

# Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025

## Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Tim Nicholls MP, Minister for Health and Ambulance Services, make this statement of compatibility with respect to the Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025 (Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

Under the *Tobacco and Other Smoking Products Act 1998* (Act), Queensland has some of the strongest offences, highest on-the-spot fines and most extensive enforcement powers in Australia. Despite this, illegally imported cigarettes, looseleaf tobacco ('chop-chop'), and nicotine-filled vapes remain readily available in tobacconists, convenience stores, gift shops and other retailers.<sup>1</sup>

Illicit tobacco and illicit nicotine products, including vapes and nicotine pouches, pose serious risks to public health and safety. The harmful effects of smoking tobacco are well established, with smoking remaining one of the leading causes of preventable disease and death. It significantly reduces life expectancy and increases the risk of conditions such as cancer, heart disease and diabetes.<sup>2</sup>

Newer products, such as vapes, also carry significant risks. These include nicotine addiction, seizures, poisoning and lung injury. There is emerging evidence of adverse effects on cardiovascular health, such as elevated blood pressure and heart rate.<sup>3</sup> Evidence shows that vaping is likely to cause lung cancer and oral cancer.<sup>4</sup> There have also been reports of illicit

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<sup>1</sup> Willis, J., *Tobacco chief: Australia's black market ranks top 3 in the world*, The Daily Telegraph, 26 June 2025; Nicole, A., *Names, locations of every Queensland shop caught selling illegal tobacco*, Courier Mail, 23 June 2025; Davis, W., *Brisbane at centre of Queensland's illegal cigarette boom*, Brisbane Times, 4 April 2025; *Revealed: Record haul of illegal vapes and tobacco in Gold Coast raids*, Gold Coast Bulletin, 11 August 2025.

<sup>2</sup> Department of Health, Disability and Ageing, *Effects of smoking and tobacco*, <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-smoking/effects>.

<sup>3</sup> Banks, E., et al., 2023, *Electronic cigarettes and health outcomes: umbrella and systematic review of the global evidence*, Medical Journal of Australia, 218(6).

<sup>4</sup> Clinical Oncology Society of Australia, *E-cigarettes and Cancer: A Qualitative Risk Assessment*, July 2025, [https://www.cosa.org.au/media/j4rjo4m3/cosa\\_research\\_report\\_on\\_e-cigarettes\\_and\\_cancer\\_final\\_july\\_2025.pdf](https://www.cosa.org.au/media/j4rjo4m3/cosa_research_report_on_e-cigarettes_and_cancer_final_july_2025.pdf).

vaping liquids being contaminated with dangerous substances, including synthetic opioids such as nitazenes, which can be up to ten times more potent than fentanyl.<sup>5</sup>

New research published in the Medical Journal of Australia indicates that the decline in youth smoking rates across Australia has slowed since the widespread uptake of vaping. The study estimates that, had the pre-vaping trend continued, only 5.8 per cent of students would have tried smoking by 2022–23. In reality, that figure has more than doubled to 13.2 per cent. In addition, the April 2025 *Report of the Chief Health Officer Queensland* showed that vaping rates amongst Queensland highschoolers tripled between 2017 and 2023.<sup>6</sup> These findings reinforce long-standing concerns held by public health experts that vaping is not diverting young people from smoking but rather reversing decades of progress in tobacco control.<sup>7</sup>

Against this backdrop, the Bill aims to protect public health by disrupting the supply of these harmful products and reducing their widespread use, particularly among young people.

Seized point-of-sale data shows that many retailers are generating significant income from the sale of illicit tobacco and illicit nicotine products, with profits often outweighing the risks of being caught. Enforcement is further complicated by the sheer volume of businesses involved and the sophisticated tactics used to avoid detection and shield owners from financial and legal accountability. Organised crime groups are also exploiting the profitability of this illicit trade, further embedding criminal activity in local communities.<sup>8</sup>

In some cases, this criminal involvement has escalated to violence—with reports of some retailers being threatened, fire-bombed and coerced into supplying illegal products to generate profits for criminal networks across the country.<sup>9</sup> This has heightened community concern about public safety, particularly for those living or working near affected businesses where the risk of violence and criminal damage may be greater.<sup>10</sup>

Compounding this problem, some lessors wilfully turn a blind eye to illegal activity occurring on their premises. In some cases, lessors may continue leasing to the same lessees despite repeated enforcement action taken under the Act, or knowingly rent to ‘new’ lessees who are clearly rebranded versions of previously shut-down illegal operators.

Illicit tobacco and illicit nicotine products are being supplied in a wide range of businesses, including convenience stores, gift shops and tobacconists. This diversity of retail settings

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<sup>5</sup> Australian Federal Police, *AFP warn over alarming potent synthetic opioids in 2024*, 3 December 2024, <https://afp.gov.au/news-centre/media-release/afp-warn-over-alarming-potent-synthetic-opioids-2024>; Gwynn, L., *Nitazines found in black market vapes as criminals make new variations to evade detection*, ABC News, 4 April 2025; Murray, D., *Deadly nitazene vapes: First Australian arrest made in Sydney*, The Australian, 7 August 2025.

<sup>6</sup> Queensland Health, *Report of the Chief Health Officer*, E-cigarettes, April 2025, <https://www.choreport.health.qld.gov.au/our-lifestyle/electronic-cigarettes>.

<sup>7</sup> Egger, S., et al., *Trends in adolescent smoking prevalence before and after the emergence of vaping in Australia: an interrupted time series analysis, 1999–2023*, Medical Journal of Australia, 27 July 2025.

<sup>8</sup> Kohler, A., *Illegal tobacco is a deadly \$10 billion industry wiping out legitimate businesses*, ABC News, 4 August 2025; Crime and Corruption Commission, *Multi-million-dollar money laundering investigation smashes illicit tobacco and vape supply*, <<https://www.ccc.qld.gov.au/news/multi-million-dollar-money-laundering-investigation-smashes-illicit-tobacco-and-vape-supply>>, 31 August 2023.

<sup>9</sup> Chamberlin, T., *Qld tobacconists face arson threat, extortion as criminal syndicates chase profits*, Courier Mail, 12 April 2025.

<sup>10</sup> Couacaud, T., *Crime scene declared after Capalaba tobacco shop fire*, Courier Mail, 11 August 2025.

further complicates the enforcement environment, as any commercial business could be repurposed for illegal supply. To effectively disrupt the supply chain and reduce the commercial viability of the illegal market, it is critical to limit the availability of commercial premises for unlawful businesses.

Further legislative controls are needed to disrupt the significant economic incentives associated with the supply of illicit tobacco and illicit nicotine products, to target other players involved in the illegal trade, and to make enforcement arrangements more efficient and effective, thereby enabling targeted, rapid and responsive enforcement action against offenders. Disrupting the illegal market is essential to addressing the public health harms arising from the widespread availability of illicit nicotine products and cheap illicit tobacco.

The objectives of the Bill are to:

- protect public health by reducing the supply and possession of illicit tobacco and illicit nicotine products;
- strengthen existing powers and offences to ensure they provide an appropriate financial deterrent to the supply and possession of illicit tobacco and illicit nicotine products;
- reduce the availability of commercial premises used for the illegal trade;
- hold lessors who permit the supply and possession of illicit products accountable;
- improve enforcement and investigation efficiencies; and
- make minor and technical amendments to improve the operation of the Act.

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

The Bill amends the Act to introduce a range of additional enforcement powers and regulatory measures. These include amendments to:

- expand the existing 72-hour ‘interim’ closure power, to allow the chief executive of Queensland Health to order a closure of premises for three months if satisfied that illicit tobacco and illicit nicotine products are being supplied or possessed at the premises, or unlicensed sale of smoking products is occurring;
- expand the existing six month ‘long-term’ closure power, to allow a Magistrate to order the closure of premises for up to 12 months in the same circumstances;
- ensure businesses cannot circumvent the intent of closure orders, by providing that it is an offence to open to the public or supply any products or services when a closure order is in effect;
- insert a statutory power for lessors of commercial premises to terminate a lease where the premise is subject to a closure order;
- create a criminal offence applying to lessors of commercial premises who knowingly permit premises to be used for the supply or possession of illicit tobacco or illicit nicotine products;
- enable the chief executive to apply to the court for a civil penalty order if the chief executive is reasonably satisfied that a lessor has permitted premises to be used for the supply or possession of illicit tobacco or illicit nicotine products;

