

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

## Explanatory Notes

### Short title

The short title of the Bill is the Tobacco and Other Smoking Products (Smoke-free Places) Amendment Bill 2015 (the Bill).

### Policy objectives and the reasons for them

The purpose of the Bill is to amend the *Tobacco and Other Smoking Products Act 1998* (the Tobacco Act) to:

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

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

Daily smoking rates in Queensland have declined in recent decades, but this decline is slowing. Smoking-related diseases continue to take the lives of more than 3,700 Queenslanders each year—ten-times greater than the annual road toll. There are indisputable personal, social and economic reasons to continue to encourage young people not to start smoking, reduce exposure of non-smokers to second-hand smoke and help smokers to quit.

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

For more than a decade, the Tobacco Act has banned smoking at many outdoor public places including near children's playground equipment, between the flags on patrolled beaches, at prescribed outdoor swimming areas such as artificial beaches, at major event facilities such as Suncorp Stadium, at entrances to non-residential buildings, and at outdoor eating and drinking places. In 2014, these bans were extended to schools and health facilities.

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

The Bill will protect the community and, in particular, the health of young people from the harmful effects of second-hand smoke, by extending smoking bans at all:

- outdoor pedestrian malls
- public transport waiting points
- public swimming facilities
- skate parks
- sporting grounds and spectator areas during organised under-age sporting events
- early childhood education and care facilities, and
- private and public residential aged care facilities, except in nominated areas.

In addition, the Bill will enable smoking to be banned at prescribed national parks, or parts of national parks, and prescribed outdoor government precincts. The Bill will also empower local governments to make laws banning smoking at any outdoor public place not covered by State smoking laws.

Other amendments will prohibit the sale of smoking products from temporary retail outlets, such as pop-up stalls popular at youth festivals. The Bill also makes minor and technical amendments to clarify and strengthen Queensland's tobacco laws.

### **Create more smoke-free public places across Queensland**

- ***Public transport waiting points***

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

The *Transport Operations (Passenger Transport) Regulation 2005* prohibits smoking on busways, busway transport infrastructure and light rail platforms, where there is a sign indicating that smoking is not allowed in the area. The *Transport Infrastructure (Rail) Regulation 2006* prohibits smoking in an area of a railway where there is a sign indicating that smoking is not allowed in the area. Transport legislation also prohibits a person from smoking in any public passenger vehicle.

In 2010, local governments were given the power under the Tobacco Act to create local laws prohibiting smoking at outdoor public transport waiting points such as bus stops, taxi ranks and ferry terminals. Ipswich City Council and Fraser Coast Regional Council have declared that all bus stops and taxi ranks on local government and state-controlled roads within their respective local government areas are smoke-free areas. Redland City Council prohibits smoking at each jetty and ramp that is considered a public transport waiting point within the local government area.

An amendment is required to provide a consistent state-wide ban for smoking at all public transport waiting points, to strengthen protection against involuntary exposure to tobacco smoke for persons waiting for public transport.

- ***Outdoor pedestrian malls***

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

To meet community expectations that people will not be exposed to smoke at busy public outdoor areas, an amendment to the Tobacco Act is required to prohibit smoking at all outdoor pedestrian malls established under the *Local Government Act 2009* (Local Government Act) and the *City of Brisbane Act 2010* (City of Brisbane Act).

- ***Public swimming facilities***

The use of local government owned and operated pools forms an important part of active and healthy lifestyles in Queensland. There is a community expectation that people will not be exposed to second-hand smoke when at these facilities.

The Tobacco Act provides that smoking can be prohibited at a prescribed outdoor swimming area between sunrise and sunset. The outdoor swimming areas currently prescribed are:

- Airlie Beach Lagoon
- Bluewater Lagoon (Mackay)
- Esplanade Lagoon (Cairns)
- Rockpool (Townsville)
- Settlement Cove Lagoon (Redcliffe), and
- Streets Beach—South Bank (Brisbane).

These provisions are working effectively and will remain in the Tobacco Act.

An amendment is required to provide a state-wide smoking ban at all public swimming facilities owned or operated by a local government.

- ***Skate parks***

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

Consistent with the smoking ban that applies within 10 metres of children's playground equipment, an amendment is needed to create a smoking ban within 10 metres of any part of skate park equipment.

- ***Sporting grounds and spectator areas during organised under-age sporting events***

Sporting grounds are popular places for children and families to gather, both as participants and spectators. Smoking at sporting grounds and spectator areas during organised under-age sporting events is counterproductive to the health benefits of sport, as children exposed to

second-hand smoke are more likely to suffer health problems such as bronchitis, pneumonia and asthma.

An amendment to the Tobacco Act is required to create smoke-free sporting grounds and spectator areas during organised under-age sporting events, to provide children, young people and their families with a healthy, smoke-free environment in which to participate in organised under-age sporting events and training. The creation of more smoke-free places will also reduce the normalcy and social acceptability of smoking behaviours.

- ***National parks***

National parks are significant places for Queensland to encourage active and healthy lifestyles. An amendment to the Tobacco Act is required to enable smoking bans to be introduced at particular national parks, or parts of national parks. This amendment would increase community enjoyment and safety by preventing exposure to second-hand smoke, particularly in areas with a high numbers of visitors.

- ***Early childhood education and care facilities***

Early childhood education and care services in Queensland include approved education and care services under the *Education and Care Services National Law (Queensland) Act 2011* and Queensland approved education and care services under the *Education and Care Services Act 2013*. The most common service types approved under this legislation include long day care services, kindergarten services, family day care, limited hours services and outside school hours care. Currently, an approved education and care service must provide a tobacco, drug and alcohol free environment for children educated and cared for under their service. However, this tobacco-free environment does not extend to the perimeter around the facility.

Following amendments in 2014, the Tobacco Act provides that a person must not smoke on school land, or on land within five metres beyond the boundary of school land.

An amendment to the Tobacco Act is required to create a smoke-free environment at, and in the vicinity of, early childhood education and care facilities.

- ***Government precincts***

Smoke-free workplaces and public places have largely been accepted, and often expected, by the public. Government precincts often include busy outdoor public spaces that adjoin buildings occupied by government departments, courts, tribunals, the Legislative Assembly and other entities that represent the State. These spaces are used by people working in the precinct and visitors accessing facilities in the precincts.

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

- ***Private and public residential aged care facilities***

In 2014, the Tobacco Act was amended to prohibit smoking at and within five metres of outdoor areas of public and private health facility land. These existing smoking bans apply to

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

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

- ***Local laws prohibiting smoking in public places***

In 2013, at the 117<sup>th</sup> Local Government Association of Queensland Annual Conference, local governments carried a motion to make representations to the State Government to amend the Tobacco Act to provide councils with the power to prohibit smoking at additional public places, in addition to the existing power to make local laws about outdoor pedestrian malls and public transport waiting points.

An amendment is required to empower local governments to make local laws prohibiting smoking at outdoor public places in their local government area, aside from those areas in which state-wide smoking bans apply.

### **Prohibit the sale of smoking products from temporary retail outlets**

Smoking products have been marketed to young people through temporary retail outlets at major arts, music and sporting events. These temporary retail outlets include mobile structures, vehicles, vessels, tents, booths and other temporary structures.

Prohibiting the sale of smoking products from temporary retail outlets will limit young people's exposure to the sale and promotion of smoking products.

