

Tobacco and Other Smoking Products Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Tobacco and Other Smoking Products Amendment Bill 2023 (the Bill).

Policy objectives and the reasons for them

The policy objective of the Bill is to strengthen, modernise and future-proof the requirements, restrictions and safeguards in the *Tobacco and Other Smoking Products Act 1998* (the Act). These reforms are needed to continue reducing the smoking rate in Queensland and provide the Queensland community with further protections from second-hand smoke and the illicit tobacco trade.

To achieve this objective, the Bill will amend the Act to:

- establish a licensing scheme for the wholesale and retail sale of smoking products;
- ensure there are effective deterrents against the unlawful supply of smoking products, including strong penalties;
- empower Queensland Health to monitor compliance with Commonwealth requirements for smoking products and improve intelligence-sharing with other state, territory and Commonwealth law enforcement agencies;
- modernise and clarify the requirements for advertising, display and promotion of smoking products, including their application to online trading;
- expand smoke-free public spaces, including community spaces for children;
- enhance offences protecting children from the dangers of smoking; and
- improve protections at liquor licensed premises, including tighter requirements for smoking areas and tobacco product vending machines.

The object of the Act is to improve the health of the public by reducing exposure to tobacco and other smoking products. Initiatives implemented under the Act have included restricting the supply of smoking products to children, limiting their advertising and promotion, reducing public exposure to second-hand smoke and establishing a framework for compliance monitoring and enforcement activities.

The effects of smoking products are a significant public health concern in Queensland. No other single risk factor contributes as greatly to the burden of preventable health and disease. Smoking also contributes to health inequity. Higher smoking rates, and therefore poorer health outcomes, are more common among Aboriginal and Torres Strait Islanders and persons in low socio-economic circumstances or living in regional and remote areas.

Over the past 25 years, public health efforts have more than halved the adult smoking rate in Queensland. This includes measures implemented under the Act. Unfortunately, smoking is still a significant contributor to death, disease and health inequity.

Another significant challenge has been the number of unscrupulous suppliers seeking to profit from the evasion of public health requirements, such as plain packaging laws. This unlawful trade of illicit tobacco is occurring at the expense of other businesses and public health.

Despite a substantial reduction over the last 25 years to the rates of smoking, it continues to have a significant cost to society. Uptake of smoking products by young people also risks rapid escalation of smoking rates in the future.

Achievement of policy objectives

To achieve its policy objectives, the Bill will amend the Act to:

- improve oversight of the smoking product industry in Queensland, by licensing wholesale and retail sellers of smoking products;
- enhance monitoring and enforcement activities, by introducing new offences and high penalties, and by giving authorised persons expanded powers to make enquires, share information with other enforcement agencies and take immediate action to prohibit unlawful activities;
- introduce new restrictions on the supply and use of smoking products, to assist smokers to quit the habit and reduce opportunities for children to access smoking products at home, in retail outlets and at liquor licensed premises;
- introduce new restrictions in designated outdoor smoking areas (DOSAs) at liquor licensed venues, to prohibit children remaining in a DOSA and require smoke-free buffer zones between a DOSA and the enclosed venue areas;
- modernise the advertising, display and promotion provisions in the Act, including clearer regulation of the display of smoking product-related signage, images and business names and for online marketing of smoking products;
- limit exposure to direct and second-hand smoke at places where families and communities gather, including outdoor eating and drinking places and outdoor markets;
- protect children from direct and second-hand smoke at and near school facilities, and at organised outdoor recreation activities; and
- make other minor and technical amendments to improve the operation of the Act.

Key reforms in the Bill, and how these reforms achieve the policy objectives, are outlined below.

Introduce a licensing scheme for wholesale and retail supply of smoking products

To monitor or enforce compliance with the Act, the chief executive may require a wholesaler of smoking products to provide information about any retailers that have been provided with smoking products within the past 12 months. This process is cumbersome, as it relies on wholesalers to provide data and Queensland Health to collate and analyse the data. It does not yield real-time data and requires an entirely separate process to make individual follow-up enquiries with the identified retail sellers. It is also not suited to the growing electronic cigarette (e-cigarette) market, where there is no reliable list of wholesalers and an increasing amount of illicit products entering the market.

The Bill introduces a licensing scheme for wholesale and retail sellers of smoking products. The scheme will enable Queensland Health to identify and monitor the number, type and location of wholesalers and retailers, which will facilitate compliance activities and targeted industry education and engagement.

A retail licence authorises the sale of smoking products by retail sale. A wholesale licence authorises the sale of smoking products by wholesale, but only to licensed retailers. Both types of licenses authorise sales at one outlet and one online shop, with additional outlets or online shops requiring separate licences.

Before granting a wholesale or retail licence, the chief executive must be satisfied the person is a fit and proper person to hold the licence. This includes consideration of whether the applicant holds or previously held a licence under the Act, any specific conditions attached to the licence and whether the licence was ever suspended or cancelled. Previous convictions are a relevant consideration (for example, breaches of the Act or serious offences involving fraud and dishonesty). Compliance with any state or Commonwealth smoking product laws, and any instance of insolvency, administration, receivership, liquidation or disqualification from managing corporations would also be considered. The chief executive may grant the licence with or without conditions.

When an application for a licence is declined, or a licence is cancelled, no further application for a licence may be made for six months.

It will be an offence to sell a smoking product by wholesale or retail without a licence and an offence for a wholesaler to sell to an unlicensed retailer. The penalty for these offences will be 1,000 penalty units, which is higher than other penalties in the Act. However, this reflects calls from the retail supply industry for significant penalties, as a commercial disincentive for unscrupulous persons to enter the highly-profitable trade in illicit tobacco. These penalties are also consistent with the penalty for operating without a licence under other health legislation in Queensland, including the *Pest Management Act 2001*, the *Tattoo Industry Act 2013* and the *Food Act 2006*.

The chief executive will be empowered to request information from a licence holder about the chemical composition of any smoking product sold or available for sale through their business.

All licences will be granted for up to one year and may be renewed annually. Wholesale and retail sellers will each be charged an annual flat fee per licence issued or renewed. These fees are intended to ensure full cost recovery of the licensing infrastructure and the related education, monitoring and enforcement activities. The annual renewal process will also provide an opportunity to update the broad industry profile and information held about individual sellers.

The scheme will provide a strong incentive for industry to maintain compliance standards, to avoid having their licence suspended or cancelled or conditions imposed on their ability to sell. The pre-licence suitability assessment may deter unscrupulous operators from operating in the market. The chief executive will also establish and maintain a register of licences, which will be published on the Department's website.

As approximately half of liquor licensed premises sell smoking products, they will also be captured by the licensing scheme. Where the holder of a liquor licence intends to sell smoking products at their premises, they will automatically be granted a retail licence on application.

This recognises the level of regulation already applying to liquor licensees under the *Liquor Act 1992*. However, the chief executive may refuse to grant a retail licence (liquor) if the applicant's liquor licence is suspended or cancelled, or they have had a previous retail licence (liquor) suspended or cancelled. Also, the Bill restricts their sale of smoking products to only the licensed premises (that is, they cannot sell from an online shop).

The streamlining of wholesale supply chains means many small retailers in rural and remote areas cannot obtain smoking products from wholesalers. This has the potential to disadvantage these retailers relative to larger retailers in more urban areas. To address this, the Bill allows for a 'limited wholesale condition', authorising a retail licensee to on-sell small amounts of smoking products to these rural and remote retailers, provided such on-selling is not their primary business activity. This option prevents the supplying urban retailer requiring both a retail and wholesale licence in those circumstances.

Where the holder of a licence breaches the Act or a condition of their licence, the chief executive may suspend or cancel the licence. In addition, the chief executive may cancel a licence where the licensee is no longer a fit and proper person to hold a licence or the licensee is placed in administration, wound up or deregistered under the *Corporations Act 1990*. Before taking this disciplinary action, the chief executive must follow a show cause process.

If a person is adversely affected by a decision of the chief executive, they may first seek an internal review of the decision. Examples of these decisions include the outcome of applications for grant, renewal, restoration or amendment of a licence and the imposition of conditions on a licence. Other examples include the outcome of a show cause process arising from the chief executive's power to amend, suspend or cancel a licence.

If not satisfied with the outcome of the internal review, an affected person may seek an external review by the Queensland Civil and Administrative Tribunal (QCAT).

The offence of unlicensed supply will commence on 1 September 2024, giving wholesalers and retailers twelve months to obtain a licence.

Implementing a licensing scheme will align Queensland with other Australian jurisdictions. South Australia (SA), Northern Territory (NT) and Tasmania licence retail suppliers, Western Australia (WA) and Australian Capital Territory (ACT) licence both wholesalers and retail suppliers, and New South Wales (NSW) has a registration scheme for retail suppliers and restricts wholesalers to selling only to registered retail suppliers. There is no licensing scheme in Victoria.

Prohibit the supply of smoking products by children

The Act prohibits the supply of a smoking product to a person under the age of 18 years. However, there is no restriction on the age at which a person may supply a smoking product to another person. Child employees who sell smoking products may grow to view smoking as normal behaviour and become familiar with brand names. They are also exposed to the variety of smoking products available. In addition, they may face peer pressure to illegally supply smoking products to other children.

The Bill amends the Act to prohibit the supply and handling of smoking products by children. WA and NT have similar prohibitions. The prohibition will commence on 1 September 2024,

giving retailers twelve months to adjust their practices and staffing. For small businesses (such as those employing less than 20 people) the commencement date will be 1 September 2025.

If a child employee supplies a smoking product, they do not commit an offence. Instead, the employer would be liable unless, prior to the supply, they took prevention measures to avert the supply (for example, providing instructions to the person and obtaining their written acknowledgement).