- deem executive officers of corporations to have personally committed certain offences committed by the corporation, unless they can satisfy the evidential burden of showing that they did not know, and could not have reasonably been expected to know, of the corporation's conduct constituting the offence, or that they took all reasonable steps to ensure the corporation did not engage in that conduct, and this cannot be disproven by the State;
- expand existing seizure and forfeiture powers to allow authorised persons, when seizing illicit tobacco and illicit nicotine products, to also seize legal smoking products, hookahs and components of hookahs as 'compromised goods' and forfeit them;
- expand the existing entry powers to allow authorised persons to enter wholesale premises without a warrant or occupier's consent;
- allow the chief executive of Queensland Health to appoint controlled purchase officers to participate in covert operations involving attempts to buy illegal and legal products to gather evidence and support more efficient and targeted enforcement;
- introduce the ability for evidentiary aids to be utilised in court proceedings under the Act as evidence of certain matters;
- allow authorised persons to request information from any person that is relevant to the monitoring or enforcement of certain provisions of the Act;
- expand the offences related to bongs, ice pipes and their components to capture the storage or commercial possession of these products, and to allow the forfeiture of components of these products;
- require licensed wholesalers to retain copies of invoices provided to licensed retailers for at least two years to ensure consistent requirements for all licensees and improve compliance monitoring;
- expand the information required as part of an initial licence application to assist with assessing the entity for a licence and identifying lessors;
- allow for acknowledgment of prevention measures completed by employees, relating to supply of smoking products to children, to be provided electronically; and
- provide venues with a commercial hotel, community club or commercial special facility casino licence with the option to choose either a smoking-only area (where drinking is not permitted) or a designated outdoor smoking area (where drinking is permitted).

### **Amendments to the *State Penalties Enforcement Regulation 2014***

The Bill also amends the *State Penalties Enforcement Regulation 2014* to prescribe three offences as penalty infringement notice offences with their respective penalty amounts:

- contravention of a closure order – 20 penalty units (individuals) and 100 penalty units (corporations);
- failure of a licensee for a wholesale licence or retail licence with a limited wholesale condition to keep invoices for at least two years – 10 penalty units (individuals) and 50 penalty units (corporations); and
- failure of a retail licensee to keep invoices for at least two years – 10 penalty units (individuals) and 50 penalty units (corporations).

## Human Rights Issues

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

In my opinion, the human rights that are relevant to the Bill are:

- right to freedom of movement (section 19);
- right to property (section 24);
- right to privacy and reputation (section 25);
- right to liberty and security of person (section 29);
- right to a fair hearing (section 31); and
- rights in criminal proceedings (section 32).

Where rights are limited by the Bill, I have provided an analysis of the justification.

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

#### **1. Human rights limited by expanding the period and scope of closure orders**

Under section 209A of the Act, the chief executive of Queensland Health may order that stated premises be closed for 72-hours, if the chief executive reasonably suspects illicit tobacco or illicit nicotine products (including vaping goods) are being supplied at the premises as part of a business activity, or is satisfied that the unlicensed sale of smoking products is occurring (described in the Act as an ‘interim closure order’).

Section 209B of the Act currently empowers a Magistrate, on the application of the chief executive, to order that stated premises be closed for a stated period of not more than six months (described in the Act as a ‘long-term closure order’). To make such an order, a Magistrate must be satisfied that:

- illicit tobacco or illicit nicotine products have been, or are likely to be, supplied at the premises as part of a business activity; or
- a business is being carried on at the premises in a way that involves the unlicensed sale of smoking products.

To strengthen these provisions, disrupt illegal supply and disincentivise individuals and businesses from engaging in illegal trade, the Bill amends the existing closure powers to:

- extend the period for interim closure orders from 72-hours to three months (now called ‘short-term closure orders’), and for long-term closure orders from up to six months to up to 12 months;
- allow a closure order to be issued in relation to the possession of illicit tobacco or illicit nicotine products, in addition to the supply of illicit tobacco or illicit nicotine products or the unlicensed sale of smoking products;

- provide that the chief executive must be satisfied, rather than reasonably suspect, that illicit tobacco or illicit nicotine products are being supplied or possessed as part of a business activity, or that the unlicensed sale of smoking products is occurring at the premises before a short-term closure order can be issued;
- introduce matters that the chief executive and Magistrate may have regard to when deciding to issue a closure order; and
- clarify that closure orders do not apply to residential premises.

(a) the nature of the right

***Right to freedom of movement (section 19)***

The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right includes freedom from physical and procedural barriers, such as requiring permission before entering a public park or participating in a public demonstration in a public place.

By extending the period of short-term and long-term closure orders, the Bill places a greater limitation on the right to freedom of movement, as occupiers, customers and the broader public will be restricted from entering premises subject to closure orders for longer periods than currently apply under the Act.

***Right to property (section 24)***

The right to property provides that every person has the right to own property alone or in association with others, and must not be arbitrarily deprived of their property. Case authority suggests that ‘arbitrary’ in this context refers to conduct that is capricious, unpredictable or unjust, or interferences which are not proportionate to a legitimate aim being sought.

‘Property’ includes all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and may include some statutory rights—especially if the right includes traditional aspects of property rights, such as using, transferring, disposing of and excluding. Property also includes economic interests.

The Bill will limit the right to property by authorising the chief executive or a Magistrate to order that stated premises be closed for a longer period than is currently provided for under the Act. This will prevent any person, including the occupier and customers, from using the premises for the duration of the closure order. Where the premises are leased, the closure order will also restrict the lessor's ability to use the premises and may expose the lessor to a higher risk of non-payment of rent.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Due to the highly lucrative nature of selling illicit tobacco and illicit nicotine products, stronger enforcement measures are required to disrupt persistent non-compliance with the Act. To date, the current 72-hour closure period has not been effective in deterring and disrupting the trade

of illicit tobacco and illicit nicotine products. Businesses treat it as a ‘long weekend off’ and simply reopen at the end of the closure period, to continue trading in illicit products.<sup>11</sup>

To impose a more significant economic impact and ensure that closure orders act as a stronger deterrent to participating in the supply or possession of illicit products, the Bill extends the 72- hour closure period to three months. The Bill describes these closure orders as ‘short-term closure orders’ instead of ‘interim closure orders’. The Bill also extends the long--term closure order to a period of up to 12 months so it can be used appropriately to address more serious offending.

The purpose of these changes is to further disincentivise and disrupt illicit and unlicensed trading, and further reduce access to illicit tobacco and illicit nicotine products. This reflects the significant harm that these products present to public health and safety. This purpose is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Extending the period in which unlawful and non-compliant operators will be subject to a closure order, and the associated loss of business revenue, is expected to significantly disrupt the financial viability of the illegal trade and provide an increased disincentive to entering or continuing in the illegal market.

The amendments will also protect the public from the harmful effects of illicit tobacco and illicit nicotine products by reducing access to these products for consumers and the community for longer periods.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives that would achieve the above purposes. While retaining the status quo was considered, the current 72-hour limit on interim closure orders has proven to be an ineffective deterrent for non-compliant businesses.

Extending the maximum duration of these closure orders (now ‘short-term closure orders’) from 72-hours to three months, and long-term closure orders from six months to up to 12 months, is essential to meaningfully disrupt the operations of illicit and unlicensed traders and create a sufficient financial and operational deterrent. These operators often rely on business models that are deliberately structured to avoid detection and minimise downtime, enabling rapid restocking and reopening quickly following the short closure period of 72-hours.

A longer closure period directly interferes with this model, increases the costs and consequences of non-compliance, and reinforces the seriousness of continued unlawful conduct. This approach is necessary to support the Bill’s primary objective of limiting the availability of harmful and unregulated tobacco and nicotine products in the community and protecting public health.

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<sup>11</sup> *‘Hit the hip pocket’: Queensland government looking to crack down on illegal vape sellers*, SBS News, 5 January 2025; Fellows, T. and Scott, S., *Qld govt investigating ways to financially ruin smoke shops, disrupt organised crime amid booming black market*, Courier Mail, 5 January 2025.

While the amendments necessarily impose limitations on the right to property and the right to freedom of movement, the Bill includes a range of safeguards designed to ensure the closure powers are exercised proportionately and only where justified.

A key safeguard is the introduction of a higher threshold before a short-term closure order can be issued. The Bill requires that the chief executive must be satisfied, rather than reasonably suspect, that illicit tobacco or illicit nicotine products are being supplied or possessed at the premises as part of a business activity, or that the unlicensed sale of smoking products is occurring. This reflects the more serious consequences of extended closure periods.

In addition, the chief executive and, in the case of long-term closure orders, a Magistrate, may consider discretionary factors before issuing a closure order. These include whether prior enforcement action has been taken in relation to the premises, such as the issuing of a penalty infringement notice (PIN) or seizure of illicit products, and whether the closure order would limit community access to essential goods or services. For example, the decision-maker may consider whether the premises is the only grocery store or fuel station in a regional town, or whether the order would unfairly affect a co-lessee who is not involved in the offending conduct. The chief executive and Magistrate may also have regard to any other matter considered appropriate.