### **Minor and technical amendments**

The Bill makes minor and technical amendments to:

- clarify the smoking ban at major event facilities
- clarify that the smoking ban at health facilities and school land applies to persons in motor vehicles
- extend the smoke-free area at the entrances to non-residential buildings from four metres to five metres
- update provisions relating to hookahs
- remove references to nursing homes, in light of the new smoking ban at residential aged care facilities
- clarify the interaction between smoking bans and outdoor smoking areas, and
- clarify requirements around the display of no smoking signs at licensed premises.

## Achievement of policy objectives

### Create more smoke-free public places across Queensland

- **Public transport waiting points**

The Bill will provide public transport users with greater protection from involuntary exposure to second-hand smoke, by prohibiting smoking at, and within five metres of, all public transport waiting points across Queensland, except for those where smoking is already prohibited under transport legislation.

Public transport waiting points include:

- train stations
- light rail platforms
- busway platforms
- bus stops, including school bus stops
- taxi ranks
- limousine ranks, and
- ferry terminals.

A public transport waiting point includes:

- a sign indicating that an area is a drop-off or collection point for a public passenger vehicle
- shelter or seating provided for persons waiting at a drop-off or collection point for the public passenger vehicle, and
- a terminal, jetty, pontoon or landing for the arrival or departure of a public passenger vehicle.

This means that smoking is prohibited at, for example, bus stop shelters, taxi rank signs and ferry terminals. Smoking is also prohibited on land within five metres of these areas.

If smoking is prohibited under the *Transport Operations (Passenger Transport) Regulation 2005* or the *Transport Infrastructure (Rail) Regulation 2006*, the smoking ban under the Tobacco Act will not apply and all enforcement action will occur under the transport legislation.

The Bill also provides that it is an offence for a person to smoke while in a queue that starts at a public transport waiting point or from within the five metre buffer zone from a public transport waiting point. For example, it will be an offence to smoke while anywhere in an airport taxi rank queue or bus queue, even if the queue extends beyond five metres from the public transport waiting point.

The amendments make clear that it is not an offence to smoke on residential premises or business premises that fall within five metres of a public transport waiting point. The offence does not apply to a person travelling within five metres of a public transport waiting point in a motor vehicle. A person who is walking through the public transport waiting point buffer, for purposes not related to the public transport waiting point, also has a reasonable excuse if they are smoking.

The Bill provides that it is an offence for a person who is smoking at a public transport waiting point, or within five metres from a public transport waiting point, not to comply with a direction by an authorised person to stop smoking.

The impact of the new state-wide smoking ban at public transport waiting points is that existing local laws, made under the current power in the Tobacco Act for local governments to make local laws in relation to public transport waiting points, will no longer be valid. This is because section 28 of the City of Brisbane Act and section 27 of the Local Government Act provide that if there is any inconsistency between a local law and a State law, the State law prevails to the extent of the inconsistency.

- ***Outdoor pedestrian malls***

The Bill will prohibit smoking at all outdoor pedestrian malls that have been established under the City of Brisbane Act or the Local Government Act, or continued as a mall under the City of Brisbane Act.

The Bill also provides that it is an offence for a person who is smoking in an outdoor pedestrian mall not to comply with a direction by an authorised person to stop smoking.

The impact of these provisions is that existing local laws, made under the current power in the Tobacco Act for local governments to make local laws in relation to outdoor pedestrian malls, will no longer be valid. This is because section 28 of the City of Brisbane Act and section 27 of the Local Government Act provide that if there is any inconsistency between a local law and a State law, the State law prevails to the extent of the inconsistency.

- ***Public swimming facilities***

The Bill will prohibit a person from smoking at a public swimming facility. A public swimming facility is a pool that is either owned or operated by a local government and is open to the public, whether or not on the payment of money. It includes the areas associated with the swimming pool, such as any area around the pool that is enclosed by a fence or wall, the kiosk, viewing areas and seating areas, and platforms and diving boards.

A public swimming facility does not include a natural body of water, such as a dam, creek or river.

The Bill also provides that it is an offence for a person who is smoking at a public swimming facility not to comply with a direction by an authorised person to stop smoking.

- ***Skate parks***

The Bill will ban smoking within 10 metres of any part of a skate park. This is consistent with the ban on smoking within 10 metres of children's playground equipment. Skate park equipment includes obstacles, jumps or uneven surfaces used for riding or skating on bicycles, rollerblades, rollerskates, skateboards and scooters. It does not include a bicycle path, a footpath or a path shared by cyclists and pedestrians.

The Bill provides that the offence does not apply to a person who is at residential or business premises or on land on which residential or business premises may lawfully be built. This

ensures that the offence does not infringe on the rights of persons who are on private property, even if the property is within 10 metres of a part of the skate park. The offence does not apply if a person is travelling in a motor vehicle within 10 metres of the skate park. This ensures that a person will not commit an offence if they smoke while driving past a skate park.

The Bill also provides that it is an offence for a person who is smoking within 10 metres of any part of a skate park not to comply with a direction by an authorised person to stop smoking.

- ***Sporting grounds and spectator areas during organised under-age sporting events***

The Bill prohibits smoking at sporting grounds, and within 10 metres beyond, the sporting grounds and the viewing areas for a water sport, during an organised sporting event or training session that is predominantly participated in by persons under the age of 18. The smoking ban will cover the sporting grounds, viewing areas, public seating at the sporting grounds and any other area reserved for use by the competitors and the officials. The ban will also apply during any intervals or breaks in play.

The Bill defines an organised under-age sporting event as a sporting event that is organised in advance for persons predominantly under the age of 18 and is conducted by a professional or amateur sporting body or education institution according to established rules.

For example, during a little athletics event, smoking would be prohibited on the playing area, such as the running track and the oval. Smoking would also be prohibited in the area provided for people to watch the event, any area reserved for competitors and sporting officials, and the warm up area for the competitors. Smoking would also be prohibited within 10 metres of any of these areas. The smoking ban would apply while the event is underway, and would include any breaks or intervals, for example, the breaks in between running races. It would also apply during any training session for the organised under-age sporting event.

During, for example, a school rowing event, smoking would be prohibited in the area set aside for people to watch the rowing event, and 10 metres beyond this viewing area. This might include a marquee, a roped off area, or a designated viewing area. The smoking ban would apply while the event is underway, in any breaks or interval during the event and during training sessions for the event.

The Bill is not intended to apply to a sporting event that is largely participated in by persons over the age of 18—for example, a representative rugby match in which the majority of players are over the age of 18, but one or two are under 18 years.

The Bill provides that the offence does not apply to a person in the area 10 metres beyond the sporting ground or viewing area for a water sport (the *buffer zone*) who is at residential or business premises or on land where residential or business premises may lawfully be built. The Bill also provides that the offence does not apply to a person travelling through the buffer zone in a motor vehicle.

The amendments provide that it is an offence for a person who is smoking at a sporting ground, or at a viewing area for a water sport, during an organised under-age sporting event,

training session, break or interval, not to comply with a direction by an authorised person to stop smoking.

Sporting groups responsible for organised under-age sporting events will not be required to enforce the smoking ban.

- **National parks**

The Bill will enable smoking to be banned at prescribed national parks, or parts of national parks. To address the complexities of the land management arrangements for some national parks, the Bill provides that, before a regulation is made to prohibit smoking at a national park, or a part of a national park, the Minister who administers the Tobacco Act must obtain the agreement of the Minister responsible for the management of national parks under the *Nature Conservation Act 1992*.