Prohibit the supply of smoking products to children by parents and guardians

The Act prohibits the supply of smoking products to children. However, no offence is committed if the supplier is a responsible adult for the child, such as a parent or guardian.

The supply of smoking products to children by family and friends contributes to smoking initiation, experimentation and progression to regular smoking.

The Bill amends the Act to remove the exemption that prevents a responsible adult committing an offence if they supply a smoking product to a child. No other Australian jurisdiction provides an exemption for parents and guardians supplying smoking products to children.

This amendment may raise concern that it criminalises parents or guardians. However, the intended enforcement approach will focus on monitoring, prevention and education, rather than prosecution of the parent or guardian.

Limit the supply of smoking products at liquor licensed premises to service areas

There are an estimated 800 tobacco product vending machines in licensed premises across Queensland. They offer ease of access to smoking products, which are known to trigger recent quitters to relapse and social smokers to increase their smoking. Given the strong association between alcohol and tobacco consumption, the presence of such machines in licensed premises exacerbates these risks.

The Bill amends the Act to only allow the supply of smoking products from a service area, such as a bar or bottle shop. Service area staff will be required to accept payment and retrieve the requested product from either a suitable cabinet or a tobacco product vending machine that has been relocated to an area not accessible by patrons. In either situation, as supply will be from a service area, the display restrictions in the Act will also apply.

The prohibition will commence on 1 September 2024, giving licensed premises twelve months to adjust their practices and physical environment.

Tasmania has a similar restriction, tobacco vending machines in NSW and SA must have a staff intervention mechanism and the ACT bans vending machines entirely.

Modernise advertising, display and promotion provisions to improve clarity and consistency

The Act regulates the advertising, display and promotion of smoking products and most of these provisions have been strengthened over time. However, the provisions were designed primarily for the sale of tobacco products at bricks-and-mortar outlets and have not kept pace with emergent retail practices, products and initiatives.

Suppliers are increasingly using digital marketing to reach new customers. The Bill clarifies that the restrictions on display, advertising or promotion of smoking products include where this is done online.

At a retail point of sale, the supplier must display a mandatory sign (for example, ‘it is an offence to supply a smoking product to a person under the age of 18’) and may display a permitted sign (that is, ‘smoking products sold here’). However, some suppliers are displaying multiple permitted and/or mandatory signs. Even signage designed to raise awareness of the dangers of smoking is useful in calling attention to the availability of smoking products. The Bill will clarify that a supplier may only display one of each sign.

Reference to a smoking product in a supplier’s business name does not breach the prohibition on advertising or display. However, some suppliers have begun registering additional business names which reference different types of smoking products. The Bill clarifies that a supplier must not display multiple business names that each reference a smoking product.

There are numerous terms used to describe e-cigarettes and their related products. These include descriptors of how they differ from more traditional tobacco-based smoking products (for example, ‘smokeless products’) or colloquial names (for example, ‘vapes’), all of which may appeal to their growing youth market. The Bill clarifies that the prohibition on advertising also captures these terms.

Supply of a smoking product for free is prohibited if the supply promotes the sale of a smoking product. However, there is a growing trend for e-cigarette ‘sample bags’ to be sold at a dramatically-reduced price (such as five cents). This practice is designed to further capture the growing youth market for these products. The Bill clarifies that a nominal fee, such as a very small amount which is much less than the recommended retail value, will also be considered ‘free’ for the purpose of supply.

A retail outlet must not display an image promoting the use of a smoking product. The Bill clarifies that this includes any type of image promoting use of a smoking product, whether it is fixed, moving or within a video.

All other Australian jurisdictions have similar legislation. While the detail of legislation varies from state to state, they are all intended to ensure the restrictions on display, advertising and promotion of smoking products remain modern and effective.

Prohibit the supply and possession of illicit tobacco

Smoking products must be in plain packaging, as prescribed in the *Tobacco Plain Packaging Act 2011* (Cth). The packaging must also contain graphic health warnings, as prescribed in the *Competition and Consumer (Tobacco) Information Standard 2011*, made under the *Competition and Consumer Act 2010* (Cth). These potent and unapologetic requirements are proven prevention strategies. Smoking products not complying with these Commonwealth requirements are called ‘illicit tobacco’.

Illicit tobacco is often illegally imported, meaning it may be sold cheaply as excise taxes would not be paid (however, the relevant Commonwealth taxation offence is not replicated in the Bill as a law of Queensland). By seeking to profit from the evasion of standard retail requirements, this growing trade in illicit tobacco is causing significant detriment to compliant businesses

and to public health. Accordingly, the Queensland retail sector strongly supports more state-based enforcement action to prevent the supply of illicit tobacco in a retail environment.

The Bill amends the Act to prohibit the supply of illicit tobacco. This will extend the existing powers of authorised persons under the Act to take the necessary monitoring and enforcement action, including seizing illicit tobacco. The Bill empowers the chief executive, following a show cause process, to forfeit seized illicit tobacco without first taking prosecution action. Further, by allowing additional Commonwealth laws to be prescribed by regulation, the Bill anticipates the possibility of tighter national requirements being introduced for e-cigarettes.

The Bill also makes it an offence to store or possess illicit tobacco at a retail outlet. It is a defence to establish that the product was for personal use, although this defence does not apply if the product was present in a commercial quantity (as prescribed by regulation).

Require smoke-free buffer zones between a designated outdoor smoking area and the enclosed venue areas

The Act allows the licensee of certain liquor licensed premises to have a designated outdoor smoking area (DOSA), being part of the licensed outdoor area in which smoking may occur. Eligible premises are those holding a commercial hotel, community club or special facility (casino) licence.

Smoke drift from a DOSA into enclosed areas of the premises further contributes to the risk of second-hand smoke exposure. Accordingly, the Act requires a DOSA to have a buffer zone on its perimeter wherever it is adjacent to other parts of the outdoor area.

However, the Act does not require a buffer to the perimeter of a DOSA adjoining an enclosed area. Examples of this include a shared wall between the two spaces, often with an access door, or large bi-fold doors separating the spaces. When doors are open, there is insufficient separation between the DOSA and the enclosed non-smoking area to prevent smoke drift.

The Bill amends the Act to extend the existing buffer requirement to include a perimeter of the DOSA which is adjacent to an enclosed area of the premises. For situations where this perimeter is or includes an access door, the liquor licensee must ensure the door is closed when not being used by patrons to enter or exit the DOSA. Where the perimeter includes a window, it must remain closed at all times when the DOSA is operating. Most other jurisdictions prescribe a buffer between their equivalent of a DOSA and the non-smoking areas of the premises.

Prohibit children being in a DOSA

The Act does not restrict the persons who may enter a DOSA, including children. The Bill amends the Act to require the liquor licensee to ensure that no child remains in the DOSA. If the DOSA is a thoroughfare, a child may only transit through it, not remain there. This will reduce children's exposure to second-hand smoke and reduce the appeal of DOSAs for patrons at the premises caring for children. The ACT prohibits children accessing their equivalent of a DOSA.

Introduce a smoke-free buffer zone around outdoor eating or drinking places

The Act prohibits smoking at an outdoor eating or drinking place, that is, an open-air place where persons may consume food or drink provided from an on-site food service. Such places take many forms, including agricultural shows. Given the prohibition only extends to the perimeter of the outdoor eating or drinking place, there is potential for smoke drift from outside the place. This exposes patrons to the risk of second-hand smoke.

The Bill amends the Act to impose a five-metre buffer zone around the perimeter of the outdoor eating or drinking place. Although it will be an offence for patrons to smoke in the buffer zone, the person in charge of the outdoor eating or drinking place will not be liable for any contraventions. All other jurisdictions prohibit smoking at outdoor eating or drinking places, with NSW and Tasmania also imposing buffer zones around the perimeter of the place.

Introduce a smoke-free buffer zone around smoking-only areas in outdoor eating or drinking places

At an outdoor eating or drinking place, smoking may only occur in an area which is clearly designated as somewhere that food and drink may not be consumed. There is potential for smoke drift from a smoking-only area, which again exposes patrons to the risk of second-hand smoke. Where smoking-only areas are adjacent to an on-site service, the food service staff are also at risk from second-hand smoke.

The Bill imposes a two-metre buffer zone around any smoking-only area. In this buffer zone, patrons at the outdoor eating or drinking place are not permitted to eat, drink or smoke and no entertainment can be offered. It will be an offence for patrons to smoke in the buffer zone. The person in charge of the outdoor eating or drinking place will also be held liable for any contraventions as they would occur inside the perimeter of the venue. Victoria and NSW impose non-smoking buffer zones in relation to food stalls or food vendors in certain situations.

Prohibit smoking at outdoor markets, with provision for smoking areas

Outdoor markets are common across Queensland. The usual high-density arrangement of market vendors increases the risk of second-hand smoke exposure for patrons, which often includes families with children, and vendors themselves. In addition to outdoor eating or drinking places, the Act regulates smoking at a variety of ‘other outdoor places’. However, given the diverse functions and locations of outdoor markets, the smoking restrictions in the Act apply inconsistently across different markets and even within the same market.

The Bill prohibits smoking within an outdoor market. Smoking will also be prohibited within a five-metre buffer zone from any clearly-defined entrance and/or exit to the market.

The market organiser may set aside a smoking area within the outdoor market. However, there must be a five-metre buffer zone between any smoking area and other parts of the market. Smoking is prohibited in the buffer zone, and patrons are not permitted to eat or drink in the smoking area or the buffer zone. In addition to penalties for patrons who breach any of the smoking prohibitions or fail to comply with a direction from an authorised person, the market organiser will be held liable for contraventions.

All other jurisdictions have restrictions on smoking at outdoor eating or drinking places which could similarly apply to outdoor markets. Also, as noted above, Victoria and NSW impose non-smoking buffer zones in relation to food stalls or food vendors.

