

Tobacco and Other Smoking Products Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Tobacco and Other Smoking Products Regulation 2021* made under the *Tobacco and Other Smoking Products Act 1998*.

In my opinion, the *Tobacco and Other Smoking Products Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The objective of the *Tobacco and Other Smoking Products Act 1998* is to improve the health of the public by reducing their exposure to tobacco and other smoking products. This objective is achieved by restricting the supply of tobacco and other smoking products to children, restricting the advertising and promotion of tobacco and other smoking products, reducing public exposure to smoke from tobacco and other smoking products and establishing a framework for monitoring, investigating and enforcement activities.

Currently, the *Tobacco and Other Smoking Products Regulation 2010* (existing Regulation) prescribes various matters to support the operation of the Tobacco and Other Smoking Products Act. The existing Regulation is due to expire on 31 August 2021.

The *Tobacco and Other Smoking Products Regulation 2021* (Regulation) has been prepared to replace the existing Regulation and maintain an effective legislative framework. The Regulation supports the Tobacco and Other Smoking Products Act by prescribing various supporting measures, including:

- the types of things that are *smoking related products*;
- the requirements for the form of price tickets and other indicators of price at points of sale or tobacco product vending machines;
- the requirements for the form of mandatory signs, permitted signs and no smoking signs;
- the requirements for the display of mandatory signs and no smoking signs;
- smoke-free outdoor places, such as outdoor swimming areas, government precincts and national parks; and
- the number of hookahs that can be displayed.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human right relevant to the subordinate legislation is the right to property.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Section 24 of the Human Rights Act states that all persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Regulation prescribes various matters which limit the ability of a person to conduct various activities with smoking related products and hookahs. The Regulation sets requirements for the form of price tickets and other indicators of price and the form and display of certain signage. It also prescribes areas, such as outdoor swimming areas, government precincts and national parks, where people are not allowed to consume tobacco and other smoking products. This places limitations and restrictions on how a person may deal with their property.

The Regulation supports the objectives of the Tobacco and Other Smoking Products Act to improve the health of the public by reducing their exposure to tobacco and other smoking products. This objective is achieved by restricting the supply of tobacco and other smoking products to children, restricting the advertising and promotion of tobacco and other smoking products, reducing public exposure to smoke from tobacco and other smoking products and establishing a framework for monitoring, investigating and enforcement activities.

The limitations on the use of property under the Regulation are all aimed at improving health and wellbeing.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The current framework to regulate tobacco and other smoking products in Queensland has shown to have a considerable impact on the use of tobacco and other smoking products. For example, the latest data from the Chief Health Officer's Report – *The health of Queenslanders 2020* indicates that the proportion of adults smoking daily has halved since 2002 to 10 per cent in 2020.

The extension of provisions in the case of new outdoor swimming areas and the associated smoke free area and the removal of exemptions for two national parks are in step with restrictions that are currently in place for other public swimming areas and national parks and contribute to reducing exposure of the Queensland community to smoke from tobacco and other smoking products. The addition of new smoking related products will ensure products used in the consumption of a tobacco product, herbal cigarette or loose smoking blend are included in the provisions restricting advertising and display.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no reasonable or less restrictive and reasonably available ways to achieve the purpose of the Regulation. The Regulation is required to support the operation of the requirements of the Tobacco and Other Smoking Products Act. If the Regulation was not remade, various requirements under the Tobacco and Other Smoking Products Act would no longer be effective to limit the exposure of the public to tobacco and other smoking products.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Smoking remains the leading preventable cause of death and disease despite a significant reduction in smoking rates over recent decades. The health impacts of smoking include lung cancer and 18 other cancers and neoplasms, cardiovascular diseases such as coronary heart disease, type 2 diabetes, gastrointestinal disorders, hearing and vision disorders, infectious diseases, musculoskeletal conditions, neurological conditions, and respiratory diseases such as chronic obstructive pulmonary disease. Compared to adults who had never smoked, Australian current smokers die on average 10 years earlier and develop age-related diseases 10 years earlier.

Second-hand smoke is also a serious health threat. Second-hand smoke can cause or worsen a range of conditions and diseases, including cancer, heart attacks, heart disease, asthma, diabetes, respiratory conditions and infectious diseases. Infants and children are particularly susceptible to the health effects of second-hand smoke. Electronic cigarettes (e-cigarettes) also continue to pose risks to tobacco control and population health in terms of smoking initiation, cessation and youth uptake.

Given the significant health impacts as a result of smoking, it is considered necessary to regulate the use of smoking products in Queensland. While the Regulation controls how a person may use their property, these restrictions are proportionate and appropriate to limit the risks to the public as a result of being exposed to tobacco or other smoking products.

Conclusion

I consider that the *Tobacco and Other Smoking Products Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
MINISTER FOR HEALTH and AMBULANCE SERVICES
and LEADER OF THE HOUSE