The regulation will clearly identify the national parks, or the areas of the national park, in which smoking is prohibited. The regulations will also clearly identify any areas in which the smoking ban does not apply, for example, a public road which passes through the national park.

The Bill provides that it is an offence for a person who is smoking at a prescribed national park (or prescribed part of a national park) not to comply with a direction by an authorised person to stop smoking.

- **Early childhood education and care facilities**

The Bill will prohibit smoking at all early childhood education and care facilities and five metres beyond the boundary of early childhood education and care facilities.

An early childhood education and care facility means the land on which an early childhood education and care service is provided. An early childhood education and care service means approved education and care services under the *Education and Care Services National Law (Queensland) Act 2011* and Queensland approved education and care services under the *Education and Care Services Act 2013*.

Specific provisions will apply to early childhood education and care facilities that operate from residential premises, for example, family day care services. The Bill provides it is a defence if a person was not aware that the facility was an early childhood education and care service. This is appropriate as it may not be apparent from the outside that the residence is being used to provide an early childhood education and care service.

The Bill also provides that it is not an offence to smoke at an early childhood education and care facility if the facility is also a residential premises but is not being used as an early childhood education and care facility at the time. For example, smoking will not be prohibited in the evening or on the weekend when the residence is not being used to provide an early childhood education and care service.

The offence of smoking within five metres of an early childhood education and care facility does not apply to a person who is at residential premises or business premises, including land on which residential or business premises may lawfully be built. This ensures the provisions

do not infringe on the rights of persons who are on private property, even if their property is located immediately next door to an early childhood education and care facility. These exceptions only apply to the five metre buffer around the early childhood education and care facility—they do not apply to the facility itself. These exceptions are consistent with the provisions relating to schools facilities under the Tobacco Act.

The Bill also provides that it is not an offence to smoke within five metres beyond the boundary of an early childhood education and care facility while driving past in a motor vehicle. It will, however, be an offence to smoke if parked in a motor vehicle within five metres of the boundary of the early childhood education and care service, or while in a motor vehicle within the boundary of the facility, for example, while driving through or parked in a carpark at the facility.

The Bill provides that it is an offence for a person who is smoking at or near an early childhood education and care facility not to comply with a direction by an authorised person to stop smoking.

- ***Government precincts***

The Bill provides that smoking is prohibited at any government precinct prescribed in regulation. A government precinct may include land that adjoins a building occupied by:

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

However, the offence will only apply where the government precinct is prescribed by regulation. The regulation will clearly define the government precinct. This may be by reference to a map or another clear method to define the space where smoking is prohibited. A government precinct would only be prescribed following consultation with impacted entities.

The Bill provides that it is an offence for a person who is smoking at a prescribed government precinct not to comply with a direction by an authorised person to stop smoking.

- ***Private and public residential aged care facilities***

The Bill provides that it is an offence to smoke at a residential aged care facility, except while in a nominated outdoor smoking place. The Bill also provides that it is an offence to smoke on land five metres beyond the boundary of the residential aged care facility. A residential aged care facility means a facility that provides aged care. It does not include retirement villages and other areas where elderly persons live independently, or aged care provided to people in their homes.

The Bill will enable the occupier to create and clearly define a nominated outdoor smoking place where smoking is permitted. For clarity, the Bill provides that the nominated outdoor smoking place cannot be in an area where smoking is otherwise prohibited under the Tobacco

Act. For example, a nominated outdoor smoking place cannot be established within 10 metres of a skate park on an adjoining lot.

The Bill contains the same exceptions as currently apply to provisions relating to health facilities. The offence of smoking within five metres of a residential aged care facility does not apply to a person who is at residential or business premises, or on land where residential or business premises may lawfully be built. This ensures the provisions do not infringe on the rights of persons on private property, even if the property is located immediately next door to a residential aged care facility. These exceptions only apply to the five metre buffer around the residential aged care facility—they do not apply to the facility itself.

The Bill also provides that it is not an offence to smoke within five metres beyond the boundary of a residential aged care facility while driving past in a motor vehicle. It will, however, be an offence to smoke if parked in a motor vehicle within five metres of the boundary of the residential aged care facility, or in a car that is driving or parked within the boundary of the facility.

The Bill provides it is an offence for a person smoking at or near a residential aged care facility not to comply with a direction by an authorised person to stop smoking.

- ***Local laws prohibiting smoking in public places***

The Bill provides local governments with the power to make local laws prohibiting smoking in outdoor public places in their local government area. This will enable local governments to prohibit smoking at, for example, particular restaurant and commercial precincts, parks or boardwalks within their local government area.

A local law may only be made under this provision in relation to a place that is not otherwise dealt with under the Tobacco Act. This ensures that local laws cannot be made in areas where smoking is already banned under the Tobacco Act. It also means that a local law cannot ban smoking in an area in which the Tobacco Act allows for smoking—for example, within a designated outdoor smoking area established under section 26ZA of the Tobacco Act.

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

A local law made under this power must not impose a penalty of more than 20 penalty units. Any fine imposed by a court in relation to an offence under this type of law local must be paid to the local government. The local government may also be required to provide information about the local government's enforcement of any local law made under the division.

## **Prohibit the sale of smoking products from temporary retail outlets**

The Bill will prohibit the sale of smoking products from temporary retail stores. Temporary retail stores include places such as booths, tents, market stalls, stands, vehicles and mobile structures.

The offence carries a maximum penalty of 140 penalty units. This is consistent with other offences for the sale or supply of smoking products.

## **Minor and technical amendments**

- ***Major event facilities***

Major events under the *Major Events Act 2014* (the Major Events Act), such as the two motorsports events held at Townsville and the Gold Coast, are significantly different to major sports facilities, such as Suncorp Stadium. However, they currently have the same smoking prohibitions. The existing smoking bans and related provisions for major sports facilities are retained in the Bill.

The Bill provides that smoking is prohibited at a major event facility. A major event facility means a major event area under the Major Events Act, during the major event period under the Major Events Act. However, a person is permitted to smoke in a nominated outdoor smoking place, provided the person is not consuming food or drink at the time. The major event organiser may establish a nominated outdoor smoking place, as an area in which smoking is permitted and food and drink must not be consumed. For clarity, the Bill provides that a nominated outdoor smoking place cannot be established in an area in which smoking is otherwise prohibited under the Tobacco Act. For example, a nominated outdoor smoking place cannot be established within 10 metres of children's playground equipment.

The Bill provides that it is an offence for a person who is smoking at a major event facility not to comply with a direction by an authorised person or the major event organiser to stop smoking.

The Bill also provides that if a person contravenes the offence provision relating to smoking at a major event facility, the major event organiser also commits an offence. However, a number of defences are available to the major event organiser. These provisions are consistent with the existing provisions for major event facilities.

- ***Motor vehicles at health and school facilities***

Currently, the Tobacco Act provides that it is not an offence to smoke within five metres of health facility land or school land while in a motor vehicle, unless the motor vehicle is parked on a road or road-related area.

The Bill will make clear that it is an offence to smoke in a motor vehicle that is within the boundary of a health facility or school facility, regardless of whether the vehicle is parked or travelling. The Bill will also make it clear that it is not an offence to smoke on land five metres beyond the boundary of a health facility or a school facility if the car is travelling through the buffer.