The closure order applies only to the stated premises—customers remain able to enter and purchase lawful products from other retail premises not subject to closure orders. Similarly, it will not impact other premises owned and operated by the same business that are not subject to closure orders.

The Bill also provides that closure orders cannot be made in relation to residential premises. This reflects operational practices and the need to limit the impact of the scheme to commercial settings.

These safeguards help ensure closure orders are used appropriately and only where necessary to address persistent or serious non-compliance.

To ensure closure orders do not persist where no longer necessary, the Bill provides that short-term closure orders will automatically end if the lease with the offending lessee ends, including where it is terminated or expires. This aligns with the existing framework for long-term closure orders and ensures consistency across the Act.

The Bill also introduces new notification requirements to support transparency and enforcement. Where a closure order is made in relation to leased premises, Queensland Health must, where reasonably practicable, provide the relevant lessor with a copy of the closure order and a notice. The notice must explain the reasons for the closure order, inform the relevant lessor of the availability of the statutory power to terminate the lease, and advise that they may be liable for a criminal offence or civil penalty if they continue to allow the premises to be used for the supply or possession of illicit tobacco or illicit nicotine products.

The term *relevant lessor* is defined in the Bill as the person who:

- leases the premises directly to a person conducting a tobacco business at the premises; or



- otherwise directly allows a person conducting a tobacco business at the premises to occupy the premises; and
- does not include a person who leases the premises to another person who is not occupying the premises for the purpose of conducting a tobacco business (for example, a head lessor).

The definition of *relevant lessor* applies in relation to closure orders, the lease termination power, and the lessor offence and civil penalty, and ensures provisions related to a lessor are appropriately confined.

Taken together, these measures ensure that the amended closure powers are targeted, proportionate, and supported by appropriate safeguards.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments strike a fair balance between the benefits to the public and the limitation of individual rights by achieving their purposes in disrupting and disincentivising illegal and unlicensed activity. This ultimately will assist in achieving the broader purpose of protecting public health. Illicit tobacco and illicit nicotine products pose significant and well-documented health risks, and their continued unlawful availability undermines public health objectives. Operators who engage in the unlicensed sale of legal smoking products also often engage in the supply of illicit tobacco and illicit nicotine products and circumvent the regulatory controls of the licensing framework.

The amendments are intended to strengthen enforcement by extending the duration of closure orders, creating stronger financial and operational disincentives for those engaging in illegal conduct. They also reduce the availability of illegal products for longer periods, further supporting public health aims.

In my opinion, the amendments strike an appropriate balance between the Bill's public health objectives and the limitation on human rights that is reasonable and demonstrably justifiable in a free and democratic society.

- (f) any other relevant factors

Nil.

## **2. Human rights limited by amending the section 209C offence**

It is currently an offence under section 209C of the Act to supply smoking products or work in a business involving the supply of smoking products at premises while a closure order is in effect. The maximum penalty is 200 penalty units.

The Bill amends the existing section 209C offence to apply to the opening of the premises to the public or trading in any products or services during the closure period, regardless of the type of product or service.

(a) the nature of the right

***Right to freedom of movement (section 19)***

The right to move freely within Queensland is outlined above on page 6. The amendment will limit this right as it will prevent people, including lessees, employees or customers, from entering premises subject to a closure order.

***Right to property (section 24)***

The nature of the right to property is outlined above on page 6. The Bill limits the right to property by restricting a person's ability to open the relevant premises to the public, work in a business involving the supply of any products or services at the premises, or sell any products or provide any services from the premises.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to prevent any trade from the closed premises. This is intended to support the objectives of closure orders, which include deterring illegal supply and reducing the availability of illegal products.

Authorised persons undertaking enforcement activity under the Act report that many 'closed' businesses continue trading in illicit tobacco and illicit nicotine products under the guise of selling goods other than smoking products—for example, by offering soft drinks and snacks. Others ostensibly close but remain onsite stocking shelves and filling online orders. This undermines the purpose of closure orders and diminishes their deterrent effect.

The purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves the purpose of ensuring premises subject to closure orders remain closed for all purposes by prohibiting the business from opening to the public or offering any products or services during the closure period. This ensures businesses subject to closure orders cannot circumvent the orders by opening to the public and selling illicit products under the guise of selling goods other than smoking products.

This strengthens the deterrent effect of closure orders and ensures enforcement action can be taken where businesses and individuals attempt to contravene the Act, reducing opportunities for covert trading during the closure period and reinforcing the seriousness of breaches under the Act. It also reduces the availability of illegal products to the public by ensuring that stores cannot covertly sell them during closure periods under the guise of selling legal products.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to achieve this purpose of the Bill. The existing offence, which restricts the supply of smoking products from the premises, is not effective in preventing the continued supply of illicit tobacco and illicit nicotine products to the community and the unlicensed sale of smoking products during closure periods. Retaining the current approach undermines the intent of closure orders and limits their deterrent effect. Amending the offence to cover all trading activity is necessary to prevent businesses from exploiting this loophole.

Closure orders will impact lessors' ability to deal with their property, as they are not permitted to use the premises for another purpose or lease it to another entity while a closure order is in effect. However, this limitation is balanced by providing a relevant lessor with the opportunity to invoke a statutory power to terminate the lease with the lessee.

Safeguards are included in the Bill to ensure the limit on human rights is constrained and appropriate. The offence is limited to the premises subject to the closure order. Customers are free to purchase lawful products from other retailers not subject to closure orders.

Closure orders must be posted in a conspicuous place on the entrance to the premises, to advertise to all persons the effect of opening the premises or being onsite for any trade. This will protect those who may inadvertently contravene the order where they would not otherwise be aware of the issuance of an order.

The offence will not apply if a person has a reasonable excuse for supplying a product or service at the premises—for example, providing emergency repairs or maintenance, or responding to health and safety issues. The limitation on the right to freedom of movement and right to property is not disproportionate or arbitrary.

The amendment does not impose a more significant limitation on human rights than that intended when section 209C of the Act was initially introduced—it simply corrects a legislative oversight to properly give effect to the purpose of the existing offence.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation imposed by the amendment is directly tied to protecting public health and maintaining the integrity of the regulatory framework.

The amendment ensures that premises subject to a closure order are genuinely closed for all trading purposes. This strengthens deterrence by signalling to operators that they will not be able to continue business under a different guise, and it reduces opportunities for the covert supply of harmful products to the community, including to children and young people. The ability to completely close premises for trading is a powerful tool for disrupting supply chains and curbing the availability of illicit products, which is a critical public health objective.

Although the amendment limits freedom of movement and property rights, those limitations are temporary, targeted and proportionate. They only apply to premises where offending

conduct has already been established and only for the period of the closure order. Businesses operating in accordance with the Act are not affected and customers are free to purchase lawful products from other businesses. The amendment balances the above rights with the need to ensure effective enforcement measures that deter serious non-compliance and protect the community from the harms of illicit tobacco and illicit nicotine products.

(f) any other relevant factors

Nil.

### **3. Human rights limited by introducing a statutory lease termination power**

The Bill introduces a statutory power in the Act for a relevant lessor to terminate a lease of premises subject to a closure order.

(a) the nature of the right

#### ***Right to property (section 24)***

The right to property is discussed above on page 6. This amendment will limit the property rights of lessees whose lessor utilises the statutory termination power to terminate their lease following the issuing of a closure order.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill will enable relevant lessors of commercial premises to terminate a lease with an offending lessee who has engaged in illegal conduct that has resulted in a closure order against the leased premises.

The statutory lease termination power provides lessors with a clear, timely, and effective mechanism to act when their premises are subject to a closure order. The power, and therefore the limitation on the right to property, serves two purposes.

The first is to enable the lessor to protect their commercial and financial position. Closure orders may apply for a period of three months (short-term closure orders) or up to 12 months (long-term closure orders), during which time the premises cannot be lawfully used for retail or wholesale purposes. Without the ability to terminate the lease, a lessor may suffer financial loss from unpaid rent or their inability to end the lease and relet the premises. Allowing the lessor to terminate the lease following issuance of a closure order addresses this issue.

The second purpose of the limitation is to disrupt illegal trading activity by reducing the availability of commercial premises for unlawful use. By empowering lessors to take swift action to terminate leases with offending lessees, the Bill reduces the number of premises available for illegal supply.

