

# Health Legislation Amendment Bill 2025

## Explanatory Notes

### Short title

The short title of the Bill is the Health Legislation Amendment Bill 2025.

### Policy objectives and the reasons for them

The Bill amends the:

- *Hospital and Health Boards Act 2011* to require at least one member of each Hospital and Health Board (HHB) to be a clinician who is employed or engaged by the Hospital and Health Service (HHS) for which the board is established, and provide they may not be appointed as Chair or Deputy Chair of the board;
- *Tobacco and Other Smoking Products Act 1998* (TOSPA) to:
  - allow the chief executive of Queensland Health to promptly forfeit vaping goods upon seizure;
  - empower courts to order persons convicted of an offence under TOSPA to pay the State for reasonable costs incurred as a result of the offence; and
  - make minor and technical amendments to improve the operation of the Act.

### Amendments to the *Hospital and Health Boards Act 2011*

The amendments to the Hospital and Health Boards Act implement a commitment made by the Queensland Government during the 2024 State Election campaign to put doctors, nurses and clinical staff back in charge of hospitals. As outlined in the *Easier Access to Health Services Plan*, one of the ways this will be achieved is by encouraging frontline clinicians to take on leadership positions in local HHSs, including as members of HHBs.

The Charter Letter for the Minister for Health and Ambulance Services includes a commitment to ‘amend legislation to ensure there is at least one frontline staff member employed in a local health facility on Health and Hospital Boards’. The proposed amendment to the Hospital and Health Boards Act addresses this commitment.

Each HHS in Queensland is governed by a HHB. The Minister for Health and Ambulance Services makes a recommendation to the Governor in Council to appoint board members with the necessary skills, knowledge and experience for the role. Currently, the Hospital and Health Boards Act requires that each board must have five or more members, with at least one member who is a clinician. Section 23(5) of the Hospital and Health Boards Act defines a ‘clinician’ as a registered health practitioner who provides care or treatment to patients in a profession that provides health services in the public sector.

The objective of the amendment to the Hospital and Health Boards Act is to require at least one board member to be a clinician who is employed or engaged by the HHS for which the

board is established and provide they may not be appointed as Chair or Deputy Chair of the board. The appointment of HHS clinicians on boards will help to ensure that frontline clinical staff are involved in decision making for the delivery of health services to patients served by the HHS.

### **Amendments to the *Tobacco and Other Smoking Products Act 1998***

In 2024, the Commonwealth Government took action to address increasing levels of vaping in the community by banning the importation, manufacture, supply, and non-personal possession of disposable and recreational vapes. Enforcement of these bans is primarily the responsibility of states and territories, supported by delegated powers under the Commonwealth *Therapeutic Goods Act 1989*.

In response, Queensland's *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Act 2024* made significant amendments to TOSPA. These amendments empowered enforcement officers to seize and forfeit illicit nicotine products, including recreational vaping goods, strengthening Queensland's legislative framework.

Queensland Health is working closely with both federal and state agencies to combat the illicit trade of tobacco and vaping goods. Although the 2024 reforms have bolstered enforcement efforts, some operators continue to trade illegally because of the high profitability of supplying illicit vaping goods. Ongoing enforcement efforts are critical to curbing illegal supply, however, operational challenges have arisen in managing the increasing volume of seized vaping goods. These challenges have been exacerbated by the hazardous nature of vaping goods which require specialised storage.

These ongoing challenges have highlighted the need for further legislative action to support effective enforcement against illegal vaping operators, enable the safe and efficient management of vaping goods, and help to alleviate the substantial financial burden of the enforcement of TOSPA.

#### Forfeiture and destruction of vaping goods

Under section 205 of TOSPA, the chief executive of Queensland Health has authority to forfeit illicit tobacco and illicit nicotine products to the State. This process begins with issuing a show cause notice, which provides the owner with 28 days to respond before forfeiture takes effect. Section 225 allows a person to appeal the forfeiture decision within 28 days of receiving the notice. However, section 225(7) clarifies that an appeal does not automatically halt the destruction of forfeited goods. Section 226 enables a court to grant a stay, preventing destruction if deemed necessary.

Currently, Queensland Health stores seized vaping goods for a minimum of eight weeks, to comply with the show cause periods, and to avoid the risk of compensation if the forfeiture decision is overturned or if a court-ordered stay delays destruction. This process is becoming increasingly difficult to manage due to the increase in seized vaping goods and the significant storage challenges this creates. Queensland Health's storage facilities are near capacity, and the shortage of secure, safe storage is impacting enforcement actions and could hinder future seizures. It is essential to address this challenge to maintain effective enforcement.