- ***Extending smoke-free entrances at non-residential building from four metres to five metres***

The Tobacco Act currently provides that a person must not smoke within four metres of any part of an entrance to an enclosed place. The Bill will extend this distance to five metres to create consistency across a number of provisions in the Tobacco Act. The Bill will also make clear that it is an offence to smoke while in a parked motor vehicle within five metres of a non-residential building.

- ***Hookahs***

The Tobacco Act currently defines a *hookah* by reference to the use of the hookah to smoke tobacco. Accordingly, the use of a hookah is prohibited in smoke-free areas only where the hookah is used to smoke tobacco. However, hookahs are increasingly being used to smoke non-tobacco products, which are a known health hazard. The Bill updates definitions in the Tobacco Act to ensure the use of hookahs to smoke non-tobacco products is regulated as a smoking product.

The definition of hookah in the Tobacco Act also refers to a ‘fully assembled device’. This has been used to circumvent provisions regulating the display of hookahs. For example, if the hookah is displayed with some of the flexible hoses removed, it may be argued that the hookah is no longer fully assembled. This was not the intent of the provisions. Therefore, the Bill will amend the provision limiting the display of hookahs to make clear that the display of part of a hookah is taken to be the display of a hookah.

- ***Remove references to nursing homes***

The Bill removes references to a *nursing home* within a number of sections of the Tobacco Act. This is as a consequence of the provisions prohibiting smoking at, and within five metres of, all residential aged care facilities.

- ***Clarify the interaction between smoking bans and outdoor smoking areas***

The Bill will provide for nominated outdoor smoking places to be established in residential aged care facilities and at major event facilities. The Tobacco Act also allows for the establishment of an area for smoking at an outdoor eating and drinking area, provided the area is clearly designated as an area where no food or drink may be consumed. The Bill makes clear that these areas cannot be established within an area in which smoking is otherwise prohibited under the Tobacco Act. For example, a residential aged care facility cannot establish a nominated outdoor smoking place that is within 10 metres of a children’s playground on an adjoining lot.

However, a designated outdoor smoking area (a DOSA) established under section 26ZA of the Tobacco Act may be located in an area in which smoking is otherwise prohibited under the Tobacco Act. This is because the Tobacco Act contains strict requirements about how and where a DOSA may be established, including a requirement to have buffers on its perimeter.

- **No smoking signs at licensed premises**

The Tobacco Act currently requires that a licensee of a licensed premises must display a ‘no smoking’ sign at the entrance. The Bill will clarify that this sign must only be displayed in licensed premises that can have a designated outdoor smoking area.

## **Alternative ways of achieving policy objectives**

Amending the Tobacco Act is the only way of effectively achieving the policy objectives.

## **Estimated cost for government implementation**

Additional costs to Queensland Health will be met within existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. However, potential breaches of fundamental legislative principles are addressed below.

### **Matters to be prescribed in a regulation**

Prescribing matters in a regulation may be seen to breach section 4(2)(b) of the *Legislative Standards Act 1992* (Legislative Standards Act), which requires legislation to have sufficient regard to the institution of Parliament.

New section 26ZD, inserted by clause 11, would enable a regulation to prescribe a government precinct where smoking will be prohibited. The amendments provide that a government precinct is land that adjoins a building occupied by the State, the Legislative Assembly, a court or tribunal, an entity that represents the State or another entity established by an Act.

New section 26ZKE, inserted by clause 13, would also enable a regulation to prescribe a national park, or a part of a national park, where smoking will be prohibited. The Bill provides that a national park means a national park under the *Nature Conservation Act 1992*.

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

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

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

## **Reversal of onus**

The Bill may be seen to breach section 4(3)(d) of the Legislative Standards Act as the Bill provides for the reversal of the onus of proof.

New section 26VU, inserted by clause 9, provides that a person must not smoke at an early childhood education and care facility or at land five metres beyond the boundary of an early childhood education and care facility. However, it is a defence if an early childhood education and care service is operating from residential premises (i.e. a family day care service) and the person was not aware the facility was an early childhood education and care facility. The onus is on the person smoking to prove that they were not aware, and could not have reasonably been expected to be aware, that the premises is an early childhood education and care facility.

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

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

## **Introduction of new offences**

Legislating to restrict ordinary activities, without sufficient justification, may be a breach of section (4)(2)(a) of the Legislative Standards Act, which requires legislation to have sufficient regard to the rights and liberties of the individual.

New section 13C, inserted by clause 5, makes it an offence to sell smoking products from a temporary retail store, carrying a maximum penalty of 140 penalty units. This penalty is consistent with other offences for the sale or supply of smoking products.

Clauses 9, 11 and 13 of the Bill also insert a number of new offence for smoking at particular outdoor public areas, or failing to comply with a direction to stop smoking. The maximum penalty of 20 penalty units is consistent with the penalties in the Tobacco Act for existing smoking bans.

Clause 9 provides that it is an offence for an occupier of a major sports facility, or a major event organiser, if a person is smoking in a major sports facility or major event facility respectively. These offences carry a maximum penalty of 140 penalty units. These provisions replicate existing section 26ZG of the Tobacco Act.

These offence provisions are necessary to encourage compliance with the new smoking bans and meet the objects of the Bill by reducing people's exposure to second-hand smoke, reducing the normalcy and social acceptability of smoking behaviours particularly for young people, and providing environments to help people quit smoking.

## Consultation

The Department of Health invited a wide range of stakeholders to provide feedback on the proposed legislative reforms including:

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

Feedback on the legislative reforms in the Bill generally acknowledged the importance of strong and consistent tobacco laws. A number of stakeholders noted that enforcement, resources and education will be important components for the successful implementation of these legislative changes.

Feedback received from non-government health bodies was strongly supportive of the legislative changes to reduce the burden of smoking on the community. Feedback received from peak bodies representing early childhood education and care providers was also strongly supportive of the proposed smoking ban.

## Consistency with legislation of other jurisdictions

Tobacco legislation varies significantly across Australian states and territories. Queensland has often been a leader in reform in this area. Accordingly, while some of the proposed smoking bans are consistent with restrictions in other states and territories, others are not.

- ***Public transport waiting points and outdoor pedestrian malls***

Most Australian states and territories prohibit smoking at some public transport waiting points. The Bill will make Queensland consistent with New South Wales (NSW), which prohibits smoking at all public transport stops and platforms, including bus stops and taxi ranks.

South Australia (SA) prohibits smoking at covered public transport areas, including bus, tram, train and taxi shelters. Victoria prohibits smoking at all train stations, tram stop platforms and bus shelters. Tasmania has a state-wide ban on smoking anywhere within three metres of a bus shelter on a public street. The Northern Territory (NT) prohibits smoking in certain public transport areas.

Tasmania is the only jurisdiction that currently bans smoking at prescribed pedestrian malls. However, Western Australia (WA) and SA enable a regulation to prescribe a public place at which smoking is prohibited.

- ***Public swimming facilities, skate parks and under-age sporting events***

The proposed amendments to ban smoking at a public swimming facility and within 10 metres of any part of the skate parks or in a sporting venue during an organised under-age sporting events or training sessions are consistent with Victorian legislation.

Tasmania prohibits smoking within 20 metres of organised sporting events, irrespective of the age of the participants. In NSW, smoking in areas set aside or being used by spectators to watch an organised sporting event is an offence when the organised sporting event is being held.