This limitation is consistent with the values of a free and democratic society, which recognises that proportionate restrictions on individual rights may be justified to protect the health and safety of the community and to ensure the integrity of lawful business practices.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purposes by enabling lessors to promptly terminate leases following the issue of a closure order. This targets premises used to support illegal trade, while ensuring lessors are not financially or legally disadvantaged by having to maintain leases with lessees who are engaging in illegal conduct.

The lease termination power is drafted to preserve the lessor's contractual and statutory rights. A termination under the Act will be taken to be a termination for repudiation of the lease by the lessee, ensuring that rights arising in favour of the lessor under the lease, and at common law, equity and under statute, are preserved.

Commercial leases often involve significant investment and high rental costs. The statutory lease termination power ensures that lessors are not left to bear the burden of a closure order, which is a result of the lessee's offending conduct. The lease termination power aims to reduce the financial burden on lessors and encourage the use of the termination power as a tool to disrupt unlawful activity.

This proactive step will allow action to be taken against lessees found to be contravening the Act and aid in reducing the availability of commercial premises for these illegal purposes.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purposes of the Bill. Queensland Health considered several alternatives to a statutory lease termination power. One option was to not include a statutory power to terminate a lease in the Bill. This would mean lessors could only rely on the terms of their lease to terminate, or otherwise continue leasing to an unlicensed lessee or a lessee engaging in the illegal trade of illicit tobacco or illicit nicotine products.

However, this option is not appropriate. While in practice, many commercial leases contain a termination clause for illegal conduct, such a clause typically requires the lessee to be convicted of the illegal conduct before it can be enforced. Court processes can be lengthy and lessors would be unable to act in the interim, leaving them burdened by the closure orders and preventing them from dealing with their property.

Without the statutory power to terminate a lease, lessors would not be afforded an effective means to act swiftly and with legal certainty in response to illegal conduct, allowing illegal trading to continue. This would unfairly disadvantage lessors and fail to address the need for timely intervention to reduce the number of premises available for use in the trade of illicit tobacco and illicit nicotine products.

Another alternative considered by Queensland Health was to limit the statutory lease termination power to situations where a Magistrate makes a long-term closure order. However, this would allow lessees to continue to occupy and engage in illegal trade from the premises until the order is obtained. As obtaining a court order can be a lengthy process, this alternative would fail to protect lessors from the legal and financial risks associated with continuing to

lease to lessees engaging in illegal conduct. As even short-term closure orders are generally issued only after multiple enforcement steps have been undertaken, requiring court intervention as a precondition to lease termination would defeat the purpose of enabling swift intervention and it would undermine the deterrent effect of the enforcement framework.

As a safeguard, if a lessor terminates a lease on the basis of a closure order, and in the unlikely circumstance that the closure order is later found to have been wrongfully issued, revoked, or found to be invalid, the lessee may be able to seek compensation from the State under section 219 of the Act. Compensation may be awarded by the court where it is just to do so. Compensation claims are expected to be rare, as closure orders are only issued in response to strong evidence of illegal conduct and repeated non-compliance.

For these reasons, the inclusion of a statutory lease termination power linked to closure orders is considered the most effective, proportionate, and reasonably available approach.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The right to property is an important right that underpins economic participation and private enterprise. However, it is not absolute. It may be limited where necessary to protect public interests such as health, safety, and the integrity of the legal system.

The purpose of the limitation is significant. The supply and possession of illicit tobacco and illicit nicotine products pose serious risks to public health and are associated with broader criminal activity. Empowering lessors to remove lessees who use commercial premises for unlawful purposes is a key step in disrupting this activity and reducing community harm.

The statutory lease termination power complements the expanded closure powers and the new lessor offence and civil penalty introduced by the Bill. This power is necessary to protect the legitimate interests of the lessor, mitigate their exposure to the new lessor offence and civil penalty, and reduce the availability of commercial premises for illicit trade.

The limitation on property rights is narrow in scope and applies only to premises subject to a closure order. The amendment carefully balances the interests of all parties and ensures that any interference with property rights is not arbitrary, and is reasonable and demonstrably justifiable.

- (f) any other relevant factors

Nil.

#### **4. Human rights limited by introducing a criminal offence and civil penalty for relevant lessors of commercial premises**

The Bill introduces a dual enforcement framework aimed at disrupting the use of commercial premises for the supply or possession of illicit tobacco and illicit nicotine products:

- A criminal offence applies where a relevant lessor knowingly permits the premises to be used for these illegal purposes. The maximum penalty is 1,000 penalty units, one year imprisonment, or both.

- The chief executive may apply to the court for an order to require the lessor to pay a civil penalty if the chief executive is reasonably satisfied that a relevant lessor has permitted the use of the premises for these illegal purposes. The maximum penalty is an amount equivalent to 1,000 penalty units for an individual or 5,000 penalty units for a corporation.

(a) the nature of the right

***Right to property (section 24)***

The right to property is discussed above on page 66. The new provisions will impact the right to property of relevant lessors leasing commercial premises, because it will limit their ability to continue leasing to any lessee of their choice.

***Right to liberty and security (section 29)***

The right to liberty provides that a person must not be arrested and detained unless provided for by law, and that any arrest or detention must not be arbitrary. The right to security requires the State to take reasonable measures to protect a person's security (physical and mental). The right is relevant whenever a person is placed at risk of imprisonment. The criminal offence will limit the right to liberty and security by attaching a term of imprisonment to the offence.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

One of the key enforcement challenges in disrupting the illicit tobacco and illicit nicotine product market is the widespread availability of commercial premises used to carry out illegal supply and possession. Across Queensland, some lessors knowingly permit their commercial premises to be used for these illegal activities, or they turn a blind eye to this conduct, provided the rent is paid. This facilitates the continuation of illegal trade. The ongoing illegal trade undermines public health efforts, and exposes the community and neighbouring occupiers to serious risks, including criminal activity, burglary, ram-raids and arson.<sup>12</sup>

The purpose of the above limitations is twofold. First, to disrupt illegal trading by incentivising lessors to not allow their premises to be used for the supply or possession of illicit tobacco or illicit nicotine products, and second, to hold lessors accountable where they knowingly permit such activities or turn a blind eye to them.

The dual enforcement framework will provide Queensland Health with flexibility in pursuing action against offending lessors and strengthen measures to combat the illicit tobacco and illicit nicotine product market in Queensland. The limitations will create a strong incentive for relevant lessors to act if they are aware of their premises being used to supply illicit tobacco or illicit nicotine products.

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<sup>12</sup> See, for example: *Explained: Everything we know about Qld's war on illegal tobacco*, Courier Mail, 26 June 2025; Meacham, S., *Illegal tobacco wars light up across states as crimes rise in Qld*, Brisbane Times, 14 April 2025; Couacaud, T., *Crime scene declared after Capalaba tobacco shop fire*, Courier Mail, 11 August 2025.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations will directly achieve the first purpose by creating a strong incentive for relevant lessors to take steps to prevent the unlawful use of their premises. This may include notifying relevant authorities of unlawful use, terminating the lease where a closure order is issued, or engaging with Queensland Health to commence investigations that may lead to enforcement action being taken under the Act. Lessors who knowingly permit or turn a blind eye to the illegal conduct will be held criminally or civilly liable and therefore accountable, achieving the second purpose.

The limitation on the right to liberty will only arise where a relevant lessor is convicted of the criminal offence by a court and imprisonment is deemed an appropriate penalty based on the severity of the conduct and other sentencing considerations. This ensures judicial oversight and proportionality in cases involving more serious or repeated non-compliance and actual, rather than constructive, knowledge of the illegal activities occurring at the premises.

The limitation on property rights reflects the need to deter lessors from leasing to, or continuing leases with, lessees running illegal operations. The limitation also encourages lessors to be alert to the risks of leasing to individuals who are likely to be involved in the illegal trade, and to prevent this illegal activity from occurring from their premises.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives that would be equally effective in disincentivising lessors from knowingly leasing to illegal traders or turning a blind eye to illegal conduct occurring at their premises, and holding them accountable where they do so.

The illicit tobacco and illicit nicotine product trade is increasingly sophisticated and highly profitable. While existing penalties and enforcement tools remain essential, they do not directly address the role of lessors in permitting the supply or possession of illicit tobacco and illicit nicotine products at their premises. The lessor offence and civil penalty close this regulatory gap and are necessary to disrupt one of the key enablers of illicit activity—the availability of commercial premises for use by illegal operators.

The criminal offence is intended to capture more serious conduct, where a lessor has actual knowledge of the unlawful activity and allows it to continue. The civil penalty provision is a novel but necessary addition to Queensland's enforcement framework. It is designed to fill a critical gap by enabling action to be taken against lessors whose conduct may not meet the criminal threshold of actual knowledge but who nonetheless facilitate illegal activity through wilful blindness or reckless indifference.

