

Health and Environment Committee

Tobacco and Other Smoking Products Amendment Bill 2023 Report No. 32, 57th Parliament

Government Response

On 5 May 2023, following its inquiry into the Tobacco and Other Smoking Products Amendment Bill 2023, the Health and Environment Committee tabled Report No. 32 on the Bill.

The report contains three recommendations. The first recommendation by the Committee was that the Bill be passed. The Government's response to the following recommendations is below.

Recommendation 2

The Committee recommends improved alignment of the *Medicines and Poisons Act 2019* and the *Tobacco and Other Smoking Products Act 1998* to remove barriers to executing warrants, searching premises and seizing contraband items.

Government response: supported in principle

The Government acknowledges the emergence of e-cigarettes containing nicotine has created an area of convergence between the *Tobacco and Other Smoking Products Act 1998* (TOSPA) and the *Medicines and Poisons Act 2019* which may cause some uncertainty about when and how the respective enforcement powers under these Acts should apply. To address this, Queensland Health has established an internal working group to examine how the powers under these Acts apply and interact in practical situations. A key aim of this working group is to develop guidelines for the most effective use of these powers. This will be supported by materials to assist authorised persons and inspectors to exercise their powers, including simplified and standardised processes for seizing evidence and applying for warrants. Where legislative barriers are identified, the working group may recommend amendments to either, or both, Acts.

While the powers of authorised persons under TOSPA and inspectors under the Medicines and Poisons Act are similar in many respects, complete alignment of powers may not be appropriate due to differences in the objectives of, and matters dealt with by, these Acts. Whereas TOSPA is concerned with the regulation of smoking and the smoking products industry, the Medicines and Poisons Act applies to persons carrying out regulated activities with regulated substances across a broad range of industries as diverse as agriculture, health care, pest management and veterinary services. The Medicines and Poisons Act also applies to a diverse range of activities, including the manufacture and wholesale of regulated substances, the sale of medicines and poisons by licensed persons, and the prescribing, dispensing and administration of medicines by health practitioners in hospitals, pharmacies, private health facilities and many other settings.

On 2 May 2023, the Commonwealth Government announced significant national reforms to the regulation of e-cigarettes. These reforms include coordinated efforts across State and Territory Governments to end e-cigarette sales in convenience stores and other retail settings and only allowing e-cigarettes to be prescribed by a medical practitioner to aid with smoking cessation. To support the reforms, single-use, disposable e-cigarettes will be banned, the personal importation scheme will close and new packaging and ingredient requirements will be introduced. Also, new restrictions on domestic supply and manufacture of e-cigarettes will be developed and implemented by a National E-cigarette

Working Group, to be formed by the Commonwealth in agreement with State and Territory Health Ministers.

As it is anticipated these reforms will require amendments to Queensland legislation, including TOSPA, there will be a future opportunity to revise the enforcement powers if needed. Future amendments may also be informed by the recommendations of the working group established by Queensland Health.

In the interim, to effectively monitor and enforce compliance with TOSPA, the Bill provides authorised persons with expanded powers which address challenges reported by authorised persons exercising their existing powers, including in relation to enforcement of existing e-cigarette restrictions. Before considering further changes to the enforcement powers under TOSPA, the Government considers the amendments in the Bill should be implemented to gauge their effectiveness and identify whether any further revisions are needed.

Recommendation 3

The Committee recommends that the Government fully consider resourcing enhanced enforcement efforts coordinated between Queensland Health and the Queensland Police Service, and between the relevant state and federal agencies targeting illicit tobacco and vaping markets

Government response: supported in principle

The Bill introduces a licensing scheme for wholesale and retail sales of 'smoking products', which are defined in TOSPA to include e-cigarettes. The Bill also makes it a Queensland offence to supply 'illicit tobacco', being smoking products not complying with Commonwealth requirements. As the Commonwealth Government has recently announced introducing new packaging and ingredient requirements for e-cigarettes, these products may also be caught by the new illicit tobacco offence.

In addition to ensuring full cost recovery of the licensing infrastructure and delivery, the fees charged for obtaining and renewing a licence will fund additional compliance activities throughout the State. This will include establishing a dedicated intelligence capability unit within Queensland Health in relation to retail sales of smoking products and the trade in illicit tobacco. The unit will develop targeted compliance activities, provide direct support to enforcement teams and assist with prosecution action. Public Health Units will also be allocated funding to expand their existing compliance activities, which may cover the recruitment of more authorised persons.


As well as improving Queensland Health's compliance capability and effectiveness, the Bill facilitates a more coordinated approach to enforcement between State agencies and between the State and the Commonwealth. For example, the Bill deems police officers to be authorised persons for the purpose of monitoring and enforcing the new offences of unlicensed sale of smoking products and supplying illicit tobacco. This will boost enforcement activities where there are indications of organised crime activity or where the safety of authorised persons may be compromised. It will also formalise the role police already play in supporting efforts to combat serious smoking product offences. To operationalise this police involvement, and any resourcing required, a memorandum of understanding will be developed between the Queensland Police Service (QPS) and Queensland Health.

Also, where information about the unlawful trade in smoking products is gathered in the course of administering TOSPA, the Bill allows the chief executive to share that information with other State or Commonwealth law enforcement agencies. This includes other Queensland agencies, such as the QPS. Queensland Health maintains an ongoing dialogue with the smoking product regulators in other jurisdictions, in relation to emerging issues and trends, and developments in national requirements and

initiatives. To support the administration, monitoring and enforcement of the new licensing scheme and in taking direct action on illicit tobacco, Queensland Health will consider establishing more formal information-sharing pathways with other jurisdictions.

To ensure the effectiveness and efficiency of these initiatives in the Bill, Queensland Health is developing a monitoring and evaluation plan. This plan will assess the entire TOSPA enforcement program, including compliance with the new licensing scheme and combatting the trade in illicit tobacco, and then identify and implement any operational revisions needed.

The recent Commonwealth announcement about significant national reforms to the regulation of e-cigarettes will also give Queensland a unique opportunity to help shape future restrictions on the domestic supply and manufacture of e-cigarettes. This includes participating in the National E-cigarette Working Group of State and Territory Health Ministers to develop and implement a coordinated end to e-cigarette sales in convenience stores and other retail settings.

Queensland Legislative Assembly	
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