Vaping goods present unique safety risks that make their management more complex than other seized substances like illicit tobacco. Vaping goods are highly flammable and create significant fire hazards, particularly when improperly handled, stored, or destroyed. The presence of lithium-ion batteries, which can overheat, leak, or explode under certain conditions, further complicates their handling. Additionally, vaping goods contain hazardous materials, such as

liquid nicotine, heavy metals, and carcinogens, which pose health and environmental risks. Their non-compostable plastic components exacerbate environmental harm. Proper destruction requires careful handling and dismantling to mitigate these risks. Given the hazardous nature of vaping goods, managing them safely is far more challenging than managing other products seized under TOSPA such as illicit tobacco.

Storing vaping goods requires specialised, fire-resistant facilities, such as ventilated and cooled shipping containers, that can cost up to \$65,000 each. With the rapid increase in seized vaping goods, Queensland Health's storage capacity is becoming unsustainable, further compounded by the current show cause provisions. Show cause processes are not suitable for goods that pose immediate safety risks, such as explosives, drugs, and chemicals. These products are often exempt from such processes due to their inherent danger. Given their hazardous nature, vaping goods should be treated similarly, allowing for swift action to mitigate safety risks.

To address these challenges, it is necessary to remove the show cause process for the forfeiture of vaping goods. The objective of the amendment is to enable the chief executive to order the forfeiture and destruction of vaping goods promptly upon seizure, ensuring rapid action to mitigate the safety risks associated with storing them for extended periods. This provision will only apply to vaping goods, without extending to other products seized under TOSPA that do not present the same risks or storage difficulties. Vaping goods are easily identifiable due to their distinct characteristics, such as cartridges, e-liquid containers, and lithium-ion batteries, making misidentification unlikely. This further justifies the removal of procedural requirements like the show cause process.

Despite the forfeiture process being expedited, safeguards will remain in place. An authorised person must reasonably believe that the item is evidence of an offence under TOSPA before seizing vaping goods, ensuring that legitimate retailers, such as community pharmacies selling therapeutic vaping goods, are not affected. Additionally, the chief executive must reasonably believe that ordering forfeiture is necessary to prevent the goods from being used for the offence for which it was seized (for example, illegal supply of vaping goods to the public).

Section 219 of TOSPA also allows individuals to claim compensation for any loss or expense incurred due to the exercise, or attempted exercise, of powers under part 11 of TOSPA. Claims must be made through a court, either as a standalone proceeding or as part of another proceeding involving an offence under TOSPA. Compensation will only be awarded if the court deems it just, providing a legal avenue for individuals who are adversely affected.

#### Cost recovery from convicted persons

Currently, TOSPA does not provide the court with the explicit authority to order persons convicted of offences to pay the State's costs reasonably incurred in relation to those offences, including the costs associated with the storage, destruction, and disposal of seized items.

As outlined above, vaping goods contain hazardous components that require specialised storage and handling, leading to substantial costs. Additionally, other illicit items regulated under TOSPA, such as ice pipes, bongs, and illicit tobacco, incur costs for Queensland Health in terms of testing, transportation, storage, and disposal.

These costs are a direct consequence of offences committed under TOSPA. To address the financial burden placed on the State, it is necessary to amend TOSPA to allow the courts to order convicted persons to pay for the reasonable costs incurred in managing seized items, investigating the offence, and preparing for prosecution. This amendment applies to all offences under TOSPA, not just those involving vaping goods, enabling the prosecution to seek cost orders in all appropriate cases.

The objective of the amendment is to introduce a clear mechanism for the prosecution to apply for a cost order, which will prevent the State from bearing the full burden of costs associated with criminal activity. This will ensure that those responsible for the offences contribute to the costs incurred. For example, it would allow Queensland Health to recover costs for handling and disposing of hazardous materials like vaping goods and illicit tobacco.

To maintain fairness, safeguards will be implemented to allow the court to consider the specific circumstances of each case when determining whether to order the payment of costs. In deciding whether to make a costs order, the court may have regard to factors such as the individual's conduct during the investigation and the extent of their actions in causing the incurred costs.

