may be consumed at tables (compliance with the ban in these areas was required by 6 September 2001);

⁸⁰ For a guide on the *Smoke-free Environment Act 2000* (NSW) see <http://www.health.nsw.gov.au/health-public-affairs/smokefree/smoke-freensw.pdf>.

- any part of a casino or casino environs used solely for the purposes of gaming machines or a bar (whether or not such gaming machines are situated in the bar area);
- any premises prescribed by regulation (s 11).

If a smoke-free area forms part of premises in which smoking is elsewhere allowed, the occupiers of both the smoke-free area and the other part must take reasonable steps to prevent smoke from penetrating the smoke-free area (s 10). Guidelines were developed on what constitutes ‘reasonable steps’.

The Smoke-free Environment Regulation 2000 (NSW) also contains requirements which exempt premises must comply with in relation to partitions or barriers to prevent the penetration of smoke into smoke-free areas, ventilation and the designation of parts of the premises as smoke-free areas (s 12, regulation 6). The occupier of exempt premises must separate the exempt premises from any other part of the premises that is smoke-free by the use of partitions or similar barriers, or ensure that a 1.5 metre separation is maintained between the exempt premises and any smoke-free area.

The Director-General may declare that any particular premises cease to be exempt premises if satisfied that any requirement of the Act or the regulations has been breached, or the guidelines on preventing smoke from penetrating a smoke-free area have not been complied with (s 13).

4.1.2 ‘Share the Air’ Campaign

In December 2002, a voluntary agreement was reached between the New South Wales Government and the hospitality industry and union representatives to extend the non-smoking areas in licensed premises.

The terms of the agreement were:

- by July 2003 - no smoking at bar or service counters areas, and providing a designated non-smoking area within at least one bar area; and
- by July 2004 – providing one full non-smoking bar in venues with more than one bar, and one non-smoking recreational or gambling area where more than one of each such area exists in a venue.

There has been substantial compliance with the agreement, and the agreement indicated ‘in principle’ support for future legislation to mandate these restrictions.⁸¹

⁸¹ Hon F Sartor MP, Smoke-free Environment Bill 2004 (NSW), Second Reading Speech, Legislative Assembly, *New South Wales Parliamentary Debates*, 27 October 2004.

4.1.3 Smoke-free Environment Amendment Bill 2004 (NSW)

On 27 October 2004, the Smoke-free Environment Bill 2004 (NSW) was introduced into the New South Wales Legislative Assembly by the Hon F Sartor MP. The Bill phases out smoking in enclosed public places in licensed premises, and is said to consider “the health of workers and the concerns of business proprietors who own and operate licensed premises or enclosed public spaces”.⁸²

In introducing the Bill, reference was made to the significant number of studies that have been published showing the effects of environmental tobacco smoke, particularly on hospitality workers.⁸³

The bans apply to the following areas of clubs, nightclubs and hotels:

- bar rooms (rooms in which drink are ordered, served and consumed, but not including gaming machine rooms or recreation rooms);
- gaming machine rooms; and
- recreation rooms (rooms used substantially for the purposes of games or other recreational activities other than gaming machines) (cl 4).

Phase 1 – Restrictions from 1 January 2005 to 1 July 2005

The following changes will have effect from 1 January 2005 until 1 July 2005:

- smoking will be banned at counters where food or drinks are ordered or served;
- in venues that have more than one bar room, one bar room must be smoke free;
- in venues that have more than one gaming machine room, one gaming machine room must be smoke free; and
- in venues that have more than one recreation room offering a game or activity, at least one of each room offering a particular activity must be smoke free.

The first phase of the amendments is substantially the same as the restrictions that were voluntarily implemented under the ‘Share the Air’ campaign.

⁸² Smoke-free Environment Bill 2004 (NSW), Second Reading Speech.

⁸³ Smoke-free Environment Bill 2004 (NSW), Second Reading Speech.

Phase 2 – Further restrictions from 1 July 2005 to 1 July 2006

From 1 July 2005 until 1 July 2006, smoking will only be permitted in one room (bar room, gaming machine room or recreation room) of a venue, which must not exceed 50% of the total area of all rooms in the venue. If there is only one room in the venue, smoking will be permitted in 50% of that room.

Smoking will be banned in thoroughfares, dance floors, auditoriums, toilets, lobbies, auditoriums and counter areas.

