



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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Record of Proceedings, 14 March 2023

## **TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL**

### **Introduction**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Minister for Health and Ambulance Services) (11.14 am): I present a bill for an act to amend the Forestry Act 1959, the Police Powers and Responsibilities Act 2000, the Recreation Areas Management Act 2006 and the Tobacco and Other Smoking Products Act 1998 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Health and Environment Committee to consider the bill.

*Tabled paper:* Tobacco and Other Smoking Products Amendment Bill 2023 [284](#).

*Tabled paper:* Tobacco and Other Smoking Products Amendment Bill 2023, explanatory notes [285](#).

*Tabled paper:* Tobacco and Other Smoking Products Amendment Bill 2023, statement of compatibility with human rights [286](#).

The Tobacco and Other Smoking Products Amendment Bill 2023 delivers on key government election commitments. The reforms in the bill respond to ongoing and emergent public health concerns and will ensure Queensland's health legislation remains contemporary and effective. In Queensland, the effects of smoking are a significant public health concern. It is the No. 1 risk factor contributing to preventable death and disease. The annual cost of smoking to Queensland, including hospital and other medical expenses, has been estimated at \$27.4 billion. Smoking also contributes to health inequity. Higher smoking rates, and therefore poorer health outcomes, are more common in First Nations people and in low socio-economic and regional or remote communities.

Over the past 25 years, concerted public health efforts have more than halved the adult smoking rate in Queensland. This includes measures implemented under the Tobacco and Other Smoking Products Act 1998. However, this progress is threatened by aggressive new marketing of smoking products to young people. This includes using social media to promote allegedly safer new smoking products, such as e-cigarettes. Unethical new business practices have also emerged, designed to circumvent the protections in the act. Some of these issues will be canvassed in the vaping inquiry referred to the Health and Environment Committee earlier today. However, that inquiry will not delay us taking action to address the harms of smoking.

The community is also concerned about the increasing trade in illicit tobacco. These are smoking products that do not comply with Commonwealth requirements for plain packaging and health warnings and that circumvent excises and duties. As these products are often illegally imported or manufactured in unsafe or uncontrolled conditions, they are also unlikely to meet Australian safety standards in relation to ingredients and concentrations and may contain dangerous toxins.

In 2016, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee conducted an inquiry into tobacco licensing arrangements in Queensland. The committee's report recommended that a wholesale and retail licensing scheme be considered. Then, in 2020, the Palaszczuk government made two significant election commitments: firstly, to strengthen the retail supply, advertising and promotion provisions in the act and take direct action on illicit tobacco;

and, secondly, to increase smoke-free public places. To demonstrate how the bill responds to these public health challenges and gives effect to the committee's report and the government's election commitments, I shall now explain the key amendments in the bill.

There is no requirement for sellers of smoking products in Queensland to be licensed. This has limited Queensland Health's ability to effectively identify and monitor the number, type and location of businesses selling smoking products. In turn, this has impacted the department's ability to engage with the industry and design targeted compliance programs. The bill introduces a licensing scheme for wholesale and retail sales of smoking products. Both types of licenses authorise sales at one physical premises and one online shop, with additional premises or online shops requiring separate licences. The licenses must be renewed annually. Before granting a licence, the chief executive of the department must be satisfied the applicant is a fit and proper person to hold the licence. This includes consideration of any criminal history and the applicant's compliance with smoking product laws in Queensland and interstate.

Where the holder of a liquor licence applies to sell smoking products at their premises, they will automatically be granted a retail licence (liquor); however, their licence only allows sales from the premises, not from an online shop. There will be a fee charged for obtaining and renewing a licence. These fees are intended to ensure full cost recovery of the licensing infrastructure and delivery, and to fund additional compliance activities throughout the state by Queensland Health.

The licensing scheme will provide a strong incentive for industry to maintain compliance standards. Where a licensee breaches the act or otherwise ceases being a fit and proper person, the chief executive may take disciplinary action. This includes suspending or cancelling their licence. The chief executive may also impose conditions on a licence, and these may be listed on the register of licences to be published online.

