

**Tobacco and Other Smoking
Products (Smoke-free Places)
Amendment Bill 2015**

**Report No. 10, 55th Parliament
Health and Ambulance Services Committee**

February 2016

Health and Ambulance Services Committee

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Ms Ros Bates MP, Member for Mudgeeraba
Members	Mr Steve Dickson MP, Member for Buderim Mr Aaron Harper MP, Member for Thuringowa Mr Joe Kelly MP, Member for Greenslopes Dr Christian Rowan MP, Member for Moggill
Committee Staff	Ms Deborah Jeffrey, Research Director (from 18 January 2016) Ms Amanda Honeyman, Research Director (from 16 November 2015 to 15 January 2016) Ms Emily Booth, Principal Research Officer Ms Kath Dalladay, Principal Research Officer (to 8 January 2016) Ms Katie Shalders, Executive Assistant (from 10 December 2015 to 15 January 2016) Ms Lyn Whelan, Executive Assistant (from 18 January 2016)
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer (part-time) Ms Tamara Vitale, Executive Assistant
Contact details	Health and Ambulance Services Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6626
Fax	+61 7 3553 6699
Email	hasc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/hasc

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Abbreviations

The Act	<i>Tobacco and Other Smoking Products Act 1998</i>
The Bill	Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015
CCQ	Cancer Council Queensland
COPD	Chronic obstructive pulmonary disease
The Committee	Health and Ambulance Services Committee
The Department	Department of Health
EHO	Environmental Health Officer
FLP	Fundamental legislative principle
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
The Minister	Minister for Health and Minister for Ambulance Services
OQPC	Office of the Queensland Parliamentary Council
Private Member's Bill	Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015
QADA	Queensland Aged and Disability Advocacy
QCEC	Queensland Catholic Education Commission

Chair's foreword

This Report details the examination by the Health and Ambulance Services Committee of the *Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015*.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament in accordance with section 4 of the *Legislative Standards Act 1991*.

The Committee considered that the proposed provisions are consistent with the Committee's previous recommendations on the Private Members' Bill. The Committee found that there was general support for the provisions in the stakeholders' submissions. The Committee supports the provisions contained in the Bill and has recommended that it be passed.

On behalf of the Committee, I thank those who lodged written submissions on this Bill and participated in the Committee's hearings and meetings. I also thank the Department of Health for the support provided to the Committee during this inquiry.

In particular, I thank all members of the Committee for the constructive approach they have taken to the inquiry, and to this report.

I would also like to thank Hansard, Secretariat and Scrutiny of Legislation secretariat staff for the support they have provided to us.

I commend this report to the House.



Leanne Linard MP

Chair

Recommendations

Recommendation 1

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The Committee recommends that the Tobacco and Other Smoking Products (Smoke free places) Amendment Bill 2015 be passed.

1. Introduction

1.1 Role of the Committee

The Health and Ambulance Services Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility are health and ambulance services.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Referral

On 10 November 2015, the Minister for Health and Minister for Ambulance Services, the Hon. Cameron Dick MP, introduced the *Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015* into the Queensland Parliament. The Bill was referred to the Committee for detailed consideration.³ In accordance with a resolution of the Legislative Assembly on the same day, the Committee was required to report to the Parliament by 15 February 2016.

1.3 Inquiry process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing. The Committee also sought additional written advice from the department.

The Committee wrote to the Department on 12 November 2015, seeking advice on the Bill. The Committee wrote to subscribers and stakeholders, to inform them of the inquiry and invite written submissions.

The Committee received 20 written submissions. A list of those who made submissions is contained in Appendix A. Submissions authorised by the Committee have been published on the Committee's webpage and are available from the Committee secretariat.

A written briefing from the Department of Health (the Department) was received on 27 November 2015..

The Committee held a public departmental briefing on 2 December 2015 and a public hearing with stakeholders on 15 December 2015. Both of these briefings are published on the Committee's webpage and are available from the Committee secretariat. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A list of representatives who gave evidence at the public hearing is contained in Appendix C.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194

² Standing Rules and Orders of the Legislative Assembly, Schedule 6

³ In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly

1.4 Policy objectives of the Bill

The explanatory notes for the Bill state its purpose is to amend the *Tobacco and Other Smoking Products Act 1998* (the Act) to:

- create more smoke-free public places across Queensland;
- prohibit the sale of smoking products from temporary retail outlets; and
- make minor and technical amendments to clarify and strengthen Queensland's tobacco laws.

The primary objectives of the Bill, as outlined in the explanatory notes, are to create more smoke-free places to reduce people's exposure to second-hand smoke, reduce the normalcy and social acceptability of smoking behaviours particularly for young people, and provide supportive environments to help people quit smoking.⁴

1.5 Consultation on the Bill

The Department advised that they undertook consultation on the Bill, inviting the following stakeholders to provide feedback on the legislative reforms:

- non-government health organisations, including Cancer Council Queensland and the Heart Foundation Queensland;
- local governments who have local laws prohibiting smoking in their local government area;
- the Local Government Association of Queensland;
- unions;
- retailer associations;
- peak bodies for private residential aged care facilities;
- peak bodies for approved early childhood education and care services;
- peak bodies for sporting associations; and
- hospital and health services⁵

2. Outcome of Committee considerations

Standing Order 132(1)(a) requires that the Committee after examining the Bill determine whether to recommend that the Bill be passed.

The Committee considered whether it should make a recommendation for the Bill to be passed. Pursuant to Standing Order 132(1)(a), the Committee recommends that the Bill be passed.

Recommendation 1

The Committee recommends that the Tobacco and Other Smoking Products (Smoke free places) Amendment Bill 2015 be passed.

⁴ Bill, Explanatory notes, page 2

⁵ Bill, Explanatory notes, page 16

3. Background

The *Tobacco and Other Smoking Products Act 1998* (the Act) regulates the smoking and tobacco industry and, amongst other things, sets out a number of specific areas in which smoking is banned. The Bill amends this Act to:

*...create more smoke-free places to reduce people's exposure to second-hand smoke, reduce the normalcy and social acceptability of smoking behaviours particularly for young people, and provide supportive environments to help people quit smoking.*⁶

The impacts of smoking are well known and a number of strategies are implemented in Queensland to reduce this impact. Explanatory Notes to the Bill provide a succinct overview of the impact of tobacco smoking on Queenslanders:

*Tobacco products are toxic, carcinogenic and addictive. They are the only legal product in the market today that kills 50 per cent of its consumers when used as intended. More than 85 per cent of Queenslanders are non-smokers, yet continue to be exposed to second-hand smoke in public places.*⁷

The Explanatory Notes to the Bill emphasise the impact of passive smoking on children:

*Children are particularly vulnerable to the harmful effects of second-hand smoke and are more likely to view smoking as desirable when they often see people smoking. Smoke-free places protect people from exposure to second-hand smoke and help to prevent youth smoking uptake.*⁸

The Cancer Council Queensland (CCQ) supports measures that reduce the prevalence of smoking and summarised the impact of smoking on Queenslanders as follows:

*Tobacco smoking is a leading cause of preventable death and disease, and health inequality in Queensland. One third of smokers die in middle age losing at least 20 years of life (42% of lung cancer deaths occur in the 45–64 year old age group, and 18% of COPD [chronic obstructive pulmonary disease] deaths). Current smokers will die an average of 10 years earlier than non-smokers, with mortality rates increasing substantially with the increased intensity of smoking. Smoking accounts for 1 in 7 deaths in Queensland with 3700 Queenslanders dying annually from tobacco related conditions. About one-third of these were of working age. One in 10 people who die from smoking-related diseases have never smoked themselves.*⁹

Both the Department and CCQ note that although the prevalence of smoking has decreased, the rate of decrease is slowing down.¹⁰ CCQ considers that new measures are now urgently required to continue historical rates of progress.¹¹

⁶ Bill, Explanatory Notes, page 1

⁷ Bill, Explanatory Notes, page 1

⁸ Bill, Explanatory Notes, page 3

⁹ Submission 5, Cancer Council Queensland, page 1

¹⁰ Bill, Explanatory Notes, page 1

¹¹ Submission 5, Cancer Council Queensland, page 1

The Department has previously advised the Committee that:

Over many years Queensland has implemented a proven multi strategy approach which aims to increase protection from second-hand smoke, support smokers to quit and prevent youth uptake. Our strategies include: creating smoke-free environments by law and policy; implementing quit-smoking campaigns to remind smokers of the dangers of smoking and encourage them to take action; providing tailored quit smoking advice through the Quitline service—33,000 people call that line each year and we know that we have retention rates for their program of 68 per cent and quit rates of 45 per cent six months after program completion; targeting our quit-smoking programs to reach those with higher rates of smoking; preventing young people from taking up smoking through retail sale and display restrictions; and providing school based education to get healthy messages to children early.

Taken all together, these strategies have been proven to influence healthier behaviours and strengthen community expectations for more smoke-free environments. Indeed, three-quarters of Queenslanders tell us that they actively avoid places where they are exposed to other people's smoke¹²

The multi-strategy approach required to reduce the rate of smoking is also addressed in the Government Bill's Explanatory Notes which state:

Strong tobacco legislation, along with quit smoking mass media campaigns, smoking cessation services and targeted programs for priority populations, are proven elements of a multi-strategy approach for reducing smoking rates. The phased introduction of smoking bans, tobacco retail restrictions and other strategies in Queensland during the period between 2001 and 2014 contributed to reducing smoking rates by 30 per cent. This resulted in about 190,000 fewer smokers in 2014 than there would have been had such strong interventions not occurred.¹³

3.1 Incremental approach to smoking bans

The Committee has previously noted that Queensland, like the other states and territories, has favoured an incremental approach to smoking bans over a number of years. Initial bans were introduced to restrict smoking in specified enclosed public places in 2001, progressing to the phased introduction of smoking bans at outdoor public places including eating and drinking places, entrances to public buildings, patrolled beaches, prescribed outdoor swimming areas, children's playgrounds and sports stadiums in 2005. Smoking indoors at liquor licensed venues, including specifically in poker machine areas, was also phased out over an 18 month period from early 2005.¹⁴

In 2010, Queensland introduced smoking bans in cars carrying children under the age of 16 years and empowered local governments to play a role in creating smoke-free public places. The Act was amended to provide local governments with the ability to regulate smoking in outdoor pedestrian malls and public transport waiting points through local laws.

¹² HASC transcript, public hearing, 16 September 2015, page 5

¹³ Bill, Explanatory Notes, page 1

¹⁴ <http://www.parliament.qld.gov.au/documents/committees/HASC/2015/TobaccoOtherExtenAmendBill2015/04-rpt006-16Oct2015.pdf>

The most recent reforms continued in 2014, when the Parliament passed the Health Legislation Amendment Bill 2014, which extended smoking bans to all health facilities, school grounds and in prisons. That Bill also ensured the existing tobacco smoking laws equally applied to personal vaporising devices or ‘e-cigarettes’.

While all *enclosed* areas of health facilities and schools were prohibited by the Act, the 2014 Bill extended smoking bans to all public health land, including hospitals, community health centres, health clinics or rehabilitation centres, other than in a nominated smoking place.

3.2 Other Committee inquiries

The Committee has previously considered and is considering a number of inquiries regarding tobacco arrangements in Queensland. Details of these inquiries are discussed below.

3.2.1 Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015

The Committee previously considered a Private Member’s bill on a similar topic to the Bill that is the subject of this report. The *Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015* (Private Members’ Bill) was introduced into the House by the Member for Caloundra and referred to the Committee on 14 July 2015. The Committee tabled its report on its consideration of this Bill in the Parliament on Friday, 16 October 2015.¹⁵

The primary objective of the Private Member’s Bill was to decrease the incidence of smoking in Queensland. The Bill aimed to achieve this objective by strengthening existing smoking bans in Queensland and extending smoking bans to the following areas:

- Within 5 metres of all State Government buildings
- All transport waiting areas and pedestrian malls
- Public swimming pools and skate parks.

The Bill also banned the sale of cigarettes at pop up sales venues.¹⁶

There are a number of similar provisions in the Private Member’s Bill and Government Bill, and some additional provisions in the Government Bill. A comparative table of the amendments proposed by the two bills against the existing legislation is included in Appendix D.

3.2.2 Inquiry into tobacco licensing arrangements in Queensland

On 28 October 2015 the Legislative Assembly referred an inquiry to the Committee into licensing arrangements that affect the sale and use of tobacco in Queensland. The terms of reference for the inquiry require the Committee to consider:

- what arrangements currently apply in Queensland with respect to licensing the wholesale and retail supply of tobacco products,
- what licensing arrangements apply in other states and territories for the wholesale and retail supply of tobacco products, and
- the capacity for licensing arrangements for tobacco wholesalers and retailers to support broader public health objectives.¹⁷

¹⁵ See www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2015/5515T1431.pdf

¹⁶ Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015, Explanatory Notes, pages 1-2

¹⁷ Legislative Assembly of Queensland, *Record of Proceedings*, 28 October 2016 at page 2460.

The Committee is required to report to the Parliament by 29 April 2016.

3.2.3 Inquiry into smoking and tobacco use at universities, technical and further education facilities, and registered training organisations

On 28 October 2015 the Legislative Assembly referred an inquiry to the Education, Tourism and Small Business Committee into smoking and tobacco use at universities, technical and further education facilities, and registered training organisations. The terms of reference for the inquiry require the Committee to consider:

- What arrangements currently apply that limit smoking at these facilities
- The impact of smoking on staff, students and campus users, and
- The capacity for improved laws and regulations at these facilities to reduce smoking

The Committee is required to report to the Parliament by 29 April 2016.

3.3 Tobacco regulation in other Australian jurisdictions

A comparison of tobacco controls in other jurisdictions is provided at Appendix E.

4. Examination of the Bill

The Committee's examination of the Bill is discussed in this section.

4.1 New provisions

4.1.1 Skate parks and under-age sporting events

The Act does not currently regulate smoking at or near skate parks or under-age sporting events.

The Bill introduces a new provision to prohibit smoking at a sporting ground or viewing area for a water sport during:

- (a) an organised under-age sporting event; or
- (b) a training or practice session to prepare for an organised under-age sporting event; or
- (c) any break or interval during the organised under-age sporting event or the training or practice session.

It is also proposed that smoking be prohibited on land within 10 metres beyond the boundary of a sporting ground or the viewing area for a water sport during the time smoking is prohibited, as described above.¹⁸ The Department clarified that the Bill:

...is not intended to apply to a sporting event that is largely participated in by persons over the age of 18—for example, a representative rugby match in which the majority of players are over the age of 18, but a small number of participants are under 18 years.¹⁹

¹⁸ Bill, Explanatory Notes, page 8

¹⁹ Department of Health, written briefing, 27 November 2015, page 5

The Bill also introduces a new provision to prohibit smoking within 10 metres of any part of a skate park. A skate park is defined as follows²⁰:

skate park—

- (a) means a part of a public place constructed for the purpose of riding or skating any of the following around or over obstacles, jumps and uneven surfaces—
 - (i) bicycles;
 - (ii) rollerblades or rollerskates;
 - (iii) skateboards;
 - (iv) scooters; but
- (b) does not include a bicycle path, a footpath or a path shared by cyclists and pedestrians.

These provisions do not apply to a person at residential premises or on land on which residential premises may lawfully be built, at business premises or when travelling in a motor vehicle.²¹

Both of these offences carry a maximum penalty of 20 penalty units.

Explanatory notes advise that the 10 metres smoking prohibition is consistent with the smoking ban that applies within 10 metres of children’s playground equipment.²²

4.1.1.1 Private Members’ Bill

Under the provisions of the Private Members’ Bill smoking is banned at and within 5m of a skate park.

The Committee expressed support for the intent of the provision in its report on this Bill, while recommending the ban should be increased to 10m to ensure there is consistency with the existing provision banning smoking near children’s playground equipment. The Government Bill addresses this recommendation.²³

4.1.1.2 Stakeholder views

The majority of stakeholders expressed support for the prohibition of smoking at skate parks and under-age sporting events. Some submitters consider the bans could go further, while a number of local councils identified challenges in the interpretation and implementation of these provisions.