Civil penalties serve a distinct regulatory purpose. Unlike criminal offences, which are focused on punishment and require proof beyond reasonable doubt that the offence has been committed, the civil penalty instead aims to deter non-compliance, encourage behavioural change, and remove the financial incentives that may lead a lessor to ignore illegal activity. The lower burden of proof means proceedings can be pursued more efficiently, providing more effective enforcement where evidence of actual knowledge may be difficult to obtain but indicators of constructive knowledge are clear.



Importantly, the civil penalty allows lessors to make a commercial decision in response to known or suspected illegal activity on their premises. A lessor who suspects illegal activity but does not want to lose their rental income may decide to turn a blind eye to their lessee's activities, rather than terminate the lease. However, in doing so, they expose themselves to a significant financial penalty under the civil penalty provision. This reflects the transactional nature of the civil penalty and allows lessors to weigh up the costs of lease termination against the cost of the potential civil penalty.

Additionally, the civil penalty provision gives the court the discretion to impose a penalty that balances the severity of the offending with the need for deterrence. The penalty may be higher for a well-resourced corporate offender to ensure it achieves a sufficient deterrent effect. This reflects the High Court of Australia's findings in *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

The Bill inserts safeguards to ensure the criminal offence and civil penalty are carefully targeted to apply to the party who has entered a lease with the offending lessee by defining the term *relevant lessor* in the Bill. Prosecutorial and judicial discretion will be exercised to ensure fairness and proportionality.

Before applying to the court for a civil penalty order, the Bill requires the chief executive to be reasonably satisfied that the contravention has occurred. In making this assessment, the chief executive will consider whether the lessor should reasonably have known of the unlawful conduct. The chief executive may have regard to the same factors that will guide the court—for example, whether there is a pattern of supply or possession of illicit tobacco or illicit nicotine products at the premises, whether the chief executive has notified the relevant lessor that one or more closure orders have been made in relation to the premises, whether the relevant lessor and the lessee have an arm's length relationship and whether the rent for the premises is significantly above market value or paid well in advance. These are 'red flags' indicating that the lessor should have known or suspected that the premises were being used for illegal conduct.

Both the criminal offence and civil penalty contain a reasonable excuse defence. However, this defence is not intended to shield deliberate inaction. Courts will have full discretion to consider the evidence and ensure that outcomes are fair but not lenient in the face of serious non-compliance.

The maximum penalty for the criminal offence is 1,000 penalty units, one year's imprisonment, or both. The maximum penalty for the civil penalty provision is a penalty equivalent to 1,000 penalty units for an individual and 5,000 penalty units for a corporation. These penalties are intended to serve as a strong deterrent for lessors who knowingly permit or turn a blind eye to the unlawful activity occurring at their premises. These penalties are proportionate, reflect the seriousness of the conduct and are necessary to disrupt the illegal trade.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

By incentivising lessors to not allow their premises to be used for the supply or possession of illicit tobacco or illicit nicotine products, the criminal offence and civil penalty are likely to reduce the availability of commercial premises for these activities. This will reduce the overall

availability of illicit products, which has a public health benefit. It is also likely to have a community safety benefit, noting the increasing number of dangerous incidents associated with illicit tobacco and vape retailers. Where lessors choose to continue facilitating and profiting from illegal conduct, there is a clear public interest in ensuring they can be held accountable.

Balanced against the public health and safety benefits, the limitations on the right to property and the right to liberty and security are reasonable and demonstrably justifiable in a free and democratic society.

(f) any other relevant factors

Nil.

## **5. Human rights limited by deeming liability for executive officers**

There are five offences in the Act that extend liability for the conduct of a corporation to its executive officers (known as executive liability provisions). These include selling smoking products without a licence, supplying smoking products to a child, and supplying, storing or possessing illicit tobacco or illicit nicotine products as part of a business activity.

Under the current executive liability provisions in the Act, an executive officer commits an offence if the corporation commits an offence against one of the executive liability provisions, and the officer failed to take all reasonable steps to prevent the offence. In deciding whether an executive officer is liable and failed to take reasonable steps, the court will consider whether the officer knew or reasonably ought to have known of the corporation's conduct and whether the officer was in a position to influence the corporation's conduct. The onus is on the prosecution to prove these elements.

To strengthen accountability and ensure executive officers cannot avoid liability for the actions of the corporations they control, the Bill provides that if the corporation commits an offence against an executive liability provision, an executive officer is deemed liable, unless they can demonstrate sufficient evidence that they did not know, and could not have been reasonably expected to know about the conduct, or took all reasonable steps to ensure the corporation did not engage in the conduct. This shifts the evidential burden to the executive officer, who is best placed to explain their role and actions. The legal burden to prove the relevant defence does not exist still rests on the prosecution, to prove beyond a reasonable doubt.

(a) the nature of the right

### ***Right to a fair hearing (section 31) and rights in criminal proceedings (section 32)***

Section 31 of the Human Rights Act relates to the right to a fair hearing. This right is limited where a person is deprived of the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 32 of the Human Rights Act provides that as part of a person's rights in criminal proceedings, they have a right to examine witnesses against them, and to obtain the attendance and examination of witnesses on their behalf, under the same conditions as witnesses for the prosecution.

The Bill limits these rights by reversing the evidential burden of proof for executive liability.

- (b) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

As recognised in the Explanatory Notes to the *Directors' Liability Reform Amendment Act 2012*, this type of reverse-onus liability, known as type 2 executive liability, is reserved for offences that pose a significant risk of harm to public safety, public health or the environment.

The offences to which executive liability applies are outlined below and are intended to target conduct that poses a significant risk to public health:

- the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity;
- unlicensed sale of smoking products;
- supply of smoking products to children; and
- failure to ensure that child employees do not supply or handle smoking products.

Smoking poses significant health risks, contributing to various diseases and impacting public health.<sup>13</sup> The illicit market undermines public health initiatives aimed at reducing smoking rates and protecting children, young people and other vulnerable populations. Illicit nicotine products are unregulated, mislabelled, and flavoured to appeal to young people, potentially exposing them to high doses of nicotine and harmful chemicals. Nicotine exposure in adolescence is associated with addiction, impaired brain development, and increased likelihood of lifelong smoking.<sup>14</sup> While type 2 executive liability provisions are uncommon in Queensland, the extraordinary nature of the vaping and illicit tobacco public health crisis and the methods used to avoid personal liability warrant exceptional measures.

Given the scale of harm and the difficulty of prosecuting corporations with complex structures, a type 2 liability provision is considered necessary and appropriate. This is a novel and exceptional case, where entities involved in the illicit trade often deliberately use complex and layered corporate arrangements to shield individuals from legal consequences while they continue to profit from illegal conduct. The purpose of the amendment is therefore to ensure executive officers cannot avoid liability by hiding behind the corporate veil and ensure they are held accountable where they fail to take reasonable steps to prevent corporate offending. This purpose is consistent with that of a free and democratic society based on human dignity, equality and freedom.

The limitation is directly connected to the purpose. The limitation will hold executive officers who authorise, permit, or are knowingly involved in a corporation's conduct constituting an executive liability provision offence accountable, whether it be supply and possession of illicit tobacco or illicit nicotine products, supply of smoking products to children, or selling smoking products without a licence.

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<sup>13</sup> Department of Health, Disability and Ageing, *Effects of smoking and tobacco*, <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-smoking/effects>.

<sup>14</sup> Tobacco in Australia, *Health effects of e-cigarette use during adolescence*, May 2024, <https://www.tobaccoinaustralia.org.au/chapter-18-e-cigarettes/18-6-the-health-effects-of-e-cigarette-use/18-6-2-health-effects-of-e-cigarette-use-during-adolescence>.

This amendment supports public health by encouraging executive officers of corporations to actively prevent unlawful practices, as executive officers are often in the best position to influence business operations. By improving the ability of Queensland Health to hold them to account when they allow illegal conduct to occur, the Bill strengthens incentives for businesses to comply with the law. This ultimately aims to reduce the supply of illicit tobacco and illicit nicotine products in the community, prevent access by children and other vulnerable people, and uphold the integrity of the regulatory framework that protects public health.

(c) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive and reasonably available alternatives have been identified to achieve the purpose. Reversing the evidential burden for executive officers will ensure that they are held to account for the actions of the corporations they control.

Liability for an executive officer only arises where the prosecution first demonstrates that the corporation has committed one of the relevant offences. The limitations do not extend the number or type of offences to which executive liability applies. The Bill introduces clear defences for officers to rely on in court proceedings. While the officer bears the evidential burden to adduce evidence of the defence, the prosecution is required to prove beyond reasonable doubt that the defence does not exist.