The following areas will not be taken into account when determining the area of a room or rooms: dining areas, toilet areas, foyers, lobbies, thoroughfares, dance floors, auditoriums, counters at which drinks or food are ordered or served, and high roller rooms.

Phase 3 – Further restrictions from 1 July 2006 to 1 July 2007

From 1 July 2006, the maximum allowable smoking area mentioned above will be reduced to one room not exceeding 25% of the total area of all rooms in the venue. In single room venues, smoking will only be permitted in 25% of those rooms.

Phase 4 - Total ban from 1 July 2007

From 1 July 2007, smoking will not be permitted in enclosed public spaces in licensed premises. The ban will not, however, apply to private residential accommodation in motels, hostels, hotels and clubs (cl 11-12).

Similar to the other States, an exemption will remain for ‘high roller’ rooms in the Star City Casino. The exemption will not, however, “diminish the responsibility of the casino or any other licensed premises that is owed to employees under occupational health and safety legislation”.⁸⁴ Provision is made for this exemption to be reviewed every 12 months to determine whether it is justified to maintain parity with smoking restrictions in interstate casinos.

Regulations will be made about the issuing of guidelines to industry in relation to areas that are considered to be enclosed spaces, including when a covered outside area is considered to be substantially enclosed for the purposes of the legislation (cl 11). It is also anticipated that “some sections of the hospitality industry may require guidance on building renovations and arrangements to comply with the legislation”.⁸⁵

⁸⁴ Smoke-free Environment Bill 2004 (NSW), Second Reading Speech.

⁸⁵ Smoke-free Environment Bill 2004 (NSW), Second Reading Speech.

The Bill also protects the New South Wales Government from any claims for compensation arising from the enactment or operation of this legislation (cl 10).

4.2 VICTORIA

4.2.1 Current Position

Smoking in public areas in Victoria is governed by Part 2, Division 1 of the *Tobacco Act 1987* (Vic), which prohibits smoking in:

- an enclosed restaurant or café (this excludes footpath and courtyard dining areas, and dining at private functions in temporary marquees), or an indoor dining area of licensed premises (ss 5A-5BA);
- a retail shopping centre (ss 5C-5E);
- a bingo area or bingo centre (ss 5F-5H);
- a casino, except in a ‘declared smoking area’ such as a bar area, TAB area or a high roller room (ss 5I-5K);
- a gaming machine area of a single room gaming venue (ss 5L-5N); and
- a ‘designated non-smoking room’ of licensed premises (ss 5P-5R).

Licensed premises which have two or more non-gaming rooms in operation must designate one of the rooms to be a non-smoking room (ss 5O-5R).

Smoking was prohibited in designated shopping centres on 1 November 2000. The prohibitions on smoking in enclosed restaurants and cafés, and in indoor dining areas of licensed premises, commenced on 1 July 2001. Laws prohibiting smoking in all retail shopping centres came into effect on 1 November 2001. The remaining prohibitions commenced on 1 September 2002.⁸⁶

4.2.2 Further Proposed Bans

In jointly announcing with the New South Wales Government the proposed ban on smoking in the enclosed areas of pubs, clubs and other licensed premises from July 2007, the Victorian Premier, the Hon S Bracks MP,⁸⁷ said that banning smoking in

⁸⁶ For a more detailed discussion of the prohibition on smoking in licensed premises, bingo and gaming venues, see Victoria, Department of Human Services, *The Sign of a Healthy Business – New Smoking Laws in Licensed Premises, Bingo and Gaming Venues Start 1 September 2002*, http://www.health.vic.gov.au/tobaccoreforms/downloads/sept_02_smoking_laws.pdf.