In its submission to the Committee, Ipswich City Council noted it can see the public health benefits of the provisions affecting skate parks and under-age sporting events.²⁴

The provisions are also supported by the CCQ, which stated:

*...[l]ocal sporting clubs are routinely frequented by young people and children under 14 years of age, who are particularly vulnerable to the harmful effects of passive smoking and are easily influenced by adult role modelling.*²⁵

CCQ considers the provisions will protect people from second-hand smoke and deter people from smoking.²⁶ CCQ considers that smoking should be prohibited within 10 metres of all local sporting clubs and fields in Queensland.²⁷

²⁰ Bill, Clause 13

²¹ Bill, Clause 13

²² Bill, Explanatory Notes, page 3

²³ Health and Ambulance Services Committee, Report No. 6, 55th Parliament, Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015, October 2015, pages 19-20

²⁴ Submission 14, page 2

²⁵ Submission 5, page 3

²⁶ Submission 5, page 3

²⁷ Submission 5, page 3

The Heart Foundation also supports the provisions as they bring skate parks into a consistent line with the current law that bans smoking within 10 metres of children's playgrounds. In addition, it notes the vulnerability of children and young people, who have smaller airways and less developed immune systems compared to adults.²⁸

The Local Government Association of Queensland (LGAQ) indicated that they support strategies that contribute to the reduction of health costs associated with smoking related illnesses. They noted that they consider that the introduction of additional smoke-free places represents one element of a multi-strategy approach needed to reduce the incidence of smoking in Queensland.²⁹

The Queensland Catholic Education Commission (QCEC) supported provisions that would see smoking banned more extensively in public areas, particularly those where young people are most likely to be present such as sports and recreational areas. They advised that the proposed provisions are a:

*...very positive proactive step to protect the well-being of young people and other members of the community.*³⁰

Logan City Council and Ipswich City Council identified some challenges associated with the proposed provisions. For example, with regard to the interpretation of a 'boundary', the Ipswich City Council advised that the boundary of a sporting ground or viewing area needs further explanation:

*What if the area is fenced? What is the boundary (sideline or other determined area)? Clearer definitions are required to allow Council staff to undertake compliance duties as required; but also to give clear direction for people using these facilities on what is a smoke-free area.*³¹

The Committee sought additional clarification on this issue from the Department and was advised that the essence of the Bill is to get the message out that smoking is not permitted around children and the definition of what is to be the boundary of a particular park is best worked out by consultation within local areas.³²

Logan City Council expressed general support for the prohibition of smoking at skate parks, while noting enforcement of such provisions at these parks, and more broadly, is particularly challenging.³³ Key challenges faced by Council's Park Rangers include:

- Resource intensiveness of data collection at smoking hot spots and education and awareness campaigns.
- Identification of an offender for determination of an offence. Information can be requested and is required to be provided under the Act, however local government officers have no power to detain persons where they are uncooperative.
- Where an alleged offender is a minor, a parent or guardian needs to be present for the gathering of evidence.
- Without Police assistance, a Council officer may simply only ask smokers to stop smoking or remove themselves from the area.³⁴

²⁸ Submission 11, page 3

²⁹ Submission 16, page 1

³⁰ Submission 8, page 1

³¹ Submission 14, page 2

³² Dr Young, Department of Health, Public hearing transcript, 2 December 2015, page 8

³³ Submission 13, page 3

³⁴ Submission 13, page 2

Logan City Council expressed support for banning smoking at under-age events, however, noted challenges related to the enforcement of the provisions.³⁵

4.1.1.2 Committee comment

The Committee supports the provisions. The proposed provisions are consistent with the Committee's previous recommendation on the Private Members' Bill to increase the ban to 10 metres to ensure there is consistency with the existing provision banning smoking near children's playground equipment.

The Committee noted that there was general support for the provisions in the stakeholders' submissions. The Committee noted the concerns of some stakeholders regarding the interpretation of boundary and that this will be the subject of local discussions with relevant councils.

4.1.2 National parks

National parks are considered significant places that encourage active and healthy lifestyles.³⁶

4.1.2.1 Current provisions

The current Act does not regulate smoking at national parks.

4.1.2.2 The Bill

Smoking at a national park, or part of a national park, prescribed by regulation is prohibited by the Bill. Before making a regulation, the Minister is required to obtain written consent to its making from the Minister responsible for the management of national parks. 'National park' means a national park under the *Nature Conservation Act 1992*.³⁷

This new offence carries a maximum penalty of 20 penalty units.

Explanatory notes advise why the Act is required to be amended:

*An amendment to the Tobacco Act is required to enable smoking bans to be introduced at particular national parks, or parts of national parks. This amendment would increase community enjoyment and safety by preventing exposure to second-hand smoke, particularly in areas with a high numbers of visitors.*³⁸

4.1.2.3 Stakeholder views

Provisions that prohibit smoking at national parks prescribed by regulation, or parts of national parks, were generally supported by submitters.

The Heart Foundation considers the provisions will bring Queensland into line with NSW law and:

*...will increase the community's enjoyment of and safety in these green spaces; as well as support public health goals. It will also reduce the risk of accidental fires being started by unextinguished cigarette butts and reduce littering.*³⁹

³⁵ Submission 13, page 2

³⁶ Bill, Explanatory Notes, page 4

³⁷ Bill, Clause 13

³⁸ Bill, Explanatory Notes, page 4

³⁹ Submission 11, page 3

Both CCQ and the Heart Foundation note the beneficial impact the provisions will have reducing peoples' exposure to second hand smoke.⁴⁰ CCQ advises that:

- Passive smoking is associated with a 25% increase in the risk of coronary heart disease among non-smokers and an increase in the risk of stroke, cancer, and other diseases.
- Even brief exposure to passive smoking can adversely affect the health of non-smokers.
- Second-hand smoke is linked to heart disease, lung cancer and respiratory conditions.
- The World Health Organization estimates that about 10% of deaths due to smoking are a result of second-hand smoke.⁴¹

Logan City Council also supports the provisions, subject to enforcement by respective State agencies and not local government.⁴²

4.1.2.4 Committee comment

The Committee supports the provisions. The Committee noted that there was general support for the provisions in the stakeholders' submissions.

4.1.3 Early childhood education and care facilities

Early childhood education and care services are:

*...approved education and care services under the Education and Care Services National Law (Queensland) Act 2011 and Queensland approved education and care services under the Education and Care Services Act 2013. The most common service types approved under this legislation include long day care services, kindergarten services, family day care, limited hours services and outside school hours care.*⁴³

4.1.3.1 The Act

Under the Education and Care Services Regulation, approved education and care services are required to provide a tobacco, drug and alcohol free environment for children educated and cared for under their service. This does not extend to the perimeter around the service.⁴⁴

With regard to schools, in 2014 the Act was amended to prohibit smoking on school land and within five metres of the boundary of the school land.⁴⁵

4.1.3.2 The Bill

The Bill prohibits smoking at early childhood education and care facilities, and on land within 5m beyond the boundary of the facility (buffer zone). The most common early childhood education and care services include long day care services, kindergarten services, family day care, limited hours services and outside school hours care.⁴⁶

Explanatory Notes advise that currently, an approved education and care service must provide a tobacco, drug and alcohol free environment for children educated and cared for under their service. However, this tobacco-free environment does not extend to the perimeter around the facility. Amendments introduced by the Bill would create a smoke-free environment at, and in the vicinity of, early childhood education and care facilities.⁴⁷

⁴⁰ Submission 11, page 3 and Submission 5, page 5

⁴¹ Submission 5, page 5

⁴² Submission 13, page 4

⁴³ Bill, Explanatory Notes, page 4

⁴⁴ Education and Care Services Regulation 2013, s14

⁴⁵ Bill, Explanatory Notes, page 4

⁴⁶ Bill, Explanatory Notes, page 4

⁴⁷ Bill, Explanatory Notes, page 4

A person is not prohibited from smoking in the buffer zone if they are at a residential premises, business premises, on land on which residential premises may be built or travelling through the buffer zone in a motor vehicle.⁴⁸

This new offence carries a maximum penalty of 20 penalty units.

4.1.3.3 Stakeholder views

The ban on smoking at early childhood education and care facilities, and on land within 5 metres beyond the boundary of the facility, is supported by a number of submitters. No objections to the provisions were received.

The QCEC notes it has 24 Catholic kindergartens and many outside school hours care services operating in Queensland and supports provisions of the bill that relate to early childhood education and care facilities.⁴⁹

CCQ considers the provisions will deter people from smoking, protect people from second-hand smoke and discourage smokers from clustering around community service facilities and equipment. The influence of adult role modelling, and the vulnerability of children and young people aged under 14 years to the effects of passive smoking, was also highlighted as reason to support the new provisions.⁵⁰

The Heart Foundation Queensland is also supportive of the provisions, noting they will bring early childhood education and care services into line with schools and hospitals.⁵¹

Logan City Council notes the provisions are a logical extension to the current Division 2A provisions of the Act in respect to Schools. This proposed no smoking provision is supported subject to the enforcement by State agencies. This Council also considers the Bill should:

...include all "associated/dedicated" school parking areas for the education centre. Some school car parks are currently covered by no-smoking laws and some are not covered creating an anomaly in the intent of the legislation (within and outside of the 5 metre buffer). This should also be an amendment for school precinct no smoking areas.⁵²

CCQ recommends the smoking ban be extended from five metres to 10 metres from all early childhood education and care services, including kindergartens and places offering after-school care.⁵³

4.1.3.4 Committee comments

The Committee supports the proposed provisions. The Committee considers that the provisions are a common sense approach given the vulnerability of children to second hand smoke and the influence of adult role models when it comes to smoking behaviour.

The Committee found there was support for the proposed provisions from stakeholders. The Committee considers that the proposed provisions will bring early childhood education and care facilities in line with schools and hospitals.

⁴⁸ Bill, Clause 9

⁴⁹ Submission 8, page 1

⁵⁰ Submission 5, page 3

⁵¹ Submission 11, page 4

⁵² Submission 13, page 5

⁵³ Submission 5, page 3

4.1.4 Prescribed government precincts

4.1.4.1 The Act

The current Act does not regulate smoking at prescribed government precincts, but it does prohibit within 4m of the entrance to a non-residential building.⁵⁴

4.1.4.2 The Bill

Smoking within a government precinct is prohibited by the Bill. Government precinct means land prescribed by regulation and land adjoining a building or occupied by:

- The State,
- The Legislative Assembly,
- A court or tribunal,
- An entity that represents the State, or
- Another entity established by an Act.

Explanatory notes to the Bill identify that:

*Government precincts often include busy outdoor public spaces that adjoin buildings occupied by government departments, courts, tribunals, the Legislative Assembly and other entities that represent the State. These spaces are used by people working in the precinct and visitors accessing facilities in the precincts.*⁵⁵

An amendment to the Tobacco Act is required to create smoke-free areas at prescribed government precincts.⁵⁶

This new offence carries a maximum penalty of 20 penalty units.

4.1.4.3 Private Members' Bill

The Private Members' Bill considered by the Committee in 2015 proposed to ban smoking within five metres of a government building:

A person must not smoke on land within 5 metres of a Government Building that has both of the following types of signage, on the outside of the building, at or near a public entrance to the building –

- (a) signage identifying the building as a government building;*
- (b) a no smoking sign.*

A government building is defined as a building in which:

- the majority of space is leased or occupied by a department or part of a department; or
- a building in which a court or tribunal is situated; or
- a building in which the Legislative Assembly is situated; or
- if prescribed by regulation, a public sector unit is situated.

For the purposes of this offence, a government building did not include a building on health facility land or school land.

⁵⁴ Tobacco and Other Smoking Products Act 1998, s26Z1

⁵⁵ Bill, Explanatory Notes, page 4

⁵⁶ Bill, Explanatory Notes, page 4

4.1.4.4 Stakeholder views

The provisions are supported by CCQ, which notes the provisions would discourage smokers from clustering around building entrances and hence exposing people to second hand smoke.⁵⁷

Logan City Council considers it is a logical extension to the current Act, and supports the provisions provided they are subject to reasonable and appropriate enforcement by State agencies.⁵⁸

Gold Coast Hospital and Health Service supports the provisions, while noting that:

...further clarity on what is meant by 'land' that adjoins a government building is required, for example, does it include car parks (which are excluded from smoking bans in major sporting facilities), what is the size of the adjoining land if the property is not fenced? Does this include state owned housing that is occupied by state employees?⁵⁹

A number of submitters expressed support for the smoking ban at prescribed government precincts. The inclusion of the definition of 'government precinct' was also welcomed by the Heart Foundation.⁶⁰

The Committee received a submission from the Speaker of the Queensland Legislative Assembly regarding the Bill. The Speaker is committed to the elimination of smoking within the precinct, despite some of the unique practical issues that arise, and outlined a proposal already in train to amend the *Parliamentary Service By-laws* to progressively achieve a similar result. The Speaker has also directed a more proactive approach in providing encouragement and assistance to smokers (Members and staff) who are attempting to quit.

4.1.4.5 Committee comments

The Committee supports the proposed provisions.

4.1.5 Public and private residential aged care facilities

4.1.5.1 The Act

Smoking is prohibited at and within five metres of an outdoor area of public and private health facility land.⁶¹ Explanatory Notes state:

...existing smoking bans apply to residential aged care facilities on hospital and health service land, but do not apply to privately operated residential aged care facilities.⁶²

4.1.5.2 The Bill

The Bill prohibits smoking at all public and private residential aged care facilities and on land within 5m beyond the boundary of the facility. This excludes nominated outdoor smoking areas.⁶³

This provision does not apply to a person if they are at a residential premises, business premises, on land on which residential premises may be built or travelling through the buffer zone in a motor vehicle.⁶⁴

These new offences carries a maximum penalty of 20 penalty units.

⁵⁷ Submission 5, page 5

⁵⁸ Submission 13, page 5

⁵⁹ Submission 18, page 1

⁶⁰ Submission 11, page 4

⁶¹ *Tobacco and Other Smoking Products Act 1998*, s26ZGC

⁶² Bill, Explanatory Notes, pages 4-5

⁶³ Bill, Clause 9

⁶⁴ Bill, Clause 9

Explanatory Notes describe why this amendment is required:

Residential aged care facilities are both homes for their residents and workplaces for health workers and other carers. Prohibiting smoking at all residential aged care facilities, including those that are privately operated, will reduce resident, visitor and staff exposure to second-hand smoke. An amendment to the Tobacco Act is required to prohibit smoking at all public and private residential aged care facilities, outside of nominated outdoor smoking places.⁶⁵

This provision, or a similar provision, was not included in the Private Members' Bill.

4.1.5.3 Stakeholder views

General support was provided for the extension of the prohibition of smoking at residential aged care facilities to include private facilities. Some submitters recommended amendment to the provisions, which are outlined below.

Both the Heart Foundation and CCQ support the ban on smoking at public and private residential aged care facilities and on land within five metres beyond the boundary of the facility. The Heart Foundation considers the extension of the current smoke-free areas to include private facilities will:

...protect all who attend these facilities including staff, visitors and residents alike, plus allowing a buffer of five metres.⁶⁶

CCQ adds that the bans will reduce cigarette use and discourage smokers from clustering around facilities, thereby reducing the number of people exposed to second hand smoke.⁶⁷

The impact of, and recourse for, smoke-drift from nominated outdoor smoking areas on adjoining private residents and businesses was raised by the Heart Foundation:

For example, it would be important that children playing in their garden of a private residence adjoining an aged care facility, are not exposed to smoke-drift. It would make common sense that the aged care facility ensure that no-one is being harmed by the smoke-drift from their nominated outdoor smoking place.⁶⁸

A recommendation that may go some way to address the issue of smoke-drift was made by CCQ. That is, to prohibit designated smoking areas within 10 metres of residential properties, including homes and backyard areas.⁶⁹

Queensland Aged and Disability Advocacy Inc (QADA) notes that residents have a right to live in a home like environment under the *Residential Care Aged Care Act 1997* Charter of Care Recipients' Rights and Responsibilities. Residents have a right to participate in activities that are not illegal, as long as the activity does not pose a risk of harm to others. QADA also highlights that residents of residential aged care often have limited mobility and may find it difficult to access an outdoor smoking place depending on its location and recommends the Bill be amended to:

...specify that the nominated outdoor smoking place be made mandatory for all residential aged care facilities and accessible to all residents. This will ensure that all residents who want to have access to this activity as per their right.⁷⁰

⁶⁵ Bill, Explanatory Notes, page 5

⁶⁶ Submission 11, page 4

⁶⁷ Submission 5, page 4

⁶⁸ Submission 11, page 4

⁶⁹ Submission 5, page 4

⁷⁰ Submission 12, page 1

4.1.5.4 Committee comments

The Committee acknowledges the views put forward by stakeholders, including the issues raised by QADA and CCQ, but supports the provisions on the basis that, on balance, they provide protection for residents, staff, visitor and neighbours of private residential facilities. The Committee supports the provisions.