Implementing a licensing scheme will align Queensland with other Australian jurisdictions. South Australia, the Northern Territory and Tasmania license retail suppliers; Western Australia and the ACT license both wholesale and retail suppliers; and New South Wales has a registration scheme for retailers. It is expected that the application portal will go live on 1 September 2023, and suppliers will then have 12 months to become licensed.

The absence of a licensing scheme in Queensland has contributed to a proliferation of retail shops trading in illicit tobacco. By seeking to profit from the evasion of standard retail requirements, this growing trade in illicit tobacco is causing significant detriment to compliant businesses and to public health. To provide more effective deterrence and enforcement, the bill makes it an offence under Queensland law for a person to supply smoking products not complying with Commonwealth requirements. Because the covert nature of the illicit tobacco trade may make it difficult to obtain evidence of an actual supply, it will also be an offence to store illicit tobacco at a retail premises as it presumes this product is intended as stock rather than for personal use. The bill also allows the illicit tobacco offence to be extended by regulation to include any new Commonwealth smoking product laws. This futureproofs the bill and anticipates the possibility of tighter national requirements being introduced, for example in relation to e-cigarettes.

Authorised persons are appointed under the act to monitor and enforce compliance with its provisions. To ensure they can effectively discharge this function, the bill provides authorised persons with expanded powers. This includes powers to make additional inquiries; issue improvement notices to immediately prohibit an activity; and remain at premises for a reasonable period to check compliance with an improvement notice. To prevent seized illicit tobacco being used to commit further offences, the chief executive will be empowered to seize these products without first taking prosecution action. The chief executive will also be able to share intelligence with other state or Commonwealth law enforcement agencies.

To assist Queensland Health to enforce the new offence of supplying illicit tobacco and the related offence of unlicensed sale of smoking products, the bill deems police officers to be authorised persons. Where police take compliance action using these new powers, Queensland Health will still be responsible for commencing any subsequent prosecution. While police officers are authorised persons, it is intended that Queensland Health officers will have the primary and predominant role of enforcing the provisions of this act. These additional powers will not divert police officers from their usual duties, including to protect the community from serious crime. Instead, this important amendment will clarify and formalise the role that police already perform in assisting, at both state and Commonwealth levels, with combating high-level smoking product offences.

The bill similarly deems conservation officers under the Nature Conservation Act 1992 to be authorised persons for the purpose of monitoring and enforcing compliance with the prohibition on smoking in a national park. The bill introduces significant maximum penalties for noncompliance. This

will deter the unlawful supply of smoking products and send a clear message that selling smoking products must only be entrusted to legitimate businesses. For example, the maximum penalty for unlicensed wholesale or retail sale of smoking products is 1,000 penalty units, which equates to \$143,750. The same penalty applies where a wholesaler sells smoking products to an unlicensed retailer. For supplying illicit tobacco, the bill prescribes a penalty of up to 300 penalty units, which equates to \$43,125. For being in possession of illicit tobacco at a retail premises, the maximum penalty is 140 penalty units, which equates to \$20,125.

The bill modernises the act to strengthen and clarify existing restrictions on the advertising of smoking products. The restrictions will now specifically apply to online shops. They will also capture the use of colloquial names of smoking products and the display of multiple business names which each reference smoking products. The bill ensures the existing restrictions on the display and promotion of smoking products keep pace with emerging business practices. The restrictions will now specifically apply to any fixed or moving image promoting use of a smoking product, and to packaging of hookahs and non-tobacco substances which may be smoked in a hookah. These restrictions will also be extended to capture the supply of a smoking product for a nominal fee and the practice of displaying multiple mandatory or permitted signs to indirectly draw attention to the fact that smoking products are available for sale.

The bill includes new restrictions to further protect children from exposure to smoking, smoking products and second-hand smoke. Employees under the age of 18 who sell smoking products may grow to view smoking as normal behaviour. They will also become familiar with brand names and be exposed to the variety of smoking products available, including the multiple flavours of e-cigarettes.