Prohibit smoking at children's organised activities

The Act prohibits smoking at or near sporting events for children. This protects children who, while participating in organised outdoor sports, may be exposed to second-hand smoke from adults delivering the activities or from spectating family and friends.

However, 'sport' does not capture other structured, group-based outdoor pursuits for children, including Scouts, Girl Guides, or the Boys' or Girls' Brigades, where the risk of second-hand smoke may also arise. The Bill extends the existing smoking prohibition to include other organised children's activities, where they are conducted outdoors by an association or club. However, this does not include excursions into general community areas, a street parade or attendance at a public event. No other jurisdiction specifically prohibits smoking in relation to children's organised outdoor activities.

The existing requirement for a ten-metre buffer zone around the place where the activity is conducted will also apply. However, the Bill clarifies that if the organised children's activity was conducted at, for example, one end of a large park, the buffer zone will be around the area used for the activity, rather than the entire park.

Prohibit smoking at carpark adjacent to a school facility and provided for school community use

The Act prohibits smoking at school facilities and within a five-metre buffer zone beyond the perimeter of the school land. Many schools have a carpark located adjacent to school land which is used for student drop-off and collection, and for parents and visitors attending school events.

Schools report that parents and caregivers have been observed smoking at their cars while they wait for children. As the five-metre buffer zone may not cover the full area of these carparks, the Bill extends the existing smoking prohibition to include carparks adjacent to a school facility and provided for school community use. No other jurisdiction prohibits smoking in areas adjacent to a school, including a carpark.

Minor and technical amendments

The Bill makes minor and technical amendments to improve the operation of the Act.

The Bill includes the Australia Post Keypass identity card as acceptable evidence of a person's age. This is a relatively new form of identification and its inclusion will ensure the Act keeps pace with retail supply practices.

The Bill clarifies that a person who is smoking does not commit an offence if they are merely passing through a smoke-free government precinct without stopping. This recognises the number and proximity of government buildings in certain locations and is consistent with similar transit defences in the Act in relation to a public transport waiting points or the entrance to an enclosed space.

The Act regulates hookahs. When the requirements in the Act were designed, only certain cultural groups used these items. However, the use of hookahs is now widespread and increasingly targets the youth market.

The Bill expands the existing prohibition on the display of more than three hookahs, to deem the display of packaging in which a hookah is supplied, or an image of a hookah or part of a hookah, to be a display of the hookah. This will stop suppliers exploiting a loophole in the Act which allows them to, in effect, display more product than otherwise permitted.

Under the general definition of ‘smoking product’ in the Act, a non-tobacco substance which may be smoked in a hookah is captured (for example, shisha stones). However, the definition of ‘smoking product’ for the advertising, display and promotion provisions does not include these non-tobacco substances. To close this loophole, this specific definition is amended so it aligns with the general definition.

The Act prohibits smoking in a national park. However, the size and remoteness of national parks makes compliance activities difficult for Queensland Health. The Bill deems a conservation officer appointed under the *Nature Conservation Act 1992* to be an authorised person under the Act for the purpose of monitoring and enforcing compliance with this prohibition. In discharging this function, conservation officers will be subject to directions from the chief executive for the Nature Conservation Act.

Alternative ways of achieving policy objectives

The policy objectives are not intended to limit or remove a person’s choice to smoke. Rather, they seek to reduce the known harm arising from exposure to second-hand smoke, create environments which support attempts to quit smoking, and target practices and products which may contribute to persons, especially children, taking up smoking.

On 30 May 2022, the Consultation Regulatory Impact Statement (RIS) *Reducing the negative effects of smoking in Queensland* was released for public comment. The Consultation RIS canvassed a series of significant smoking-related issues, and provided a range of options for addressing each. These options included maintaining the status quo, education campaigns, industry self-regulation and legislative change. Given that smoking rules in Queensland are prescribed in the Act, and there is an imperative on government to take strong action to minimise risks to the community, the recommended options involved legislative change. When feedback on the Consultation RIS was analysed, it was found that stakeholders generally supported these recommended options.

In relation to the introduction of a licensing scheme, the Consultation RIS considered three options for improved monitoring and enforcement of smoking product supplies:

1. status quo;
2. introduce a registration scheme for wholesale and retail suppliers of smoking products; or
3. introduce a licensing scheme for wholesale and retail suppliers of smoking products.

The recommended option was the introduction of a licensing scheme for wholesale and retail suppliers, which was supported by both retail groups and the broader community.

Option 1 would not deliver the policy objective of effective monitoring of smoking product supply in Queensland. It would also not improve market understanding, to enable effective

communication with smoking product retailers and compliance monitoring of the industry overall. Further, it provided no mechanism to identify e-cigarette suppliers.

Option 2 would provide Queensland Health with useful information regarding suppliers of smoking products. However, this option would only partially achieve the objective, as registration was a once-off requirement, meaning the currency of data may diminish over time.

Option 3 was the recommended option and was found to be most likely to achieve the objective in an effective and efficient manner. A licensing scheme for wholesalers and retailers of smoking products would improve the currency of information about the industry and provide meaningful compliance mechanisms. The payment of licence fees would also contribute to the cost of administering and enforcing the retail smoking product laws.

In relation to a number of amendments to existing provisions in the Act, such as the DOSA provisions, provisions relating to buffer zones and technical amendments, these are best clarified or expanded through legislative change rather through alternative means.

Estimated cost for government implementation

Queensland Health will incur costs in implementing the amendments proposed in the Bill, including new signage and education campaigns for both industry and the community. Ongoing monitoring and enforcement activities will also be required to ensure compliance with the proposed new restrictions and prohibitions. These costs will be met within existing resources and infrastructure.

A key amendment proposed in the Bill is the introduction of a new licensing scheme for wholesalers and retail sellers of smoking products, including an initial licence fee and annual renewal fee. These fees are intended to ensure full cost recovery of the licensing infrastructure.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. However, several clauses may potentially impact on particular principles. The potential departures from fundamental legislative principles are discussed below and are considered justified to support improving the health of Queenslanders by reducing their exposure to tobacco and other smoking products. All potential departures have been carefully considered and wherever possible the impact of the potential departures have been minimised.

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992, s 4(2)(a)*)

The Bill contains several clauses that potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals.

Personal information collected for licencing scheme

For legislation to have sufficient regard to rights and liberties of individuals, a person's right to privacy should be protected as far as is practicable. The Bill proposes amendments in relation to the use and disclosure of personal information, which may impact on a person's right to privacy.

Clause 7 of the Bill introduces new Part 1A and a new licensing scheme for wholesale and retail sellers of smoking products. In deciding whether to grant a licence, the chief executive will consider whether the applicant is a fit and proper person. The personal information about the applicant which may be used in this assessment includes (clause 7, new section 7ZC):

- whether the person holds, or has held, another licence under the Act and whether that licence was subject to conditions or was ever suspended or cancelled;
- whether the person has contravened the Act or been convicted of an indictable offence or a serious offence (for example, one involving fraud and dishonesty);
- whether the person has breached the laws of another state or territory in relation to the wholesale or retail sale of smoking products;
- whether the person is, or has been, insolvent under administration or disqualified under the Corporations Act from managing a corporation;
- any other matter the chief executive considers relevant.

The Act restricts the supply of smoking products and in some instances prohibits their supply. The new licensing scheme will facilitate enhanced compliance monitoring and ensure operators comply with the requirements of the Act. The provision of certain personal information during the application process is necessary for effective implementation of the new licensing scheme and therefore justified.

The Bill introduces new offences which prohibit:

- the supply of smoking products by children (clause 10);
- the supply of smoking products to children by parents and guardians (clause 17); and
- children remaining in a DOSA at liquor licensed premises (clause 43).

The proposed offences are intended to stop children from active smoking and protect them from exposure to second-hand smoke. To determine whether one of these offences has been committed, an authorised person under the Act may need to request personal information from a person to determine their age.

The Act already empowers an authorised person to require evidence of a person's age, and the proposed offences are consistent with other offences in the Act (for example, prohibiting the supply of smoking products to children). Reducing second-hand smoke exposure and preventing the uptake of smoking by children are both strong public health objectives. As such, requesting personal information to determine age is justified.

Offence provisions

For legislation to have sufficient regard to the rights and liberties of individuals, new offences should be appropriate and reasonable, and the penalty should be proportionate to the wrong occasioned by the breach. The Bill proposes amendments which impose new requirements, a breach of which creates an offence. The Bill also extends existing offence provisions to cover additional circumstances.

The new and extended offences in the Bill include:

- sale of a smoking product without a licence (1,000 penalty units) (clause 9, new section 9B);
- wholesale sale of a smoking product to an unlicensed retail seller (1,000 penalty units) (clause 7, new section 7ZN);

- the sale or transfer, or advertising for the sale or transfer, of a licence issued under the Act (200 penalty units) (clause 7, new section 7ZO);
- providing false or misleading information in an application for a licence under the Act (50 penalty units) (clause 7, new section 7ZP);
- failure of a licence holder to notify the chief executive within 14 days of conviction for an indictable offence (140 penalty units) (clause 7, new section 7ZI);
- failure to provide chief executive information requested which is necessary for the administration of the Act or to determine whether the person is a fit and proper person (50 penalty units) (clause 7, new section 7ZM);
- failure of a wholesale licence holder to issue an invoice when supplying a smoking product to a retailer seller (140 penalty units) (clause 7, new section 7ZL);
- failure of a wholesale licence holder to provide the chief executive information requested in relation to the supply of tobacco products to retailers (70 penalty units) (clause 12);
- supply of a smoking product by a child (140 penalty units for first offence, 280 penalty units for the second offence and 420 penalty units for a third or later offence) (clause 10);
- supply of a smoking product to a child by a parent or guardian (140 penalty units) (clause 17);
- tobacco product vending machine in licenced premises being in an area accessible by patrons (70 penalty units) (clause 14) and supply of smoking products at liquor licensed premises not being in a service area (140 penalty units) (clause 16);
- supply of illicit tobacco (300 penalty units) or storing or possessing illicit tobacco at a retail outlet (140 penalty units) (clause 50);
- child remaining in a DOSA (140 penalty units) (clause 43);
- not having a buffer zone between a DOSA and the enclosed venue areas of a liquor licensed premises (140 penalty units) (clause 42);
- smoking within the buffer zone around an outdoor eating or drinking place (20 penalty units) (clause 38) or around smoking areas in an outdoor eating or drinking place (20 penalty units) (clause 39);
- smoking at outdoor markets or within five metres of any clearly defined entrance and/or exit to the market (20 penalty units) (clause 46);
- smoking at a children's organised activity (20 penalty units) (clause 47); and
- smoking at car parks adjacent to a school facility (20 penalty units) (clause 31).