4.1.6 Temporary retail store

4.1.6.1 The Act

The current Act does not regulate the sale of smoking products from temporary retail outlets.

4.1.6.2 The Bill

Suppliers are prohibited from selling smoking products from a temporary retail store under the Bill. A supplier is defined in the Act as a person who, as part of a business activity, supplies smoking products to the public, but does not include a person who supplies smoking products to the public as an employee of another person.⁷¹

Temporary retail store means (a) a temporary structure, regardless of whether any part of the structure is permanent; or (b) a vehicle or mobile structure, including a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation. Examples of temporary structures include a booth, tent, market stall or stand.⁷²

The explanatory notes identify that the proposed amendments will limit young people's exposure to the sale and promotion of smoking products.⁷³

This new offence carries a maximum penalty of 140 penalty units.

4.1.6.3 Private Members' Bill

A similar provision is included in the Private Members' Bill, which prohibits the sale of smoking products from a vehicle and from a pop-up store.

Key differences between the Bills include the terminology used. 'Pop-up store' in the Private Members' Bill is similar in meaning to 'temporary retail store' in the Government Bill.

With regard to provisions that ban the sale of smoking products from vehicles, although worded slightly differently, provisions in both Bills will have the same effect. In the Government Bill, this provision is included under the meaning of temporary retail store, while the Private Members' Bill includes it as a separate provision.

The definitions of temporary retail store and pop-up store are different, while having a similar meaning. A comparison is provided in Appendix D of this report.

The Committee supported the ban on supplying smoking products from vehicles and pop-up sales venues, noting it would hopefully discourage young people from smoking. It also noted that:

...the Department of Health could review the current powers available to officers generally under the Tobacco Act and bring forth any amendments in tandem with any further reforms introduced by the Government.⁷⁴

⁷¹ Tobacco and Other Smoking Products Act 1998, Schedule Dictionary

⁷² Bill, Clause 5

⁷³ Bill, Explanatory Notes, page 5

⁷⁴ Health and Ambulance Services Committee, Report No. 6, 55th Parliament, Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015, October 2015, page 28

4.1.6.4 Stakeholder views

This provision received positive support from submitters. The Heart Foundation expressed it strongly supports the reform which will:

...limit the exposure of young people to the sales and promotion of tobacco and other smoking products (including e-cigarettes) at public events such as music or art festivals and sporting events.⁷⁵

They considered that temporary sales venues, or pop-up stores, to undermine smoke-free environments and laws that restrict the sale and display of cigarettes, targeted at events of particular interest to young people.⁷⁶

CCQ noted that pop-up stores are often used to sell smoking products at events predominantly attended by young people, such as music festivals. It is the young adult age group (18-34 years) that has the highest proportion of non-daily smokers. CCQ advise that the highest rate of smoking is among those aged 25-44 years, at about 1 in 5 smoking daily in 2014:

Considering daily and non-daily smoking together, about 1 in 5 persons aged 25 to 44 years is a current smoker. It is therefore imperative to encourage young people to avoid becoming daily smokers, and to stop them from taking up the habit in the first place... Banning the sale of smoking products from vehicles and pop-up stores will help to discourage young people from smoking.⁷⁷

CCQ recommends that funding be provided to support the implementation of Quit campaigns targeted at young people who are proven to be at high-risk of smoking.⁷⁸

4.1.6.5 Committee Comments

The Committee supports the proposed provisions and notes that the provisions have substantially the same effect as those in the Private Members' Bill which help discourage young people from smoking.

4.2 Amendments to existing provisions

4.2.1 Banning smoking at public transport waiting points

4.2.1.1 Current provisions

Smoking is currently prohibited:

- on busways
- on busway transport infrastructure and light rail platforms, where there is a sign indicating that smoking is not allowed in the area
- in an area of a railway where there is a sign indicating that smoking is not allowed in the area
- in any public passenger vehicle.⁷⁹

⁷⁵ Submission 11, page 5

⁷⁶ Submission 11, page 5

⁷⁷ Submission 5, page 6

⁷⁸ Submission 5, page 6

⁷⁹ Bill, Explanatory Notes, page 2

In 2010, the Act was amended to provide that local governments may make local laws prohibiting smoking at certain places, including a public transport waiting point that is not in an enclosed place, if the place is under local government control.⁸⁰ A public transport waiting point is defined as any of the following:

- a) a transit terminal for public passenger services
- b) a ferry terminal, jetty, pontoon or landing for ferry services
- c) a bus stop, bus shelter, bus station or bus lay-by
- d) a taxi rank, limousine rank or limousine standing area.⁸¹

Some local governments have used this provision to prohibit smoking in places such as public transport waiting points:

*Ipswich City Council and Fraser Coast Regional Council have declared that all bus stops and taxi ranks on local government and state-controlled roads within their respective local government areas are smoke-free areas. Redland City Council prohibits smoking at each jetty and ramp that is considered a public transport waiting point within the local government area.*⁸²

However the introduction of bans have not been uniform across the state. The explanatory notes identify that the provisions are necessary in order to provide a more consistent state-wide ban of smoking at public transport waiting points, and to strengthen protection against involuntary exposure to tobacco smoke for persons waiting for public transport.⁸³

4.2.1.2 *The Bill*

The Bill prohibits smoking at public transport waiting points, and a new offence to prohibit smoking on land within 5m beyond the waiting point (the 'buffer zone'). A person outside the buffer zone is taken to be within the buffer zone if they are in a queue that starts at the public transport waiting point or in the buffer zone.

The explanatory notes provide:

*...there is a community expectation that people will not be exposed to second-hand smoke in situations of involuntary crowding, such as at public transport waiting points.*⁸⁴

An exception to this new offence is that it will not apply to a person who is in the 5m buffer zone at a residential premises, business premises, on land on which residential premises may be built or travelling through the buffer zone in a motor vehicle.⁸⁵

The new offence carries a maximum penalty of 20 penalty units.

The effect of this provision is that a local government will no longer have the ability to 'opt in' to make local laws banning smoking at public transport waiting points, as it will already be an offence under the Act for a person to do so. However, local governments would have power under the Bill to make a local law prohibiting smoking at *other* outdoor public places, if the place is not regulated by the Act and if the place is within the local government's local area.⁸⁶

The Private Member's Bill and Act currently include the same definition of 'public transport waiting point'. The Bill introduces a new definition including any of the following (a) a sign indicating that it is

⁸⁰ *Tobacco and Other Smoking Products Act 1998, s26ZPB(1)*

⁸¹ *Tobacco and Other Smoking Products Act 1998, s26ZPA*

⁸² Bill, Explanatory Notes, page 2

⁸³ Bill, Explanatory Notes, page 2

⁸⁴ Bill, Explanatory Notes, page 2

⁸⁵ Bill, Clause 13

⁸⁶ Bill, Clause 16

a drop-off or collection point for a public passenger vehicle (b) shelter or seating provided for persons waiting at a drop-off or collection point for a public passenger vehicle (c) a terminal, jetty, pontoon, platform or landing for the arrival and departure of a public passenger vehicle.⁸⁷

4.2.1.3 Private Members' Bill

Smoking at public transport waiting points is also prohibited by the Private Members' Bill.

During the Committee's consideration of the Bill it recommended the bans imposed under the Bill be extended:

*...to an appropriate area at or near the waiting point, where people may gather when waiting to use public transport.*⁸⁸

This is addressed under the Government Bill, which prohibits smoking on land within 5m beyond the waiting point.

4.2.1.4 Stakeholder views

Stakeholders were generally supportive of the provision to prohibit smoking on land within 5m beyond a public transport waiting point, noting it will reduce people's exposure to second hand smoke. Challenges around the implementation of these provisions were also highlighted.

CCQ supports the proposed amendments, noting the impact of passive smoking, particularly on non-smokers. CCQ considers the ban on smoking at public transport waiting points would:

*...deter people from smoking and protect people from second hand smoke ... public transport waiting points are routinely frequented by young people and children under 14 years of age, who are particularly vulnerable to the harmful effects of passive smoking and are influenced by adult role modelling.*⁸⁹

The Heart Foundation also welcomes the provisions, highlighting the high community expectation for smoke-free areas. It noted the large number of people that gather at public transport waiting points, and that these people cannot easily avoid exposure to smoking. The Heart Foundation considers:

*All Queenslanders deserve to be protected from tobacco smoke, and we welcome this decisive action to make state-wide legislation. State-wide legislation is necessary because nearly all local councils, except a handful of leaders, failed to make local laws to protect their citizens in these areas, despite being given the express powers to do so in 2009.*⁹⁰

⁸⁷ Bill, Clause 13

⁸⁸ Health and Ambulance Services Committee, Report No. 6, 55th Parliament, Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015, October 2015, page 19

⁸⁹ Submission 5, Cancer Council Queensland, pages 5-6

⁹⁰ Submission 11, page 2

At the public hearing the LGAQ advised that while their members are generally supportive of the Bill there may be some difficulties regarding application of the provisions. They advised:

*At a public transport waiting point if you are within five metres, you are committing an offence by smoking. If you are walking through that transport waiting point and you are smoking, you are not committing an offence. If you are in a queue 10 or 20 metres away, you could be committing an offence. If you are leaning over an adjoining property within five metres at a residential commercial property and you are smoking, you are not committing an offence.*⁹¹

The LGAQ stated:

*... having the discretion for local governments to have a range of approaches, gives them that ability to be a little flexible in how they respond to those challenges.*⁹²

Ipswich City Council supports the consistency introduced by the bill, through prohibiting smoking on land within 5m beyond public transport waiting points. The Council is concerned, however, at the exemption afforded to people walking through a buffer zone and considers no such exemption should be provided:

*Whilst this might be okay for a single PTWP, a quasi-transit area or area where there is a connection of bus and taxi ranks such as those in Bell Street, Ipswich would be a different scenario in that almost the entire street is a PTWP and should a person be caught smoking, they could merely claim that they are walking through the area. This could be exploited by some people. This needs careful consideration as it weakens the existing laws that Ipswich has in place. It might even be used as an excuse when walking through other smoke free areas eg walking through a mall, a park. These areas should be determined to be free of smoking (full stop) and therefore the 'walk through' defence does not apply.*⁹³

Logan City Council is generally supportive of the provisions as they will create more smoke-free public places across Queensland which will benefit the health of our community. The Council's support is subject to the State committing to:

*...a comprehensive and ongoing education and awareness campaign as well as the resourcing of its State Agencies to enforce such no smoking areas.*⁹⁴

The Council also acknowledges issues associated with enforcement of the new provisions, which are explored in more detail in later in this chapter.

4.2.1.5 Committee Comments

The Committee noted that extending the ban to include the queue, and five metres beyond it, arising from a public transport wait point addresses its recommendation 5 in its report on the Private Members' Bill. The Committee supports these provisions.

The Committee noted the importance of the provisions being implemented in conjunction with other strategies, such as education campaigns and that the proposed provisions will improve consistency across the State.

⁹¹ Public hearing, Transcript, 15 December 2015, page 2

⁹² Public hearing, Transcript, 15 December 2015, page 3

⁹³ Submission 14, pages 1-2

⁹⁴ Submission 13, page 3

4.2.2 Outdoor pedestrian malls

4.2.2.1 Current provisions

In 2010, the Act was amended to provide local government with power to create local laws to prohibit smoking at outdoor pedestrian malls. Brisbane City Council, Ipswich City Council and Logan City Council have used these provisions to declare particular malls within their local government areas to be smoke-free places.⁹⁵

An outdoor pedestrian mall is defined as any of the following:

- a) a mall established under the *Local Government Act 1993*
- b) the Chinatown Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*
- c) the Valley Mall established under the *Local Government (Chinatown and Valley Malls) Act 1984*
- d) the Queen Street Mall established under the *Local Government (Queen Street Mall) Act 1981*⁹⁶

4.2.2.2 The Bill

The Bill also prohibits smoking at regulated outdoor pedestrian malls, and amends its definition to:

- a) a mall established under the *City of Brisbane Act 2010*, section 88
- b) a mall established under the *Local Government Act 2009*, section 80A
- c) a mall continued as a mall under the *City of Brisbane Act 2010*, section 258⁹⁷

The explanatory notes state that these provisions will ensure that all Queenslanders have access to smoke-free outdoor pedestrian malls.⁹⁸

The explanatory notes state that to meet community expectations that people will not be exposed to smoke at busy public outdoor areas the Act is required to be amended to prohibit smoking at all outdoor pedestrian malls established under the *Local Government Act 2009* (Local Government Act) and the *City of Brisbane Act 2010* (City of Brisbane Act).⁹⁹ This offence carries a maximum penalty of 20 penalty units.

The effect of this provision is that a local government will no longer have the ability to 'opt in' to make local laws banning smoking in prescribed outdoor pedestrian malls, as it will already be an offence under the Act for a person to do so. However, local governments would have power under the Bill to make a local law prohibiting smoking at *other* outdoor public places, if the place is not regulated by the Act and if the place is within the local government's local area.¹⁰⁰

4.2.2.3 Stakeholder views

Feedback on the provisions that prohibit smoking at regulated outdoor pedestrian malls varied from strong support, to opposition relating to challenges regarding implementation. Concerns include, for example, the removal of local council power to decide whether and where to prohibit smoking in malls and enforcement of the provisions.

⁹⁵ Bill, Explanatory Notes, page 3

⁹⁶ *Tobacco and Other Smoking Products Act 1998*, s26ZPA

⁹⁷ Bill, Clause 13

⁹⁸ Department of Health, written briefing, 25 November 2015, page 4

⁹⁹ Bill, Explanatory Notes, page 3

¹⁰⁰ Bill, Clause 16

Ipswich City Council advise that it was the first Council to implement smoke-free places at public transport waiting points and pedestrian malls under the provisions of the current Act via its own local law. The Council has observed that:

...great behaviour change in those smoke-free places over the last couple of years where the laws have left a positive indent on the social fabric.¹⁰¹

Logan City Council also generally supports the provisions, recognising they will create more smoke free public places across Queensland which will benefit the health of the community. They advised that a smoking ban for Beenleigh Town Square commenced in August 2015 and supports the discretion afforded to local government to enforce the provisions.¹⁰²

Both the Heart Foundation¹⁰³ and CCQ strongly support the amendments, with CCQ noting the health impacts of second hand smoke:

- Passive smoking is associated with a 25% increase in the risk of coronary heart disease among non-smokers and an increase in the risk of stroke, cancer, and other diseases.
- Even brief exposure to passive smoking can adversely affect the health of non-smokers.
- The World Health Organization estimates that about 10% of deaths due to smoking are a result of second-hand smoke.
- Smoking bans at outdoor public places reduces smoking prevalence and cigarette consumption, discouraging uptake of the habit.¹⁰⁴

Prohibiting smoking at outdoor pedestrian malls will protect people from second hand smoke by deterring people from smoking and discouraging clustering of smokers. CCQ "... recommends that funding be provided to support the implementation of targeted Quit campaigns and initiatives in local areas with high smoking prevalence."¹⁰⁵

With regard to the proposed process by which malls will be deemed smoke free under the Bill, the Ipswich City Council advised:

The Bill prescribes that an outdoor pedestrian mall means a mall established under the Local Government Act 2009 (section 80A) and subsequent Regulation which means it has to be captured in the Planning Scheme. Prescription of the mall under a Planning Scheme is onerous. A Council Resolution or a determination by a local/subordinate local law could provide the same outcome with less administration whilst meeting legislative and community needs.¹⁰⁶

¹⁰¹ Submission 14, page 1

¹⁰² Submission 13, page 3

¹⁰³ Submission 11, page 3

¹⁰⁴ Submission 5, pages 5 to 6

¹⁰⁵ Submission 5, pages 5 to 6

¹⁰⁶ Submission 14, page 2

A number of concerns were expressed by Brisbane City Council regarding the removal of power for local governments to make local laws prohibiting smoking in outdoor pedestrian malls and public transport waiting points. The Council acknowledges the adverse impact of smoking on health, but does not support the changes to the power of local governments to decide whether and where to prohibit smoking in malls and public transport waiting points:

Blanket bans are innately inflexible and run the risk of creating unforeseen displacement effects, making smoking problems worse in un-regulated areas. Council's Smoke Free Places Local Law 2011 (the local law) was drafted after extensive community consultation to ensure that, while the public was protected from tobacco smoke in the highest use areas of the Queen Street Mall, smoking was able to continue in suitable areas with less risk to the community. This flexibility will be lost if this Bill proceeds ...¹⁰⁷

Additional issues regarding enforcement of provisions such as these are examined in more detail later in this chapter.