This amendment is necessary to ensure that the financial impact of enforcing TOSPA does not fall solely on the State. It will provide a fairer and more sustainable approach to cost recovery, reinforcing accountability and supporting the continued enforcement of public health and safety laws. It will also increase the deterrent effect of relevant offences under TOSPA, by reducing the profitability associated with the illegal conduct.

#### Minor and technical amendments

To improve the clarity and operational effectiveness of TOSPA, the Bill makes a range of minor and technical amendments. These changes will streamline the provisions of TOSPA, ensuring alignment with both current practices and policy objectives. In particular, the Bill will:

- clarify that when issuing a show cause notice, the notice must specify the *grounds* for the proposed cancellation, including the specific acts, omissions, and circumstances supporting those grounds, rather than focusing only on *disciplinary grounds*. The objective of this change is to ensure that the show cause notice provides all relevant information regarding the cancellation of a retail or wholesale licence, as cancellation can occur for reasons beyond the disciplinary grounds outlined in section 36 and may also include other grounds listed under section 37(1)(b) to (d);
- clarify that a thing becomes the property of the State if it is forfeited to the State or if the owner and the State agree to transfer ownership. The objective of this clarification is to acknowledge that ownership can be transferred to the State not only through forfeiture but also through mutual agreement between the owner and the State;
- clarify that when the chief executive decides that a seized ice pipe or bong is forfeited to the State, the written notice of the decision and reasons must be given to the *former* owner, rather than the owner, of the seized item; and
- insert subdivisions to enhance the structure and readability of part 11, division 4 of TOSPA, ensuring it aligns with current legislative drafting practices.

## **Achievement of policy objectives**

### **Amendments to the *Hospital and Health Boards Act 2011***

The Bill amends the Hospital and Health Boards Act to provide that at least one HHB member must be a clinician employed or engaged by the same HHS for which the board is established and provide they may not be appointed as Chair or Deputy Chair of the board. The clinician must be a practitioner who is registered under the Health Practitioner Regulation National Law,

which means they must be a doctor, nurse, midwife or from another allied health profession that requires registration. The clinician could be an employee of the HHS or a clinician engaged by the HHS as a contractor, such as a visiting medical officer. The clinician must be employed or engaged to provide care or treatment for an average of at least 8 hours per week and have been employed or engaged by the HHS as a clinician for at least two years. These are minimum requirements to ensure the clinician has direct experience working in the HHS.

The Bill provides that a clinician member of the board from the same HHS will not be eligible to be the Chair or Deputy Chair of the board. Under the Hospital and Health Boards Act, the Chair has significant responsibilities such as having a casting vote at meetings and signing service agreements between the HHS and the department. The Deputy Chair acts as Chair of the board when the Chair is absent from duty or during a vacancy in the Chair position. Ensuring a HHS clinician member cannot be appointed as the Chair or Deputy Chair helps to manage any perceived issues about these significant functions.

A clinician who does not work for a HHS may also continue to be appointed as a board member. The Minister may recommend a person for appointment to a HHB if the Minister considers they have the skills, knowledge and experience required to assist a HHS to perform its functions effectively and efficiently, including persons with clinical expertise (section 23(2)(b)) or skills, knowledge and experience in primary healthcare or Aboriginal and Torres Strait Islander health (section 23(2)(d) and (f)). This allows for flexibility for board appointments to have a range of clinical experience and expertise, while ensuring that at least one member of the HHB must be a HHS clinician.

The Bill also provides that a board member may be removed from the Board if they were appointed because they were a HHS clinician but they have ceased being a HHS clinician. This could apply, for example, if the person ceases their employment by the HHS entirely or no longer works for the minimum of 8 hours per week on average.

The requirement for a HHS clinician to be appointed to the board will commence on 1 April 2026, to allow sufficient time for Queensland Health to undertake the recruitment process for new board members with the necessary skills, knowledge and experience for the role. Following the recruitment and appointment process, the scheduled appointment term for new board members will commence on 1 April 2026.

## **Amendments to the *Tobacco and Other Smoking Products Act 1998***

### Forfeiture and destruction of vaping goods

The Bill introduces a new provision in TOSPA which allows the chief executive to determine that seized vaping goods are forfeited to the State, without the show cause processes applying to other items forfeited under TOSPA. This determination can be made if the chief executive is satisfied that seized items are vaping goods and reasonably believes that forfeiture is necessary to prevent the goods from being used to commit the offence for which they were seized. The chief executive will be required to provide the former owner of the vaping goods with written notice of the forfeiture decision, including the reasons for the decision. The seized vaping goods can then be swiftly destroyed and do not need to be stored for extended periods.