⁸⁷ See Hon S Bracks MP, ‘Smoking in Victorian pubs and clubs to end by 2007’, *Media Release*, 12 October 2004.

restaurants in Victoria had increased patronage by 5% as non-smokers were more willing to eat in restaurants.⁸⁸

Similar to the positions in Queensland and New South Wales, 'high roller' rooms at the Crown Casino will continue to be exempt from the prohibition. This exemption will, however, be reviewed annually and may be abolished if the other States similarly abolished their exemption.⁸⁹ Similar to the situation in New South Wales, but contrary to that which is proposed in Queensland, smoking will continue to be allowed in al fresco dining areas.⁹⁰

Crown Casino spokesman Mr Gary O'Neill has stated that it is "one of the great urban myths" to suggest that more non-smokers would go to pubs if they were smoke-free, and that bars at the Crown Casino that had been forced to ban smoking due to the 2003 smoking bans in gaming venues had lost 40-50% of their custom, whereas custom had increased in the bars where smoking was allowed.⁹¹

The Victorian Government will consult with industry and health groups over the next three months to determine a timetable for implementing the further bans. There are plans to release a discussion paper in November 2004 detailing how the bans will be phased in.⁹²

4.3 WESTERN AUSTRALIA

Partial smoking bans in enclosed public places commenced in Western Australia on 12 January 1999 under Part 9B of the *Health Act 1911* (WA).

The Act provides that the Governor may make regulations for the regulation or prohibition of smoking in enclosed public places (s 289F).

A 'public place' means a place or vehicle that the public (or a section of the public) is entitled to use, or that is open to, or is being used by, the public (or a section of the public), whether on payment of money, by virtue of membership of a club or other body, or otherwise. A public place is 'enclosed' if it has, whether permanently or temporarily, a ceiling or roof and walls, sides or other vertical

⁸⁸ Michael Bachelard and Megan Saunders, 'Smoking ban in pubs, clubs'.

⁸⁹ Morgan Mellish, 'Drinkers face a breath of fresh air'.

⁹⁰ Misha Ketchell and Bridie Smith, 'Bracks clears the air in pubs and clubs', *Age*, 13 October 2004.

⁹¹ Michael Bachelard and Megan Saunders, 'Smoking ban in pubs, clubs'.

⁹² Morgan Mellish, 'Drinkers face a breath of fresh air'.

coverings, so that when the place's existing closeable openings are closed, the place is completely or substantially enclosed (s 289E(1)).

Where premises contain more than two enclosed public places, the regulations must not permit smoking in more than two of those places (this does not, however, currently apply to the Burswood Casino)⁹³ (ss 289F(3)-(4)).

The Health (Smoking in Enclosed Public Places) Regulation 2003 (WA), which commenced operation on 1 December 2003, prohibits smoking in an enclosed public place (regulation 4). The following places are exempt from this prohibition:

- A bar or lounge area⁹⁴ which adjoins, but does not include, a dining area, provided the following conditions are met:
 - the bar or lounge area is not a subject of a restaurant licence;
 - meals are not served or consumed in the bar or lounge area, except at a bar counter;
 - the bar or lounge area has adequate ventilation;⁹⁵ and
 - there is no other separately enclosed public place within the premises in which the bar or lounge area is located that comprises another bar or lounge area.
- A bar or lounge area not adjoining a dining area, provided the following conditions are met:
 - the bar or lounge area is not a subject of a restaurant licence;
 - meals are not served or consumed in the bar or lounge area, except at a bar counter;
 - the bar or lounge area has adequate ventilation; and
 - if the bar or lounge area is located in premises that comprise only one other bar or lounge area that is an enclosed public place but no other enclosed public place that is exempt from the ban, a non-smoking area is set aside in the public area of at least one of the bar or lounge areas.
- An allocated room in a restaurant, provided the following conditions are met:

⁹³ It is proposed that the exemption of the Burswood Casino from this requirement will be removed by the Health Legislation Amendment Bill 2004 (WA), cl 5, which was introduced into the Legislative Assembly on 8 April 2004.

⁹⁴ A 'bar or lounge area' is an area of licensed premises that is primarily or predominantly used for the consumption of liquor (regulation 3).

⁹⁵ 'Adequate ventilation' is natural and/or mechanical ventilation which meets the performance requirements of the Building Code of Australia (regulation 3).

- the allocated room is a separate and enclosed room within an area that is a subject of a restaurant licence, and there is only one allocated room in this area;
- meals are not served or consumed in the allocated room;
- the allocated room has adequate ventilation; and
- the allocated room is not, or does not form part of, the main access way to the area the subject of the restaurant licence.
- A cabaret or nightclub, until 1 January 2007, provided the following conditions are met:
 - the cabaret or nightclub has adequate ventilation;
 - 80% of the floorspace is set aside as a non-smoking area.
- A covered area,⁹⁶ provided one or more of the windows, doors or retractable coverings are open so that the covered area is not substantially enclosed.
- The international room at Burswood Casino, provided the room has adequate ventilation.