Other amendments clarify existing provisions, including those modernising the advertising, display and promotion restrictions to better capture online marketing. Although these amendments do not create new offences, suppliers may find that some of their existing practices are prohibited under the clarified provisions. Also, the existing offence of failing to comply with a direction from an authorised person has been extended to include directions which may be given in relation to some of the prohibitions inserted by the Bill.

The amendments proposed in the Bill are designed to protect the public from the dangers of second-hand smoke, support quit smoking campaigns and discourage people, particularly children, from taking up smoking. The offence provisions are necessary to ensure there are sufficient deterrents against non-compliance with these new restrictions and prohibitions.

Also, the offence provisions and their associated penalties are consistent with existing offences and penalties within the Act. The exceptions to this are the new (1,000 penalty unit) penalties for sale of a smoking product without a licence (clause 9) and for wholesale sale of a smoking product to an unlicensed retail seller (clause 7, new section 7ZN).

These higher penalties are consistent with the penalty for operating without a licence under other health legislation in Queensland, including the *Pest Management Act 2001*, *Tattoo Industry Act 2013* and *Food Act 2006*. It is anticipated that many persons supplying without a licence will be trading in illicit tobacco. This includes illegally-imported tobacco products and e-liquids manufactured in unsafe or uncontrolled conditions. These products would not meet Australian safety standards in relation to ingredients and concentrations and may contain dangerous toxins. Accordingly, the potential health implications for consumers justifies a high penalty. Also, the high penalties reflect calls from within the retail supply industry for significant penalties, as a commercial disincentive for unscrupulous persons to enter the otherwise highly-profitable trade in illicit tobacco.

Restriction of movement

For legislation to have sufficient regard to rights and liberties of individuals, a person's right to liberty and freedom of movement and association should be protected as far as practicable. The Bill proposes amendments imposing restrictions and prohibitions. Although the Bill is designed to protect the public by increasing smoke-free public places, some provisions may impact on a person's liberty and their right to freedom of movement and association. Such proposed amendments in the Bill include:

- imposing smoke-free buffer zones around the perimeter of outdoor eating or drinking places and around the smoking areas at such places (clauses 38 and 39);
- prohibiting smoking at outdoor markets, other than in smoking areas, and imposing smoke-free buffer zones around defined entrances and exits (clause 46);
- prohibiting smoking at children's organised activities (clause 47); and
- prohibiting smoking at carparks adjacent to a school facility and provided for school community use (clause 31).

Although the right to freedom of movement and association is not absolute, Parliament should not use its power to limit this right without a compelling reason. The amendments proposed in the Bill are designed to protect the public from the dangers of second-hand smoke, including in places where families, children and the community gather. Also, these restrictions and prohibitions only apply in certain specific circumstances and are mostly directed at persons choosing to smoke. For these reasons, the impact of these proposed amendments on liberty and the right to freedom of movement and association is minimised to the extent possible and considered justified.

Fit and proper person

Section 4(3)(a) of the Legislative Standards Act refers to legislation which makes liberties or obligations dependent on administrative power. It provides that such legislation may have regard to rights and liberties of individuals if the administrative power is sufficiently defined and subject to appropriate review.

Clause 7 introduces a new licensing scheme for wholesalers and retail sellers of smoking products. The scheme involves the following administrative powers:

- before granting a licence, the chief executive must consider whether the applicant is a fit and proper person;
- the chief executive may impose conditions on a licence, including when the licence is renewed or following a breach of the Act by the licensee or another event which impacts their suitability to continue holding a licence; and

- the chief executive may suspend or cancel a licence.

In deciding whether the applicant is a fit and proper person, the chief executive will be guided by the criteria prescribed in the Act. These criteria includes whether the applicant has been declared bankrupt, convicted of a serious offence or has contravened the Act.

There may be circumstances where although the applicant/licensee is still ‘fit and proper’, additional controls are required to ensure their compliance with the Act. In such a situation, the power to impose conditions allows the chief executive to grant or renew a licence or allow a licence to continue instead of being cancelled.

The powers may only be exercised in certain circumstances and according to prescribed criteria, with the necessary discretion for the chief executive to consider other relevant matters and impose conditions to address specific concerns.

Decisions of the chief executive are administrative decisions subject to review. If a person is adversely affected by a decision, they may seek an internal review, followed by an external review to QCAT. If the decision is to suspend, cancel or impose additional conditions on a licence, the licensee must be provided a ‘show cause’ notice and be given the opportunity to make submissions in response.

For these reasons, it is considered the administrative powers in the Bill are sufficiently defined to safeguard the rights and liberties of individuals.

Review of decisions relating to licences

Section 4(3)(b) of the Legislative Standards Act provides that legislation may have sufficient regard to rights and liberties of individuals if it is consistent with principles of natural justice.

This will include consideration of three principles:

- a person should have a right to be heard if they are to be deprived of some right, interest, or legitimate expectation of a benefit;
- a decision-maker must be unbiased; and
- procedural fairness should be afforded to the person.

The Bill, in clause 7, introduces a new licensing scheme for wholesalers and retail sellers of smoking products. As discussed above, this scheme empowers the chief executive to grant and renew licenses, with or without conditions, and take action, including cancellation, if the licensee is no longer considered a fit and proper person.

As part of the licensing scheme, it is intended that review rights will be embedded in the Act for persons who are adversely affected by a licensing decision. These review rights include an internal review conducted by Queensland Health, and an external review to QCAT. It is intended that external review by QCAT will only be available to applicants once the internal review process has been undertaken. If the decision is to suspend, cancel or impose additional conditions on a licence, the licensee must be provided a ‘show cause’ notice and be given the opportunity to make submissions in response.

The criteria and processes built into these powers are consistent with principles of natural justice.

Forfeiture of illicit tobacco

Section 4(3)(b) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with principles of natural justice.

Clause 56 inserts new section 42DF into the Act, empowering the chief executive to decide a seized thing is forfeited to the State if satisfied the thing is illicit tobacco. The illicit tobacco may be forfeited without first taking prosecution action.

If the illicit tobacco were returned, it may be used to facilitate commission of another offence as the illicit tobacco would be in the possession of the supplier. Therefore forfeiture is considered necessary to prevent such repeat offences.

Further, the seized items may be potentially harmful. Illicit tobacco is often illegally imported products which may have been manufactured in unsafe, uncontrolled and unregulated conditions. These often do not meet Australian safety standards in relation to ingredients and concentrations and may contain dangerous toxins.

Under the proposed provision, the supplier will be issued a show cause notice, giving the supplier an opportunity to respond to the chief executive's belief that the item seized is illicit tobacco and that keeping the item is necessary to prevent it being used to commit the offence for which it was seized. The outcome of the show cause process also gives the supplier a clear decision and reasoning, which may be used in any subsequent judicial review process. A supplier is also able to appeal a forfeiture decision to a Magistrates Court and the court may either confirm the original decision, substitute another decision for the original decision or set aside the original decision and return the matter to the chief executive with directions.

Similar provisions operate in New South Wales, under section 7A(6) of the *Public Health (Tobacco) Act 2008* (NSW). However, that provision differs as the owner of a seized item must initiate a request not to forfeit the item.

This provision is not intended to capture individuals possessing tobacco for personal use. The definition of illicit tobacco includes a smoking product that does not comply with the plain packaging or health warning requirements, or another requirement for the smoking product under a law of the Commonwealth. The forfeiture provision is only enlivened if there is an illegal supply or storage of illicit tobacco by a supplier under section 26ZQB. Given the objective elements of the offence, the chief executive is able to make an informed decision that they are satisfied the seized thing is illicit tobacco. In deciding whether keeping the item is necessary to prevent it being used to commit the offence for which it was seized, the chief executive may have regard to the circumstances in which the item was seized and the amount of illicit tobacco involved.

Queensland Health is the lead State regulatory agency in relation to the supply of smoking products. Its officers need clear, strong and decisive powers to ensure illicit tobacco is seized and then forfeited, so it may be removed from the community and not used in the commission of further offences. To require prosecution action every time seized illicit tobacco is forfeited would be inefficient and require significant agency resources. However, to ensure procedural fairness, forfeiture may only occur after a show cause process and any decision of the chief executive to forfeit is then subject to judicial review.

The proposed provision is similar to the forfeiture power in section 170 of the *Medicines and Poisons Act 2019*, although that provision does not include a show cause process.

These powers are necessary to ensure that things which are unlawful to supply are not made available for further offences and may be dealt with appropriately.

Entry into a place

Section 4(3)(e) of the Legislative Standards Act refers to legislation which confers power to enter premises, and search for or seize documents or other property. It provides that legislation may have regard to rights and liberties of individuals if the powers are only conferred by a warrant issued by a judge or other judicial officer.