(d) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Although the amendment will limit the right to a fair hearing and rights in criminal proceedings by shifting the evidential burden to executive officers, the limitation is narrow and proportionate. The Bill does not create new offences but strengthens the existing executive liability provision to ensure executive officers who enable or fail to prevent offending conduct cannot avoid accountability. Executive officers are well placed to influence compliance, and the amendment creates a strong incentive for them to act responsibly and lawfully.

Liability only arises once the prosecution demonstrates the corporation's offence, and officers retain clear defences such as showing they took reasonable steps or could not reasonably have known of the conduct. On balance, the limited impact on rights is justified by the significant public health benefits and improved enforcement outcomes.

(e) any other relevant factors

Nil.

## **6. Human rights limited by introducing seizure and forfeiture powers for compromised goods**

The Bill amends the Act to allow authorised persons to seize any legal smoking products, hookahs or hookah components found at premises where illicit tobacco or illicit nicotine products are seized ('compromised goods'), and forfeit them to the State following a forfeiture decision on the illicit products they were seized alongside.

As a result of amendments to the Act in June 2025 to introduce immediate forfeiture of seized vaping goods,<sup>15</sup> any compromised goods seized with vaping goods will be subject to immediate forfeiture. Compromised goods seized with illicit tobacco, or illicit nicotine products other than vaping goods, will be subject to forfeiture following a show cause process.

(a) the nature of the right

***Right to property (section 24)***

The right to property is outlined above on page 6. The amendment to allow authorised persons to seize compromised goods found at premises alongside illicit products limits a person's right to hold legal property, and may deprive a person of that property.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of this limitation is to further disincentivise the supply of illicit tobacco and illicit nicotine products, in the interests of public health.

The current seizure framework only allows for the seizure of illicit products under the Act. However, illegal operators may offer legal stock alongside illicit stock to increase the perception of compliance or to hold themselves out as a legitimate supplier. In some instances, the bulk of illicit stock is held offsite, including at nearby storage sheds or vehicles. These tactics limit the quantity of illicit products that can be seized. These minimal seizures are quickly absorbed as a cost of doing business and do not meaningfully deter ongoing illegal conduct.

Allowing the seizure and forfeiture of compromised goods provides an additional enforcement tool to disrupt the illegal trade. This increases the financial consequences for non-compliant operators by enabling authorised persons to remove broader inventory. This measure is designed to deter unlawful activity by making it clear that businesses involved in the illegal trade risk losing not only illicit stock but also legal goods. This reduces the profitability of mixing legal and illegal trade and discourages others from entering or dabbling in the illicit market, as the potential loss may be too great to justify the risk.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendment is directly connected to the Bill's purpose of protecting public health and creating a stronger deterrent to engaging in the illicit tobacco and illicit nicotine product market. By enabling the seizure and forfeiture of legal smoking products, hookahs and hookah components, the limitation will ensure that enforcement action has immediate and tangible consequences. It will significantly increase the cost of engaging in illicit trade.

The provision operates alongside other amendments in the Bill to form a comprehensive enforcement framework. This approach is designed to change behaviour in the industry by sending a clear signal that illicit trade is not tolerated.

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<sup>15</sup> Section 20, *Health Legislation Amendment Act 2025*.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve this purpose of the Bill.

Seizing compromised goods provides an immediate, practical enforcement tool that directly affects the profitability of the illicit trade. It ensures that businesses cannot offset the risk of losing illicit stock by continuing to trade in lawful products. This financial impact discourages not only entrenched operators but also those who might otherwise be tempted to dabble in illicit trade, as the potential losses will outweigh any short-term gain.

The power is carefully confined to avoid unnecessary interference with property rights. The amendment is limited to specific categories of goods already regulated under the Act and does not permit the seizure of unrelated lawful property, such as confectionary or gifts. The amendment applies only where illicit tobacco or illicit nicotine products are found and seized at the premises, meaning the power is directed solely at individuals running businesses engaging in unlawful supply or possession. The rights of individuals who operate within the law will not be limited.

A show cause process will apply to compromised goods that are found alongside illicit tobacco or illicit nicotine products other than vaping goods. This is because those goods are only considered ‘compromised’ by being located with illicit products, and their forfeiture depends on the outcome of the forfeiture process for those illicit items. If the chief executive decides not to forfeit the illicit tobacco or illicit nicotine products, the compromised goods must be returned.

However, the show cause process does not apply to compromised goods found alongside vaping goods. This is because vaping goods are subject to a separate framework that allows them to be immediately forfeited without a show cause process. Compromised goods located with vaping goods follow that same process and can also be immediately forfeited. In other words, compromised goods take their status from the type of illicit product they are found with, and the relevant forfeiture process is applied accordingly.

Although vaping goods and any associated compromised goods can be immediately forfeited, their seizure is carefully controlled. Authorised persons may only seize the underlying illicit products where there is a clear and reasonable basis to do so, and they must hold a reasonable belief that the illicit products are evidence of an offence under the Act, for example, evidence of supply as part of a business activity.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendment limits the right to property by permitting the seizure and destruction of lawful goods. While the concept of compromised goods introduces a new enforcement mechanism under the Act, it is a considered response to persistent non-compliance in the illicit tobacco and vaping market, and complements the broader suite of reforms in the Bill.

The limitation on property rights is targeted and proportionate to businesses engaging in the supply of illicit tobacco and illicit nicotine products. Its purpose is to strengthen deterrence by increasing the financial consequences of participating in the illicit trade and, in turn, to reduce community access to harmful tobacco and vaping products in support of public health objectives.

Given the significant public health and enforcement challenges posed by the illicit trade, the limitation on property rights is considered reasonable and demonstrably justifiable. The limitation on the right to property is balanced against the need to deter individuals and businesses from engaging in unlawful conduct and the risks to public health of that conduct. The limitation ensures that businesses engaging in the illicit trade face immediate and tangible consequences that reflect the gravity of their actions, while preserving safeguards for individuals through established legal processes for seizure and forfeiture.

(f) any other relevant factors

Nil.

## **7. Human rights limited by introducing controlled purchase operations**

The Bill amends the Act to introduce the ability for controlled purchase officers to conduct controlled purchase operations. Under the Bill, controlled purchase officers will be adult public service employees and health service employees who are appropriately qualified and trained. These operations will covertly test compliance with prescribed offences in the Act for the purpose of obtaining evidence that may lead to further enforcement action such as prosecution. The prescribed offences relate to the unlicensed sale of smoking products and the supply and possession of illicit tobacco and illicit nicotine products.

(a) the nature of the right

### ***Right to privacy and reputation (section 25)***

The right to privacy protects individuals against unlawful or arbitrary interference with their privacy, family, home, or correspondence—including personal information and data collection. Privacy is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. The concept of arbitrariness extends to interferences that may be lawful but are capricious, unpredictable, unreasonable, or disproportionate. The right protects privacy in the sense of personal information, data collection, and correspondence.

The Bill limits this right as controlled purchase operations involve officers covertly entering business premises to obtain evidence of contraventions of the Act. These operations will occur without the knowledge or consent of the individual occupier and without the need to obtain a warrant. This may limit a person's reasonable expectation of privacy, notwithstanding that it occurs in a commercial environment.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of introducing controlled purchase operations is to strengthen enforcement and intelligence-gathering by authorising controlled purchase officers to carry out covert operations aimed at detecting and investigating certain offences under the Act.

Illegal operators are highly adaptive and use various methods to try to evade enforcement. For example, authorised persons have reported instances where retailers being inspected alert other associated retailers nearby, giving them the opportunity to conceal or remove illicit products to evade enforcement action. Many operators also use covert methods to sell illicit products, including coded language and concealed transactions. Many keep stock offsite, for example in nearby cars or neighbouring premises, and only retrieve it for the purpose of making a sale. Retailers have also been discovered with secret stockrooms full of illegal products.<sup>16</sup>

Controlled purchase operations are intended to overcome these challenges by enabling Queensland Health to gather first-hand evidence of unlawful conduct, build intelligence on the methods used to avoid compliance, and take targeted action to disrupt illegal activity at its source.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation directly advances the Bill's purpose by equipping Queensland Health with a method of identifying non-compliance and obtaining evidence that is not available through ordinary inspection powers alone. Intelligence gathered from controlled purchase operations will allow Queensland Health to build stronger cases against operators engaging in illegal conduct, enabling effective prosecution and enforcement action under the Act.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no less restrictive and reasonably available alternative to introducing controlled purchase operations to achieve the purpose of the Bill. Existing inspection and seizure powers are carried out openly. Many operators quickly change their behaviour once they know an investigation into their conduct is occurring. The existing powers alone have not been enough to deter illicit trade.