In relation to these exemptions, note that until 31 December 2006, where premises are comprised of more than two of these enclosed public places (other than the international room at the Burswood Casino),⁹⁷ smoking is prohibited in all but two of such places located in the same premises. Size restrictions apply where two bar or lounge areas are set aside for smoking in certain premises until this date (regulation 8). From 1 January 2007, this will be reduced, so that smoking will be prohibited in all but one of the places (regulation 7).

If smoking is prohibited in an enclosed public place but not in another part of the premises where the place is located, the occupiers of both areas must, unless the non-smoking place has adequate ventilation, take reasonable steps to prevent smoke penetrating the non-smoking place (regulation 13).

A private member's Bill for a total prohibition on smoking in enclosed public places was introduced into the Western Australian Legislative Assembly on 14 May 2003.⁹⁸

⁹⁶ A 'covered area' is an area of premises that is predominantly outside the permanent external walls of the premises, has a ceiling or roof and has at least two sides that border an outdoor area of the premises or an area outside the premises and are primarily or predominantly comprised of openable windows, doors or retractable coverings (regulation 3).

⁹⁷ This exception for the Burswood Casino is likely to be removed as a result of the Health Legislation Amendment Bill 2004 (WA) (refer to footnote 93).

⁹⁸ Health (Smoking in Enclosed Public Places) Amendment Bill 2003 (WA). The Bill was introduced by Dr J Woollard MLA.

APPENDIX A – MINISTERIAL MEDIA STATEMENTS

Hon. Peter Beattie MP, Premier and Minister for Trade

18 October 2004

Queensland Government Doubles Fines In Crack-Down On Smoking

The Queensland Government will introduce Australia's highest anti-smoking penalties when it doubles fines as part of the country's toughest bans on smoking in public places.

Cabinet today approved tobacco legislation to be introduced to Parliament this week, said Premier Peter Beattie.

Upgraded monitoring and enforcement will back up the new laws.

"More than 3,400 deaths and 30,000 hospital admissions each year in Queensland are a direct result of smoking.

"Our new fines will be the toughest in the country because we are mounting an all-out assault on the death toll and illness caused by tobacco smoke.

"The fine for supplying a tobacco product to a child will double from \$5,250 to a maximum of \$10,500 for a first offence and up to a maximum of \$31,500 for a third offence - the first time there has been a more onerous fine for a third offence.

"A breach of the laws banning advertising of tobacco products, already the toughest in Australia, will double from \$5,250 to \$10,500.

"A retailer's failure to display signs required by law, such as health warnings and quit smoking signs, will attract a fine of \$1,500, up from \$750.

"Queensland Health and Liquor Licensing will work co-operatively on the enforcement of the legislation.

Health Minister Gordon Nuttall said smoking would be banned in all outdoor eating areas in Queensland, and areas where food or drink is served, including a 100 per cent smoking ban in all outdoor restaurant areas and cafes.

"These new laws will give back the outdoors to the 80% of Queenslanders who don't smoke, and in turn ensure better health for all.

"A 100% smoking ban will also apply inside all pubs and clubs," he said.

"While these premises will be encouraged to prohibit smoking in all outdoor areas as well, pubs and clubs will have an option to designate space for outdoor smoking which will be:

- Up to 50% of the total outdoor area and

- where no food or drink is served
- where no food is consumed
- where no entertainment is offered
- where there are no gaming machines
- not next to an area where food or drink is served.

"Any pub or club choosing to designate space for outdoor smoking must, by law, develop a new Smoking Management Plan that will be inspected by enforcement officers, and be on public display for all patrons.

"Any breach of the new laws regarding designated outdoor smoking areas will attract a fine of up to \$10,500.

"Individuals caught smoking in no-smoking areas, including outdoor eating areas, patrolled beaches, major sports facilities, within 10 metres of playgrounds and four metres of an entry to a non-residential building will face fines of up to \$1,500.

"There will also be more responsibility on venue owners and licensees to enforce the proposed laws. An increased fine of \$10,500 will apply to any venue owner or licensee who allows smoking in no-smoking areas.

"In a new penalty, a venue owner or licensee will also be required by law to stop serving food or drink to any person who refuses to stop smoking when directed," he said.