As a safeguard, in the rare event that a small number of vaping goods intended for personal use or therapeutic vaping goods are inadvertently forfeited and destroyed, section 219 of TOSPA allows individuals to seek compensation for any loss or expense incurred due to the exercise of powers under part 11. Claims must be submitted through the court, with compensation granted only if deemed just by the court. This ensures that the rights of individuals are protected, while also allowing for swift action to address safety concerns.

This amendment to the forfeiture provisions is necessary to streamline enforcement efforts and address the growing safety, storage, and disposal challenges posed by vaping goods. By enabling immediate forfeiture of vaping goods upon seizure, Queensland Health will be better equipped to manage these risks, protect public safety, and ensure that enforcement actions address the illicit vaping trade.

#### Cost recovery from convicted persons

The Bill inserts a new provision in TOSPA which provides that if a court convicts a person of an offence against TOSPA, the court may order the person to pay the costs reasonably incurred by the State because of the offence, including the following costs:

- cost of testing, transporting, storing, dismantling, destroying or disposing of smoking products, ice pipes, bongs, illicit tobacco, or illicit nicotine products;
- the Department's reasonable costs of investigating any offence in TOSPA; and
- reasonable costs of preparing for the prosecution of the offences related to any offence in TOSPA.

In deciding whether to make the costs order, the court may have regard to the:

- extent to which the person's conduct during the investigation contributed to the costs being incurred;
- whether the offence was committed, wholly and partly, for a commercial purpose; and
- any other relevant matter.

The amount that the court orders to be paid will be a debt owing to the State. This cost recovery provision does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

This ensures that the financial burden resulting from the enforcement of TOSPA is more equitably shared. By empowering the court to order convicted persons to pay for the costs reasonably incurred by the State due to their offence, including costs associated with the testing, transport, storage, dismantling and destruction of seized items, the amendment aims to hold offenders accountable for the financial impact of their illegal actions. This provision also seeks to address the economic incentives driving illicit trade, increasing the deterrent effect of relevant offences.

#### Minor and technical amendments

The Bill makes a number of minor and technical amendments to TOSPA to:

- provide that when the chief executive issues a show cause notice, the notice must outline the grounds for the proposed cancellation and the specific acts, omissions, and circumstances supporting those grounds, rather than focusing solely on disciplinary grounds;
- clarify that a thing becomes the property of the State if the thing is forfeited to the State or the owner of the thing and the State agree to the transfer of the ownership of the thing to the State;
- clarify that when the chief executive decides that a seized item is forfeited to the State, the written notice of the decision and reasons must be given to the *former* owner, rather than the owner, of the seized item; and

- insert subdivision headings to improve the structure and readability of part 11, division 4 of TOSPA and align with modern drafting conventions.

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

There are no alternative ways to achieve the policy objective of ensuring that HHS clinicians are appointed to HHBs under the Hospital and Health Boards Act.

There are no alternative solutions to the amendments to TOSPA that would allow for the prompt forfeiture and destruction of vaping goods and enable Queensland Health to recover the costs of managing illicit goods. Without these changes, the challenges related to the storage and destruction of seized vaping goods will persist and continue to impact enforcement actions and hinder future seizures. The financial responsibility for managing these illicit goods, including the costs of safe storage, testing, and destruction, would continue to burden the State and taxpayers.

## **Estimated cost for government implementation**

The recruitment and appointment process for clinician members of HHBs will be undertaken as part of the next round of recruitment for board members, which will be completed by 1 April 2026. As a result, it is not expected there will be any additional cost to Government to implement the amendments to the Hospital and Health Boards Act.

Implementing TOSPA amendments will result in minor costs for Queensland Health, primarily for developing systems to streamline the seizure and forfeiture process for vaping goods, and to ensure the proper preservation of evidence before lawful destruction of prohibited vaping goods. These costs can be met within Queensland Health's existing budget. The Bill will generate cost savings for Queensland Health by reducing the need to hold seized items for extended periods and for Government by allowing for the recovery of enforcement-related costs.

## **Consistency with fundamental legislative principles**

The amendments are generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. However, the amendments may impact on particular principles. The potential departures from fundamental legislative principles are discussed below and are considered justified. All 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(3)(b))**

#### Absence of a show cause process – natural justice

The Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice. The three key principles of natural justice are that a person should have a right to be heard, a decision-maker must be unbiased and procedural fairness should be followed.

