

# Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2025

Explanatory notes for SL 2025 No. 20

made under the

*State Penalties Enforcement Act 1999*  
*Tobacco and Other Smoking Products Act 1998*

## General Outline

### Short title

*Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2025*

### Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*  
Section 237 of the *Tobacco and Other Smoking Products Act 1998*

### Policy objectives and the reasons for them

On 19 September 2024, the *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Act 2024* (Amendment Act) received assent. The Amendment Act amended the *Tobacco and Other Smoking Products Act 1998* to create several new offences relating to illicit nicotine products (which include vaping goods and other products prescribed by regulation) and significantly increased the penalties for existing offences relating to illicit tobacco. The Amendment Act also introduced new enforcement options such as closure powers and injunctive relief.

Despite these reforms, the widespread availability of vaping goods and illicit tobacco remains a substantial public health issue in Queensland. The considerable profits to be derived from this illegal trade outweigh the risks for many suppliers, driving ongoing and extensive non-compliance. The supply of nicotine pouches is also increasing. These products are often sold by the same retailers who supply vaping goods and illicit tobacco, and are promoted as a discreet alternative to smoking and vaping. Further controls are required to effectively disrupt the strong economic incentives associated with the supply of illegal vaping goods, illicit tobacco and novel nicotine products like nicotine pouches.

#### Prescribing penalty infringement notice offences

The *State Penalties Enforcement Act 1999* enables the issuing of penalty infringement notices (PINs) for certain offences, as an alternative to prosecution. The recipient of a PIN can either

pay the fine contained in the PIN or, if they wish to contest the offence, elect to have the matter decided by a court. PINs can be issued for an offence if the offence is prescribed in schedule 1 of the *State Penalties Enforcement Regulation 2014* as an infringement notice offence.

PINs are an essential component of the enforcement framework under the Tobacco and Other Smoking Products Act. Significant PIN penalties are required for the offences relating to the supply and commercial possession of illicit tobacco and illicit nicotine products, to ensure penalties are commensurate with the economic incentives of this illegal trade and provide an effective deterrent.

### Prescribing nicotine pouches as ‘illicit nicotine products’

New section 161A of the Tobacco and Other Smoking Products Act provides it is an offence to supply or possess illicit nicotine products as part of a business activity. Section 161B provides that it is an offence for an employee or other person acting on behalf of another to supply illicit nicotine products or illicit tobacco. Section 161C provides that it is an offence for an adult to supply a child with an illicit nicotine product outside of a commercial environment (for example, supply by an adult to a friend or family member who is a child). Section 109A provides that it is an offence to display, promote or advertise illicit nicotine products as part of a business activity.

Schedule 1 of the Tobacco and Other Smoking Products Act defines ‘illicit nicotine product’ as vaping goods or another product containing nicotine or another substance detrimental to health prescribed by regulation. The ability to prescribe products by regulation ensures that novel nicotine and related products can be captured within the prohibition as they are developed, or as their use becomes commonplace in Queensland. These products do not need to contain nicotine but can instead contain another substance detrimental to health. To date, no products have been prescribed by regulation as illicit nicotine products.

Nicotine pouches are small pouches designed to be placed between the lip and gum which may contain nicotine, a synthetic nicotine, a nicotine analogue such as 6-methylnicotine, or another nicotine alternative or substitute. Nicotine pouches also often contain sweeteners and come in a variety of mint, fruit, beverage, and confectionary flavours – for example, peppermint, watermelon, coffee, and bubble gum. Nicotine pouches are sometimes held out to be ‘nicotine-free’, ‘zero nicotine’ or as giving ‘a nicotine-like experience without the nicotine’. Nicotine pouches are colloquially known as ‘lip pillows’, ‘upper decky’ or ‘zyn’. The use of nicotine pouches is becoming more widespread, including among children and young adults. A 2024 University of Melbourne survey of almost 1600 Australians aged 16-39 years found that over one quarter (26 percent) of those surveyed had used a nicotine pouch in their lifetime, with almost one in five (19 percent) having used a nicotine pouch in the 30 days prior to the survey.<sup>1</sup>

Data from independent testing of nicotine pouches suggests they contain hazardous substances, including substances classified as ‘possibly carcinogenic’ by the International Agency for Research on Cancer. Nicotine pouches pose a significant health risk in terms of creating and maintaining nicotine dependence, accidental misuse, and cardiovascular problems. Nicotine use by children and young adults can also exacerbate mental health concerns such as anxiety and depression.