The Council of the City of the Gold Coast expressed reservation, about the provision that allows local laws to be made to prohibit smoking in other places. It acknowledges the consistency provided by the state-wide ban on smoking at malls introduced by the Bill, while stating:

...the provisions to allow local governments to introduce bans in other places once again creates potential for confusion.¹⁰⁸

4.2.2.4 Committee Comments

The Committee supports the intent of the provisions which provide improved consistency for all public malls across the State. The Committee acknowledged the concerns expressed by some local councils regarding the removal of the power for them to make local laws prohibiting smoking at outdoor pedestrian malls. The Committee comments those councils who have been proactive in their application of smoking laws. However, the Committee has found that laws have been applied inconsistently across local government jurisdictions and considers that the benefits of the proposed legislation outweighs these concerns.

4.2.3 Public swimming facilities

It is widely agreed that “[t]he use of local government owned and operated pools forms an important part of active and healthy lifestyles in Queensland. There is a community expectation that people will not be exposed to second-hand smoke when at these facilities.”¹⁰⁹

4.2.3.1 The Act

The Act prohibits smoking at prescribed outdoor swimming areas between sunrise and sunset. Outdoor swimming area is defined as “... an area in, or adjacent to, a pool or other body of water used by the public for swimming.” A prescribed outdoor swimming area is “... an outdoor swimming area, or part of an outdoor swimming area, prescribed under a regulation”.¹¹⁰

There are currently six prescribed outdoor swimming areas:

- Airlie Beach Lagoon
- Bluewater Lagoon (Mackay)
- Esplanade Lagoon (Cairns)

¹⁰⁷ Submission 17, page 1

¹⁰⁸ Submission 7, page 1

¹⁰⁹ Bill, Explanatory Notes, page 3

¹¹⁰ Tobacco and Other Smoking Products Act 1998, s26Z1

- Rockpool (Townsville)
- Settlement Cove Lagoon (Redcliffe)
- Streets Beach—South Bank (Brisbane)¹¹¹

Explanatory notes state that although these provisions are working effectively and will remain in the Tobacco Act, the Act is required to be amended to expand the smoking ban to all public swimming facilities owned and operated by a local government.¹¹²

4.2.3.2 *The Bill*

The Bill expands the swimming facilities at which smoking will be prohibited through using different terminology and introducing new definitions for key terms. Public swimming facility:

(a) means a swimming pool that is owned or operated by a local government and is open to the public for swimming, whether or not on payment of money; and

(b) includes the associated area for the swimming pool.

This does not include a natural body of water, such as a dam, creek or river.¹¹³

The associated area for a swimming pool means any of the following:

(a) an area rising from within the pool or a platform over the pool

(b) an area providing access to the pool.¹¹⁴

Both the Act and Bill apply a maximum penalty of 20 penalty units to this offence.

4.2.3.3 *Private Members' Bill*

Smoking at a public swimming pool or its associated area is also banned under the Private Members' Bill. The definition of 'associated area' is different to that used in the Government Bill, however, it could be argued that both definitions cover the same area.

The Committee recommended that the definition of 'public swimming pool' be reviewed to ensure that 'other body of water' does not capture bodies of water throughout the State that are not intended to capture. The Government Bill addresses this issue through omitting 'other body of water' from its definition, and clarifying that 'public swimming pool' does not include a natural body of water, such as a dam, creek or river.

4.2.3.4 *Stakeholder views*

Unanimous support was provided by stakeholders for the expansion of swimming facilities at which smoking will be prohibited.

The Heart Foundation notes the community expectation that swimming facilities be smoke-free, so that no-one is exposed to second hand smoke while engaging in these healthy activities.¹¹⁵ Similarly, CCQ recognises that banning smoking at public swimming pools will protect people, including children and young people, from the effects of second hand smoke. In addition, CCQ considers the provisions will reduce smoking prevalence and cigarette consumption, discouraging uptake of the habit.¹¹⁶

¹¹¹ Tobacco and Other Smoking Products Regulation 2010, s14 and Schedule 1

¹¹² Bill, Explanatory Notes, page 3

¹¹³ Bill, Explanatory Notes, page 7

¹¹⁴ Bill, Clause 9

¹¹⁵ Submission 11, page 3

¹¹⁶ Submission 5, page 5

CCQ recommends that the definition of a ‘prescribed outdoor swimming area’ be further expanded to include all aquatic recreational facilities.¹¹⁷

The local laws in the Logan City Council area already ban smoking at all aquatic centres. The Council advises its relevant branch is in support of the provisions and they can be easily implemented.¹¹⁸

Ipswich City Council also support this provision, while noting that:

Proving the elements of an offence may be difficult if a pool is unfenced and determining what an ‘associated area’ is. This could be rectified by having the associated area defined by a Council resolution for each applicable area- including a map. This would also assist should Councils wish to create a local law in the future to further expand a smoke free area at an unfenced pool (eg lagoon) so it is clear what is a smoke-free area under the Tobacco Act and a potential smoke-free area local law.¹¹⁹

The provisions are supported by Gold Coast Hospital and Health Service.¹²⁰

4.2.3.5 Committee comments

The Committee supports the provisions. The Committee noted that the Bill addresses a concern raised during the Committee’s consideration of the Private Members’ Bill that the definition of ‘public swimming pool’ could capture bodies of water that are not intended to be captured.

The Committee found that the proposed provisions have the unanimous support of submitters.

4.2.4 Local laws prohibiting smoking in public places

4.2.4.1 Current Act

Local Governments can make local laws about outdoor pedestrian malls and public transport waiting points, as described in earlier in this chapter.

4.2.4.2 The Bill

The Bill provides local governments with the power to prohibit smoking “... at outdoor public places in their local government area, aside from those areas in which state-wide smoking bans apply.”¹²¹ Examples of where smoking can be prohibited include particular restaurants, commercial precincts, boardwalks and parks.¹²²

Explanatory notes clarify this power may only be applied to an area in which smoking is not already prohibited or permitted under the Tobacco Act.¹²³ Additional amendments to this provision include:

... before a local law is made, the local government must first consult the department, if the local law is not subject to consultation under section 29A of the Local Government Act or section 31 of the City of Brisbane Act. This will ensure that the State government is consulted about proposed local laws to ban smoking, either as a requirement of a state interest check under the Local Government Act or the City of Brisbane Act, or as a requirement under the Tobacco Act. This requirement applies even where the local law is a subordinate local law.¹²⁴

¹¹⁷ Submission 5, page 5

¹¹⁸ Submission 13, page 3

¹¹⁹ Submission 14, page 2

¹²⁰ Submission 18, page 1

¹²¹ Bill, Explanatory Notes, page 5

¹²² Bill, Explanatory Notes, page 11

¹²³ Bill, Explanatory Notes, page 11

¹²⁴ Bill, Explanatory Notes, page 11

A maximum of 20 penalty units can be applied by local governments to law created under this provision, and “[a]ny fine imposed by a court in relation to an offence under this type of law local [sic] must be paid to the local government.”¹²⁵

4.2.4.3 Stakeholder views

The majority of feedback received was supportive of these amendments. One local council, however, was concerned the provisions may create confusion.

Ipswich City Council advised that it is:

*...especially supportive of the provisions that allow Local Governments to create their own smoke-free local laws for other areas under Local Government control.*¹²⁶

The Heart Foundation and CCQ also expressed support for these provisions, with the Heart Foundation noting they:

*... empower and encourage local governments to go even further to protect their citizens by giving them the power to make local laws prohibiting smoking in outdoor public places.*¹²⁷

CCQ also considers the provisions are empowering for local government, and they will deter people from smoking and protect people from second-hand smoke.¹²⁸

Whilst supporting the provisions in principle, the Logan City Council noted that the support is on the basis it provides discretion for local governments to determine its priorities.¹²⁹

The Council of the City of Gold Coast considers the provisions that provide for local governments to introduce bans in other places create the potential for confusion.¹³⁰

4.2.4.4 Committee comments

The Committee supports the proposed provisions. The Committee found that there was support expressed by the majority of stakeholders. The Committee notes that there will be appropriate education, signage and enforcement and considers the provisions provide additional flexibility for local councils to further discourage smoking in their local areas and therefore reducing people’s exposure to second hand smoke.

4.2.5 Minor and technical amendments

A number of minor and technical amendments are also included in the Bill. These include:

- clarify that the smoking ban at health facilities and school land applies to persons in motor vehicles
- extend the smoke-free area at the entrances to non-residential buildings from four metres to five metres
- update provisions relating to hookahs to clarify that the use of hookahs to smoke non-tobacco products is regulated as a smoking product
- remove references to nursing homes, in light of the new smoking ban at residential aged care facilities

¹²⁵ Bill, Explanatory Notes, page 11

¹²⁶ Submission 14, page 1

¹²⁷ Submission 11, pages 4-5

¹²⁸ Submission 5, page 6

¹²⁹ Submission 13, page 5

¹³⁰ Submission 7, page 1

- clarify that smoking areas at outdoor eating and drinking areas (where no food or drink can be consumed) cannot be established within an area in which smoking is otherwise prohibited under the Act e.g. within 10m of a children's playground
- clarify that a 'no smoking' sign must only be displayed at the entrance to licensed premises that can have a designated outdoor smoking area
- clarify the smoking ban at major event facilities

4.2.6 Enforcement of provisions

4.2.6.1 The Act

As described in the Committee's report on the Private Members' Bill, a number of agencies are responsible for enforcement of no smoking provisions. This includes Hospital and Health Services, Local Governments and the Queensland Police Service.

Smoking bans are primarily enforced by Queensland Health Environmental Health Officers (EHOs), who, as authorised persons under the Tobacco Act can:

- issue individuals warnings and on-the-spot fines
- issue businesses improvement notices, warnings and on-the-spot fines
- initiate legal proceedings for breaches of the tobacco laws
- respond to complaints
- inspect premises
- provide advice about the tobacco laws¹³¹

The Tobacco Act provides who may be appointed as an authorised person. The following people may be appointed as authorised persons by the chief executive of the Department of Health:

- Public services officers or employees
- Health service employees
- A person prescribed under a regulation (there are currently no classes of people prescribed under the Regulation)

Within a local government area, the chief executive officer of a local government area may also appoint the following people to be an authorised person for that area:

- Employees of the local government
- If another local government consents – employees of the other local government
- A person under contract to the local government

For a person to be appointed as an authorised person, the relevant chief executive must be satisfied the person is qualified for the appointment because they have the necessary expertise or experience.

A health service chief executive may also appoint a person as an authorised person for particular matters relating to smoking on health facility land.

¹³¹ Queensland Health, Penalties Fines and Enforcement, <https://www.health.qld.gov.au/public-health/topics/atod/tobacco-laws/penalties/default.asp> <site accessed 8 February 2016>

4.2.6.2 The Bill

At the public briefing, the Department of Health told the Committee that new and existing smoking bans will "... predominantly be enforced by environmental health officers employed by Queensland Health." The Department provided the Committee with a summary of enforcement responsibilities by agency, which is reproduced over the page at Table 1.

The Committee identified the practical limitations of a no smoking enforcement regime. This issue was acknowledged by the Department who noted the difficulty of having authorised officers to patrol every no smoking area across Queensland. The Department stated:

*Our current approach is for authorised officers to undertake coordinated activities targeting hotspots. The department will also continue to engage with local governments to ensure that they are aware of their authority under the tobacco act and to encourage use of this authority.*¹³²

The Department considers that smoke bans introduced by the Bill are likely to have a high level of community ownership as the provisions are in step with community expectations for further protection from tobacco smoke. As a result, it is likely the provisions will be largely self and community-enforced:

*For example, while there will be no legal obligations for sporting and recreation organisations to enforce the smoking ban at under-age sporting events, early indications are that these groups are very receptive to partnering with government to achieve public health benefits and supporting overall compliance. Importantly, there is also a well-established process for members of the public to report alleged breaches of the tobacco act online or to the Queensland government call centre.*¹³³

Enforcement action will include issuing warnings, asking smokers to cease or move on and the issuing of infringement notices if smokers do not comply with these directions. However, the Department made it clear to the Committee that direct enforcement action is not the primary purpose of the legislation and the main focus is on changing the behaviour of smokers.¹³⁴

The table below summarises which agencies will be responsible for the enforcement of the provisions.

Table 1: Queensland tobacco legislation (including proposed) enforcement by agency¹³⁵

Current Smoking Bans	Environmental Health in Hospital and Health Services	Local Government (optional)**	Police	Security Officers in Hospital and Health Services
Indoor				
Indoor public places e.g. liquor licensed venues, workplaces, shopping centres	X			
Inside business vehicle with other person present	X			
Inside vehicle with person under 16 present	X		X	

¹³² Public briefing, 2 December 2015, page 2

¹³³ Public briefing, 2 December 2015, page 3

¹³⁴ Public briefing, 2 December 2015, page 3

¹³⁵ Department written briefing, 25 November 2015, pages 9-10

Outdoor smoking bans				
Outdoor eating or drinking places	X			
Major event facilities	X			
On health facility land (public and private)	X			X
5m buffer outside health facility land	X	X		X
On school land (state and non-state)	X			
5m buffer outside school land	X	X		
Patrolled beach between flags	X	X		
Prescribed outdoor swimming area (artificial beach)	X	X		
4m from a non-residential building entrance	X	X		
10m within a children's playground	X	X		
Public transport waiting points and pedestrian malls		X (power to create and enforce)		
Supply and retail display of smoking products				
Tobacco sale and supply to U18s	X			
Vending machine restrictions	X			
Point of sale restrictions	X			
Advertising, display and promotion of smoking products	X			
Prohibited smoking products				
Sale, supply and retail display of ice pipes	X		X	
Sale, supply and retail display of bongos	X		X	
Display restrictions for hookahs	X		X	
Smoke-free Facilities – outdoor areas				
Major sport facilities *	X			
Major event facilities*	X			
Health facility*	X			X
- buffer (health facility)	X	X		
School facilities*	X			
- buffer (school facility)	X	X		
public swimming facilities	X	X		
early childhood education and care (ECEC) facilities	X			
- buffer (ECEC facility)	X	X		
residential aged care facilities	X			X (specific HHS only)
- buffer (aged care facility)	X	X		X (specific HHS only)
Outdoor smoking bans				
Government precincts	X			
Outdoor pedestrian malls	X	X		
Public transport waiting points and buffer	X	X		
Skate parks and buffer	X	X		
Sporting grounds and buffers	X	X		
National parks	X		X	
Local laws for outdoor areas not covered under statewide bans		X (power to create and enforce)		
Supply and retail display of smoking products				
Sell smoking products from temporary retail outlets	X			

* Replaces previous offence.

** State may request a report from local government about the administration and enforcement on any offence which they have the option to enforce.

4.2.6.2 Stakeholder views

While the intent of the Bill is supported by most inquiry participants, a number of local councils expressed concern at the enforcement challenges perceived to be presented by the Bill.

The LGAQ supports the introduction of additional smoke-free places, and the absence of a requirement for local government to enforce the relevant provisions of smoke-free places. However, the LGAQ re-iterated their concern that the Bill will likely require programmed attendance at "hot spot" locations in response to complaint based investigations. The LGAQ considers that this would be resource and labour intensive, and would require additional resources and a coordinated approach across agencies. Other challenges faced by authorised officers include:

- Responding to offences by minors
- Gathering of evidence
- Refusal to provide identification
- Powers to detain or follow a direction given¹³⁶

Logan City Council also identified issues associated with enforcing no-smoking provisions, including some of those mentioned above. For example, the resource intensive collection of data for hot spot locations, responding to offences by minors and identification of offenders. The Council explained the benefit of partnering with the Police:

Whilst information can be requested and is required to be provided under the Act, local government officers have no powers to detain persons where they are uncooperative. This situation has occurred whilst officers have conducted patrols pursuant to Local Law No. 6 (Smokefree Places) 2015 at Beenleigh Town Square. The majority of persons found smoking have stopped when directed by an officer. The minority, who continue to smoke, have an uncooperative demeanour and refuse to state their name and address. These offenders cannot be issued a fine as identification cannot be proven. Police assistance is required to assist with identification.¹³⁷

In its submission to the Committee, Ipswich City Council also noted from experience that some offenders ignore authorised officers unless they are accompanied by Police:

In the rollout of Ipswich City Council's smoke-free areas local laws we requested the Queensland Police Service to do joint patrols as they have the power to demand a name and address from offenders. If the Police aren't with Council staff some offenders just ignore Council staff. The proposed amendments should include the power for Council Authorised Persons to demand a name and address; and the Queensland Police Service should be authorised to administer and enforce the proposed Act.¹³⁸

¹³⁶ Submission 16, pages 1-2

¹³⁷ Submission 13, page 2

¹³⁸ Submission 14, page 3

At the public hearing, LGAQ identified that the large number of sites at which smoking behaviour would be required to be monitored:

Once you introduce the significant number of new locations that have been identified in this legislation—and I will go back to the public transport waiting points—if you look at the sheer volume of them I believe, for example, Logan City Council has over 1,200; I think Ipswich has about 1,000; I am not going to begin to calculate the number in Brisbane, but there are significant a number. Obviously councils take compliance action quite often based on complaints and will go and identify those hotspot locations, but it would be quite significant to go and look at that enforcement.¹³⁹

The views of Brisbane City Council around the enforcement of provisions in the Bill are noted in section 4.2.6 of this report. In summary, this Council considers it extremely difficult for authorised officers to administer and enforce the provisions.