Controlled purchase operations are a targeted and proportionate enforcement method to rectify this gap. Officers taking part in these operations are not allowed to seize products or use other broad powers; their role is only to make or attempt to make purchases to collect evidence and intelligence.

The Bill also includes strong safeguards to ensure the power is exercised properly. Controlled purchase operations can only be used in relation to certain prescribed offences under the Act, including the unlicensed sale of smoking products and the supply and possession of illicit tobacco and illicit nicotine products. The Bill provides detailed requirements that must be

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<sup>16</sup> Davis, W., *Secret tobacco storeroom revealed in police raid*, Brisbane Times, 1 August 2025.



followed before an operation can be carried out. For example, an operation must be formally authorised, it must comply with conditions and limitations in that authorisation, and it must be supervised by an authorised person. Controlled purchase officers must also be properly trained and qualified.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the introduction of controlled purchase operations represents a lawful and reasonable interference with a person's right to privacy. The powers are confined to enforcement under the Act and are supported by clear legislative safeguards.

Controlled purchase operations are narrowly targeted. These operations are limited to activities necessary to gather evidence for certain prescribed offences, such as attempting to purchase, or making purchases, of legal or illegal smoking products, for the purpose of obtaining evidence of the supply and possession of illicit tobacco or illicit nicotine products or unlicensed sale of smoking products.

Controlled purchase operations are a proportionate and justified response to the significant public health and safety risks that have arisen from the illegal trade of these products.

Overall, the introduction of controlled purchase operations is necessary to support effective enforcement against illegal operators in the community. The Bill does not arbitrarily interfere with the right to privacy and appropriately balances the purpose of the Bill with the limitation on the right to privacy and reputation.

- (f) any other relevant factors

Nil.

## **8. Human rights limited by expanding entry powers to wholesale premises**

The Bill amends the Act to allow authorised persons to enter wholesale premises without a warrant or the occupier's consent when the premises are open for business.

- (a) the nature of the right

### ***Right to privacy and reputation (section 25)***

The right to privacy is outlined above on page 23. These amendments will engage the right to privacy by permitting authorised persons to enter and inspect wholesale premises when the premises are open for business.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to strengthen Queensland Health's ability to enforce the Act and monitor compliance at the wholesale level.

Wholesale supply plays a significant role in the broader supply chain of illicit products. If unauthorised products are entering the market at this point, they may be distributed across multiple retail premises, expanding the risks to public health. The ability to enter and inspect wholesale premises is essential to prevent the downstream supply of illicit tobacco and illicit nicotine products to retailers and the community.

Authorised persons are currently permitted under the Act to enter retail premises for similar purposes, without a warrant or the occupier's consent. This amendment ensures that both retail and wholesale environments are subject to equivalent monitoring.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose by closing a known enforcement gap and disrupting the downstream distribution of illicit tobacco and illicit nicotine products. Authorised persons will be permitted to carry out inspections at wholesale premises without consent or a warrant. This will allow authorised persons to take swift action following suspected non-compliance and remove unlawful goods from the supply chain before retailers and customers can access them.

The Bill will improve regulatory visibility over the wholesale environment and support proactive enforcement, while also deterring non-compliance by making clear that wholesale premises are also subject to monitoring without advance notice.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. Currently, Queensland Health relies on a suite of enforcement tools, including the imposition of significant financial penalties on non-compliant wholesalers. However, these measures do not directly address the need for timely access to wholesale premises to take effective enforcement action under the Act and disrupt the downstream distribution of illicit tobacco and illicit nicotine products.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amended entry power applies only to wholesale premises that are open for business and engaged in the sale of smoking products or are suspected of dealing in illicit tobacco or illicit nicotine products. It does not permit arbitrary or unrestricted access and is grounded in a clear regulatory purpose. These safeguards limit the intrusion on privacy while enabling effective enforcement.

On balance, the significant public health interest in preventing the distribution of illicit tobacco and illicit nicotine products outweighs the minimal impact on privacy rights. Wholesalers play a pivotal role in the supply chain, and ensuring that non-compliant operators are subject to timely enforcement action is necessary to protect the community and disincentivise illegal trade. The limitation is therefore reasonable and proportionate.

(f) any other relevant factors

Nil.

## **9. Human rights limited using evidentiary aids**

The Bill amends the Act to insert evidentiary aid provisions that allow certificates issued by the chief executive to be taken as evidence of matters of fact for court proceedings under the Act.

(a) the nature of the right

### ***Rights in criminal proceedings (section 32)***

Rights in criminal proceedings are discussed above on page 18.

The use of evidentiary aids limits this right because it permits the production of certificates that state facts as evidence and, unless challenged by the defendant, do not require the giving of oral evidence by witnesses. This can also reverse the onus of proof by requiring the defendant to demonstrate that the matters presented by way of certificate are not correct.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of introducing evidentiary aids is to allow for more efficient court proceedings by demonstrating facts through certified documents, thereby reducing costs for all parties. The Bill will enable the chief executive to put non-contentious evidence before the court regarding matters that are not central to the offence elements in dispute with the defendant. This reduces the need to call witnesses and ensures proceedings can proceed efficiently.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation supports the Bill's purpose of improving enforcement efficiencies by streamlining the process of proving routine or non-controversial facts and reducing the burden on the courts, prosecutors and defendants.

Evidentiary aids are a well-established tool in Queensland legislation, including, for example, in the *Medicines and Poisons Act 2019*, the *Food Act 2006*, the *Liquor Act 1992*, the *Police Powers and Responsibilities Act 2000*, and the *Environmental Protection Act 1994*.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to achieve the purpose of the Bill. Without evidentiary aids, every fact that must be proven in a prosecution requires the production of formal evidence and, in many cases, the attendance of witnesses. This places an unnecessary administrative and financial burden on the State, the courts and defendants. It also creates delays in proceedings, even for straightforward and uncontested matters.

Under section 223A of the Act, a court convicting a person of an offence against the Act may order the person to pay the State the reasonable costs of preparing for the prosecution of the offence. The use of evidentiary aids may reduce costs, including for a convicted defendant.

The evidentiary aids in the Bill are carefully targeted and apply only to non-controversial matters. They will not affect the dispute over core elements of an offence under the Act.

Importantly, evidentiary certificates are not conclusive. A defendant retains the right to challenge the contents of a certificate and to present evidence in rebuttal. This preserves the fairness of the proceeding while still achieving efficiencies. Accordingly, the provision limits the impact on rights while providing a public benefit by reducing unnecessary complexity in court processes, and allowing resources to be focused on the substantive issues that genuinely require adjudication in court.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on rights in criminal proceedings is narrowly tailored to non-contentious matters and enables the chief executive to put evidence before the court without the need to call witnesses. The efficiencies gained by including evidentiary provisions in the Bill support a fairer and more timely process, reducing delays and costs for both the State and defendants.

The amendments strike an appropriate balance between the purpose of the Bill and the limitation on human rights which is reasonable and demonstrably justifiable in a free and democratic society.

(f) any other relevant factors

Nil.

## **10. Human rights limited by inserting a broad power to request information**

Section 215 of the Act allows an authorised person to request information from any person if they believe an offence against the Act has been committed and the person has relevant information about the offence. Failure to comply with a request for information without a reasonable excuse attracts a maximum penalty of 100 penalty units. However, the Act does not contain a general power to request information for the purposes of monitoring or investigating potential non-compliance where an authorised person has not yet established the belief that an offence has occurred.

To address this, the Bill inserts a power to allow authorised persons to request information where it may assist in monitoring or enforcing select provisions of the Act. This power may be used in circumstances where an authorised person suspects, but not yet believes, that an offence has been committed under sections 65, 66, 67, 161, 161A or 209CE of the Act, or to support general ongoing compliance checks relating to those sections. These sections relate to the unlicensed sale of smoking products, supply of smoking products to children, failing to ensure employees do not supply smoking products to children, supply and commercial possession of illicit tobacco, supply and commercial possession of illicit nicotine products and the offence of a relevant lessor permitting another person to use premises for the supply and commercial possession of illicit tobacco and nicotine products.

(a) the nature of the right

***Right to privacy and reputation (section 25)***

The nature of the right to privacy is outlined above on page 23. This amendment will engage the right to privacy as it is likely to involve the disclosure of personal information, including that of licensees. The new power is broad, and there is potential for personal or confidential information to be disclosed. It will also apply to persons outside of the licensing scheme, noting ‘any person’ can be required to give information, provided the request is related to the monitoring or enforcement of sections 65, 66, 67, 161, 161A or 209CE of the Act.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to strengthen Queensland Health’s ability to gather sufficient information to undertake monitoring and enforcement of key offences in the Act that have significant public health impacts.