Offence	Current Penalty	New Penalty	Other States
Supply a tobacco product to a child	1st offence \$5,250	1st offence \$10,500	NSW \$5,550
	2nd offence \$10,500	2nd offence \$21,000	VIC \$5,000
		3rd offence \$31,500	SA \$5,000
		* (see below)	TAS \$5,000(1)
			\$10,000(2)
		ACT \$5,000	
		WA \$5,000(1)	
		\$10,000 (2)	
		NT \$10,000	
Breach advertising restrictions	\$5,250	\$10,500	ACT \$5,000
			NSW \$5,500
			SA \$5,000
			VIC \$1,000

Offence	Current Penalty	New Penalty	Other States
			WA \$5,000
Fail to display quit smoking and health warning signs	\$750	\$1500	ACT \$500 NSW \$550 VIC \$100 SA \$2,500 WA \$5,000
Smoking in indoor Areas	Individual \$1,500 Licensee \$1,500	Individual \$1,500 Licensee \$10,500	ACT \$500 NSW \$550 SA \$200 VIC \$500 WA \$5,000
Smoking in outdoor areas (defined as no smoking)	N/A	Individuals \$1,500 Licensee \$10,500	No such offence
Continue serving food or drink to a customer smoking in a no-smoking area	N/A	Licensee \$10,500	No such offence
Breaching laws re Smoking Management Plans	N/A	Licensee \$5,250	No such offence
Misrepresentation of age by a minor	N/A	Referral to Juvenile Aid Bureau for caution or up to \$1,500	No such offence

*The Magistrates Court now has the discretion, on a first conviction, to suspend the retailer's ability to sell tobacco products for six months; on a second conviction to suspend selling tobacco products for 12 months; and for a third (or subsequent conviction) to suspend selling tobacco products for 3 years.

Mr Nuttall said the new penalties were part of major anti-tobacco reforms announced by the State Government on September 6 including:

REFORM

DATE OF COMMENCEMENT

Ban smoking at patrolled beaches	January 1, 2005
Ban smoking within 10m of children's playground equipment	January 1, 2005
Ban smoking when standing within 4m of building entrances	January 1, 2005
Ban smoking at 100 per cent of all outdoor sports stadiums managed by the Major Sports Facilities Authority	January 1, 2005
Severely restrict the display of all tobacco products in retail outlets including tobacconists and duty-free stores	December 31, 2005
Ban the display of tobacco product brand names and prices, excluding tobacco product vending machines	December 31, 2005
Introduce stronger penalties for retailers selling to children - including an automatic suspension from selling	December 31, 2005
Smoking banned in all indoor areas of liquor licensed premises	Phased in, leading to a complete ban on 1 July 2006
	Ban covering 1/3 of indoor area of all licensed premises begins 1 Jan 05, followed by a ban covering 2/3 of indoor area of all licensed premises by 30 September 2005.
Smoking banned in all outdoor areas where food or beverages are served and are contiguous to the operations within a business	July 1, 2006
Make it an offence for children to falsely represent their age when purchasing or attempting to purchase a tobacco product	December 31, 2005
	Continue the current arrangements of enforcing the sales of minor provisions of the legislation through Queensland Health enforcement officers' surveillance of tobacco outlets.
There will also be six minor amendments to improve efficiency of the Act.	
Media contacts: Premier's office - 3224 4500	
Minister's office - 3224 1190	

Hon. Gordon Nuttall MP, Minister for Health

20 September 2004

Beattie Govt Details Plan to Limit Lethal Tobacco Displays

The Queensland Government will ban some forms of tobacco promotion and severely restrict the display of tobacco products, brand names and prices under a detailed strategy released today.

Premier Peter Beattie and Health Minister Gordon Nuttall said Cabinet had approved stringent limits on point-of-sale promotion of cigarettes and tobacco products.

"These changes will back up our comprehensive new smoking bans - Australia's toughest - to combat smoking's death toll of more than 3400 Queenslanders each year," Mr Beattie said.

"The reforms are specially aimed at preventing young people from taking up the habit and becoming the smoking-related death or casualty statistics of the future.