Tasmania also prohibits smoking anywhere at a public pool. NSW provides that a swimming pool complex is a smoke-free area.

- ***Early childhood education and care facilities***

The proposed amendment to ban smoking at early childhood education and care facilities or at land five metres beyond the boundary of an early childhood education and care facility is largely consistent with Victorian legislation. However, Victoria does not ban smoking in the buffer around the education and care service but rather prohibits smoking within four metres of any part of a pedestrian access point to an education and care service.

NT also has smoking bans in schools, pre-schools, commercial childcare facilities, domestic premises, and any other facility used for the provision of education or care for children. However, the ban only applies to the grounds and does not apply to the surrounding areas.

- ***Prescribed government precincts***

Queensland will be the first Australian jurisdiction to introduce smoking bans at government precincts. However, WA and SA enable a regulation to prescribe a public place at which smoking is prohibited.

- ***Public and private residential aged care facilities***

There are a number of jurisdictions that ban smoking at residential aged care facilities, however, they do not include the concept of a smoke-free buffer around the facility. NT prohibits smoking in shared accommodation facilities including residential aged care facilities. NSW provides that health institutions or health services may be designated under by-law or regulation as smoke-free.

## Notes on provisions

### 1 Short title

*Clause 1* provides that, when enacted, the short title of the Act will be the *Tobacco and Other Smoking Products (Smoke-free Places) Amendment Act 2015*.

### 2 Commencement

*Clause 2* provides for the Bill to commence on the day fixed by proclamation.

### 3 Act amended

*Clause 3* specifies that this Act amends the *Tobacco and Other Smoking Products Act 1998*.

### 4 Replacement of pt 2, div 1A, hdg (Point of sale at a retail outlet)

*Clause 4* omits the heading of part 2, division 1A and inserts a new heading to reflect the insertion of section 13C into part 2, division 1A.

### 5 Insertion of new s 13C

*Clause 5* inserts new section 13C, which prohibits a supplier from selling smoking products from a temporary retail store. This offence carries a maximum penalty of 140 penalty units.

Subsection (2) defines and provides examples of a temporary retail store. A *temporary retail store* means a temporary structure, such as a booth, tent, market stall or stand. It also means a vehicle or mobile structure including, for example, a trailer or a caravan.

### 6 Amendment of s 26Q (Definitions for pt 2B)

*Clause 6* amends the definition of *licensed premises* in section 26Q to remove a reference to an incorrect section in the *Liquor Act 1992*. A licensed premises for part 2B of the Tobacco Act will include a place with a permit under the *Liquor Act 1992*.

### 7 Amendment of s 26R (Person must not smoke in enclosed place)

*Clause 7* amends section 26R, which provides that a person must not smoke in an enclosed place, to remove the reference to *nursing home* from the definition of *multi-unit residential accommodation*. The effect of this is that a nursing home (otherwise described as a residential aged care facility) is an enclosed place in which smoking is prohibited.

The definition of *residential premises* in section 26R(4) has been amended to reflect that *residential premises* will be defined in the schedule of the Tobacco Act, however for section 26R the definition of *residential premises* does not include *multi-unit residential accommodation*.

### 8 Amendment of s 26S (No smoking sign)

*Clause 8* amends section 26S, which provides that licensed premises must display a no smoking sign at each public entrance from an outdoor area to an enclosed place. The

amendment makes it clear that this provision only applies to licenced premises that can have a designated outdoor smoking area.

## **9 Insertion of new pt 2BB**

*Clause 9* inserts new part 2BB, which deals with smoke-free facilities.

New section 26VF of division 1 provides that part 2BB does not apply to an enclosed place, other than an enclosed place that is a vehicle or part of a vehicle. This is to make clear that smoking in enclosed places is dealt with under separate provisions of the Tobacco Act. However, it will be an offence for a person in a motor vehicle to smoke while at a smoke-free facility.

New division 2 provides for smoke-free major sports facilities. These provisions reflect the existing provisions in division 2 of part 2C of the Tobacco Act for a major sports facility that have been removed by clause 11.

New section 26VG defines a *major sports facility* as a facility declared to be a major sports facility under the *Major Sports Facilities Act 2001*.

New section 26VH provides that it is an offence to smoke at a major sports facility except at a road, carpark, picnic area or parkland in the major sports facility. This offence carries a maximum penalty of 20 penalty units.

New section 26VI provides that a person contravening section 26VH(1) (smoking at a major sports facility) must stop smoking when directed to do so by an authorised person, the occupier of the major sports facility or an employee of the occupier. This offence carries a maximum penalty of 20 penalty units.

New section 26VJ(1) provides that if a person contravenes section 26VH(1) (smoking at a major sports facility) the occupier commits an offence. This offence carries a maximum penalty of 140 penalty units. Subsection (2) provides that it is a defence for the occupier to prove:

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

New division 3 provides for smoke-free major event facilities.

New section 26VK provides the definitions for division 3. A *major event facility* means the major event area prescribed by regulation for a major event under the *Major Events Act 2014* but only during the period the area is a major event area. A *major event organiser* has the same meaning as in the *Major Events Act 2014*.

New section 26VL provides that a person must not smoke at a major event facility, unless the person is in a nominated outdoor smoking place and is not consuming food or drink. This offence carries a maximum penalty of 20 penalty units.

Subsection (3) provides that a *nominated outdoor smoking place* for a major event facility means a clearly designated part of an outdoor area within the major event facility, where

people can smoke but where no food or drink can be consumed. Subsection (3) clarifies that nominated outdoor smoking place cannot be established in an area where smoking is otherwise prohibited under the Tobacco Act. For example, a nominated outdoor smoking place cannot be established within 10 metres of children's playground equipment. There may be more than one nominated outdoor smoking place within the major event facility. There is no obligation for the major event organiser of a major event facility to provide a nominated outdoor smoking place.

New section 26VM provides that a person contravening section 26VL(1) (smoking at a major event facility) must stop smoking when directed to do so by an authorised person, the major event organiser or an employee of the major event organiser. This offence carries a maximum penalty of 20 penalty units.

New section 26VN provides that if a person contravenes section 26VL(1) (smoking at a major event facility) the major event organiser also commits an offence. This offence carries a maximum penalty of 140 penalty units. Subsection (2) provides that it is a defence for the major event organiser to prove:

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

New division 4 provides for smoke-free health facilities. This division reflects the existing provisions in division 2A of part 2C relating to health facility land.

New section 26VO(1) provides that a person must not smoke at a health facility. Subsection (2) provides that it is also an offence to smoke on land within five metres beyond the boundary of the health facility (the *buffer zone*). These offences carry a maximum penalty of 20 penalty units.

Subsection (3) provides that it will not be an offence to smoke in the buffer zone if the person is at residential premises or business premises. Residential and business premises include land on which residential or business premises may lawfully be built.

Subsection (3) also provides that it is not an offence if the person is travelling through the buffer zone in a motor vehicle. However, it will be an offence to smoke in a motor vehicle that is parked in the buffer zone around a health facility. It is also an offence to smoke in a motor vehicle while at a health facility, regardless of whether the vehicle is parked or travelling.

Subsection (4) defines terms for the purpose of section 26VO. These definitions are largely consistent with the existing definitions in section 26ZGB. However, the new definitions exclude residential aged care facilities from the definition of a health facility. This is because new division 8 provides for smoke-free residential aged care facilities.