The current information gathering powers are only available after an offence has occurred, or where the authorised person holds a reasonable belief that an offence has been committed. This limits Queensland Health’s ability to understand the compliance of a licensee or to identify an illegal operator before a contravention of the Act occurs. It also restricts Queensland Health’s capacity to proactively detect and address emerging risks and undermines efforts to prevent contraventions.

The Bill addresses this by enabling authorised persons to request any information relevant to the monitoring or enforcement of the Act for the key offences, including those relating to the supply of smoking products to children and the supply and possession of illegal and harmful products such as illicit tobacco and illicit nicotine products. It also captures the new lessor offence, as discussed above from page 14. These are offences that target behaviours with a serious and harmful impact on public health.

This new power is broader than existing section 215 and will apply to a wider range of information and people. A person is required to comply with a request for information under the new provision, and a failure to comply attracts a maximum penalty of 100 penalty units.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation ensures authorised persons have access to information that is essential for monitoring, investigating and enforcing compliance with key provisions of the Act. It allows for earlier intervention and more effective regulatory action, particularly in an industry where illegal operators actively seek to avoid detection and circumvent enforcement action.

As regulatory action is focused on disrupting the supply of illicit products and ensuring the integrity of the licensing scheme, an information-gathering power of this nature is justifiable. The amendment will also complement the objects of the Act by contributing to a more robust framework of monitoring, investigation and enforcement activities in the illicit tobacco and illicit nicotine product trade.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. Without this power, Queensland Health would remain limited in its ability to gather relevant information for the purpose of monitoring or enforcing key offences in the Act.

The Bill includes effective safeguards to ensure the new power is exercised proportionately. It is appropriately confined, and can only be used where the information sought is relevant to the monitoring or enforcement of specific sections of the Act.

The Bill also preserves an important safeguard by allowing the person to rely on a reasonable excuse defence. This may include circumstances where providing the information could incriminate the person. The retention of this safeguard ensures the power is not applied inappropriately or in a way that unreasonably infringes individual rights.

This approach aligns with information-gathering powers in the *Liquor Act 1992*.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the purpose of protecting public health by strengthening monitoring and enforcement powers in the Act outweighs the limited and confined impact on privacy rights. The amendment is a reasonable and proportionate response to the public health issues that stem from the supply of smoking products to children, and the supply and commercial possession of illicit tobacco and illicit nicotine products. It will ensure the new lesser offence and civil penalty provision can be properly operationalised and achieve their aims. The power is confined to specific enforcement contexts and is accompanied by safeguards to protect individual rights, making it a reasonable and justified limitation.

- (f) any other relevant factors

Nil.

## 11. Human rights limited by requiring additional information in licence applications

The Bill amends section 18 of the Act to expand the matters that must be included in an application for a retail or wholesale licence to sell smoking products, including the business's Australian Business Number (ABN), the right to occupy the outlet and details of the lessor of the outlet, including the name, address and contact details of the lessor, where the outlet is leased.

- (a) the nature of the right

### *Right to privacy (section 25)*

The right to privacy is outlined above on page 23. Requiring an applicant to provide information about the name, address and contact details of their lessor may result in a limitation on a lessor's right to privacy. Requiring the applicant to provide their own ABN and evidence of their right to occupy the outlet may limit the applicant's right to privacy.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to strengthen Queensland Health's ability to administer and enforce the Act by enabling a thorough due diligence process to be conducted on licence applicants. By requiring ABN information, Queensland Health will be better placed to assess the legitimacy of businesses seeking to be licensed. Requiring applicants to provide contact details for their lessor is essential for enforcing the new lessor offence and civil penalty, and for providing a copy of the closure order and a notice to relevant lessors to facilitate termination of leases with offending lessees.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The ability to request information from an applicant is critical to the proper administration and enforcement of a regulated sector, ensuring that due diligence can be conducted before applicants enter the licensing scheme. Without sufficient information about the applicant and their operating arrangements, Queensland Health's ability to monitor compliance and safeguard the integrity of the licensing system would be significantly reduced.

The Act already requires applicants to provide information such as proof of identity, director details, the location of outlets and details of other licences held. The Bill expands upon this requirement by mandating disclosure of an applicant's ABN and, where the premises are leased, the name, address and contact details of the lessor. This additional information gives greater insight into the legitimacy of a business and provides a clear avenue for contacting lessors for the purposes of enforcement.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. The additional information required is targeted at understanding whether an entity is operating

under a legitimate arrangement, and ensures Queensland Health can give a notice of a closure order on relevant lessors under the Bill.

In the case of the lessor, the provision of their details to Queensland Health as part of the application process may also be to the lessor's benefit, as it will ensure Queensland Health can contact the lessor if a closure order is issued over the premises, and alert the lessor to their right to terminate the lease with the offending lessee.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendment strikes an appropriate balance as it provides Queensland Health with the information necessary to administer and enforce the licensing scheme with minimal privacy impacts, as the information required is limited to that directly relevant to regulatory oversight. The significant public interest in protecting public health and preventing illicit trade outweighs any minor intrusion on privacy.

- (f) any other relevant factors

Nil.

## **12. Human rights potentially limited by prescribing new PIN offences**

The Bill prescribes the following offences as PIN offences under the State Penalties Enforcement Regulation:

- contravention of a closure order under amended section 209C(1) – 20 penalty units (individuals) and 100 penalty units (corporations);
- failure of a retail licensee to keep invoices for at least two years under amended section 49(3) – 10 penalty units (individuals) and 50 penalty units (corporations); and
- failure of a wholesale licensee to keep invoices for at least two years under new section 49(4) – 10 penalty units (individuals) and 50 penalty units (corporations).

- (a) the nature of the right

### ***Fair hearing (section 31) and rights in criminal proceedings (section 32)***

These rights are outlined above on page 18.

The amendments may limit these rights because they prescribe certain offences as PIN offences under the State Penalties Enforcement Regulation. A person is not required to attend court in relation to a PIN. However, a person may elect for the matter to be heard by a court instead of paying the penalty. If a person elects for the matter to be heard by a court, the person is afforded all rights in criminal proceedings guaranteed under the Human Rights Act.



***Right to property (section 24)***

The right to property is outlined above on page 6. The Bill may limit the right to property because it prescribes the payment of a fine for relevant offences. In addition, the failure to pay a fine may result in enforcement action being taken against a person— this may include seizure and sale of property, imposing a charge over property, taking the fine amount directly from the person's earnings or savings, cancelling the person's driver's licence or immobilising the person's vehicle.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to assist in achieving effective enforcement of relevant offences under the Act and to reduce the burden on courts. Prescribing these offences as PIN offences creates an alternative and efficient enforcement pathway for contravening a closure order and for failure of a licensee to keep invoices for at least two years. The ability to issue a PIN provides a prompt and proportionate response to non-compliance, avoiding the need for lengthy court proceedings while still creating a meaningful deterrent.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Prescribing these offences as PIN offences directly supports the purpose of achieving efficient and effective enforcement under the Act. It removes the need to prosecute these matters through the courts, reducing the administrative and financial burden on the justice system. The ability to issue a PIN provides an efficient and cost-effective method of enforcing offences under the Act, ensuring non-compliance can be addressed promptly.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of enforcing relevant offences under the Act in a timely and cost-effective way.

If PINs were unable to be issued for contravening relevant offences in the Act, every offence would require prosecution through the courts. This would significantly burden enforcement teams, prosecutors, and the courts, as well as impose greater costs on both the offender and the State.

Prescribing PIN offences also provides several benefits to alleged offenders who decide not to contest a PIN. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as certainty about their legal position. Importantly, payment of a PIN does not result in a criminal record, which reduces the longer-term impacts on the individual.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments to the State Penalties Enforcement Regulation appropriately balance the purpose of the limitation and the limitation on human rights.

Prescribing new PIN offences provides an alternative enforcement pathway for enforcing requirements under sections 209C, 49(3) and 49(4) of the Act. Only individuals or businesses that choose not to comply with these provisions will be affected.

The ability to issue PINs delivers a proportionate and targeted response to non-compliance, avoiding the need for criminal prosecution while still promoting adherence to the law. Any limitation on human rights is minimal and is outweighed by the significant public interest in implementing effective enforcement measures, reducing the burden on the courts and safeguarding public health.

- (f) any other relevant factors

Nil.

## Conclusion

In my opinion, the Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

**THE HONOURABLE TIM NICHOLLS**  
MINISTER FOR HEALTH and AMBULANCE SERVICES

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