The bill prohibits the supply and handling of smoking products by children; however, the offence for contravention will be committed by the employer, not the child employee. The act already prohibits the supply of smoking products to children; however, it is not an offence if the supplier is a responsible adult for the child, such as a parent or guardian. The supply of smoking products to children by family and friends contributes to smoking initiation, experimenting and progression to regular smoking. No other jurisdiction in Australia provides such an exemption. Although the bill will remove this exemption, Queensland Health's intended enforcement approach will focus on monitoring, prevention and education rather than prosecution. Also, to protect children from the dangers of second-hand smoke, the bill prohibits smoking at or near organised children's outdoor activities, such as Scouts or Girl Guides, and at car parks adjacent to a school.

The act already allows liquor licensed premises to have a designated outdoor smoking area, otherwise known as a DOSA. To protect patrons from exposure to second-hand smoke, the bill requires a no-smoking buffer zone between the DOSA and any enclosed area of the premises. The bill also requires the liquor licensee to ensure that no child is allowed to remain in a DOSA.

Smoking and drinking are often paired behaviours. To prevent recent quitters from relapsing and social smokers from increasing their smoking, the bill restricts the supply of smoking products at liquor licensed premises to a service area. This will mean that smoking product vending machines at premises must not be accessible directly by patrons.

The act already prohibits smoking at an outdoor eating or drinking place, such as an agricultural show where food or drink is provided from an onsite food service. To protect persons entering or passing by the place, the bill introduces a requirement for a no-smoking buffer zone around its perimeter.

Outdoor markets are becoming increasingly common across Queensland. To protect patrons and vendors, the bill introduces specific smoking rules for this type of outdoor place. Smoking will be prohibited at an outdoor market and within a buffer zone from any clearly defined entrance or exit to the market.

The bill does not take away a person's choice to smoke; however, it does introduce restrictions to balance this right with the public health imperative to protect the community at places where families gather. Accordingly, the bill allows the person in charge of an outdoor eating or drinking place or outdoor market to set aside a smoking area; however, the smoking area must be clearly signed and surrounded by a buffer zone, and no food or drink may be served within either the smoking area or the buffer zone. As an added safeguard, where the person in charge elects to create a smoking area, they will be held liable for any persons found smoking in the buffer zone.

To improve the operation of the act, the bill makes several technical amendments. These include renumbering the act to make it easier for the community to understand and law enforcement agencies to apply.

The bill was developed with extensive input from industry and the community, including through a formal regulatory assessment process and targeted consultation on the draft legislation. Organisations such as Cancer Council Queensland, the Heart Foundation, the Public Health

Association of Australia and the Lung Foundation of Australia have provided positive feedback on the reforms to protect public health. Retailers agree with introducing the licensing scheme as a means of keeping unscrupulous suppliers from entering or remaining in the industry and to reduce the trade in illicit tobacco.

To give affected stakeholders sufficient time to make the structural and operational changes needed to comply with the new requirements before they become law, some of the amendments in the bill commence on a later date. For example, the new prohibition on smoking at outdoor markets commences on 1 September 2023, some of the changes at liquor licensed premises commence on 1 July 2024 and unlicensed wholesale or retail sale becomes an offence on 1 September 2024. The prohibition on child employees supplying smoking products also commences on 1 September 2024, with small businesses having a further 12 months in which to comply.

The Palaszczuk government is committed to ensuring that Queensland's health legislation meets the needs of Queenslanders, both now and into the future. This bill will modernise Queensland's tobacco and smoking products legislation, fill gaps in the existing legislative coverage and increase regulatory oversight and deterrent measures to keep the smoking product industry honest and transparent. Above all, the bill strengthens public health protections for Queenslanders and particularly for families and children. I take this opportunity to thank the stakeholders who engaged in Queensland Health's consultation processes and most recently provided feedback on the draft bill. I commend the bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Minister for Health and Ambulance Services) (11.29 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Health and Environment Committee**

**Mr SPEAKER:** In accordance with standing order 131, the bill is now referred to the Health and Environment Committee.