The Act empowers an authorised person to enter a place with consent or pursuant to a warrant. They may also enter a public place, liquor licenced premises or a supplier's outlet without consent or a warrant. Following entry, the Act empowers the authorised person to seize anything they reasonably believe is evidence of an offence against the Act or is otherwise covered by the terms of the consent or warrant.

The Bill, at clause 50, prohibits the supply of illicit tobacco. Illicit tobacco means a smoking product which does not comply with the requirements for plain packaging or graphic health warnings, or another requirement for the smoking products under a law of the Commonwealth. The existing entry, search and seizure powers will apply to cover monitoring and enforcement activities in relation to these new prohibitions.

The requirements for plain packaging and graphic health warnings are proven prevention strategies designed to protect the public from the dangers of active smoking and exposure to second-hand smoke. Although new to the Act, they mirror longstanding Commonwealth requirements. To ensure effective monitoring and enforcement activities and enable immediate removal of non-compliant smoking products from the marketplace, extending the existing powers of authorised persons is considered necessary and justified.

The Bill, at clause 52, also empowers an authorised person to remain in premises for a reasonable period to exercise a power or check compliance with an improvement notice, regardless of whether the business continues being open to the public. This amendment is a direct response to the actions of some retailers in declaring their premises to be closed mid-inspection, to deliberately frustrate an authorised person's attempt to administer the Act. As these new powers in the Bill are sufficiently defined to safeguard the rights and liberties of individuals, they are also considered necessary and justified.

Requesting further information

Section 4(3)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation provides adequate protection against self-incrimination.

New section 7ZM (clause 7) requires a licensee to comply with a request from the chief executive to provide additional information, unless they have a reasonable excuse. As self-incrimination is not specified as an allowable reasonable excuse, the provision may be considered not to provide appropriate protection against self-incrimination.

Former Parliamentary Committees have found that it may be justifiable to abrogate the privilege against self-incrimination in instances where Parliament considers the public interest is elevated over individual interests (for example, where it is more important to determine the facts of a matter). Also, in *Pyneboard Proprietary Limited v Trade Practices Commission* (1983) 152 CLR 328, Mason A-CJ and Wilson and Dawson JJ observed that privilege may be abrogated:

... when the object of imposing the obligation [for example, answering questions or producing documents] is to ensure the full investigation in the public interest of matters involving the possible commission of offences which lie peculiarly within the knowledge of persons who cannot reasonably be expected to make their knowledge available otherwise than under a statutory obligation.

The information sought in the section is required to determine whether the licensee is a fit and proper person under section 7ZC or is considered necessary by the chief executive for the administration of the Act. This may include information tending to incriminate the person, which is information peculiarly within the knowledge of the licensee. Despite this, the provision allows the licensee to not comply with the requirement if they provide a reasonable excuse, which could include self-incrimination depending on the circumstances.

The personal information sought by the chief executive is necessary for the effective implementation of the new licensing scheme. In particular, the information may be relevant to a key aspect of the scheme, being whether someone is a fit and proper person to hold, or continue holding, a licence. This power is considered necessary and justified.

Whether the legislation has sufficient regard to the institution of Parliament (Legislative Standards Act 1992, s 4(2)(b))

Under section 4(2)(b) of the Legislative Standards Act, legislation must have sufficient regard to the institution of Parliament.

Prescription of fees and invoice details by regulation

Section 4(4)(a) of the Legislative Standards Act provides that legislation has sufficient regard to the institution of Parliament if it allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The Act (section 53) provides a regulation-making power, and the Bill expands this (clause 61) to allow a regulation to be made prescribing fees for the proposed licensing scheme.

As fees are administrative and subject to change, to accommodate CPI increases and other factors, they are commonly prescribed by regulation for ease of updating as needed. Therefore, the proposed approach to prescribe fees for the licensing scheme by regulation is considered appropriate.

New section 7ZL (clause 7) requires a wholesale licensee, or a retail licensee with a limited wholesale condition, to provide an invoice upon supply. The section provides that the content of the invoice will be prescribed by regulation. Given all invoices are likely to contain the same basic information, this delegation of power might be considered to be inappropriate and unnecessary, as this information could probably be prescribed in the Act itself.

However, to ensure the information required on an invoice may be easily updated as needed, the details are best particularised by regulation. There is also benefit to suppliers by having all the requirements for an invoice in the regulation, as this will assist them to understand their obligations. The proposed delegation of legislative power is considered appropriate.

Consultation

Most of the amendments in the Bill arise from the preferred options canvassed in the Consultation RIS *Reducing the negative effects of smoking*, which was released for public comment on 30 May 2022. Responses were received from members of the public, businesses, peak bodies, health agencies and health researchers. The results were published in the Decision RIS *Reducing the negative effects of smoking in Queensland*, dated September 2022.

Targeted consultation on a draft of the Bill has also been undertaken with representative associations for children's outdoor activity providers, agricultural shows and farmer's markets, restaurants and retailers, hotels and clubs, public health organisations, academic centres and Aboriginal and Torres Strait Islander health organisations.

Consistency with legislation of other jurisdictions

The regulation of smoking and smoking products is mostly a state and territory responsibility. All Australian jurisdictions have legislated requirements for the supply of smoking products and have related processes in place to monitor compliance with these controls. All Australian jurisdictions also have legislation in place restricting advertising and promotion of smoking products at retail outlets. While the intention of bans on advertising and display is very similar across states and territories, provisions vary significantly in design and drafting.

The Bill makes it an offence under Queensland law to supply a smoking product not complying with Commonwealth requirements, including the plain packaging and health warning requirements. This is already an offence under Commonwealth law. To the extent there is any inconsistency between Commonwealth law and the law of a state or territory, the Commonwealth law would prevail.

However, the *Tobacco Plain Packaging Act 2011* (Cth) expressly does not exclude or limit the operation of a relevant state or territory tobacco law which is capable of operating concurrently. The term 'relevant tobacco law' includes a provision regulating the retail packaging or appearance of tobacco products. In relation to the *Competition and Consumer Act 2010* (Cth), NSW and WA have each enacted concurrent laws prohibiting the supply of tobacco products without the mandatory health warnings. Also, the Commonwealth supports the states taking an active role in responding to these issues.

Notes on provisions

Part 1

Short Title

Clause 1 states that the short title of the Act will be the Tobacco and Other Smoking Products Amendment Act 2023 (the Amendment Act).

Commencement

Clause 2 provides for the commencement of certain sections of the Amendment Act. Sections 27 to 41, 45 to 48, 51(1) and (3), 54, 58, 64 and 66(3) commence on 1 September 2023. Sections 42 and 43 commence on 1 July 2024. Sections 8 to 11, 13 to 16, 51(4), 65 and 66(4) and (5) commence on 1 September 2024.

Part 2 **Amendment of Tobacco and Other Smoking Products Act 1998**

Clause 3 states that this part amends the *Tobacco and Other Smoking Products Act 1998* (the Act).

Clause 4 inserts a new paragraph in section 3A of the Act, expanding how the objects of the Act will be achieved by ‘establishing a licensing scheme for the sale of smoking products, including a disciplinary scheme for licensees’.

Clause 5 provides for the meaning of a retail outlet and wholesale outlet.

A retail outlet is premises at which smoking products are available for sale by retail. Each retail outlet is taken to be a separate retail outlet regardless of ownership, any trading name or franchise agreements relating to the premises. A wholesale outlet is premises from which smoking products are available for sale by wholesale. Each wholesale outlet is taken to be a separate wholesale outlet regardless of ownership, any trading name or franchise agreements relating to the premises.

Clause 6 provides that an Australia Post Keypass is a document that is acceptable evidence of the age of a person.

Insertion of new Part 1A

Clause 7 introduces new Part 1A into the Act, titled ‘Retail and wholesale licences’.

The introduction of a licensing scheme allows Queensland Health to engage with the industry, ensure their compliance with legal obligations and design targeted health and community education initiatives. It also allows Queensland Health to monitor trends in the supply of smoking products.

New section 7A inserts definitions for the part for the terms ‘Australian registered body number’, ‘firm-name’, ‘information notice’, ‘licensed retailer’, ‘limited partner’, ‘online sale’,

‘retailer’, ‘retail licence’, ‘retail licence (liquor)’, ‘retailer’, ‘specific conditions’ and ‘wholesale licence’.

New section 7B(1) provides information about a retail licence. A retail licence authorises the licensee to sell smoking products to the public by retail from one retail outlet or one online shop. Selling smoking products from more than one retail outlet or online shop requires additional retail licences.

New section 7B(2) provides that if an online shop is for online sales from one retail outlet, a retail licence authorises the licensee to sell smoking products by retail from both the online shop and the retail outlet. Further, the authorisation under a retail licence (liquor) is limited to selling smoking products to customers at one liquor licensed premises.

New section 7B(3) provides for a limited wholesale condition where a retail licence may be expanded by a specific condition authorising the licensee to sell limited quantities of smoking products by wholesale to smaller licensed retailers.

New section 7C(1) provides information about a wholesale licence. A wholesale licence authorises the licensee to sell smoking products by wholesale, to licensed retailers only, from one wholesale outlet or one online shop. Selling smoking products from more than one wholesale outlet or online shop requires additional wholesale licences.

New section 7C(2) provides that if an online shop is for online sales of smoking products from one wholesale outlet, a wholesale licence authorises the licensee to sell smoking products by wholesale from both the online shop and the wholesale outlet.

New section 7D provides conditions of retail or wholesale licences. A retail or wholesale licence is subject to conditions imposed on the licence by the chief executive under this part. These are known as specific conditions.

A retail or wholesale licence is also subject to conditions prescribed by regulation and these are known as general conditions.

New section 7E provides that a retail or wholesale licence ceases to have effect if the licence is cancelled or surrendered or the business or the licence is sold. During any period of suspension of the licence, a retail or wholesale licence does not have effect.