At the public briefing, the Department of Health explained that “... effective community education before and during the introduction reduces the long-term enforcement burden.” As such, in the six months after the Bill is passed by the Parliament, the Department would undertake a period of community education and stakeholder engagement:

The community education campaign will provide clear messages about where the new smoking bans apply, the benefits for families in the community and the responsibilities for individuals. The campaign will use a range of communication strategies. This could include bus stop advertising, promotional signage, social media, public relations and online information.

Importantly, this education will be reinforced by the quit smoking television campaign. The current Quit campaign reminds smokers that they do not need to go it alone and that they can call the Quitline for help. The Queensland government has successfully implemented smoking bans since they were first introduced in the state in 2001.¹⁴⁰

4.2.6.3 Committee comments

The Committee notes that the main focus of the Bill is to change the behaviour of smokers, rather than direct enforcement action. It considers that whilst enforcement is a necessary step it should be considered a supporting effort rather than the main effort of the Bill.

5. Compliance with the Legislative Standards Act 1992

5.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that fundamental legislative principles (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

¹³⁹ Public hearing, Transcript, 15 December 2015, page 2

¹⁴⁰ Public briefing, 2 December 2015, page 2

5.2 Rights and liberties of individuals – onus of proof

Clause 9 inserts new section 26VU(1) & (2) and provides that a person must not smoke at an early childhood education and care facility or on land within five metres beyond the boundary (“the buffer zone”) of an early childhood education and care facility.

New section 26VU(3) provides that subsections (1) & (2) do not apply to a person at an early childhood education and care facility if:

- the facility is also residential premises; and
- at the relevant time, the facility is not being used to provide an early childhood education and care service.

Pursuant to section 26VU(5) it is a defence if an early childhood education and care service is operating from residential premises (i.e. a family day care service) and the person was not aware the facility was an early childhood education and care facility.

In providing this defence the onus is placed on the person smoking to prove that they were not aware, and could not have reasonably been expected to be aware, that the premises are an early childhood education and care facility.

New section 26VJ provides that should a person contravene section 26VH(1) (A person must not smoke at a major sports facility) the occupier of the major sports facility, or of the part of the facility where the contravention happened, has committed an offence. The maximum penalty for this contravention is 140 penalty units.

Pursuant to section 26VH(2) it is a defence for the occupier to prove the following:

- the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
- the occupier, or an employee or agent of the occupier:
 - directed the person to stop smoking; and
 - told the person it was an offence not to comply with a direction to stop smoking.

New section 26VN is a similar provision to section 26VJ. It provides that if a person contravenes section 26VL(1) (A person must not smoke at a major event facility), then the major event organiser of the major event facility or the part of the facility where the contravention happened, commits an offence. The maximum penalty for this contravention is 140 penalty units.

However, like section 26VJ, it is a defence pursuant to section 26VH(2) for the major event organiser to prove:

- the major event organiser was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
- the major event organiser, or an employee or agent of the major event organiser:
 - directed the person to stop smoking; and

New sections 26VU, 26VJ and 26VN all provide a defence which reverses the onus of proof. Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. “For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt”.¹⁴¹ Generally, the former Scrutiny of Legislation Committee opposed reversal of the onus of proof.¹⁴²

¹⁴¹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 36

¹⁴² Alert Digest 2002/4, page 27, paragraph 10

In relation to clause 26VU the Explanatory Notes provide the following justification for the reversal of the onus of proof:

The onus is on the person smoking to prove that they were not aware, and could not have reasonably been expected to be aware, that the premises is an early childhood education and care facility.

The reversal of the onus of proof is justified because the matter that is the subject of proof by the defendant is peculiarly within the defendant's knowledge and would be extremely difficult for the State to prove.¹⁴³

The Explanatory Notes also provide a justification for clauses 26VJ and 26VN:

New sections 26VJ and 26VN, inserted by clause 9, also provide that it is an offence for an occupier of a major sports facility or the major event organiser for a major event facility, if a person is smoking in a major sports facility or major event facility respectively. The Bill provides a number of defences for the occupier or major event organiser. The onus is on the occupier or organiser to establish the defence. This is justified because the defences involve matters relating to the occupier or organiser's actions or knowledge. These provisions replicate existing section 26ZG of the Tobacco Act.¹⁴⁴

As mentioned in the Explanatory Notes, section 26ZG(2)(a) & (b) of the *Tobacco Act 1998* currently provides the same defence if the occupier at a major events facility can prove:

- the occupier was not aware, and could not have reasonably been expected to be aware, that the contravention was happening; or
- the occupier, or an employee or agent of the occupier:
 - directed the person to stop smoking; and
 - told the person it was an offence not to comply with a direction to stop smoking.

The maximum penalty for the offence is 140 penalty units.

5.3 Committee comments

The Bill places the onus of proof on the occupier of a major sports facility and an organiser of a major event to establish a defence in respect of the offences in those sections. The Committee notes that the reversal of the onus of proof in these instances mirrors the provision already contained in the Act. In the circumstances, the Committee considers the reversal appears reasonable given that at major events and sports facilities which attract large volumes of people it is difficult for an occupier and organiser to control the actions of every person.

New section 26VU also provides a defence for a person who is not aware that they are smoking at an early childhood education and care facility or on land within 5m beyond the boundary of an early childhood education and care facility that is also residential premises. It may be the case that a person is simply walking past a residential home and smoking in circumstances where there may not be signage to indicate that the property is an early childhood education and care facility.

In light of the justification set out in the Explanatory Notes, the Committee considers that on balance, the reversal of onus of proof contained in clause 9, sections 26VU, 26VJ and 26VN, is justified in the circumstances.

¹⁴³ Explanatory Notes, Tobacco and Other Smoking Products (Smoke Free Places) Amendment Bill 2015, page 15

¹⁴⁴ Explanatory Notes, Tobacco and Other Smoking Products (Smoke Free Places) Amendment Bill 2015, page 15

5.4 Institution of Parliament – Scrutiny of the Legislative Assembly

Clause 11, new section 26ZD, allows for a regulation to prescribe a government precinct where smoking is to be prohibited. Pursuant to new section 26ZD(2)(a) a government precinct is land adjoining a building occupied by:

- the State
- the Legislative Assembly
- a court or tribunal
- an entity that represents the State
- another entity established by an Act

Clause 13, new section 26ZKE(1), provides that a regulation may prescribe a national park, or a part of a national park, where smoking is prohibited. Pursuant to section 26ZKE(2), before recommending the making of a regulation under subsection (1), the Minister must obtain written consent to its making from the Minister responsible for the management of national parks.

Clause 16 inserts new section 26ZPA(2) which provides that a local government may make a local law, including a subordinate local law, prohibiting smoking at the place if the place is in the local government's local government area.

Pursuant to section 29A of the *Local Government Act 2009* and section 31 of the *City of Brisbane Act 2010*, a local government does not need to consult with regard to the overall State interest in relation to a subordinate local law.

New section 26ZPB(a)&(b) provides that if a local government proposes to make a local law under section 26ZPA and the local law is not subject to consultation requirements under section 29A of the *Local Government Act 2009* and section 31 of the *City of Brisbane*

Act 2010, then the local government must consult with the department about the proposed local law before it is made.

The Committee notes that clauses 11 & 13 allow for a regulation to prescribe where smoking is prohibited in a national park, or a part of a national park and a government precinct. It is arguable that these provisions should be in the primary Act to reflect their importance.

Clause 16 will allow a local government to make a subordinate local law to prohibit smoking in a local government area. The laws made by a local government are not subject to the scrutiny or disallowance motions of the Legislative Assembly. Further, subordinate laws made by various local governments and councils could potentially lead to inconsistent laws being made. For example, local governments may differ in prescribing laws for non-smoking signage within their jurisdiction.

These clauses potentially breach section 4(4)(b) of the *Legislative Standards Act 1992* which provides that a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. Further, section 4(5)(c) of the *Legislative Standards Act 1992* provides that subordinate legislation should contain only matters appropriate to that level of legislation.

The Office of the Queensland Parliamentary Council (OQPC) Notebook states “[f]or Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation”.¹⁴⁵ The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

¹⁴⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 154

“The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny”.¹⁴⁶ In considering the appropriateness of delegated matters being dealt with through an alternative process, the former Scrutiny of Legislation Committee considered:

- The importance of the subject dealt with
- The practicality or otherwise of including those matters entirely in subordinate legislation
- The commercial or technical nature of the subject matter
- Whether the provisions were mandatory rules or merely to be had regard to¹⁴⁷

The Explanatory Notes address the issue and provide the following justification for the use of regulation in clauses 11 and 13:

Prescribing these smoke-free areas in a regulation is justified because the Bill gives guidance as to the area that will potentially be prescribed under a regulation. A regulation is needed to ensure the prescribed areas can be described in sufficient detail. It also provides flexibility for the Government to respond to community expectations for smoke-free areas.

As an additional requirement, before making a regulation to prescribe a national park or part of a national park as smoke-free, the Minister must obtain written consent from the Minister administering protected areas under the Nature Conservation Act 1992.

*A regulation made under the Tobacco Act, including in relation to prescribed government precincts and prescribed national parks, will be tabled and subject to parliamentary scrutiny.*¹⁴⁸

In relation to the use of subordinate local laws pursuant to clause 16, the Explanatory Notes advise:

*New section 26ZPB provides that, before making a local law under new section 26ZPA, the local government must first consult with the department, if the local law is not subject to consultation requirements under section 29A of the Local Government Act or section 31 of the City of Brisbane Act 2010. This will ensure that consultation with the State government occurs, even where the local law is a subordinate local law.*¹⁴⁹

5.5 Committee comment

The Committee notes the justifications provided in the Explanatory Notes in relation to clauses 11 and 13 including the flexibility to create smoke free areas in the future and seeking ministerial consent before making a regulation to prescribe a national park or part of a national park as a smoke-free area.

In light of these justifications, and given that subordinate legislation is subject to disallowance powers, the Committee considers that sufficient regard to the institution of Parliament has been provided in this instance.

¹⁴⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 155

¹⁴⁷ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 155

¹⁴⁸ Explanatory Notes, Tobacco and Other Smoking Products (Smoke Free Places) Amendment Bill 2015, page 14

¹⁴⁹ Explanatory Notes, Tobacco and Other Smoking Products (Smoke Free Places) Amendment Bill 2015, page 27

New section 26ZPB requires consultation with the department before a local government makes a subordinate smoking law pursuant to clause 16, section 26ZPA. This consultation process will seek to provide a safeguard and consistency with State laws and across local government jurisdictions. In light of this approach the Committee considers that sufficient regard has been given to the institution of Parliament.

5.6 New Penalties

The Committee will note that clauses 5, 9, 11, 13 & 16 introduce new sections with penalties of either 20 or 140 penalty units in the case of sections 13C(1), 26VJ(1) and 26VN(1). The penalties are consistent with those currently contained in the *Tobacco Act 1998*. There are several penalties in the Act whereby the maximum penalty for failing to comply with the provisions is 140 penalty units.

5.7 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The Committee considers the notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of Submissions

No.	Name
001	Les Yule
002	John Brown
003	Metro North Hospital and Health Services
004	Dr Saddichha Sahoo
005	Cancer Council Queensland
006	Phil Browne
007	City of Gold Coast
008	Queensland Catholic Education Commission
009	Mic Langburne
010	Royal Australasian College of Surgeons
011	Heart Foundation
012	Queensland Aged and Disability Advocacy Incorporated
013	Logan City Council
014	Ipswich City Council
015	Australian Medical Association Queensland
016	Local Government Association Queensland
017	Brisbane City Council
018	Gold Coast Hospital and Health Service
019	Chamber of Commerce and Industry Queensland
020	The Speaker, Queensland Legislative Assembly (Confidential)

Appendix B – Officers appearing on behalf of the department at public departmental briefing– Wednesday 2 December 2015

Ms Kaye Pulsford, Executive Director, Preventive Health Branch, Prevention Division, Department of Health

Mr Mark West, Director, Preventive Health Branch, Prevention Division, Department of Health

Dr Jeannette Young, Chief Health Officer and Deputy Director-General, Prevention Division, Department of Health

**Appendix C – Witnesses appearing at the public hearing – Tuesday
15 December 2015**

Witnesses
Mr Robert Ferguson, Senior Adviser, Environmental and Public Health, Local Government Association of Queensland
Ms Alison Durham, Advocacy Manager, Heart Foundation Queensland
Ms Nicole Border, Manager of Policy and Advocacy, Cancer Council Queensland

Appendix D – Comparison of legislation

The following table summarises key differences between the following tobacco related legislation:

- *Tobacco and Other Smoking Products Act 1998*,
- Tobacco and Other Smoking Products (Smoke-Free Places) Amendment Bill 2015 (Government Bill currently before the Committee), and
- Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015 (Private Member’s Bill on which the Committee reported on 16 October 2015)

Table 1 – Comparison of the Act with the Government and Private Member’s Bill

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member’s Bill)
Temporary retail store/ pop-up store	No equivalent provision.	<p>Clause 5</p> <p>New s13C Supplier must not sell smoking products from temporary retail store</p> <p>(1) A supplier must not sell smoking products from a temporary retail store.</p> <p>Maximum 140 penalty units.</p> <p>(2) In this section— <i>temporary retail store</i> means—</p> <p>(a) a temporary structure, regardless of whether any part of the structure is permanent; or</p> <p><i>Examples of temporary structures—</i></p> <p>a booth, tent, market stall or stand</p> <p>(b) a vehicle or mobile structure, including a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.</p>	<p>Clause 4 <i>cont’d</i></p> <p>New s13C Supplier must not sell smoking products from vehicle</p> <p>(1) A supplier must not sell smoking products from a vehicle.</p> <p>Maximum 40 penalty units.</p> <p>(2) In this section— vehicle includes a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.</p> <p>New s13D Supplier must not sell smoking products from pop-up store</p> <p>(1) A supplier must not sell smoking products from a pop-up store.</p> <p>Maximum 40 penalty units.</p> <p>(2) In this section— <i>pop-up store</i> means—</p> <p>(a) a temporary stall or counter; or</p> <p>(b) a retail outlet where smoking products are available for sale only during a public event.</p> <p><i>public event</i> includes a</p>

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
			concert, fete, festival, show or sporting event.
Major sports facility	<p>s26ZD A <i>major event facility</i> includes a major sports facility.</p> <p>s26ZE (1) A person must not smoke at a major event facility. Maximum 20 penalty units.</p> <p>(2) Exclusions – road or carpark; picnic area or area of parkland.</p> <p>s26ZF Person must stop smoking when directed.</p>	<p>Clause 9</p> <p>New Part 2BB.</p> <p>New s26VH – (1) a person must not smoke at a <i>major sports facility</i> (defined in s26VG). Maximum 20 penalty units.</p> <p>(2) Exclusions – same as Act.</p> <p>New s26VI Person must stop smoking when directed. Maximum 20 penalty units.</p> <p>New s26VJ Creates offence (and defences) by the occupier of the facility when a person smokes at a major sports facility. Maximum 140 penalty units.</p>	No equivalent provision.
Major event facilities	See above.	<p>Clause 9 cont'd</p> <p>New s26VL (1) person must not smoke at a <i>major event facility</i> (defined in new s26VK). Maximum 20 penalty units.</p> <p>(2) Exclusions – in nominated outdoor smoking places and the person is not consuming food or drink.</p> <p>New s26VM Person must stop smoking when directed. Maximum 20 penalty units.</p> <p>New s26VN Creates an offence (and defences) by major event organiser when a person smokes at a major event facility. Maximum 140 penalty units.</p>	No equivalent provision.
Health facilities	s26ZGC (1) and (2) A person must not smoke health facility land or on land within 5m	<p>Clause 9 cont'd</p> <p>New s26VO (1) A person must not smoke at a health facility (2) or on land within</p>	No equivalent provision.