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<sup>1</sup> Jongenelis, M. I., Brierley, M. E., & Li, R. (2024). Patterns of nicotine pouch use among young Australians. *Drug and Alcohol Dependence*, 264, 112428. <https://doi.org/10.1016/j.drugalcdep.2024.112428>.

The *Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2025* (Amendment Regulation) amends the *Tobacco and Other Smoking Products Regulation 2021* to prescribe nicotine pouches as illicit nicotine products. This will ensure that the prohibition on their supply and possession can be effectively enforced under the Tobacco and Other Smoking Products Act.

'Nicotine pouch' is defined to mean receptacles that are designed to be placed between the lip and the gum that contain one or more relevant substances able to be released buccally (that is, into the blood stream through the inner lining of the cheek of a person's mouth).

In the context of this definition, a receptacle 'contains' a substance if it:

- actually contains one or more relevant substances (for example, where verified by testing);
- is labelled to contain one or more relevant substances (for example, on the label of the packaging);
- is claimed to contain one or more relevant substances (for example, on a manufacturer's or retailer's website); or
- is reasonably believed or commonly understood to contain one or more relevant substances (for example, whether a reasonable person having regard to the circumstances in which the product was being supplied or possessed for commercial purposes would believe the product contains a relevant substance).

Relevant substances include nicotine, 6-methylnicotine (a nicotine analogue), a substance known as synthetic nicotine, or a nicotine substitute, along with other substances such as sweeteners and flavours. 'Nicotine substitute' means a substance giving, or held out as giving, a similar or alternate experience to nicotine. This includes, for example, substances that are described as a 'nicotine alternative agent', a 'nicotine derivative' or a 'no-nicotine nicotine solution.' It also includes substances held out to be nicotine or tobacco free, zero nicotine or zero tobacco or as giving a 'nicotine-like experience, without the nicotine'.

This definition ensures that enforcement action can be taken in relation to nicotine pouches without needing to scientifically test the pouches in every case to ensure that they contain nicotine or another relevant substance – it is sufficient that the pouches are labelled, claimed, reasonably believed, or commonly understood to contain such a substance.

#### Prescribed smoke-free places

Section 140(1) of the Tobacco and Other Smoking Products Act provides that a person must not smoke within a government precinct. Subsection (3) provides that 'government precinct' means land adjoining a building occupied by the State, the Legislative Assembly, a court, a tribunal, an entity that represents the State or another entity established by an Act, that is prescribed by regulation.

The premises at 41 George Street, Brisbane is no longer occupied by an entity that represents the State and therefore no longer meets the criteria to be prescribed as a smoke-free government precinct.

The policy objectives of the Amendment Regulation are to:

- disrupt the economic incentives arising from the profitable supply of illicit tobacco and illicit nicotine products and support the enforcement of relevant offences in the Tobacco and Other Smoking Products Act;
- reduce the harms to public health caused by nicotine pouches; and
- ensure that the prescribed smoke-free places identified in the Tobacco and Other Smoking Products Regulation are accurate.

## **Achievement of policy objectives**

To achieve the policy objectives outlined above, the Amendment Regulation amends the State Penalties Enforcement Regulation and the Tobacco and Other Smoking Products Regulation.

The Amendment Regulation amends schedule 1 of the State Penalties Enforcement Regulation to prescribe the offences under sections 161(1) and 161A(1) of the Tobacco and Other Smoking Products Act as PIN offences. These offences relate to the supply of illicit tobacco and illicit nicotine products as part of a business activity. The PIN penalty for each offence is 200 penalty units for an individual and 1000 penalty units for a corporation. The Amendment Regulation also prescribes the offences in sections 161(2) and 161A(2) as PIN offences. These offences relate to the possession of illicit tobacco and illicit nicotine products as part of a business activity. The PIN penalty for each offence is 100 penalty units for an individual and 500 penalty units for a corporation.

The PIN amounts for the offences at section 161(1), 161(2), 161A(1) and 161A(2) are an extraordinary measure in response to businesses selling illicit tobacco and vaping goods. The nature of this conduct poses significant risks to public health and undermines the regulatory framework. This approach is only considered appropriate in circumstances where there is clear evidence that existing penalties have been insufficient to deter widespread, organised non-compliance.

In this limited context, the PIN amounts are intended to act as a deterrent against businesses that knowingly engage in illegal activity for financial gain, particularly where previous regulatory measures or lower penalties have proven ineffective. The severity of the penalty reflects the broader public interest in protecting community health and ensuring compliance. Such PIN amounts should only be prescribed in exceptional circumstances, where the gravity of the conduct, the financial incentive, the public health risks and the deliberate nature of the offending justify a targeted approach to address a unique regulatory challenge.