A retail licence (liquor) also ceases to have effect if the related liquor licence is cancelled or surrendered. A retail licence (liquor) does not have effect during any period of suspension of the related liquor licence.

Division 3 Application and grant

New section 7F provides that the owner of a business that proposes selling smoking products, may apply to the chief executive for a retail or wholesale licence. A licence may also be applied for by an individual, corporation or partnership that proposes to establish a business that is intended to sell smoking products or an individual, corporation or partnership that proposes to purchase a business that sells smoking products.

Retail licences will be required for all retail settings where smoking products are sold.

If smoking products are proposed to be sold from liquor licensed premises, the application must be for a retail licence (liquor) and only the liquor licensee for liquor licensed premises may apply to the chief executive for the licence.

If the applicant is a partnership, the partners must make the application jointly.

New section 7G provides that the application for a retail or wholesale licence must be made in the approved form and lists a number of other requirements. The application must be accompanied by the fee prescribed by regulation.

If a person applies for a retail and wholesale licence, two separate applications are required.

If the applicant is a corporation, the application must include sufficient information to identify the directors of the corporation.

If the application is made by a partnership, the application must nominate either the firm name or the Australian registered body number, include identifying information for each partner and identify any limited partners.

New section 7H requires the chief executive to reject an application for a retail or wholesale licence if the applicant applied for a retail or wholesale licence in the previous six months and the application was refused or the applicant held a retail or wholesale licence that was cancelled within the previous six months.

New section 7I states that the chief executive may grant an application for a retail or wholesale licence only if satisfied the applicant is a fit and proper person to be a licensee. If the application is made by a partnership, the chief executive may grant the application if satisfied each partner is a fit and proper person to be a licensee.

For a retail licence (liquor) application, the chief executive must grant an application if the applicant is the liquor licensee for the liquor licensed premises at which smoking products are proposed to be sold. This recognises the level of regulation already applying to liquor licensees under the *Liquor Act 1992*. The chief executive may refuse to grant an application for a retail licence (liquor) in certain circumstances. New section 7I(5) sets out conditions for a limited wholesale condition to be granted.

New section 7J provides that the chief executive must decide to either grant or refuse an application for a retail or wholesale licence and may impose conditions on the licence.

If the applicant is not yet the owner of the business to which the application relates, the chief executive may grant the application on the condition that the applicant becomes the owner of the business.

New section 7K provides that chief executive must give the applicant notice of the decision for an application for a retail or wholesale licence and must be an information notice if the licence is granted with specific conditions or is refused.

New section 7L provides for the term of a retail or wholesale licence as one year or a shorter period stated in the licence and agreed to by the licensee.

Division 4 Renewal and restoration

New section 7M provides that before a retail or wholesale licence expires, a licensee may apply to renew a licence in the approved form and accompanied by the fee prescribed in regulation.

New section 7N provides that if a retail or wholesale licence expires, the licensee may apply to restore the licence, within 28 days after the expiry. The application must be in the approved form and accompanied by the fee prescribed in regulation.

New section 7O provides that the chief executive may grant an application for the renewal or restoration of a retail or wholesale licence only if satisfied the applicant is a fit and proper person to be a licensee. If the application relates to a partnership, the chief executive must be satisfied that each partner is a fit and proper person to be a licensee.

New section 7P requires the chief executive to grant or refuse an application for the renewal or restoration of a retail or wholesale licence, after considering the application.

New section 7Q requires the chief executive to give the applicant a notice of the decision for an application for the renewal or restoration of a retail or wholesale licence and it must be an information notice if the decision is to refuse to grant the application.

New section 7R provides that the renewal or restoration of the retail or wholesale licence extends the term of the licence by one year or a shorter period agreed to by the licensee.

Division 5 Changes to licences

Subdivision 1 Changes requested by licensee

New section 7S provides that a licensee may apply to the chief executive to change a specific condition of the retail or wholesale licence and the application must be in the approved form and accompanied by the fee prescribed by regulation.

New section 7T provides that after considering the application, the chief executive may either grant or refuse an application to change a specific condition. If granting an application, a specific condition of the licence may be amended or removed if necessary to grant the application.

New section 7U requires the chief executive, after deciding an application to change a specific condition, to give the applicant notice of the decision. The notice must be an information notice if the decision is to refuse to change all the specific conditions requested in the application.

Subdivision 2 Changes made by chief executive

New section 7V provides that where the chief executive reasonably suspects a ground exists for suspending or cancelling a licence under section 7Z or section 7ZA and reasonably believes it is necessary to ensure the health and wellbeing of customers of the licensee, they may impose a new specific condition on the licensee or change a specific condition of the licence.

New section 7W requires the chief executive, as a result of a suspicion and belief mentioned in section 7V, to give a show cause notice before making a change to a retail or wholesale licence. The show cause notice must state certain prescribed information.

New section 7X requires the chief executive to consider all responses to the show cause notice before deciding whether to make the change proposed in the show cause notice, and to give the licensee notice of the decision.

Division 6 Suspension, cancellation and surrender

New section 7Y provides that the chief executive may suspend a retail or wholesale licence if they reasonably believe any of the listed disciplinary grounds apply.

Before suspending the licence, the chief executive must give a show cause notice to the licensee stating certain matters. The chief executive is required to consider the responses to the show cause notice and must decide to either take no further action or suspend the licence. The licensee must also be given notice of this decision, if the decision is to suspend the retail or wholesale licence.

New section 7Z allows the chief executive to cancel a retail or wholesale licence if they reasonably believe that one of the listed grounds is satisfied. The chief executive is required to give the licensee a show cause notice before cancelling the licence. The chief executive is required to consider the responses to the show cause notice and must decide to either take no further action or suspend the licence. If the decision is to cancel or suspend the retail or wholesale licence, the licensee must be given notice of the decision.

New section 7ZA allows the chief executive to immediately suspend a licence without giving a show cause notice, if they reasonably believe the listed grounds apply. The chief executive may immediately suspend the retail or wholesale licence without a show cause notice, by giving the licensee an information notice for the decision.

New section 7ZB provides that a licensee may surrender a licence by a written surrender notice and the licence ceases to have effect on the day the surrender notice is given or a later day stated in the notice.

Division 7 Other matters affecting licences

Subdivision 1 Fit and proper persons

New section 7ZC requires the chief executive to have regard to certain matters, when deciding whether a person is a fit and proper person to be a licensee.

This includes consideration of whether the applicant holds or previously held a licence under the Act, any specific conditions attached to the licence and whether the licence was ever suspended or cancelled. Other considerations are any criminal history of the applicant, their compliance with any State or Commonwealth smoking product laws and any instance of insolvency, administration, receivership, liquidation or disqualification from managing corporations.

If the licensee is a corporation, the chief executive may also consider whether or not a director of the corporation has contravened the Act or whether or not a director of the corporation has contravened a law of a State or the Commonwealth which regulates the supply of smoking products or any substance used in smoking products.

A liquor licensee is taken to be a fit and proper person for a retail licence (liquor) unless the liquor licence is suspended.

New section 7ZD allows the chief executive to ask the commissioner of the police service for a criminal history report about a person under consideration, or if the person being considered is a corporation, a person who is director of the corporation. The request may only be made if the person has given the chief executive written consent for the request. The chief executive is required to destroy the information after it is no longer required and to not use it for any other purpose.

Subdivision 2 Additional information and inspections of premises

New section 7ZE provides that the chief executive may, by written notice, ask the applicant for further information or documents needed to decide one of the listed applications. If the applicant does not provide the requested information or documents within 14 days of receiving the notice or a later date agreed to by the applicant and the chief executive, the application is taken to have been withdrawn.

New section 7ZF allows the chief executive to ask the applicant or licensee, by written notice, to make available premises mentioned in the application or notice, for inspection. The premises may be requested to be inspected within 14 days after the day the written notice is given to the applicant or licensee. If the premises are not made available for inspection, the application is taken to have been withdrawn.

Subdivision 3 Executors, administrators and trustees as licensees

New section 7ZG provides that where a licensee who is an individual, dies, the executor of the deceased estate of the licensee may carry on the business conducted under the licence as the licensee. If the executor carries on the business conducted under the retail or wholesale licence, the executor is taken to be the licensee and a fit and proper person to be a licensee.

New section 7ZH provides that the administrator of a corporation placed into administration, receivership or liquidation may carry on the business conducted under the licence as a licensee. If the administrator decides to carry on the business conducted under the retail or wholesale licence, the administrator is taken to be the licensee and a fit and proper person to be the licensee.

Division 8 Obligations of licensees

New section 7ZI requires a licensee to give notice of convictions of certain offences to the chief executive within 14 days after being convicted. A maximum penalty of 140 penalty units applies for failing to notify.

New section 7ZJ requires a licensee to notify the chief executive of certain events relating to a licence, within 14 days after the event happening. A maximum penalty of 140 penalty units applies.

New section 7ZK requires a licensee to display an approved copy of the retail or wholesale licence at the retail or wholesale outlet, that is easily read by customers, at all times the outlet is open. A maximum penalty of 50 penalty units applies.

For a licensee that sells smoking products by online sale, an approved copy of the licence must be displayed on the website of the online shop, with a maximum penalty of 50 penalty units applying.

An authorised person may request that a licensee produce the licence for inspection, with a maximum penalty of 50 penalty units applying.

A licensee must remove any display of the licence as soon as practicable after the licence has ceased to have effect, with a maximum penalty of 50 penalty units applying.

New section 7ZL requires a wholesale licensee, or a retail licensee with a limited wholesale condition, to give the retailer an invoice for the sale that is in English and meets the requirements prescribed by regulation, with a maximum penalty of 140 penalty units applying. The retailer is required to keep a copy of the invoice for at least two years, with a maximum penalty of 140 penalty units applying.