New section 26VP provides that a person who is smoking at or near a health facility must stop smoking when directed to do so by an authorised person. This offence carries a maximum penalty of 20 penalty units.

New division 5 provides for smoke-free school facilities. This division reflects the existing provisions in division 2A of part 2C relating to school land.

New section 26VQ(1) provides that a person must not smoke at a school facility. Subsection (2) provides that it is also an offence to smoke on land within five metres of the boundary of a school facility (the *buffer zone*). These offences carry a maximum penalty of 20 penalty units.

Subsection (3) provides that it will not be an offence to smoke in the buffer zone if the person is at residential premises or business premises. Residential and business premises include land on which residential or business premises may lawfully be built.

Subsection (3) also provides that it is not an offence if the person is travelling through the buffer zone in a motor vehicle. However, it will be an offence to smoke in a motor vehicle that is parked in the buffer zone around a school facility. It is also an offence to smoke in a motor vehicle while at a school facility, regardless of whether the vehicle is parked or travelling. These provisions are consistent with those for health facilities.

Subsection (4) defines terms for the purposes of section 26VQ. These definitions are consistent with the existing definitions in section 26ZGB.

New section 26VR provides that a person who is smoking at a school facility or within the buffer zone of a school facility must stop smoking when directed to do so by an authorised person. This offence carries a maximum penalty of 20 penalty units.

New division 6 provides for smoke-free public swimming facilities.

New section 26VS(1) provides that a person must not smoke at a public swimming facility. A *public swimming facility* means a swimming pool that is owned or operated by a local government that is open to the public for swimming, whether or not on the payment of money. A public swimming facility includes the associated area, such as the area providing access to the pool, an area adjacent to the pool provided to watch swimmers or sunbathe, the kiosk and seating area. It also includes any area within the fence or wall surrounding the pool. A public swimming facility does not include a natural body of water such as a dam or a creek.

New section 26VT provides that a person who is smoking at a public swimming facility must stop smoking when directed to do so by an authorised person.

Both offences carry a maximum penalty of 20 penalty units.

New division 7 provides for smoke-free early childhood education and care facilities.

New section 26VU(1) provides that a person must not smoke at an early childhood education and care facility. An *early childhood education and care facility* means land on which an early childhood education and care service is provided. An *early childhood education and care service* means a Queensland approved education and care service under the *Education and Care Services Act 2013* and an approved education and care service under the *Education and Care Services National Law (Queensland) Act 2011*. The most common service types approved under this legislation include family day care services, standalone kindergarten services, long day care services, limited hour services and outside school hours care services.

Subsection (2) provides that it is an offence to smoke on land within five metres beyond the boundary of an early childhood education and care facility (the *buffer zone*).

The effect of subsections (1) and (2) is that it will be an offence to smoke anywhere within the boundary of an early childhood education and care facility (such as the carpark and outdoor play areas) and within the buffer zone of the early childhood education and care facility. These offences carry a maximum penalty of 20 penalty units.

Subsection (3) provides that it is not an offence to smoke at an early childhood education and care facility if it is a residential premises (for example, a family day care service) and the premises is not being used to provide an early childhood education and care service at the time the person is smoking.

Subsection (4) provides that it will not be an offence to smoke in the buffer zone if the person is at residential premises or business premises. Residential and business premises include land on which residential or business premises may lawfully be built.

Subsection (4) also provides that it is not an offence if the person is travelling through the buffer zone in a motor vehicle. However, it will be an offence to smoke in a motor vehicle that is parked in the buffer zone around an early childhood education and care facility. It is also an offence to smoke in a motor vehicle while at an early childhood education and care facility, regardless of whether the vehicle is parked or travelling. These provisions are consistent with those for health and school facilities.

Subsection (5) provides a defence for a person smoking at or near an early childhood education and care facility that it also a residential premises. The person must prove they were not aware, and could not have reasonably been expected to be aware, that the premises were an early childhood education and care facility. This defence reflects that it may not be apparent from the outside that a residential premises is, for example, a family day care service.

New section 26VV provides that a person who is smoking at or near an early childhood education and care facility must stop smoking when directed to do so by an authorised person. This offence carries a maximum penalty of 20 penalty units.

New division 8 provides for smoke-free residential aged care facilities.

New section 26VW(1) provides that a person must not smoke at a residential aged care facility. A *residential aged care facility* means land on which a facility used to provide aged care is situated. It does not include, however, a retirement village or home-based aged care. Subsection (2) provides that it is also an offence to smoke within five metres beyond the boundary of a residential aged care facility (the *buffer zone*). Both offences carry a maximum penalty of 20 penalty units.

A person does not commit an offence if the person is in a nominated outdoor smoking place. A *nominated outdoor smoking place* means a clearly designated outdoor area within the residential aged care facility that has been established by the person in charge of the facility as an area where smoking is permitted. A residential aged care facility may have more than one nominated outdoor smoking place. A nominated outdoor smoking place cannot be established in an area where smoking is otherwise prohibited under the Tobacco Act. For

example, a nominated outdoor smoking place cannot be established within 10 metres of children's playground equipment.

Subsection (4) provides that it will not be an offence to smoke in the buffer zone if the person is at residential premises or business premises. Residential and business premises include land on which residential or business premises may lawfully be built.

Subsection (4) also provides that it is not an offence if the person is travelling through the buffer zone in a motor vehicle. However, it will be an offence to smoke in a motor vehicle that is parked in the buffer zone around a residential aged care facility. It is also an offence to smoke in a motor vehicle while at a residential aged care facility, regardless of whether the vehicle is parked or travelling. These provisions are consistent with those for health, school and early childhood education and care facilities.

New section 26VX provides that a person who is smoking at or near a residential aged care facility must stop smoking when directed to do so by an authorised person. This offence carries a maximum penalty of 20 penalty units.

## **10 Amendment of s 26W (Meaning of outdoor eating or drinking place)**

*Clause 10* amends section 26W, which provides for outdoor eating or drinking places, to insert subsection (4A). New subsection (4A) provides that a smoking area set up under section 26W(4) cannot be in a place where smoking is otherwise prohibited. For example, a table cannot be set aside for smoking within five metres of an entrance to an enclosed place where smoking is prohibited under section 26ZJ.

Clause 10 also omits and inserts the definition of *residential premises* and inserts a new definition of *multi-unit residential accommodation* in section 26W(5). Under the existing provisions, residential premises, other than a hotel, motel, hostel, boarding house, nursing home, a lot in a community titles scheme or other similar accommodation, cannot be an outdoor eating and drinking place. The effect of the amendment is that a nursing home is no longer considered multi-unit residential accommodation and cannot be an outdoor eating and drinking place. This is because amendments made by clause 9 prohibit smoking at a residential aged care facility.

## **11 Replacement of pt 2C, divs 2 and 2A**

*Clause 11* omits divisions 2 and 2A of part 2C, which provided for smoking bans at major event facilities, health facility land and school land. Relevant provisions have been redrafted and included by clause 9 as new part 2BB.

Clause 11 also inserts new division 2, which provides for government precincts.

New section 26ZD provides that a person must not smoke within a government precinct. A *government precinct* means land prescribed by regulation that adjoins a building occupied by the State, the Legislative Assembly, a court or tribunal, an entity that represents the State or another entity established by an Act. A government precinct could include, for example, a public square that adjoins a building owned or tenanted, either wholly or in part, by a government department or a statutory body.