The amendments in the Bill streamline the current forfeiture and destruction processes for vaping goods by removing the show cause requirement that applies generally to forfeiture under TOSPA. This change will empower the chief executive to order the forfeiture of vaping goods upon seizure, enabling swift destruction and avoiding the need to store the vaping goods

for extended periods. While this shift in procedure means individuals will not have the opportunity to respond before an item is forfeited, the amendment is justified by the safety risks and logistical challenges inherent in the seizure, storage, and destruction of vaping goods. To balance efficiency with fairness, the amendment includes several safeguards to protect the rights of the former owners of vaping goods.

When deciding whether to seize vaping goods, an authorised officer must have a reasonable belief that the goods are evidence of an offence under TOSPA. While Queensland Health policy generally discourages the confiscation of vaping goods from an individual's personal belongings, it is possible a small number of vapes intended for personal use (for example, those belonging to a store employee or owner) may be inadvertently seized, forfeited, and destroyed. In such cases, section 219 of TOSPA may be applied. This section allows individuals to claim compensation for any loss or expense incurred due to the exercise or attempted exercise of powers under part 11 of TOSPA. Claims must be made through a court, either as a standalone proceeding or as part of another proceeding involving an offence under TOSPA. Compensation will only be awarded if the court deems it just.

Queensland Health will develop administrative protocols for the preservation of evidence relating to the seized items before they are destroyed. This may involve collecting representative samples, photographing the goods, and documenting the destruction process through detailed reports. These measures ensure that secondary evidence is available for potential legal proceedings, maintaining procedural integrity and transparency in the enforcement process.

The increasing volume of seized vaping goods presents significant challenges for their storage and destruction, making the removal of the show cause process necessary. Vaping goods, particularly those containing lithium-ion batteries, pose serious safety risks, including overheating, leakage, and explosions. These risks contribute to fire hazards and complicate storage requirements, necessitating expensive, specialised fire-resistant facilities. With current storage capacities nearing their limits, the risks and costs associated with prolonged storage are escalating. Expediting the forfeiture and destruction process will significantly reduce the time items are stored, mitigating these safety and environmental risks.

Comparable legislative frameworks support the approach proposed in this amendment. For example, section 705 of the *Police Powers and Responsibilities Act 2000* allows authorised officers to destroy dangerous items on-site to prevent further offences. Section 106 of the *Explosives Act 1999* allows the Minister to declare that a seized explosive is forfeited to the State, without a show cause period, if returning it to its owner would not be in the interests of public safety. Section 206 of the *Customs Act 1901 (Cth)* permits the disposal of prohibited goods, including vaping goods, when officers are reasonably satisfied that the items are prohibited. These precedents demonstrate that immediate forfeiture and destruction of hazardous goods, in certain contexts, is a well-established and necessary approach to public safety and the effective enforcement of laws.

While the removal of the show cause process may impact procedural fairness by limiting an individual's opportunity to respond prior to forfeiture, the safeguards embedded in the amendment ensure that enforcement actions remain reasonable, transparent, and proportionate. The ability to seek compensation, along with the preservation of secondary evidence, strikes a balance between protecting public health and upholding the principles of natural justice. Given the unique risks and logistical challenges relating to the storage of vaping goods, the proposed changes are justified, enabling effective regulatory enforcement while safeguarding public health and safety.



### Absence of a show cause process – property rights

An individual's right to their personal property has been identified as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties. The Bill introduces a provision that allows the chief executive to order the forfeiture of vaping goods without a show cause or appeals process, potentially limiting individuals' rights to their personal property. While this streamlining of the forfeiture process may conflict with property rights, the departure from this principle is justified due to the illicit nature of the goods and the serious harm they pose to public health.

The removal of the show cause process simplifies the forfeiture framework, enabling the chief executive to swiftly order the forfeiture of vaping goods upon seizure. This change addresses the significant practical challenges associated with the safe storage of these goods. It also reduces enforcement costs and enhances the operational effectiveness of Queensland Health's enforcement activities. The amendment allows for quicker, more decisive action in dealing with dangerous goods that pose immediate risks to public health. This change also further deters illicit activities by introducing financial consequences that are directly tied to the offences committed.