The Amendment Regulation also prescribes sections 109A(1), 109A(2) and 109A(3) of the Tobacco and Other Smoking Products Act as PIN offences. These offences relate to the display, advertising and promotion of illicit nicotine products. The PIN penalty for all offences is 10 penalty units for an individual and 50 for a corporation. Sections 215(3) and 216(1) are also prescribed as PIN offences. These offences relate to non-compliance with a requirement to provide information about an offence under the Tobacco and Other Smoking Products Act to an authorised person, and to providing false or misleading information to an authorised person. The PIN penalty for each offence is 4 penalty units.

Schedule 1 of the State Penalties Enforcement Regulation is also amended to increase the penalties for sections 90(1), 90(2), 90(3), 158(1) and 159(1) of the Tobacco and Other Smoking Products Act, which are currently prescribed as PIN offences. These offences relate to the display and advertising of smoking products, and the sale, supply and display of ice pipes and bongs. These offence provisions will attract a PIN penalty of 10 penalty units for an individual and 50 penalty units for a corporation (an increase from the current PIN penalty of 4 penalty units).

The Amendment Regulation also amends schedule 1 of the State Penalties Enforcement Regulation to identify the authorised persons for service of infringement notices relating to the following offences:

- section 78(2) – authorised persons appointed under section 170(1) of the Tobacco and Other Smoking Products Act;
- section 127(2) or section 131(2) – authorised persons appointed under section 170(1), (2), (3) or (4) of the Tobacco and Other Smoking Products Act, or a police officer; and
- sections 161A(1), 161A(2) and 161B(2) – authorised persons appointed under section 170(1) or (7) of the Tobacco and Other Smoking Products Act.

These amendments are necessary to:

- reflect the correct enforcement practice, noting that appointed public service officers (typically environmental health officers in Public Health Units) manage all provisions relating to the supply of smoking products including at liquor licensed venues and are therefore the appropriate officers to determine if a supply offence is occurring at a liquor licensed premises for the purposes of a section 78(2) offence;
- narrow the authorised persons who may issue infringement notices for an offence against sections 127(2) and 131(2) which includes the 5-metre smoke-free buffer that extends from the boundary of health facilities and residential aged care facilities. This will ensure that smoking in these areas can be addressed by public service officers and health service authorised persons in addition to authorised local government officers and police; and
- be consistent with the authorised persons currently prescribed for the supply and possession offences for illicit tobacco in section 161, as it is appropriate for appointed public service officers and authorised police officers to similarly be empowered to serve infringement notices for like offences in sections 161A and 161B.

The Amendment Regulation amends the Tobacco and Other Smoking Products Regulation to prescribe nicotine pouches as ‘illicit nicotine products’ under schedule 1 of the Tobacco and Other Smoking Products Act and to remove 41 George Street, Brisbane, from the list of smoke-free government precincts.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the State Penalties Enforcement Act and the Tobacco and Other Smoking Products Act.

By prescribing the relevant Tobacco and Other Smoking Products *Act* offences as PIN offences, the Amendment Regulation assists to maintain the integrity of fines as a viable alternative to prosecution. This reduces the cost to the State of enforcing contraventions through the courts.

By prescribing nicotine pouches as ‘illicit nicotine products’, the Amendment Regulation ensures that the prohibition on their supply and commercial possession can be effectively enforced under the Tobacco and Other Smoking Products Act. This improves public health by reducing the public’s exposure to and use of these products.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

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

There are no alternative ways to achieve the policy objectives of providing authorised officers with additional enforcement options, increasing the deterrent effect of the offences, and reducing the regulatory burden on the justice system other than prescribing the relevant offences as PIN offences.

While the Amendment Act introduced new offences and penalties, it is not feasible to prosecute all contraventions through the courts due to the large number of retailers who remain non-compliant, the significant time and resources to conduct hundreds of criminal proceedings, and the associated pressure this would place on the criminal justice system. Authorising the use of PINs as a cost-effective, expeditious alternative to prosecution, where appropriate, will make the threat of enforcement credible and provide an effective deterrent for the vast majority of retailers who would otherwise continue to have strong financial incentives to trade in illicit nicotine products.

An alternative to prescribing nicotine pouches as illicit nicotine products would be to continue to rely on the provisions within the *Medicines and Poisons Act 2019* which prohibit the supply and possession of nicotine without a prescription. However, the enforcement powers under the Medicines and Poisons Act are less suited to efficient monitoring and enforcement of prohibitions on nicotine pouches than those available under the Tobacco and Other Smoking Products Act. For example, prosecutions under the Medicines and Poisons Act require evidence that the seized product contains nicotine. The analysis required to be undertaken to provide this evidence is resource intensive.