New section 7ZM provides that the chief executive may require the licensee to give information needed to determine whether the licensee is a fit and proper person or considered necessary for the administration of the Act. A maximum penalty of 50 penalty units applies for failing to comply.

Division 9 Other offences

New section 7ZN provides that a wholesale licensee must not sell a smoking product to a retailer that does not hold a retail licence, with a maximum penalty of 1,000 penalty units applying. This penalty is intended as a disincentive for unlicensed suppliers entering or remaining in the industry, especially those who view the trade in illicit tobacco as a low-risk, high-profit enterprise.

New section 7ZO prohibits certain dealings with licences, with a maximum penalty of 200 penalty units applying.

New section 7ZP requires a person, in relation to a licence or application, not to state anything to the chief executive that the person knows is false or misleading or give information or document that they know is false or misleading, for a material particular. A maximum penalty of 50 penalty units applies.

Division 10 Register of licences

New section 7ZQ requires the chief executive to keep a register of all retail and wholesale licences. The register must contain certain information and can be kept in a way the chief executive considers appropriate. Certain information that is not personal information, may be published on the department's website.

Division 11 Review of decisions

Subdivision 1 Preliminary

New section 7ZR inserts definitions for this division, for the terms 'affected person', 'internal review', 'internal review decision', 'original decision' and 'QCAT information notice'.

Subdivision 2 Internal review

New section 7ZS provides that an affected person may apply to QCAT for a review of the decision, only after an application for an internal review has been made or taken to be made.

New section 7ZT provides that an affected person for an original decision may apply to the chief executive for a review of the decision.

New section 7ZU requires an application for internal review of an original decision to meet certain requirements.

New section 7ZV requires the chief executive to deal with an application for internal review of an original decision in a certain manner, within 20 business days of receiving the application.

Subdivision 3 Stays

New section 7ZW provides that if an application is made for an internal review of an original decision, the applicant may immediately apply to QCAT for a stay of the decision.

Subdivision 4 External review

New section 7ZX provides that a person may apply to QCAT for a review of the internal review decision.

Clause 8 inserts into section 9 of the Act, adding to the definition of prevention measures.

Clause 9 inserts new section 9B into the Act which prohibits a supplier selling smoking products unless the supplier holds a retail or wholesale licence that authorises the type of sale, with a maximum penalty of 1,000 penalty units applying.

This penalty for unlicensed wholesale or retail sale of smoking products is considered necessary as a strong deterrent against unscrupulous suppliers wanting to enter or remain in the industry. The introduction of this penalty sends a strong message that trading in smoking products should only be entrusted to legitimate businesses and it provides a meaningful disincentive for those who view the trade in illicit tobacco as a low-risk, high profit enterprise.

This provision does not apply to a pharmacist or their employees if they are selling a smoking product that is a regulated substance, supplied under a prescription.

Clause 10 inserts new section 11A into the Act which requires a supplier to not have a child employee supply or handle smoking products in the course of the child's employment. A maximum penalty of 140 penalty units applies for a first offence, 280 penalty units for a second offence and 420 penalty units for a third or later offence.

Employees under the age of 18 who sell smoking products may grow to view smoking as normal behaviour, become familiar with brand names and be exposed to the variety of smoking products available. In addition, they may face peer pressure to illegally supply smoking products to other children.

The offence for contravention applies to the employer and not the child. However, the employer would not be liable if prior to the supply, they instructed the child not to supply smoking products.

This provision does not apply where the supplier is a pharmacist and the smoking product is a regulated substance, supplied under a prescription.

Also, the provision does not apply to the handling of a smoking product if done only for the purpose of delivering smoking products to premises, loading or unloading smoking products from a vehicle or warehousing smoking products.

Clause 11 amends section 12 of the Act and prohibits an employee supplying a smoking product to a child or selling a smoking product unless the supplier holds a retail or wholesale licence that authorises the type of sale.

This provision does not apply to an employee who is a child or the sale of a smoking product if the supplier is a pharmacist and the smoking product is a regulated substance, supplied under a prescription.

Clause 12 amends section 13A of the Act, which inserts details that the chief executive may require from retail suppliers.

Clause 13 amends section 14 of the Act and omits the definition of ‘bar’ and ‘bar area’.

Clause 14 amends section 15 of the Act and provides that a tobacco product vending machine may be permitted within a liquor licenced premises if the liquor licensee holds a retail licence (liquor) and the tobacco product vending machine can only be accessed by employees of the person in charge of the machine.

Clause 15 amends section 15A of the Act and omits ‘bar area or gaming machine area’ from the heading and provision and replaces it with ‘liquor licenced premises’.

Clause 16 inserts new section 16A into the Act and prohibits an employee of the person in charge of the tobacco product vending machine from supplying a tobacco product to a customer at any part of the premises, other than a point of sale. A maximum penalty of 140 penalty units applies.

Clause 17 amends section 19 of the Act which relates to an adult supplying a smoking product to a child. The exemption for a responsible adult in subsection 19(2) will be omitted.

The supply of smoking products to children by family and friends contributes to smoking initiation, experimentation and progression to regular smoking. No other jurisdiction in Australia provides an exemption for parents and guardians supplying smoking products to children.

Clause 18 amends the definition of smoking product in section 25 of the Act to include a thing that is intended to be smoked in a hookah.

Clause 19 replaces section 26 of the Act and clarifies that display and advertisement of smoking products by suppliers includes using a description or colloquialism for a smoking product.

There are numerous terms used to describe e-cigarettes and their related products. These include descriptors of how they differ from more traditional tobacco-based smoking products (for example, ‘smokeless products’) or colloquial names (for example, ‘vapes’), all of which may appeal to the growing youth market. These terms are also subject to the relevant advertising restrictions.

Clause 20 amends section 26A of the Act to clarify that the display and advertisement restrictions also apply to an online shop.

Clause 21 amends section 26HA of the Act and provides more detail on the use of certain business names for advertising or displaying a smoking product. The prohibition on displaying more than one business name which references a smoking product applies even when those business names are displayed across different communication mediums, including online platforms.

Clause 22 amends section 26HB of the Act and provides further detail on the use of the word ‘tobacconist’ in advertising.

Clause 23 replaces section 26HC of the Act and provides detail on the display of signage at a supplier’s relevant point of sale.

Clause 24 amends section 26N of the Act to include ‘or a nominal fee’ into the prohibition on supplying a smoking product for free.

Clause 25 amends section 26PA of the Act to clarify that the prohibition on displaying an image of consumption of a smoking product includes fixed or moving images or an image which is part of a video.

Clause 26 amends section 26Q of the Act to omit the definitions for ‘licensed premises’ and ‘licensee’, and replaces the term ‘patrons’ with ‘customers’.

Clause 27 amends section 26U of the Act and changes the heading to ‘No food or drink to be provided while person continues smoking after being directed to stop’ and makes other minor amendments.

Clause 28 omits section 26VI of the Act, entitled ‘Person smoking must stop when directed’.

Clause 29 omits section 26VM of the Act, entitled ‘Person smoking must stop when directed’.

Clause 30 omits section 26VP of the Act, entitled ‘Person smoking must stop when directed’.

Clause 31 amends section 26VQ of the Act and extends the definition of school facility to include a carpark adjacent to a school and provided for the exclusive use of the school community. The definition of ‘school community’ is also added.

Clause 32 omits section 26VR of the Act, entitled ‘Person smoking must stop when directed’.

Clause 33 omits section 26VT of the Act, entitled ‘Person smoking must stop when directed’.

Clause 34 omits section 26VV of the Act, entitled ‘Person smoking must stop when directed’.

Clause 35 omits section 26VX of the Act, entitled ‘Person smoking must stop when directed’.

Clause 36 inserts a new heading before section 26W of the Act, entitled ‘Subdivision 1 General provisions’.

Clause 37 amends section 26W of the Act and the meaning of outdoor eating or drinking place.

Clause 38 amends section 26X of the Act and prohibits a person smoking within the buffer zone, meaning a five-metre area beyond the boundary of an outdoor eating or drinking place. A maximum penalty of 20 penalty units applies.

However, this provision does not apply to a person:

- in a buffer zone at residential premises or on residential land;
- in the buffer zone at business premises;
- travelling through the buffer zone in a motor vehicle or on personal transport; or
- walking through the buffer zone.

The provision also does not apply to:

- a smoking area at an outdoor eating or drinking place or outdoor market; or
- a designated outdoor smoking area.

Clause 39 inserts new section 26XA into the Act and allows an occupier of an outdoor eating or drinking place to set aside a part of the place as a smoking area. The area must be clearly signed and there must be a two-metre buffer zone around the area. In both the smoking area and its buffer zone, no food or drink may be served and no entertainment may be offered and it will be an offence for patrons to smoke inside the buffer zone. An occupier is prohibited from setting aside a part of a place that does not comply with the requirements of this section, with a maximum penalty of 140 penalty units applying.

Clause 40 amends section 26Y of the Act and amends the heading to ‘No food or drink to be provided while person continues smoking after being directed to stop’ and makes other minor amendments.

Clause 41 inserts a new Part 2C, Division 1, Subdivision 2, entitled, ‘Subdivision 2 Provisions for particular liquor licensed premises’.

Clause 42 amends section 26ZA of the Act to include a buffer for enclosed areas adjacent to a DOSA in liquor licensed premises.

Where the perimeter includes an access door, the licensee must ensure the door is closed when not being used by patrons or employees to enter or exit the DOSA. Where such a perimeter includes a window, it must remain closed at all times when the DOSA is operating. This is designed to reduce the risk of exposure to second-hand smoke.