While property rights are a fundamental protection, they are not absolute. They can be restricted when they conflict with broader public interests, such as protecting public health and safety. In the case of illicit goods, such as illegal vaping goods, the protection of property rights cannot be invoked to safeguard these items. The prompt forfeiture of such goods is a reasonable and proportionate response to mitigating the risks they pose to the community. By removing the show cause process, the Bill protects public health and safety and reinforces the principle that personal property rights may be outweighed by the need to address illegal activity.

### Cost recovery provisions

The Bill also introduces a cost recovery provision that may impact an individual's right to their personal property. This provision addresses the financial burden of managing items (including, but not limited to vaping goods, illicit tobacco, bongs and ice-pipes) seized under TOSPA. It achieves this by allowing courts to order convicted persons to pay costs to the State for expenses incurred during investigations and enforcement actions, such as testing, storage, and preparation for prosecutions.

The provision is compensatory in nature, placing the financial responsibility on offenders rather than the public. By recovering costs from those responsible for supplying illicit goods to the community, the amendments ensure that persons engaged in illicit activities, such as the supply of illegal vaping goods, and other illicit products, are held accountable for the costs arising from their criminal behaviour.

The amendment is justified because it is necessary to maintain an effective and robust regulatory framework. The amendment ensures that enforcement actions remain financially viable, enabling the State to manage the increasing costs of seizing, storing, and destroying illegal products. By empowering the court to order cost recovery, the State can allocate resources efficiently to support public health protections and mitigate the impact of illicit products on the community.

## Consultation

### **Amendments to the *Hospital and Health Boards Act 2011***

Chairs of HHBs were consulted on the amendments to the Hospital and Health Boards Act about the appointment of HHS clinicians to boards. The commencement date of 1 April 2026 was acknowledged as providing the necessary time for implementation, including the recruitment and appointment process for new board members. Community consultation was not undertaken on these amendments as they implement a commitment made by the Queensland Government during the 2024 State Election campaign.

### **Amendments to the *Tobacco and Other Smoking Products Act 1998***

The reforms in the Bill are designed to address the ongoing issues surrounding the possession and supply of illicit vaping goods and other illegal products, targeting retailers and wholesalers who are engaged in the illegal supply and commercial possession of such goods in contravention of TOSPA and the Commonwealth Therapeutic Goods Act. These changes will not impact businesses that comply with existing legislation and do not engage in the supply and commercial possession of illegal products.

As a result, consultation with external stakeholders was not undertaken.

## Consistency with legislation of other jurisdictions

### **Amendments to the *Hospital and Health Boards Act 2011***

Each state and territory has its own legislation about management and governance of the health system that is adapted to local requirements.

### **Amendments to the *Tobacco and Other Smoking Products Act 1998***

Australian states and territories are facing an increased volume of seizures and storage challenges, leading to significant costs associated with the growing number of seized vaping goods. South Australia has introduced amendments aimed at streamlining the process. Under section 25 of the *Tobacco and E-Cigarette Products Regulation 2019* (SA), the Minister has the authority to direct the destruction of seized tobacco or e-cigarette products, or any prohibited items deemed dangerous, even if no charges have been laid. This allows for the prompt destruction of such goods either at the site of seizure or another suitable location.

# Notes on provisions

## Part 1 Preliminary

### Short Title

*Clause 1* provides that, when enacted, the short title of the Act will be the *Health Legislation Amendment Act 2025*.

### Commencement

*Clause 2* provides for the commencement of the Act.

It provides for Part 2 which amends the Hospital and Health Boards Act to commence on 1 April 2026. All other amendments commence on assent.

## Part 2 Amendment of the Hospital and Health Boards Act 2011

### Act amended

*Clause 3* states that this part amends the Hospital and Health Boards Act.

### Amendment of s 23 (Membership of boards)

*Clause 4* amends section 23 of the Hospital and Health Boards Act.

*Clause 4(1)* amends section 23(3) to replace the reference to ‘clinicians’ with ‘HHS clinicians’. This change reflects the requirement that one or more members of a HHB must be a clinician who is employed by or engaged to perform work for the HHS for which the board is established.

*Clause 4(2)* amends section 23(5) to remove the definition of ‘clinician’. A new definition of ‘HHS clinician’ is inserted in schedule 2 (Dictionary) by clause 8 of the Bill.