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
	<p>outside the boundary of a health facility. Maximum 20 penalty units.</p> <p>(3) Exclusions - (a) a person at residential premises or on land on which residential premises are built or may be lawfully built; or (b) a person at business premises or on land on which business premises are built or may be lawfully built; or (c) a person in a motor vehicle unless the motor vehicle is parked on a road or road-related area.</p>	<p>5m beyond boundary of facility. Maximum 20 penalty units.</p> <p>(3) Exclusions – (a) in the buffer zone at residential premises or on land on which residential premises may lawfully be built; or (b) in the buffer zone at business premises; or (c) travelling through the buffer zone in a motor vehicle.</p> <p>New s26VP Person must stop smoking when directed. Maximum 20 penalty units.</p>	
<p>School facilities</p>	<p>26ZGD Person must not smoke on school land</p> <p>(1) A person must not smoke on school land (2) or on land within 5m outside the boundary of school land. Maximum 20 penalty units.</p> <p>(3) Subsection (2) does not apply to (a) a person at residential premises or on land on which residential premises are built or may be lawfully built or (b) a person at business premises or on land on which business premises are built or may be lawfully built or (c) a person in a motor vehicle unless the motor vehicle is parked on a road or road-</p>	<p>Clause 9 cont'd</p> <p>New s26VQ Person must not smoke at or near school facility</p> <p>(1) A person must not smoke at a school facility (2) or on land within 5m beyond the boundary of the facility. Maximum 20 penalty units.</p> <p>(3) Exclusions - residential premises, business premises and travelling through in a motor vehicle.</p> <p>New s26VR Person must stop smoking when directed. Maximum 20 penalty units.</p>	<p>No equivalent provision.</p>

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
	<p>related area.</p> <p>s26ZGE Person must stop smoking when directed. Maximum 20 penalty units.</p>		
<p>Public swimming facilities/ Outdoor swimming area</p>	<p>s26ZI (1) A person must not smoke at a prescribed outdoor swimming area between sunrise and sunset. Maximum 20 penalty units.</p> <p>(2) In this section - <i>outdoor swimming area</i> means an area in, or adjacent to, a pool or other body of water used by the public for swimming.</p> <p><i>prescribed outdoor swimming area</i> means an outdoor swimming area, or part of an outdoor swimming area, prescribed under a regulation.</p>	<p>Clause 9 cont'd</p> <p>New s26VS (1) A person must not smoke at a <i>public swimming facility</i>¹⁵⁰. Maximum 20 penalty units.</p> <p>New s26VT A person must stop smoking when directed. Maximum 20 penalty units.</p>	<p>Clause 6</p> <p>Replacement s26ZI</p> <p>(1) A person must not smoke at a public swimming pool or its <i>associated area</i>¹⁵¹. Maximum 20 penalty units.</p> <p>(2) Defines <i>associated area</i> and <i>public swimming pool</i>.</p>
<p>Early childhood education and care facilities</p>	<p>No equivalent provision.</p>	<p>Clause 9 cont'd</p> <p>New s26VU (1) A person must not smoke at an early childhood education and care facility (2) or within 5m beyond boundary of facility. Maximum 20 penalty units.</p> <p>(3) and (4) Exclusions – facility is also a residential premises and at the relevant time, the facility is not being</p>	<p>No equivalent provision.</p>

¹⁵⁰ This means a swimming pool owned or operated by a local government and is open to the public for swimming, whether or not on payment of money. Includes the *associated area* for the swimming pool.

¹⁵¹ This means any of the following - (a) an area rising from within the pool or a platform over the pool; (b) an area providing access to the water in the pool; (c) an area adjacent to the pool provided for persons to observe swimmers in the pool; (d) an area containing diving boards or water slides for the pool; (e) an artificial beach adjacent to the pool; (f) if the area surrounding the pool is enclosed by a fence or wall—the area enclosed by the fence or wall.

	Tobacco and Other Smoking Products Act 1998	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
		<p>used to provide an early childhood education and care service. Also, when the person is in a residential premises, business premises or travelling through in a motor vehicle.</p> <p>(5) Defence – if the person was not/ could not have reasonably been expected to be aware, that premises were an early childhood education and care facility.</p> <p>New s26VV A person must stop smoking when directed. Maximum 20 penalty units.</p>	
Residential aged care facilities	<p>s26ZGC</p> <p>Smoking is prohibited at and within five metres of outdoor areas of public and private health facility land. These existing smoking bans apply to residential aged care facilities on hospital and health service land, but do not apply to privately operated residential aged care facilities.¹⁵²</p>	<p>Clause 9 cont'd</p> <p>New s26VW Extends the ban on smoking to private residential aged care facilities.</p> <p>prohibits smoking at all public and private residential aged care facilities, outside of nominated outdoor smoking places, and on land within 5m beyond the boundary of the facility. Maximum 20 penalty units.</p> <p>Exclusions – does not apply to nominated outdoor smoking space. Also, when the person is in a residential premises, business premises or travelling through in a motor vehicle.</p> <p>New s26VX A person must stop smoking when directed. Maximum 20 penalty units.</p>	No equivalent provision.
Government precincts/ Government buildings	<p>Smoking is not permitted within 4 metres of non-residential building</p>	<p>Clause 11</p> <p>Replaces Part 2C, Divisions 2 (major event facilities) and 2A (health facility land and</p>	<p>Clause 5</p> <p>Inserts new Part 2C, Division 2B</p>

¹⁵² Bill, Explanatory Notes, pages 4-5

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
	entrances.	<p>school land) (s26ZD-s26ZGF)</p> <p>New s26ZD (1) A person must not smoke within a government precinct (2) which means land adjoining a building occupied by the State, the Legislative Assembly, a court or tribunal, an entity that represents the state or another entity established by an Act. Or land prescribed by regulation. Maximum 20 penalty units.</p> <p>Replacement s26ZE: A person must stop smoking when directed. Maximum 20 penalty units.</p>	<p>New s26ZGG (1) A person must not smoke on land within 5m of a government building¹⁵³ that has both of the following types of signage, on the outside of the building, at or near a public entrance to the building (a) signage identifying the building as a government building (b) a no smoking sign.</p>
		No equivalent provision.	<p>New s26ZGH Responsibility for ensuring a no smoking sign is displayed.</p>
Entrance to enclosed place	<p>s26ZJ Person must not smoke near entrance to enclosed place</p> <p>(1) A person must not smoke within 4m of any part of an entrance to an enclosed place, unless the person has a reasonable excuse.</p> <p>(2) Exclusions.</p>	<p>Clause 12 (amends s26ZJ)</p> <p>(1) Extends the distance a person must not smoke from an entrance to an enclosed place from 4m to 5m.</p>	No equivalent provision
	<p>(3) Subsection (1) does not apply to (a) a person in a motor vehicle; or (b) a person in an outdoor pedestrian mall prescribed under a regulation.</p>	<p>(2) Amends s26ZJ(3) by omitting reference to outdoor pedestrian mall: 'Subsection (1) does not apply to a person in a motor vehicle passing the entrance'.</p>	<p>Clause 8</p> <p>Similar to Government Bill. New provision: 'Subsection (1) does not apply to a person in a motor vehicle'.</p>

¹⁵³ *Government building* (a) means (i) a building in which the majority of space is leased or occupied by a department or part of a department, or (ii) a building in which a court or tribunal is situated, or (iii) a building in which the Legislative Assembly is situated, or (iv) a building, prescribed in regulation, in which a public sector unit is situated, but (b) does not include a building on health facility land or school land.

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
	s26ZJ(6) <i>multi-unit residential accommodation</i> means motels, hostels, boarding houses, nursing homes, residential accommodation comprising lots in a community titles scheme and other similar accommodation.	(3) Amends s26ZJ(6) to omit reference to nursing homes.	No equivalent provision.
	s26ZJ(6) <i>residential premises</i> means premises used, or intended to be used, as a place of residence or mainly as a place of residence and does not include multi-unit residential accommodation.	(4) Omits definition and replaces it with '... does not include multi-unit residential accommodation'.	No equivalent provision.
Outdoor pedestrian mall	26ZPB Local government may make local laws prohibiting smoking at certain places (1) A local government may make a local law prohibiting smoking at all or part of the following places in the local government's local government area - ... (b) an outdoor pedestrian mall.	Clause 13 New s26ZKA (1) a person must not smoke at an <i>outdoor pedestrian mall</i> . Maximum 20 penalty units. (2) <i>Outdoor pedestrian mall</i> means (a) a mall established under s88 of the <i>City of Brisbane Act 2010</i> (b) s80A of the <i>Local Government Act 2009</i> and (c) a mall continued as a mall under s258 of the <i>City of Brisbane Act 2010</i> .	Clause 7 New s26ZKA (1) Same. (2) <i>Outdoor pedestrian mall</i> means (a) a mall established under the <i>City of Brisbane Act 2010</i> , section 88 or the <i>Local Government Act 2009</i> , section 80A (b) the Chinatown Mall and Valley Mall established under the repealed <i>Local Government (Chinatown and The Valley Malls) Act 1984</i> (c) the Queen Street Mall established under the repealed <i>Local</i>

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
			<i>Government (Queen Street Mall) Act 1981.</i>
Public transport waiting point	<p>26ZPB Local government may make local laws prohibiting smoking at certain places</p> <p>(1) A local government may make a local law prohibiting smoking at all or part of the following places in the local government's local government area -</p> <p>(a) a public transport waiting point that is not in an enclosed place if the place is under local government control ...</p>	<p>Clause 13 cont'd</p> <p>New s26ZKB (1) a person must not smoke at a <i>public transport waiting point</i>¹⁵⁴</p> <p>(2) Or on land within 5m beyond a wait point (<i>buffer zone</i>), unless the person has a reasonable excuse.</p> <p>Maximum 20 penalty units.</p> <p>(3) A person outside the buffer zone is taken to be within the buffer zone if the person is in a queue that starts at the public transport waiting point or in the buffer zone.</p> <p>(4) – (7) exclusions, reasonable excuse and definitions.</p>	<p>Clause 7 cont'd</p> <p>New s26ZKB (1) Same.</p> <p>Note different definition of <i>public transport waiting point</i>⁴.</p> <p>(2) Defines ferry service, public passenger service and public transport waiting point.</p>
Skate park	No equivalent provision.	<p>Clause 13 cont'd</p> <p>New s26ZKC (1) A person must not smoke within 10m of any part of a <i>skate park</i>¹⁵⁵. Maximum 20 penalty units.</p> <p>(2) Exclusion - does not apply when the person is at a residential premises, business premises or travelling in a motor vehicle.</p>	<p>Clause 7 cont'd</p> <p>New s26ZKC (1) A person must not smoke at a <i>skate park</i>⁵ (2) or on land within 5m of a skate park. Maximum 20 penalty units.</p> <p>(3) Exclusions – same.</p>
Under-age	No equivalent	Clause 13 cont'd	Clause 7 cont'd

¹⁵⁴ New s26ZKB *Public transport waiting point* means any of the following-

Government Bill: (a) a sign indicating that it is a drop-off or collection point for a public passenger vehicle (b) shelter or seating provided for persons waiting at a drop-off or collection point for a public passenger vehicle (c) a terminal, jetty, pontoon, platform or landing for the arrival and departure of a public passenger vehicle.

Private Member's Bill: (a) a transit terminal for public passenger services; (b) a ferry terminal, jetty, pontoon or landing for ferry services; (c) a bus stop, bus shelter, bus station or bus lay-by; (d) a taxi rank, limousine rank or limousine standing area.

¹⁵⁵ New s26ZKC *Skate park*-

Government Bill: a) means a part of a public place constructed for the purpose of riding or skating any of the following around or over obstacles, jumps and uneven surfaces – (i) bicycles (ii) rollerblades or rollerskates (iii) skateboards (iv) scooters, but (b) does not include a bicycle path, a footpath or a path shared by cyclists and pedestrians.

Private Member's Bill: means a part of a public place constructed for the purpose of riding a skateboard around or over obstacles and uneven surfaces.

Tobacco and Other Smoking Products Act 1998		Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
sporting event	provision.	<p>New26ZKD (1) A person must not smoke at a sporting ground or the viewing area¹⁵⁶ for a water sport during (a) an <i>organised under-age sporting event</i>¹⁵⁷; or (b) a training or practice session to prepare for an organised under-age sporting event; or (c) any break or interval during the organised under-age sporting event or the training or practice session. Maximum 20 penalty units.</p> <p>(2) A person must not smoke on land within 10m beyond the boundary of a sporting ground¹⁵⁸ or the viewing area for a water sport (the <i>buffer zone</i>) during a period smoking is prohibited under subsection (1). Maximum 20 penalty units.</p> <p>(3) Exclusions - does not apply when the person is at a residential premises, business premises or travelling in a motor vehicle.</p> <p>(4) Definitions.</p>	<p>No equivalent provision.</p> <p>Note: New s13D - Supplier must not sell smoking products from pop-up store - applies to sporting events.</p>
National park	No equivalent provision.	<p>Clause 13 cont'd</p> <p>New s26ZKE(1) A person must not smoke at a national park, or part of a national park, prescribed by regulation. Maximum 20</p>	No equivalent provision.

¹⁵⁶ New s26ZKC(4) *viewing area*, for a water sport, means the area set aside for viewing the water sport.

¹⁵⁷ New s26ZKD(4) *organised under-age sporting event* means a sporting event (a) organised in advance; and (b) organised or intended for, or predominately participated in by, persons under 18; and (c) conducted by a professional or amateur sporting body or educational institution according to established rules.

¹⁵⁸ New s26ZKD(4) *sporting ground* (a) means 1 or more of the following places (each a *playing area*) - (i) a court, field or oval marked for use to play 1 or more sports; *Examples*— a soccer field, a cricket oval, a tennis or basketball court. (ii) a running track; (iii) a racing track for bicycles; (iv) a textured surface used for athletics; and (b) includes— (i) any area, seating or other structure provided for persons to observe players and competitors at the playing area; and (ii) any area reserved for players, competitors, umpires or other officials for a game being played at the playing area; and (iii) any waiting or warm-up area for players or competitors waiting to enter the playing area; but (c) does not include a bicycle path, a skate park, a path shared by cyclists and pedestrians or a horse racing track.

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
		penalty units.	
Other outdoor public places	s26ZPB Local government may make local laws prohibiting smoking at certain places, including public transport waiting points and outdoor pedestrian malls (see definition for both of these). Penalty cannot be more than 20 penalty units.	Clause 16 Omits Part 2C, div 4 Replaces Part 2C, div 4: New s26ZPA If the Act doesn't regulate smoking at an outdoor public place, a local government may prohibit smoking at the place (if within the local government's LGA). New s26ZPB It must consult with the department about proposed local law before making it. New s26ZPC State may require report from local government about local law. New s26ZPD Fines payable for contravention of local law payable to local government.	Clause 11 Omits Part 2C, div 4
Hookah	No equivalent provision.	Clause 17 New s26ZQA (2) adds that the display of a part of a hookah is taken to be the display of a hookah.	No equivalent provision.
Administration of provisions	No equivalent provisions.	Clause 18 New Part 2E Administration of provisions by State and local governments. New s26ZU-s26ZX	No equivalent provisions.
Power to direct a person to stop smoking	s40A Power to direct person to stop smoking (1)This section applies if an authorised person finds a person contravening section 26R(1), 26X(1), 26ZE(1), 26ZGC, 26ZGD, 26ZH(1), 26ZI(1), 26ZJ(1) or 26ZK(1). (2)The authorised	Clause 20 Omits s40A(1) and inserts '(1) This section applies if an authorised person finds a person contravening a relevant provision.' Also inserts new s40A(4) 'relevant provision means section ...' [lists 19 sections].	Clause 12 Amends cross references in s40A.