Additionally, Queensland Health officers cannot simultaneously exercise powers under the Tobacco and Other Smoking Products Act and the Medicines and Poisons Act. This has resulted in a dual enforcement approach which requires at least four Queensland Health officers to be involved in inspections of retailers selling both nicotine pouches and tobacco products. It is preferable that officers be able to act under a single legislative framework in relation to these retailers.

For the above reasons, relying on the Medicines and Poisons Act to enforce the prohibition on the supply of nicotine pouches would not effectively achieve the purpose of the Amendment Regulation.

## Benefits and costs of implementation

The cost of implementing the Amendment Regulation will be met within existing budget allocations. The amendments do not impose any new or increased fees.

Prescribing the relevant offences from the Tobacco and Other Smoking Products Act as PIN offences enables Queensland Health to issue PINs for breaches of those offences. This will reduce the cost to the justice system for prosecutions while retaining an individual's option to contest the relevant offence. This is likely to increase the deterrent effect of the offences and support the public health objectives of the Tobacco and Other Smoking Products Act.

Prescribing nicotine pouches as illicit nicotine products ensures that the prohibition on their supply and possession can be effectively enforced under the Tobacco and Other Smoking Products Act. This will reduce their availability and the resulting harmful impact on public health.

## Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

*Whether the proposed legislation has sufficient regard to the rights and liberties of individuals.*

### **Restrictions on ordinary activities must be justified**

Although not specifically enumerated in the Legislative Standards Act, legislation should not, without sufficient justification, unduly restrict ordinary activities.<sup>2</sup> An activity should be lawful unless, for a sufficient reason, it is declared unlawful by an appropriate authority. This includes unduly interfering in a person's conduct of business.

The Amendment Regulation amends the Tobacco and Other Smoking Products Regulation to prescribe nicotine pouches as 'illicit nicotine products'. Under section 161A of the Tobacco and Other Smoking Products Act, it is an offence to supply or possess illicit nicotine products as part of a business activity. Although it is already an offence under the Medicines and Poisons Act to supply nicotine pouches without a prescription, the Amendment Regulation will interfere with a person's ability to conduct a business supplying these products by facilitating better enforcement of this prohibition.

Restrictions that interfere with a person's ability to conduct a business can be justified, particularly if the rationale for the restrictions is for the health and safety of the public.

Restricting a person's ability to conduct a business that supplies nicotine pouches to the public is justified, based on the considerable health risk of these products, particularly for young people.

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<sup>2</sup> See, e.g., *Fundamental Legislative Principles, The OQPC Notebook*, p. 118-120 (updated Jan 2008).

**Offences should be appropriate and reasonable**

Under section 4(2)(a) of the Legislative Standards Act, legislation must have sufficient regard to the rights and liberties of individuals.

For legislation to have sufficient regard to the rights and liberties of individuals, offences should be appropriate and reasonable, and the penalty should be proportionate to the wrong occasioned by the breach.

When used appropriately and in conjunction with other compliance mechanisms under the Tobacco and Other Smoking Products Act, PINs have proven to be a fair and effective enforcement response. PINs provide a more immediate deterrent than commencing lengthy prosecution action. The option of a PIN gives a person an alternative to court-based prosecution. By avoiding a prosecution, PINs reduce demand on Queensland courts while still maintaining a person's right to access the judicial system if they wish to challenge the offence. While the PIN penalties imposed for the offences relating to the supply and commercial possession of illicit tobacco and illicit nicotine products are significant, they are commensurate with the economic incentives of that illegal trade, and necessary to ensure that the profitability of the trade does not continue to outweigh the risks of enforcement.

For these reasons, the proposed PINs have sufficient regard to the fundamental legislative principles regarding individual rights and liberties.

## **Consultation**

Queensland Health conducted consultation with external stakeholders in April and May 2024 on the amendments in the Amendment Act. Targeted external consultation was undertaken with key stakeholder groups, including Aboriginal and Torres Strait Islander organisations, retail associations, health professional associations and peak bodies, public health organisations, the education sector, unions, and community sector organisations.

Overall, stakeholders were supportive, and welcomed action from the Queensland government to address issues relating to the supply of illicit tobacco and illicit nicotine products in Queensland. Stakeholders were supportive of ensuring Queensland Health could appropriately enforce offences under the Tobacco and Other Smoking Products Act. Stakeholders were also supportive of a definition of 'illicit nicotine products' which would capture novel products such as nicotine pouches.