Clause 43 amends section 26ZB of the Act and provides that the licensee must ensure that children must not remain in the area. A maximum penalty of 140 penalty units applies.

This provision prevents adult smokers from taking their children with them into the DOSA, which increases the child’s exposure to second-hand smoke. If the area is a thoroughfare, a child may only transit through it and must not remain there.

Clause 44 amends section 26ZD of the Act and clarifies the prohibition on a person smoking within a government precinct.

The provision provides that the person may have a reasonable excuse for smoking within a government precinct, including passing through the area and not remaining.

Clause 45 omits section 26ZE, entitled, ‘Person smoking must stop when directed’.

Clause 46 inserts new Part 2C, Division 2A, entitled, ‘Division 2A Outdoor markets’. New section 26ZE prohibits a person from smoking at an outdoor market, with a maximum penalty of 20 penalty units applying.

Markets usually consist of a high-density arrangement of market vendors, which increases the risk of second-hand smoke exposure for patrons, which often includes families with children, as well as the vendors themselves.

New section 26ZF prohibits a person from smoking within a five-metre area of the entrance or exit of an outdoor market, without a reasonable excuse. A maximum penalty of 20 penalty units applies. The organiser will not be liable for persons smoking in this buffer zone.

New section 26ZG provides that if a person contravenes section 26ZE(1), the organiser of the market commits an offence, with a maximum penalty of 140 penalty units applying.

It is a defence for the organiser to prove they were not aware and could not reasonably have been expected to be aware that the contravention was happening. A defence is also established if the organiser (or their employee or agent) directed the person to stop smoking and told the person it was an offence not to comply with the direction to stop smoking.

New section 26ZGA provides that the organiser of an outdoor market may set aside part of the market as a smoking area. If the organiser sets aside part of the market as a smoking area that is not in compliance with this section, a maximum penalty of 140 penalty units applies.

The area must be clearly signed and there must be a five-metre buffer zone around the area. In both the smoking area and its buffer zone, no food or drink may be served.

The organiser will be liable for persons smoking in the buffer zone, unless they were unaware the person was smoking or gave the person a direction to stop smoking.

Clause 47 amends section 26ZKD and inserts a definition of ‘organised children’s activity’. A person is prohibited from smoking in a part of a park or similarly defined area of land being used for an organised children’s activity, with a maximum penalty of 20 penalty units applying. The existing buffer zone requirement also applies to the area being used for an organised children’s activity.

This addition extends the smoking prohibition to include other organised children’s activities, where they are conducted outdoors by an association or club. This includes Scouts, Girl Guides, Boys’ Brigades or Girls’ Brigades, where the risk of second-hand smoke may also arise. This provision does not apply to excursions into general community areas, a street parade or attendance at a public event.

Clause 48 omits section 26ZL of the Act, entitled ‘Person smoking must stop when directed’.

Clause 49 amends section 26ZQA of the Act and provides detail on the prohibition on displaying a hookah.

The provision clarifies that where packaging of a hookah includes a picture of the hookah or a statement that it is for a hookah, display of that packaging is also considered to be display of the hookah itself.

Clause 50 inserts new section 26ZQB into the Act and prohibits a supplier supplying illicit tobacco, with a maximum penalty of 300 penalty units applying. A supplier is also prohibited from storing or possessing illicit tobacco at the premises where the supplier supplies smoking products, with a maximum penalty of 140 penalty units applying.

This provision makes it a Queensland offence to supply smoking products not complying with Commonwealth requirements.

Clause 51 amends section 28 of the Act and provides that a conservation officer under the Nature Conservation Act is taken to be an authorised person, for the purpose of investigating, monitoring and enforcing compliance with the prohibition on smoking at national parks under section 26ZKE.

A police officer is also an authorised person and the functions of the officer are to investigate, monitor and enforce compliance with the offences under section 9B (supplier must not sell smoking products without licence) and 26ZQB (supply or possession of illicit tobacco). As the offence under section 9B does not commence until 1 September 2024, the related police function also does not commence until that date.

As the Act does not require conservation officers or police officers to be appointed as authorised persons, the provisions in the Act relating to qualifications for appointment (section 29), issue of identity card (section 30A), resignation (section 30D) and return of identity card (section 30E) are not relevant and do not apply.

A health service authorised person, conservation officer or police officer has all the powers of an authorised person under Part 3 of the Act.

Clause 52 amends section 33 of the Act and allows an authorised person, when entering a place, to either exercise general powers after entering or to check compliance with an improvement notice and may remain there for a reasonable time.

Clause 53 amends section 37 of the Act and requires the owner or occupier of a place or another person at the place to provide the authorised person with help to ascertain whether the Act is being complied with or the name and contact details of the business that sells smoking products at the place. This expands the enquiry power to determine the true owner or operator of a wholesale or retail business.

Clause 54 amends section 40A of the Act and provides that an authorised person may direct a person to stop smoking, when the person is contravening a smoking prohibition.

Clause 55 amends the heading of section 42D of the Act, to note the section now includes forfeiture of seized things that cannot be returned to its owner.

Clause 56 inserts new section 42DF into the Act, to provide for the forfeiture of illicit tobacco. The chief executive may decide a seized thing is forfeited to the State if satisfied the thing is illicit tobacco and reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

Before making this decision, the chief executive must give the owner of the seized thing a notice stating:

- the chief executive believes the seized thing is illicit tobacco and it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized;
- the chief executive proposes the seized thing be forfeited to the State, and
- that the owner may, within 28 days after being given the notice, give the chief executive a written response to the belief and proposal.

The chief executive must consider all responses given by the supplier before making a decision.

Clause 57 amends section 44C of the Act and allows an authorised person to give an improvement notice requiring a person to immediately cease a contravention of the Act and not continue or repeat the contravention.

Clause 58 inserts new section 50A and 50B into the Act. New section 50A empowers certain persons to direct a smoker to stop smoking in certain situations or locations. This consolidates and replaces some of the provisions in the Act which are removed by the Bill.

New section 50B requires a person to comply with a direction to stop smoking made by an authorised person or a person authorised under section 50A, with a maximum penalty of 20 penalty units applying. This consolidates and replaces some of the provisions in the Act which are removed by the Bill.

Clause 59 inserts new Part 3 Division 6 into the Act, in relation to appeals for illicit tobacco forfeiture decisions. New section 50C inserts definitions for the division. New section 50D provides that a person may appeal to a Magistrates Court against the decision. New section 50E allows a person to apply to the court for a stay of the operation of the forfeiture decision. New section 50F sets out the powers of the court when deciding an appeal against a forfeiture decision and new section 50G relates to the effect of the court's decision.

Clause 60 inserts new sections 52 to 52D into the Act. New section 52 applies to confidential information that an administrator obtains in performing a function under this Act or obtains access to from a person performing a function under this Act.

The administrator is prohibited from disclosing confidential information to another person, unless permitted, with a maximum penalty of 50 penalty units applying.

New section 52A of the Act allows the chief executive to disclose information obtained in performing a function or exercising a power under the Act, to certain entities.

The chief executive may only disclose if satisfied the disclosure is reasonably necessary for the entity to exercise its functions and the information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.

Where information about unlawful trade in smoking products is gathered in the course of administering the Act, this provision allows the chief executive to share that information with other State or Commonwealth law enforcement agencies. This includes other Queensland agencies, such as the Queensland Police Service.

New section 52B relates to a proceeding for an offence against the Act arising from a police officer exercising a power under the Act as an authorised person. This provision provides that only the chief executive may commence the proceeding. The commissioner of the police service must also comply with a written request from the chief executive for a report about the exercise of the power by the police officer and the evidence of the offence that the police officer obtained from exercising the power.

New section 52C of the Act allows the chief executive to approve forms for use under this Act.

New section 52D provides that the chief executive may delegate the chief executive's functions under this Act to an appropriately qualified person.

Clause 61 inserts new provisions to section 53 of the Act, relating to the regulation-making power.

Clause 62 inserts new Part 5, Division 1, entitled 'Division 1 Transitional provision for Tobacco and Other Smoking Products Amendment Act 2004'.

Clause 63 inserts new Part 5, Division 2, entitled 'Division 2 Transitional provisions for Tobacco and Other Smoking Products Amendment Act 2023'.

New section 55 of the Act provides for staged implementation for particular business names, where a supplier uses more than one business name that includes a reference to a smoking product and was registered before commencement.

Clause 64 inserts new section 56 of the Act, entitled 'Amendment to renumber', allowing the Act to be re-numbered.

Clause 65 inserts new sections 57 and 58 of the Act. New section 57 provides that section 11A does not apply to small business until the day that is one year after the commencement of that section. New section 58 provides a transitional provision for a person or partnership that applies for a retail or wholesale licence before the commencement of section 9B and the application has not been decided or withdrawn before the commencement of section 9B.

Clause 66 amends the Schedule Dictionary and omits the definitions of 'licensee', 'licensed premises', 'retail outlet' and 'tobacconist' and inserts several new entries.

Under section 30 of the Act, an authorised person holds office subject to any conditions or limitation of powers as stated in their instrument of appointment, a signed notice or a regulation. A signed notice means a notice signed by the administering authority. *Clause 66(6)* amends the Dictionary definition of 'administering executive' to include, for conservation officers, the chief executive of the department administering the Nature Conservation Act, and for police officers, the commissioner of the police service.

Schedule 1 Other amendments

This schedule makes a number of minor technical amendments to correct terminology and section numbers.

Section 44BA of the Act is amended to clarify which powers under Part 3, Division 5, apply to conservation officers and police officers as authorised persons. The amendments align the powers of conservation officers with those of a health service authorised person (for example, they do not have the power to issue an improvement notice). Police officers will have similar powers, but also the additional power under section 44G of the Act to require information from a person where they reasonably believe an offence against the Act has been committed and the person may be able to give information about the offence.