### Amendment of s 24A (Temporary members of board)

*Clause 5* amends section 24A of the Hospital and Health Boards Act, which provides for the temporary appointment of a person as a member of a HHB for up to six months if the Minister reasonably believes it is necessary to urgently appoint the person as a board member.

*Clause 5(1)* amends section 24A(1)(c) to replace the reference to ‘clinicians’ with ‘HHS clinicians’. This change reflects the requirement in the Bill that one or more members of a HHB must be a HHS clinician. The effect of this change is that if none of the members of a HHB are HHS clinicians (for example, if a HHS clinician member resigns from the board), the Minister may appoint a temporary member to fill the vacancy.

*Clause 5(2)* amends section 24A(6) to remove the definition of ‘clinician’.

**Amendment of s 25 (Chair and deputy chair)**

*Clause 6* amends section 25 of the Hospital and Health Boards Act, which provides that the Governor in Council may, on the recommendation of the Minister, appoint a member of a board to be chair of the board and another member to be deputy chair of the board.

Clause 6(1) replaces section 25(1)(a) and (b) to provide that a member of the board, other than a member who is a HHS clinician, may be appointed to be the chair or deputy chair of the board.

Clause 6(2) amends section 25(4) to insert a new paragraph (c), which provides that a vacancy arises in the office of chair or deputy chair if the person holding the office becomes a HHS clinician. This amendment ensures that if the chair or deputy chair of the board is employed by or engaged to perform work for the HHS for which the board is established, their appointment as chair or deputy chair ends.

Clause 6(3) replaces section 25(5) to clarify that a person may continue to be a member of a board if their position as chair or deputy chair ends when they become a HHS clinician. The effect of the current section 25(5) is retained which provides that a person who resigns from the office of chair or deputy chair may continue to be a member of a board. This outcome is achieved by providing that a person may continue to be a member of the board if the person stops holding office as the chair or deputy chair under section 25(4)(a) or new section 25(4)(c) as inserted by the Bill.

**Amendment of s 28 (Removal from office of board members)**

*Clause 7* amends section 28 of the Hospital and Health Boards Act which specifies when the Governor in Council may remove a board member from office.

Clause 7 amends section 28(e) to provide that the Governor in Council may remove a board member from office if the Minister recommends the removal because the Minister is satisfied the board member was appointed because they were a HHS clinician and has stopped being a HHS clinician. This amendment ensures that if the board member ceases working as a HHS clinician, the Minister can recommend that the Governor in Council remove them from the board.

**Amendment of sch 2 (Dictionary)**

*Clause 8* amends schedule 2 of the Hospital and Health Boards Act to insert a definition of the term 'HHS clinician'. A 'HHS clinician' is defined as a person who is a health professional registered under the Health Practitioner Regulation National Law, other than as a student, who has been employed by or engaged to provide care or treatment to persons for an average of at least 8 hours per week and has been employed or engaged by the HHS for at least 2 years.

By referring to a HHS clinician in relation to a board established for a HHS, the structure of the definition requires the HHS clinician to be employed or engaged by the same HHS as the board to which the HHS clinician is proposed to be appointed.

## **Part 3                      Amendment of Tobacco and Other Smoking Products Act 1998**

### **Act amended**

*Clause 9* states that this part amends the *Tobacco and Other Smoking Products Act 1998*.

### **Amendment of s 37 (Cancellation)**

*Clause 10* amends section 37 by removing the words 'disciplinary' and 'stated disciplinary' from subsections 37(2)(b) and 37(2)(c).

This clarifies that when the chief executive issues a show cause notice relating to a proposed licence cancellation under section 37, the show cause notice must outline the grounds for the proposed cancellation and the specific acts, omissions, and circumstances supporting those grounds, rather than focusing solely on disciplinary grounds.

### **Amendment of s 38 (Immediate suspension without show cause notice)**

*Clause 11* amends section 38 by removing the word 'disciplinary' from subsection 38(1)(a).

This clarifies that when the chief executive seeks to immediately suspend a licence under section 38, the required notice to the licensee must outline the grounds for the proposed immediate suspension and the specific acts, omissions, and circumstances supporting those grounds, rather than focusing solely on disciplinary grounds.

### **Amendment of pt 11, div 4, hdg (Seizure of evidence)**

*Clause 12* amends the heading of part 11, division 4 by replacing the words 'of evidence' with 'by authorised persons and forfeiture,' updating the heading to read 'Seizure by authorised persons and forfeiture.'