This offence carries a maximum penalty of 20 penalty units.

Clause 11 also inserts new section 26ZE, which provides that a person who is smoking at a government precinct must stop smoking when directed to do so by an authorised person. This offence carries a maximum penalty of 20 penalty units.

## **12 Amendment of s 26ZJ (Person must not smoke near an entrance to an enclosed place)**

*Clause 12* amends section 26ZJ(1), which provides that a person must not smoke at the entrance to an enclosed place. Subsection (1) is amended to omit *4m* and insert *5m*, extending the area in which a person must not smoke near an entrance to an enclosed place.

Clause 12 also replaces section 26ZJ(3). Existing section 26ZJ(3) provides that the offence does not apply to a person in a motor vehicle or in a prescribed outdoor pedestrian mall. New subsection (3) provides that the offence does not apply to a person in a motor vehicle passing the entrance. The effect of the amendment is that a person does not commit an offence by smoking in a motor vehicle that is driving within five metres of an entrance to an enclosed place. However, a person smoking in a motor vehicle parked within five metres of an entrance will commit an offence. The reference to prescribed outdoor pedestrian malls is removed as clause 13 provides that smoking is prohibited at all outdoor pedestrian malls.

Clause 12 also amends section 26ZJ(6) to remove the reference to *nursing homes* from the definition of *multi-unit residential accommodation*. The effect of this amendment is that the offence of smoking within five metres of an entrance will no longer apply to nursing homes. However, new division 8 of part 2BB provides that it is an offence to smoke at, or within five metres of, a residential aged care facility. This will encompass the area within five metres of the entrance to a building from which residential aged care is provided.

## **13 Insertion of new ss 26ZKA-26ZKE**

*Clause 13* inserts new sections 26ZKA, 26ZKB, 26ZKC, 26ZKD and 26ZKE, which apply smoking bans at outdoor pedestrian malls, at or near a public transport waiting point, at or near a skate park, at or near sporting grounds and spectator areas during an organised under-age sporting event, and at prescribed national parks.

New section 26ZKA provides that a person must not smoke at an outdoor pedestrian mall. An *outdoor pedestrian mall* means a mall established under either the *City of Brisbane Act 2010* (City of Brisbane Act) or the *Local Government Act 2009* (Local Government Act). It also includes Queen Street Mall and the Chinatown and Valley Malls, which are continued in existence under the City of Brisbane Act. This offence carries a maximum penalty of 20 penalty units.

Existing provisions in division 4 of part 2C of the Tobacco Act enable a local government to ban smoking at outdoor pedestrian malls within the local government area. Clause 16 omits these provisions to reflect that smoking is prohibited at all outdoor pedestrian malls.

New section 26ZKB(1) provides that a person must not smoke at a public transport waiting point. Subsection (2) provides that a person must not smoke on land within five metres beyond a public transport waiting point (the *buffer zone*), unless the person has a reasonable excuse. These offences carry a maximum penalty of 20 penalty units.

A *public transport waiting point* means:

- a sign, shelter or seating at a drop-off or collection point for a public passenger vehicle, and
- a terminal, jetty, pontoon, platform or landing for the arrival and departure of a public passenger vehicle.

A public passenger vehicle includes trains, light rail, buses, ferries, taxis and limousines. Therefore, a public transport waiting point will include train stations, light rail platforms, bus stops (including school bus stops), bus shelters, busway platforms, taxi ranks and ferry terminals, used to transport members of the public. The offence will apply to any public transport waiting point, including where the waiting point is on privately owned land, such as a taxi rank at an airport, or a bus stop at a shopping centre.

Subsection (3) provides that a person, who would otherwise not be in the buffer zone, is taken to be in the buffer zone if the person is in a queue that starts at the public transport waiting point or in the buffer zone. This means that, for example, a person is prohibited from smoking in a taxi queue, even if the person is further than five metres from the taxi rank sign.

Subsection (4) makes clear that if relevant transport legislation prohibits smoking at a public transport waiting point, the smoking ban in the transport legislation applies and the person does not commit an offence under the Tobacco Act.

Subsection (5) provides that it is not an offence if the person is at residential or business premises that are situated within the buffer zone, or the person is travelling through the buffer zone in a motor vehicle. However, a person smoking in a parked motor vehicle at a public transport waiting point or within the buffer zone will commit an offence.

Subsection (6) provides that it is a reasonable excuse for the offence of smoking in the buffer zone of a public transport waiting point if the person was walking along the street and incidentally passed within five metres of the public transport waiting point.

Existing provisions in part 2C, division 4 of the Tobacco Act enable a local government to ban smoking in public transport waiting points within the local government area. Clause 16 omits these provisions to reflect that these amendments prohibit smoking at all public transport waiting points.

New section 26ZKC(1) provides that a person must not smoke within 10 metres of any part of a skate park. A *skate park* is a public place where obstacles, jumps and uneven surfaces have been constructed for the purpose of riding or skating on bicycles, rollerblades, rollerskates, skateboards and scooters. It does not include a bicycle path or footpath or a path shared by cyclists and pedestrians.

Subsection (2) provides that the offence does not apply to a person at residential or business premises within 10 metres of the skate park, or a person travelling through this area in a motor vehicle. However, a person smoking in a parked motor vehicle within 10 metres of the skate park will commit an offence.

This offence carries a maximum penalty of 20 penalty units.

New section 26ZKD(1) provides that a person must not smoke at a sporting ground or the viewing area for a water sport, during:

- an organised under-age sporting event
- a training or practice session to prepare for an organised under-age sporting event, or
- any break or interval during an organised under-age sporting event or training or practice session.

Subsection (2) provides that a person must not smoke on land within 10 metres beyond the boundary of the sporting ground or the viewing area for a water sport, during a period in which smoking is prohibited under subsection (1) (the *buffer zone*).

These offences carry a maximum penalty of 20 penalty units.

An *organised under-age sporting event* means a sporting event that is:

- organised in advance
- organised or intended for, or predominantly participated in by, persons under the age of 18 years, and
- conducted by a professional or amateur sporting body or educational institution according to established rules.

The offence does not apply to social sporting events, organised by friends or family. It also does not apply to sporting events that are organised for adult participants but have a small number of participants who are under the age of 18 years.

The offence does not apply to a person in the buffer zone if they are at residential or business premises, or travelling through the buffer zone in a motor vehicle. However, a person smoking in a parked motor vehicle within 10 metres of the sporting ground or the viewing area for a water sport, during an organised under-age sporting event or training session will commit an offence.

A *sporting ground* is defined in subsection (4) to mean: a playing area, such as a court, field, oval, running track, racing track; an area set aside for spectators; an area reserved for players, competitor or officials; and a waiting or warm-up area. A sporting ground does not include a bicycle path, a skate park, a path shared by cyclists and pedestrians, or a horse racing track.

A *viewing area* for a water sport means the area set aside for viewing the water sport. This may include, for example, marquees at a school rowing event or the spectator area at a junior surf lifesaving carnival.

New section 26ZKE(1) provides that a person must not smoke at a national park, or a part of a national park, that is prescribed by regulation. A *national park* is defined by reference to the *Nature Conservation Act 1992*, which provides that a national park means an area dedicated under that Act as a national park.