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
	<p>person may direct the person to stop smoking.</p> <p>(3) When directing the person to stop smoking, the authorised person must tell the person it is an offence not to comply with the direction.</p>		
No smoking sign	No equivalent provision	<p>Clause 8</p> <p>s26S No smoking sign</p> <p>(1) replaces 'licensed premises' with 'any of the following premises (a) premises to which a commercial hotel licence or community club licence under the <i>Liquor Act 1992</i> applies (b) premises, to which a commercial special facility licence under the <i>liquor Act 1992</i> applies, that contain all or part of a casino.'</p>	No equivalent provision.
Meaning of <i>outdoor eating or drinking place</i>	s26W(4) If an area that would otherwise be within an outdoor eating or drinking place is clearly designated as an area where no food or drink may be consumed, the area is taken not to be part of the outdoor eating or drinking place.	<p>Clause 10</p> <p>(1) New s26W(4A) For subsection (4), a place can not be designated if smoking at the place is otherwise prohibited under this Act.</p> <p>(2) New s26W(5) <i>multi-unit residential accommodation</i> means hotels, motels, hostels, boarding houses, residential accommodation comprising lots in a community titles scheme and other similar accommodation.</p> <p>(3) s26W(5) definition of <i>residential premises</i> replaced with '... does not include multi-unit residential accommodation.'</p>	

	<i>Tobacco and Other Smoking Products Act 1998</i>	Smoke-free Places Bill (Government Bill)	Extension of Smoking Bans Bill (Private Member's Bill)
Vehicle	No equivalent provision.	<p>There is an equivalent provision to the Private Member's Bill in Clause 5 (below); <i>Temporary retail store</i> includes 'a vehicle'.</p> <p>New s13C(2) <i>Temporary retail store</i> means ... (b) a vehicle or mobile structure, including a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.</p>	<p>Clause 4 New 13C Supplier must not sell smoking products from vehicle</p> <p>(1) A supplier must not sell smoking products from a vehicle. Maximum 40 penalty units.</p> <p>(2) In this section— <i>vehicle</i> includes a trailer, caravan or other similar thing designed or modified to be easily attached to a vehicle for transportation.</p>
Schedule Dictionary	N/A	Clause 21 Omits and replaces a number (10+) of definitions.	Clause 13 Omits definition of <i>prescribed outdoor swimming area</i> .

Appendix E – Comparison of relevant tobacco legislation in other Australian jurisdictions

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
Legislation	<i>Tobacco and Other Smoking Products Act 1998</i> (Qld)	<i>Public Health (Tobacco) Act 2008</i> (NSW) Public Health (Tobacco) Regulation 2009 (NSW) <i>Smoke-free Environment Act 2000</i> (NSW) Smoke-free Environment Regulation 2007 (NSW)	<i>Tobacco Act 1987</i> (Vic)	<i>Public Health Act 1997</i> (Tas) Public Health (Smoke-free Areas) Regulations 2014 (Tas)	<i>Tobacco Products Regulation Act 1997</i> (SA) Tobacco Products Regulations 2004 (SA) Tobacco Products (Smoking Bans in Public Areas— Longer Term) Regulations 2012 (SA)	<i>Tobacco Products Control Act 2006</i> (WA) Tobacco Products Control Regulations 2006 (WA)	<i>Tobacco Act 1927</i> (ACT) <i>Smoke-free Public Places Act 2003</i> (ACT) (SPP Act) <i>Smoking in Cars with Children (Prohibition) Act 2011</i> (ACT)	<i>Tobacco Control Act</i> (NT) Tobacco Control Regulations (NT)
Areas where smoking is prohibited	<ul style="list-style-type: none"> Enclosed spaces, which do not include: <ul style="list-style-type: none"> residential premises multi-unit residential accomm, other than the common areas of the accomm 	<ul style="list-style-type: none"> Motor vehicles, if the vehicle is on a road or road-related area, and a person under the age of 16 is in the vehicle. Enclosed public places. 	<ul style="list-style-type: none"> An enclosed workplace (see Act for list of exclusions) an outdoor dining or drinking area e.g: a balcony, courtyard, rooftop, 	<ul style="list-style-type: none"> An enclosed public place an enclosed workplace any area, including, but not limited to including, a public street, that is not within private 	<ul style="list-style-type: none"> Enclosed public places, workplaces or shared areas (see Act for definitions). This includes all enclosed areas of licensed hospitality 	<ul style="list-style-type: none"> Between flags or other markers placed on a beach for the purpose of indicating a patrolled swimming area: s 107A an outdoor eating area: s 	<ul style="list-style-type: none"> An enclosed public place outdoor eating or drinking places underage function in a motor vehicle on a road or road 	<ul style="list-style-type: none"> An enclosed public area an enclosed workplace area an outdoor public venue a food service area public transport

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<ul style="list-style-type: none"> o premium gaming rooms • within 4 metres of any part of an entrance to an enclosed place. • licensed premises. • motor vehicles, if: the vehicle is on a road or road-related area, the vehicle is being used for business use, and another person is in the vehicle. • Motor vehicles, if the vehicle is on a road or road-related area, and a person under the age of 16 is in the 	<p>e.g shopping centres, restaurants, schools, community centres, cinemas, trains and buses.</p> <ul style="list-style-type: none"> • Outdoor public places (see Act for full list of inclusions). Includes, for example, a place that is within 10 metres of children’s play equipment, a swimming pool complex, platform of a passenger railway or light rail station, a bus stop, a taxi rank and any other 	<p>marquee, street or footpath, or any similar outdoor area.</p> <ul style="list-style-type: none"> • patrolled beaches • an outdoor area within education and care service premises or children’s service premises • within 4m of a pedestrian access point to education and care service premises or children’s service premises • an outdoor area of a swimming pool complex that is a public 	<p>premises and is designated by the occupier of the area as a smoke-free area</p> <ul style="list-style-type: none"> • at an outdoor sporting venue (see Act for detailed provision) • anywhere within 3m of an entrance to or exit from any non-domestic building or multiple-use building • anywhere within 10m of any air intake for ventilation equipment on or in a multiple-use building or a non-domestic building • anywhere within 10m of 	<p>venues, including pubs, clubs, bingo venues and the SKYCITY Casino.</p> <ul style="list-style-type: none"> • in a motor vehicle if a child under the age of 16 years is present • a prescribed public transport area which includes for example, any part of a bus stop and taxi rank • within 10m of any children’s playground equipment that is located in a public area 	<p>107B</p> <ul style="list-style-type: none"> • within 10 m of children’s playground equipment. • a vehicle if the vehicle is on a road, and any other person in or on the vehicle is a child under the age of 17 years. • an enclosed public place 	<p>related area, with a child under the age of 16 years</p>	<ul style="list-style-type: none"> • a public transport area • shared accommodation • an educational facility • an entrance area • an air-conditioning inlet area • a voluntarily declared area • an outdoor eating and drinking area • voluntarily declared areas • a motor vehicle on a public street or in a public place, when another person is in the motor vehicle aged under 16 years of age.

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
vehicle. • outdoor eating or drinking place • major event facility • health facility land or within 5 metres outside the boundary • school land or within 5 metres outside the boundary • patrolled beach • prescribed outdoor swimming area between sunrise and sunset • within 10m of any part of children's playground equipment	outdoor public place that is prescribed by the regulations as a smoke-free area.	place • an outdoor area of school premises • within 4m of a pedestrian access point to school premises • at or within 10m of children's playground equipment that is in an outdoor public place • at or within 4m of any part of a pedestrian access point to a children's indoor play centre • at or within 10m of a skate park that is in an outdoor public place	any play equipment erected at a children's playground in a public place • on a beach between the flags • anywhere at a public swimming pool, including the curtilage of the public swimming pool • anywhere that the Director, by public notice, designates as a smoke-free area in connection with a public event or class of public events specified in that public notice • outdoor	• the Minister may declare that smoking is banned in the public area or areas, and during the period specified in the notice • the Governor may, by regulation, declare that smoking is banned in the public areas specified in the regulations.			

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>situated at a place that is ordinarily open to the public</p> <ul style="list-style-type: none"> • local governments may make local laws prohibiting smoking at: <ul style="list-style-type: none"> ○ public transport waiting points, and ○ outdoor pedestrian malls. 		<ul style="list-style-type: none"> • at or within 4m of any part of a pedestrian access point to Victorian public premises • at or within 10m of a sporting venue that is an outdoor public place during certain times. • in a motor vehicle with a person under the age of 18 years • any area or premises while an underage music/dance event is taking place there. 	<p>dining area</p> <ul style="list-style-type: none"> • within 3m of an outdoor dining area (see Act for detailed provision) • a public street that the regulations declare to be a pedestrian mall • a public street that the regulations declare to be a bus mall • within 3 metres of a bus shelter on a public street. • in a motor vehicle being used in the course of any employment if another person is inside the vehicle, or if a child under the age of 18 years 				

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
Areas where smoking is expressly permitted				is in the vehicle.				
	<p>Certain licensed premises may designate a part of the licensed outdoor area of the premises as an area in which drinking and smoking is allowed.</p> <p>The licenced premises include:</p> <ul style="list-style-type: none"> • commercial hotels • community clubs, and • commercial special facilities containing all or part of a casino. 	<p>Every enclosed public place is a smoke-free area unless it is an exempt area.</p> <p>The international private gaming area of Star City Casino is exempt from the smoking bans.</p> <p>Regulations may exempt a specified outdoor public places from being a smoke-free area.</p>	<p>Smoking may be permitted in an area in a casino that is a high roller room by notice by the minister published in the Government Gazette.</p>	<ul style="list-style-type: none"> • any open deck area of a ship or vessel • any personal living area of any place providing accommodation for a fee, residential care facility or prison from which smoke drift to any smoke-free area cannot reasonably occur • an outdoor smoking area. • a designated smoking area within a smoke-free public event. 	N/A	<ul style="list-style-type: none"> • A responsible person in relation to licensed premises may allocate as a smoking zone for the premises one or more places in one or more outdoor eating areas to which a restaurant licence does not apply, but the total area of all the smoking zones for the premises must not exceed 50% of the total area of all the outdoor eating areas to which a restaurant licence does not apply. 	<ul style="list-style-type: none"> • Premises with a club licence or a liquor licence under the <i>Liquor Act 2010</i> (ACT) may have a designated outdoor smoking area. <p>In a designated outdoor smoking area, there must be:</p> <ul style="list-style-type: none"> • no people under 18 years old • no food or drink service • no food consumed • no entertainment offered or directly accessible, 	<ul style="list-style-type: none"> • domestic premises • exempt areas. These may include for example (see Regulation for full list): <ul style="list-style-type: none"> o a declared high roller room in a casino o education facilities if the majority of staff agree and the area is not normally accessible to children o outdoor public venues o personal living areas in shared accomm o the upper deck or decks of a public transport vessel

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
						<ul style="list-style-type: none"> • Crown Casino's International Room: Tobacco Products Control Regulations 2006 (WA). 	and <ul style="list-style-type: none"> • no gaming machines. 	Areas that cannot be designated as exempt areas are listed in the Act.
Regulation of e-cigarettes	<p>E-cigarettes are subject to the same regulation as cigarettes. A personal vaporiser is defined in the Act.</p> <p>Personal vaporisers cannot be supplied through a vending machine.</p> <p>The definition</p>	<p>The <i>Public Health (Tobacco) Amendment (E-cigarettes) Act 2015</i> (NSW) extends some provisions of the PHT Act to e-cigarettes. E-cigarettes, e-cigarette accessory, e-cigarette vending machines are defined in the Act.</p>	<p>E-cigarettes and cartridges containing nicotine are prohibited in Victoria. It is illegal to manufacture, sell, supply, purchase or otherwise obtain, possess or use an electronic cigarette or cartridge containing nicotine.</p>	<p>E-cigarettes and cartridges can be sold in Tasmania provided they do not contain nicotine. Cartridges containing nicotine breach the <i>Poisons Act 1971</i> (Tas).</p>	<p>E-cigarettes and cartridges containing nicotine are prohibited in South Australia. It is illegal to manufacture, sell, supply, purchase or otherwise obtain, possess or use an electronic cigarette or cartridge containing nicotine.</p>	<p>E-cigarettes and cartridges containing nicotine are prohibited in Western Australia. It is illegal to manufacture, sell, supply, purchase or otherwise obtain, possess or use an electronic cigarette or cartridge containing nicotine. A person must</p>	<p>The sale of electronic cigarettes that do not contain nicotine is allowed under public health laws in the ACT. The sale and possession of electronic cigarettes that contain nicotine is illegal without a license. Approval has not been</p>	<p>It is an offence to sell a product, designed or marketed for consumption or use by children, that resembles, or is packaged to resemble, a tobacco product or is likely to have the effect of encouraging children to smoke. E-cigarettes and cartridges containing</p>

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
	<p>of smoke includes 'for a personal vaporiser— inhale through the vaporiser.</p> <p>The provisions setting out areas where smoking is prohibited apply in relation to e-cigarettes.</p>	<p>The following provisions of the PHT Act also apply in relation to e-cigarettes:</p> <ul style="list-style-type: none"> • the sale and display of tobacco and other smoking products applies in relation to e-cigarettes and e-cigarette accessories. • sale to a person who is under the age of 18 years. <p>'Smoke' is defined to include using an e-cigarette to generate or release an aerosol or vapour.</p>				<p>not sell any food, toy or other product that is not a tobacco product but is designed to resemble a tobacco product or package.</p> <p>The Western Australian Supreme Court in <i>Hawkins v Van Heerden</i> [No 2] [2014] WASC 226 convicted a seller of e-cigarettes under s 106.</p>	<p>granted for the supply of nicotine for use in electronic cigarettes</p> <p>The ACT Government has announced plans to ban the use of electronic cigarettes in existing smoke-free areas.</p>	<p>nicotine are prohibited under the <i>Medicines, Poisons and Therapeutic Goods Act 2012</i> (NT).</p>
Restrictions	N/A	N/A	N/A	An applicant for	N/A	A tobacco	N/A	N/A

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
on the age of tobacco sellers				a tobacco licence under must be over 18. A child can be employed by the holder of a tobacco seller's licence.		licence will not be issued if the applicant has not reached 18 years of age. There are no other restrictions on the age of tobacco sellers.		If a child employee of a licensed tobacco retailer sells a tobacco product to another child, the licensed tobacco retailer is taken to have committed the offence of selling a tobacco product to a child.
Regulation of cigarettes from vending machines	Tobacco product vending machines may only be in the following liquor licensed premises: • a bar area of licensed premises where it can be easily observed by persons	A tobacco vending machine is defined in the Act. Vending machines can only be placed in: • a bar area of a hotel or club premises within the meaning of	Vending machine is defined the Act. Vending machines may be placed: • in the bar area of licensed premises in line of sight of a bar • in an	A vending machine is defined in the Act. Vending machine can only be in premises with a liquor licence. Only one vending machine is allowed. A vending	Vending machines can only be located in: • in an area delineated under a gaming machine licence under the <i>Gaming Machines Act 1992 (SA)</i> as the area in which gaming	Vending machines are defined in the Glossary of the Act. Vending machines can only be placed in: • licensed premises, or • mines amenities. The number of	Tobacco products must not be sold in vending machines. A vending machine is defined in the Dictionary of the Act. It is an offence to: • place a vending	Vending machines can only be in liquor licensed premises. Vending machines must be in: • a child free area, or • a supervised children area and in the line of sight of a bar

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>working behind the bar</p> <ul style="list-style-type: none"> • a casino • a gaming machine area where it can be easily observed by persons working behind the bar and not more than 1 metre from a gaming machine in the gaming machine area. <p>A person in charge of a tobacco product vending machine must not allow a child to obtain a tobacco product from a vending machine: s 16.</p>	<p>the <i>Liquor Act 2007</i> (NSW)</p> <ul style="list-style-type: none"> • a bar area of a casino within the meaning of the <i>Liquor Act 2007</i> (NSW) as applied by the <i>Casino Control Act 1992</i> (NSW) • a gaming machine area within the meaning of the <i>Gaming Machines Act 2001</i> (NSW). <p>There cannot be more than one vending machine in:</p> <ul style="list-style-type: none"> • a hotel within the meaning of the <i>Liquor Act 2007</i> (NSW) • club 	<p>approved venue or in a casino in line of sight of a service counter of the approved venue or casino, or</p> <ul style="list-style-type: none"> • in a bottle shop immediately adjacent to the service counter of the bottle shop. <p>A vending machine must be removed or covered at all times if the premises are used for an underage music/dance event.</p>	<p>machine must be located in a restricted area of the premises (ie where children are not allowed).</p> <p>A vending machine may not be operated by a member of the public.</p> <p>Penalties for breaches of these provisions are a fine not exceeding 50 penalty unit.</p>	<p>machines may be operated pursuant to the licence and no other such vending machine is situated in the gaming area or any other part of the premises in respect of which the licence is in force under the <i>Liquor Licensing Act 1997</i> (SA)</p> <ul style="list-style-type: none"> • in some other part of premises in respect of which a licence is in force under the <i>Liquor Licensing Act 1997</i> (SA) and no other such vending 	<p>vending machines is limited to two: s 27(2)(a) and Tobacco Products Control Regulations 2006 (WA).</p> <p>A vending machine that can be operated without the assistance of a responsible person is to be located on the premises so that at all times during which members of the public can obtain a tobacco product from the vending machine, it is visible to the responsible</p>	<p>machine on premises and allow it to be used by members of the public, or</p> <ul style="list-style-type: none"> • to occupy premises where a vending machine is available for use by members of the public. <p>The commissioner must not grant or renew a tobacco licence that would authorise the use of a vending machine for the sale of tobacco products.</p>	<p>service area in the area of the premises.</p>

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>A person in possession of a coin operated vending machine must not use the machine to supply:</p> <ul style="list-style-type: none"> • personal vaporisers • personal vaporiser related products • herbal cigarettes, or • a loose smoking blend. <p>Maximum penalties are 70 penalty units for a first offence and 140 penalty units for a subsequent</p>	<p>premises within the meaning of the <i>Liquor Act 2007</i> (NSW)</p> <ul style="list-style-type: none"> • a casino within the meaning of the <i>Casino Control Act 1992</i> (NSW). <p>Vending machines can only be activated by staff member or by a token which is only available from a staff member.</p>			<p>machine is situated in the premises in respect of which the licence is in force</p> <ul style="list-style-type: none"> • in a part of the casino in which the public are permitted to engage in gambling activities under the <i>Casino Act 1997</i> (SA) and no other such vending machine is situated in the casino. <p>Vending machines can only be operated by:</p> <ul style="list-style-type: none"> • the holder of the licence 	<p>person or a representative: s 27(2)(c) and Tobacco Products Control Regulations 2006 (WA).</p> <p>A responsible person in relation to premises that are licensed premises or a mines amenity must ensure that a tobacco product cannot be obtained by a member of the public from a vending machine at the premises without the assistance of a responsible person or a person acting on behalf of a</p>		

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
offence.				or an employee of the holder of the licence in the case of premises licensed under the Liquor Licensing Act 1997 (SA) <ul style="list-style-type: none"> • an employee of the casino • the use of a token or similar device supplied to the person by the licence holder, an employee of the licence holder or an employee of the casino, or • remote control operated by the licence holder, an 	responsible person unless the operation of the vending machine can be supervised at all times during which the premises are open to members of the public.		