"These measures will take effect on December 31, 2005, in time for the start of the new smoking bans on January 1, 2006," Mr Beattie said

The newly-approved reforms will:

- * allow only one tobacco product display unit per retail outlet. Tobacco sellers have indicated acceptance of this reform;
- * limit the size of a tobacco product display unit to 1 square metre;
- * for tobacconists, limit the size of a tobacco product display unit to 3 square metres;
- * ban the display of tobacco product cartons at all retail outlets;
- * reduce the size of tobacco product price tickets from 100mm x 80mm to 80mm x 40mm;
- * reduce the size of tobacco product price boards from 1 square metre to 0.5 square metre and require that only carton prices be displayed; and
- * ban "un-branded tobacco advertising" at or near tobacco retailing premises (this ban does not include a business name or the term "tobacconist" for dedicated tobacconists).

Mr Beattie said severe restrictions on display were discussed at a meeting between retailers and the government on September 10, four days after the government announced the new anti-smoking regime.

Health Minister Gordon Nuttall said Cabinet had on September 6 endorsed a proposal to ban the advertising of all tobacco products in retail outlets, including tobacconists and duty free stores, from December 31, 2005.

Mr Nuttall said current Queensland law meant there was no limit on the size of the display of tobacco products at retail outlets.

"As a result tobacco retailers can display more than 1000 packets of cigarettes, loose tobacco and cigars amounting to a powerwall of tobacco products," Mr Nuttall said.

"These displays, to which children are frequently exposed, are a powerful advertisement for a product which kills more than 3400 Queenslanders a year," he said.

Retailers can currently display tobacco products at multiple sites within the one retail outlet.

The Government has already announced proposed changes to the Tobacco and Other Smoking Products Act that include bans covering:

- * all indoor areas of licensed premises;
- * all outdoor areas where food or beverages are served and are contiguous to the operations within a business;
- * all patrolled beaches;
- * areas within 10 metres of children's playgrounds;
- * smokers standing within four (4) metres of all building entrances; and
- * all sporting venues administered by the Major Sports Facility Authority.

Media contacts:

Premier's office - 3224 4500

Health Minister's office - David Potter 0409 305 662

Hon. Peter Beattie MP, Premier and Minister for Trade

7 September 2004

Premier: Work With Us On Smoking Bans To Save Lives

Tokyo: Premier Peter Beattie is urging critics of Queensland's proposed smoking bans to remember that tobacco is a killer, examine the facts and work with the State Government to make the bans work.

"People should remember that there was opposition to the compulsory wearing of seat belts and to random breath testing," said Mr Beattie.

"I would imagine that 99% of the population now accepts that wearing seat belts and random breath testing have saved hundreds of lives.

"The fact is that if these tobacco bans stop people from smoking we are going to save thousands of lives.

"I have to say to critics of our plans that there was widespread criticism in Ireland before the Irish Government introduced smoking bans on March 29 this year. There were many pessimists who predicted a revolt by pubs and who forecast the death of the pub and club industry.

"Two months after the bans were introduced the Irish Office of Tobacco Control reported that in 97% of premises inspected no-one was smoking and there was no evidence of anyone having broken the law.

"Clubs, pubs and restaurants should be heartened by the fact that Irish Government surveys revealed that before the bans 68% of those surveyed said they had visited a pub in the previous fortnight.

"After the bans, the figure actually rose to 71%. The increase in pub visits was accounted for by an increase in the number of non-smokers while the number of smokers did not drop off.

"The official surveys showed the number of restaurant visits was virtually unchanged."

Health Minister Gordon Nuttall said: "We received more than 1,300 submissions on smoking and there was overwhelming support for the bans.

"In Queensland we want to achieve more than just banning smoking in public places.

"We want to change attitudes. We want to help people give up smoking. We want to save people from lung cancer, emphysema and debilitating heart problems.

"In Norway about 100,000 smokers managed to break their addiction to nicotine in the period between the announcement of a proposal to ban smoking in all workplaces and the introduction of the legislation.

"I urge smokers in Queensland to take this opportunity to stop using this extremely dangerous drug.

"When it comes to outdoor dining areas it should be obvious to anyone who has sat down to enjoy a meal in the fresh air that cigarette smoke can be extremely objectionable as well as being a health hazard.

"There would have been a risk that if bans were not introduced for outdoor dining areas they would become even more polluted by smokers unable to smoke indoors.

"There are arguments about how smoking bans should be policed when it comes to beaches and the doorways of buildings.