This offence carries a maximum penalty of 20 penalty units.

Subsection (2) provides that, before the Minister responsible for the Tobacco Act can recommend that a national park or part thereof be prescribed in a regulation, the Minister must obtain written consent from the Minister responsible for the management of national parks under the *Nature Conservation Act 1992*.

## **14 Amendment of s 26ZL (Person smoking must stop when directed)**

*Clause 14* amends section 26ZL, which provides that persons must stop smoking when directed, to omit ‘26ZJ(1) or 26ZK(1)’ and insert references to sections 26ZJ(1), 26ZK(1), 26ZKA(1), 26ZKB(1) or (2), 26ZKC(1), 26ZKD(1) or (2) and 26ZKE(1).

The effect of this is that, in addition to the offences already included in section 26ZL, a person must comply with a direction to stop smoking for the following new offences:

- section 26ZKA: a person must not smoke at outdoor pedestrian mall
- section 26ZKB: a person must not smoke at or near public transport waiting point
- section 26ZKC: a person must not smoke at or near skate park
- section 26ZKD: a person must not smoke at or near under-age sporting event, and
- section 26ZKE: a person must not smoke at national park.

## **15 Omission of ss 26ZM-26ZP**

*Clause 15* omits sections 26ZM, 26ZN, 26ZO, and 26ZP from part 2C, division 3. These sections relate to the role of local government in administering and enforcing certain provisions of the Tobacco Act. Clause 18 inserts these sections, amended as necessary to reflect other provisions in the Bill, into new part 2E.

## **16 Replacement of pt 2C, div 4 (Prohibition on smoking at public transport waiting points and malls by local governments)**

*Clause 16* omits and replaces division 4 of part 2C. Existing division 4 of part 2C enables local governments to make local laws prohibiting smoking at public transport waiting points and malls within their local government area. These provisions are no longer required as new provisions in part 2C prohibit smoking at all public transport waiting points and outdoor pedestrian malls in Queensland.

New division 4 of part 2C provides that local governments may prohibit smoking at other outdoor public places.

New section 26ZPA provides that a local government may make a local law, including a subordinate law, prohibiting smoking at an outdoor public place in their local government area provided that it is not a place otherwise dealt with under the Tobacco Act. This means that a local government cannot make a local law about a place at which smoking is already banned under the Tobacco Act. It also prevents a local government from making a local law prohibiting smoking at an area at which smoking is permitted under the Tobacco Act—for example, at a designated outdoor smoking area or a nominated outdoor smoking place.

Subsection (3) provides that a local law made under new section 26ZPA must not carry a penalty of more than 20 penalty units.

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

New section 26ZPC provides that the chief executive may ask the local government to provide a report about the local government's administration and enforcement of the local law. The local government must provide the requested report.

New section 26ZPD provides that a fine imposed by a court for a contravention of a local law made under new section 26ZPA is payable to the local government.

## **17 Amendment of s 26ZQA (Display of hookahs)**

*Clause 17* amends section 26ZQA, which provides that a person must not display in a shop more than the number of hookahs prescribed by regulation, to clarify that the display of a part of a hookah is taken to be the display of a hookah. The effect of this amendment is that, if the regulation prescribes that a person can display a maximum of three hookahs in a shop, displaying part of a hookah is considered to be the display of one hookah.

## **18 Insertion of new pt 2E**

*Clause 18* inserts new part 2E, which provides for the administration of provisions by State and local governments.

New section 26ZU(1) provides that both State and local governments have a role in administering particular provisions of the Tobacco Act. This section reflects existing section 26ZM with amendments to expand the provisions to which it applies to include:

- outdoor pedestrian malls, public transport waiting points, skate park, sporting grounds or the viewing area for a water sport during children's sporting events
- public swimming facilities
- early childhood education and care facilities, and
- residential aged care facilities.

Section 26ZU(1) operates in conjunction with the *State Penalties Enforcement Regulation 2014*, which prescribes who is an authorised officer for the purposes of issuing infringement notices for these offences.

Section 26ZU(2) makes clear that local governments are not required to enforce provisions under the Tobacco Act.

Section 26ZV provides for the role of local government. This section reflects existing section 26ZN.

Section 26ZW provides that the State may require a report from a local government about the local government's administration and enforcement of relevant provisions. This section reflects existing section 26ZO.

Section 26ZX provides that fines imposed by a court for offences under relevant provisions are payable to the relevant local government. This section reflects existing section 26ZP.

## **19 Amendment of s 28 (Appointment)**

*Clause 19* amends section 28(5) and 28(6) to provide that the function of a health service authorised person is to investigate, monitor and enforce offences relating to smoking at health facilities and residential aged care facilities, including the buffer zones around these facilities.

However, a health service authorised person is only authorised to undertake compliance activities at facilities at which a health service or residential aged care is provided by the Hospital and Health Service managed by the health service chief executive who appointed the authorised person.

## **20 Amendment of s 40A (Power to direct person to stop smoking)**

*Clause 20* amends section 40A, which provides that an authorised person may direct a person to stop smoking if the person is contravening stated provisions. Section 40A is amended to make reference to the following new sections:

- section 26VH(1): person must not smoke at major sports facility
- section 26VL(1): person must not smoke at major event facility
- section 26VO(1) or (2): person must not smoke at or near a health facility
- section 26VQ(1) or (2): person must not smoke at or near a school facility
- section 26VS(1): person must not smoke at a public swimming facility
- section 26VU(1) or (2): person must not smoke at or near an early childhood education and care facility
- section 26VW(1) or (2): person must not smoke at or near a residential aged care facility
- section 26ZD(1): person must not smoke within a government precinct
- section 26ZKA(1): person must not smoke at an outdoor pedestrian mall
- section 26ZKB(1) or (2): person must not smoke at or near a public transport waiting point
- section 26ZKC(1): person must not smoke at or near a skate park
- section 26ZKD(1) or (2): person must not smoke at or near under-age sporting event, and
- section 26ZKE(1): person must not smoke at national parks.

## **21 Amendment of schedule (Dictionary)**

*Clause 21* amends the dictionary to omit, amend and insert new definitions for the Tobacco Act.

The term *residential premises* is defined to mean premises used, or intended to be used, as a place of residence or mainly as a place of residence. This definition will apply in relevant sections of the Tobacco Act, with or without qualifiers.

*Clause 21* replaces the existing definition of *hookah* to provide that a hookah is a device for smoking both tobacco or another thing, by the drawing of smoke, fumes or vapour, resulting from heating or burning the tobacco or other thing in the device, through water or another liquid in the device.

*Clause 21* also replaces the definition of *smoke* to include, for a smoking product that is a hookah, inhale through the hookah. Currently, smoke means, for a smoking product other than a personal vaporiser, to smoke, hold or otherwise have control over an ignited smoking product. However, hookahs do not always involve an *ignited* smoking product, but rather, for example, heated stones.

*Clause 21* also amends the definition of *smoking product*, except in relation to parts 1, 2, 2A and 3 of the Tobacco Act, to mean, for a hookah, tobacco or another thing that may be smoked in the hookah. The effect of these amendments is that the smoking of non-tobacco products in a hookah is now considered smoking under the Tobacco Act and is therefore

captured by the prohibitions on smoking under the Tobacco Act. Previously, only the smoking of tobacco products in a hookah was considered smoking under the Tobacco Act.

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