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
Distances in which smoking is prohibited from entrances and other places eg children's play equipment, eating areas, children's sporting grounds					employee of the licence holder or an employee of the casino.			
	<ul style="list-style-type: none"> • within 4 metres of any part of an entrance to an enclosed place • within 5 metres outside the boundary of health facility land (includes public and private hospitals) • within 5 metres outside the boundary of school land (includes public and private schools) • 10 metres from 	<ul style="list-style-type: none"> • within 10 metres of children's play equipment in an outdoor public place: s 6A(1)(a) SE Act • within 4 metres of a pedestrian access point to a building. 	<ul style="list-style-type: none"> • within 4 metres of a pedestrian access point to education and care service premises or children's service premises • within 4 metres of a pedestrian access point to school premises • within 10 metres of children's playground equipment that is in an outdoor public place 	<ul style="list-style-type: none"> • within 20 metres of: <ul style="list-style-type: none"> ○ any permanently or temporarily erected public seating ○ any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of competitors or officials, or ○ any part of the venue used to conduct the actual organised sporting event, at an outdoor sporting venue 	<ul style="list-style-type: none"> • within 10 metres of any children's playground equipment that is located in a public area. 	<ul style="list-style-type: none"> • within 10 m of children's playground equipment in a public place that is not enclosed. 	N/A	N/A

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
children's playground equipment.		<ul style="list-style-type: none"> • within 4 metres of any part of a pedestrian access point to a children's indoor play centre • within 10 metres of a skate park that is in an outdoor public place • within 4 metres of any part of a pedestrian access point to Victorian public premises • within 10 metres of a sporting venue that is an outdoor public place during: <ul style="list-style-type: none"> ○ an 	during an organised sporting event being held at that venue <ul style="list-style-type: none"> • within 3 metres of an entrance to or exit from any non-domestic building or multiple-use building • within 10 metres of any air intake for ventilation equipment on or in a multiple-use building or a non-domestic building • within 10 metres of any play equipment erected at a children's playground in a public place • within 3 				

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
			organised underage sporting event <ul style="list-style-type: none"> ○ a training or practice session to prepare for participation in an organised underage sporting event, or ○ any break or interval during the course of the organised underage sporting event or training or practice session. 	metres of an outdoor dining area that is not surrounded by a screen, or other barrier, that is at least 2.1m high and impervious to smoke <ul style="list-style-type: none"> • within 3m of a bus shelter on a public street. 				
Enforcement	Authorised persons Authorised persons have power to enforce	Authorised persons NSW Health Authorised Inspectors conduct	Authorised persons Inspectors may be: <ul style="list-style-type: none"> • a person nominated by 	Authorised persons The following are nominated officers under the Act:	Authorised persons The Minister may appoint authorised officers.	Authorised persons Authorised persons under the Act include:	Authorised persons The following may be appointed as authorised	Authorised persons The Chief Health Officer may appoint persons as

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>provisions of the Act.</p> <p>Authorised persons include:</p> <ul style="list-style-type: none"> • a public service officer or employee • a health service employee, and • a person prescribed under a regulation. <p>An authorised person must carry an identity card.</p> <p>An authorised person may:</p> <ul style="list-style-type: none"> • apply to a magistrate for a warrant for a place: • require a name and address from a 	<p>regular compliance monitoring and enforcement activity, including issuing cautions or on the spot fines of \$300 to people seen to be breaching outdoor smoking bans.¹⁵</p> <p>NSW Police may bring proceedings in relation to breaches of the smoking ban at:</p> <ul style="list-style-type: none"> • the platform of a passenger railway or light rail station • a ferry wharf • a light rail 	<p>the Chief Executive Officer of a council within the meaning of the Local Government Act 1989 (Vic) and employed by, or providing services to,</p> <ul style="list-style-type: none"> • an employee or member of a class of employees employed under Part 3 of the <i>Public Administration Act 2004</i> (Vic). <p>An authorised person must produce an identity card before exercising any of the powers</p>	<ul style="list-style-type: none"> • the Director • a health officer (appointed under the Act or by the general manager of a council • a police officer • a person approved by the Director • a member of a class of persons approved by the Director. <p>A nominated person may require a person who is smoking in a smoke-free area to stop smoking.</p> <p>If a person fails to comply, the</p>	<p>All police officers are authorised officers.</p> <p>An authorised officer must have an identity card, which must be produced when exercising powers under the Act.</p> <p>Powers of authorised officers include:</p> <ul style="list-style-type: none"> • enter and remain on premises and inspect the premises • require a person to produce a record • examine and test ventilation 	<ul style="list-style-type: none"> • persons employed in the Public Service under the <i>Public Sector Management Act 1994</i> (SA) Part 3 appointed by the CEO • police officers • the CEO. <p>Investigators must have an identity card: s 81.</p> <p>Investigators must show their identity card when performing acts under the Act or when requested to do so.</p> <p>Investigations may be carried out to:</p>	<p>officers:</p> <ul style="list-style-type: none"> • public servants • the commissioner • a public health officer under the <i>Public Health Act 1997</i> (ACT) • a police officer • an investigator under the <i>Fair Trading (Australian Consumer Law) Act 1992</i> (ACT). <p>Authorised officers must have an identity card.</p> <p>An authorised officer must produce their</p>	<p>authorised officers to enforce and administer the Act.</p> <p>A member of the Police Force is an authorised officer: s 47(3).</p> <p>An authorised officer must have an identity card.</p> <p>Authorised officers have the following powers:</p> <ul style="list-style-type: none"> • to enter premises where the authorised officer believes tobacco products are being packaged, sold, supplied, or displayed for the purpose of sale or supply • to inspect the premises and

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>person committing an offence against the Act</p> <ul style="list-style-type: none"> • seize smoking products • direct a person to stop smoking • seize evidence • give improvement notices requiring a person to remedy a contravention of the Act. <p>Generally an authorised person is a Queensland Health Environmental Health Officers. Police officers can</p>	<p>stop</p> <ul style="list-style-type: none"> • a bus stop • a taxi rank.¹⁶ <p>Bans on smoking in motor vehicles with children under 16 years of age are enforced by NSW Police.¹⁷</p> <p>NSW Health has an online form for members of the public to report breaches of the outdoor smoking ban.</p> <p>Fines</p> <p>The Acts specify maximum penalties for contraventions of the provisions of the Acts as a</p>	<p>under the Act.</p> <p>An inspector may:</p> <ul style="list-style-type: none"> • direct a person to cease contravening provisions of the Act. If the person fails to comply, there is a maximum penalty of 5 penalty units: see by way of example s 5A • require names and addresses of a person who they believe may have contravened the Act: s 36C • enter and search any premises with the consent of the occupier • enter and 	<p>penalty is a fine not exceeding 5 penalty units.</p> <p>Fines</p> <p>It is an offence to smoke in a smoke-free area. The penalty is a fine not exceeding 20 penalty units.</p> <p>The occupier of a smoke-free area is guilty of an offence if a person smokes in the smoke-free area and the penalty is a fine not exceeding 10 penalty units for a natural person (\$1540) and not exceeding 50 penalty units for a body corporate.</p>	<p>and air conditioning equipment in an enclosed public dining or café area</p> <ul style="list-style-type: none"> • seize and retain tobacco products or records • require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's 	<ul style="list-style-type: none"> • seek evidence of a suspected offence under the Act • assess whether or not the provisions of the Act are being complied with • any other purpose relevant to the administration of the Act. <p>Investigators' powers under the Act include:</p> <ul style="list-style-type: none"> • requiring a licence holder to produce their licence • asking for a person's name and address • entering and remaining on 	<p>identity card before obtaining consent of the occupier to enter premises.</p> <p>Authorised officers have the following powers to:</p> <ul style="list-style-type: none"> • to enter premises • to inspect anything on the premises • to take copies of any documents on the premises • to take photographs of anything on the premises • to open and inspect any package on the premises that the officer has 	<p>any vending machines found in or on the premises</p> <ul style="list-style-type: none"> • to take measurements of the premises • to seize goods or other things for use as evidence in a prosecution for an offence • to take copies of or extracts from documents • to require a person to answer questions, provide information and provide reasonable assistance • to require the driver of a motor vehicle to stop the

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>enforce provisions in relation to sales of tobacco products to children and smoking in vehicles with children under the age of 16. Local governments are responsible for enforcing local laws in relation to smoking.</p> <p>Fines</p> <p>The Act specifies maximum penalties for contraventions of the provisions of the Act as a specified number of penalty units..</p>	<p>specified number of penalty units..</p> <p>By way of example:</p> <ul style="list-style-type: none"> • smoking in a smoke-free area has a maximum penalty of 5 penalty units • occupiers allowing smoking in smoke-free areas face a maximum penalty of 10 penalty units for an individual (\$550) and 50 penalty units for a body corporate (\$5500) • smoking in a motor vehicle with a person under 16 years 	<p>inspect any part of premises that are open to the public</p> <ul style="list-style-type: none"> • apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened the Act. <p>It is an offence to:</p> <ul style="list-style-type: none"> • refuse or fail to comply 		<p>identity</p> <ul style="list-style-type: none"> • require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters • require a person holding or claiming to hold a licence to produce it for inspection. 	<p>premises to exercise the investigator's powers of investigation, which include</p> <ul style="list-style-type: none"> o searching the premises and examining anything at the premises o taking possession of, and removing from the premises, documents and tobacco products o taking extracts from or make copies of, or download or print-out, any documents o photograph or film anything at the premises 	<p>reasonable grounds for believing to contain a thing connected with an offence</p> <ul style="list-style-type: none"> • to seize anything on the premises connected with an offence • to require the occupier of the premises, or an employee or agent of the occupier to provide information and answer questions • to require a person to state their name and home 	<p>motor vehicle and require the person to stop smoking</p> <ul style="list-style-type: none"> • to require a person to give their name, address and age. <p>An authorised officer may serve an infringement notice on a person in relation to a breach of the Act or Regulations: Tobacco Control Regulations (NT).</p> <p>The penalties in relation to smoking in a smoke-free area are 0.8 penalty units and 2 penalty units for</p>

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>The maximum penalties under the Act are between 20 penalty units and 420 penalty units depending on the severity of the contravention. Fines for the following contraventions are payable to the relevant local government:</p> <ul style="list-style-type: none"> • patrolled beaches • prescribed outdoor swimming area between sunrise and sunset • within 4 metres of any part of an entrance to an 	<p>of age has a maximum penalty of 10 penalty units</p> <ul style="list-style-type: none"> • failure to comply with the provisions of the PHT Act in relation to vending machines has a maximum penalty of 100 penalty units for individual and 500 penalty units for other than individuals . 	<p>with a requirement of an inspector</p> <ul style="list-style-type: none"> • give false or misleading information to an inspector • hinder or obstruct an inspector • intimidate, threaten or assault inspector. <p>Police officers are authorised to enforce the provision in relation to smoking in a motor vehicle with a person under the age of 18 years.</p> <p>Fines Generally the penalty for contravention</p>		<p>It is an offence to:</p> <ul style="list-style-type: none"> • hinder an authorised officer exercising powers under the Act • use abusive, threatening or insulting language to an authorised officer • refuse or fail to comply with a requirement or direction of an authorised officer • refuse or fail to answer a question from an authorised officer to the best of the person’s knowledge, information 	<ul style="list-style-type: none"> o requiring any person at the premises to assist the investigator • applying to a magistrate for a search warrant. <p>An investigator may direct a person to stop smoking in contravention of ss 107A-D: r 16D Tobacco Products Control Regulations 2006 (WA).</p> <p>A person must not give false or misleading information to an investigator.</p> <p>A person must not hinder the CEO, investigator or</p>	<p>address.</p> <p>Under the SPP Act, an inspector may direct a person to stop smoking in contravention of the SPP Act.</p> <p>ACT Police can enforce the prohibition on smoking in cars with children: s 8 <i>Smoking in Cars with Children (Prohibition) Act 2011</i> (ACT).</p> <p>Fines Generally the fine for smoking in contravention of the Act is 5</p>	<p>smoking in a car with a child: Tobacco Control Regulations (NT), Schedule.</p> <p>Fines A person must not smoking in a smoke-free area. A person commits an offence if they smoke in a motor vehicle with a child under the age of 16 years (maximum penalty 20 penalty units). An occupier commits an offence if a person smokes in a smoke-free area (maximum penalty 20 penalty units). The maximum</p>

Qld	NSW	Vic	Tas	SA	WA	ACT	NT
<p>enclosed place</p> <ul style="list-style-type: none"> • within 10 metres of any part of children’s playground equipment situated at a place that is ordinarily open to the public, and <p>contraventions of local laws in relation to smoking</p> <p>On the spot fines can be issued to people who smoke in areas where smoking is not permitted. Generally, the fine is 2 penalty units.</p>		<p>of the provisions of the Act is a penalty not exceeding 5 penalty units for an individual.</p> <p>An occupier that allows a contravention of the Act faces a penalty not exceeding 10 penalty units for a natural person and 50 penalty units for a body corporate.</p>		<p>and belief</p> <ul style="list-style-type: none"> • falsely represent, by words or conduct, that he or she is an authorised office. <p>The maximum penalty is \$20,000.</p> <p>Fines</p> <p>Generally the fine for smoking in an area where smoking is prohibited is a maximum penalty of \$200.</p> <p>The maximum penalty for the occupier of an enclosed public place or the employer is a workplace is \$1250.</p>	<p>police officer performing their functions under the Act.</p> <p>Fines</p> <p>Generally the fine for smoking in contravention of the Act is \$1000.</p> <p>The fine for smoking in an outdoor eating area is \$2000.</p> <p>The occupier of the outdoor eating area may also be fined \$2000.</p> <p>The penalties for contraventions of the Act in relation to vending machines are provided in the Act.</p>	<p>penalty units (\$750 for an individual and \$3750 for a corporation).</p> <p>The fine for failing to comply with a direction from an inspector to stop smoking in contravention of the Act is 20 penalty units (\$3000 for an individual and \$15 000 for a corporation).</p> <p>The fine for an occupier who allows a person to smoke in contravention of the Act is 10 penalty units (\$1500 for an individual and</p>	<p>penalty for contraventions of the Act in relation to vending machines are 100 penalty unit.</p>

	Qld	NSW	Vic	Tas	SA	WA	ACT	NT
							\$7,500 for a corporation).	