"We will consult with local governments about enforcement.

"On crowded beaches it is not just smoke but the fact that thousands of cigarette butts with all their poisons are left in the sand.

"I believe that most people will want to comply with the bans and that - as in Ireland - it will not be a major problem."

Contact: Steve Bishop 07 3224 4500

Hon. Peter Beattie MP, Premier and Minister for Trade

6 September 2004

Queensland To Introduce Nation's Toughest Smoking Bans

Queensland is aiming to be the first state in Australia to introduce comprehensive smoking bans in public places under new proposals announced by the Beattie Government today.

"Smoking is killing more than 3,000 Queenslanders every year and studies show that passive smoking is also a major health risk," said Premier Peter Beattie.

"As a responsible Government we must do everything we can to limit the effects of smoking on people's health.

"The new tobacco laws will begin coming into effect on January 1, next year.

"These are the toughest anti-smoking proposals anywhere in Australia.

"They include proposals that are not yet being considered by other states in their plans to introduce further tobacco bans."

Mr Beattie outlined the proposed changes.

From January 1, 2005 smoking will be banned:

- on all patrolled beaches;
- within 10 metres of children's playgrounds;
- while standing within four (4) metres of all building entrances; and
- at all sporting venues administered by the Major Sports Facility Authority including Suncorp Stadium, the Gabba, the Queensland Sport and Athletics Centre (formerly QEII Sports Centre and ANZ Stadium), the Sleeman Centre, the Brisbane Entertainment Centre, and Dairy Farmers Stadium, Townsville.

"From December 31, 2005 there will be bans on:

- the advertising of all tobacco products in retail outlets including tobacconists and duty-free stores and
- the introduction of stronger penalties for retailers selling to children - including for the first time, an automatic suspension from selling.

In addition any display of tobacco product names and prices will be severely restricted.

"From July 1, 2006 smoking will be banned:

- in 100 per cent of indoor areas of liquor licensed premises; and
- in all outdoor areas, where food or beverages are served and are contiguous to the operations within a business."

Health Minister Gordon Nuttall said smoking caused the deaths of more than 3400 Queenslanders each year, and accounted for more than 30,000 hospital admissions each year.

"Industry, unions and the general public, through more than 1300 submissions to the Government's review of the Act, have showed an overwhelming support for increased bans on tobacco smoking," Mr Nuttall said.

"These proposed reforms announced today will deliver that."

Mr Nuttall said stronger penalties would apply to retailers selling to children.

"If convicted of selling tobacco products to a minor, a retailer will be banned from supplying tobacco products for six months on a first offence, 12 months for a second offence and three years for any subsequent offence.

"For the first time in Queensland, it would also be an offence for children to falsely represent their age when purchasing or attempting to purchase a tobacco product, similar to laws relating to the purchase of alcohol," he said.

Mr Nuttall said the Queensland Government had promised to review the Tobacco Act when further anti-smoking laws were introduced in May 2001 to reduce exposure to environmental tobacco smoke (ETS), restrict the advertising and display of tobacco products, prohibit tobacco promotional campaigns and reduce youth access to tobacco products.

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September 6, 2004

REFORM and DATE OF COMMENCEMENT

Ban smoking at patrolled beaches - January 1, 2005

Ban smoking within 10m of children's playground equipment - January 1, 2005

Ban smoking when standing within 4m of building entrances - January 1, 2005

Ban smoking at 100 per cent of all outdoor sports stadiums managed by the Major Sports Facilities Authority - January 1, 2005

Ban the advertising of all tobacco products in retail outlets including tobacconists and duty-free stores - December 31, 2005

Severely restrict the display of tobacco product brand names and prices, excluding tobacco product vending machines - December 31, 2005

Introduce stronger penalties for retailers selling to children - including an automatic suspension from selling - December 31, 2005

Ban smoking in all indoor areas of liquor licensed premises - July 1, 2006

Ban smoking in all outdoor areas where food or beverages are served and are contiguous to the operations within a business - July 1, 2006

Make it an offence for children to falsely represent their age when purchasing or attempting to purchase a tobacco product - December 31, 2005

Continue the current arrangements of enforcing the sales of minor provisions of the legislation through Queensland Health enforcement officers' surveillance of tobacco outlets

There also will be six minor amendments to improve efficiency of the Act.

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