### **Insertion of new pt 11, div 4, sdiv 1, hdg**

*Clause 13* inserts a new heading 'Subdivision 1 Preliminary' before section 195.

### **Insertion of new pt 11, div 4, sdiv 2, hdg**

*Clause 14* inserts a new heading 'Subdivision 2 Power to seize' after section 196.

### **Insertion of new pt 11, div 4, sdiv 3, hdg**

*Clause 15* inserts a new heading 'Subdivision 3 Powers to support seizure' after section 199.

### **Insertion of new pt 11, div 4, sdiv 4, hdg**

*Clause 16* inserts a new heading 'Subdivision 4 Safeguards for seized things' after section 201.

### **Insertion of new pt 11, div 4, sdiv 5, hdg**

*Clause 17* inserts a new heading 'Subdivision 5 Forfeiture' before section 203.

### **Amendment of s 205 (Forfeiture of illicit tobacco or illicit nicotine product)**

*Clause 18* amends section 205 by replacing the terms ‘illicit tobacco’ and ‘illicit nicotine product’ with the defined term ‘relevant product.’

The term ‘relevant product’ is defined to mean illicit tobacco or an illicit nicotine product as outlined in schedule 1, definition of ‘illicit nicotine product,’ paragraph (b) (that is, a product other than vaping goods, containing nicotine or another substance detrimental to health, that is prescribed by regulation to be an illicit nicotine product).

Additionally, clause 18 inserts the word ‘former’ before ‘owner’ in section 205(4).

### **Amendment of s 205A (Forfeiture of bongos and ice pipes)**

*Clause 19* inserts the word ‘former’ before ‘owner’ in section 205A(4).

### **Insertion of new s 205B**

*Clause 20* inserts new section 205B relating to the forfeiture of vaping goods.

New section 205B(1) provides that the chief executive may decide that a seized thing is forfeited to the State if the chief executive is satisfied that the thing is vaping goods and reasonably believes it is necessary to keep the thing to prevent its use in committing the offence for which it was seized.

Under section 205B(2), if the chief executive decides to forfeit the seized thing, the chief executive must provide the former owner with written notice of the decision and the reasons for the decision.

Section 205B(3) provides that the chief executive is not required to provide procedural fairness in giving the written notice.

Section 205B(4) provides that section 205B applies even if a legal proceeding involving the seized thing has started.

### **Replacement of s 207 (Dealing with forfeited things etc.)**

*Clause 21* replaces section 207 with 'Subdivision 6 Dealing with property forfeited or transferred to State,' which introduces new sections 206A and 207.

New section 206A provides that a thing becomes the property of the State if it is forfeited to the State under subdivision 5, or if the owner and the State agree, in writing, to transfer ownership of the thing to the State.

New section 207 provides that, once a thing becomes the property of the State under section 206A, the chief executive may deal with the item as deemed appropriate, including, for example, by destroying the thing.

### **Relocation and renumbering of s 208 (Return of seized things)**

*Clause 22* relocates section 208 to part 11, division 4, subdivision 4, and renumbers it as section 202B.

### **Relocation and renumbering of s 209 (Access to seized things)**

*Clause 23* relocates section 209 to part 11, division 4, subdivision 4, and renumbers it as section 202A.

### **Insertion of new s 223A**

*Clause 24* inserts new section 223A after section 223.

Section 223A(1) allows a court convicting a person of an offence under the Tobacco and Other Smoking Products Act to order the person to pay costs reasonably incurred by the State because of the offence. These costs may include the:

- cost of testing, transporting, storing, dismantling, destroying or disposing of smoking products, ice pipes, bongs, illicit tobacco, illicit nicotine products, or other evidence;
- reasonable costs of investigating the offence; and
- reasonable costs of preparing for the prosecution of the offence.

Section 223A(2) provides that in deciding whether to make such an order, the court may have regard to:

- the extent to which the person's conduct during the investigation of the offence contributed to the incurred costs;
- whether the offence was committed, wholly or partly, for a commercial purpose; and
- any other relevant matter.

An amount ordered to be paid under this section is a debt owing to the State. This power of the court is in addition to any other powers the court may have under the Tobacco and Other Smoking Products Act or another law.

### **Amendment of s 224 (Definition for division)**

*Clause 25* amends the definition of 'forfeiture decision' in section 224 by replacing 'illicit tobacco or an illicit nicotine product' with 'a relevant product', aligning with the amendments to section 205.