

# Reducing the negative effects of smoking in Queensland

Consultation Regulatory Impact  
Statement



**Queensland**  
Government

## Reducing the negative effects of smoking in Queensland - Consultation Regulatory Impact Statement

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# Executive summary

Concerted legislative and program efforts have reduced smoking over recent decades. Queensland's adult smoking rate has more than halved from 24% in 1998 to 10% in 2020. While there has been success in reducing the negative effects of smoking, significant challenges and risks remain. Queensland has the second highest smoking rate for current adult smoking in the country and smoking is the single most preventable cause of morbidity and premature mortality in Queensland, no other single risk factor contributes as greatly to the burden of preventable death and disease, or to health inequity.

There are profound costs from the negative effects of smoking on smokers, their loved ones and health services. In 2015–16, the total cost of smoking in Queensland was estimated to be \$27.4b. This includes tangible costs associated with premature death, hospitalisations, other medical and social care costs, workplace absenteeism and tobacco spending. It also includes significant intangible costs including the value of life lost, pain and suffering.

The greatest share of the costs of smoking are borne by households, particularly by smokers, former smokers, and their families. In addition, poor health outcomes from smoking are unequally distributed in the community, with higher smoking rates among Aboriginal and Torres Strait Islanders, people in low socio-economic circumstances and people living in regional and remote areas. Addressing the burden of smoking is key to narrowing the gap in health outcomes for these groups. For Aboriginal and Torres Strait Islanders smoking related illness causes half of all deaths of those aged over 45 and one third of all deaths.

The health impacts of smoking are well known and include lung cancer and 18 other cancers and neoplasms, cardiovascular diseases such as coronary heart disease, type 2 diabetes, gastrointestinal disorders, hearing and vision disorders, infectious diseases, musculoskeletal conditions, neurological conditions, and respiratory diseases such as COPD. Compared to adults who had never smoked, Australian smokers die on average 10 years earlier and develop age-related diseases 10 years earlier.

There are new challenges which threaten to erode success in reducing the negative effects of smoking. E-cigarettes have emerged to broaden the smoking product market and are promoted as less harmful, contained in attractive packaging, and supplied in an array of interesting flavours. While evidence on the safety and efficacy of these products continues to develop there is now sufficient data that e-cigarettes are not without harms to health, and that they pose a significant risk for creating a new generation of Queenslanders for whom smoking and regular nicotine use is normal.

To reduce the negative effects of smoking the Queensland Government implements a multi-strategy approach that includes legislative and program investment. This approach, described at Table 1, is designed to reduce smoking rates through investment in policy/regulation and compliance, smoking cessation support, public communication, research and surveillance, as well as engagement and partnerships with key stakeholders. This multi-strategy approach delivers population-wide investment, Queensland Health modelling indicates that these population health measures also serve to reduce the negative effects of smoking among Aboriginal and Torres Strait Islanders, people in low socio-economic circumstances and people living in rural, regional and remote areas if targeted implementation occurs.

**Table 1 – Queensland Government investment in reducing the negative effects of smoking**

Policy, regulation, and compliance	State-wide cessation programs	Communications	Research	Stakeholder engagement and partnerships
<p>Smoke-free places and supply and promotion restrictions under the <i>Tobacco and Other Smoking Products Act 1998</i></p> <p>Complaints based compliance investigations, inspections and enforcement</p> <p>Targeted proactive compliance activities</p> <p>Smoke-free healthcare toolkit and supports</p>	<p>Quitline</p> <ul style="list-style-type: none"> <li>Targeted services for priority populations including Aboriginal and Torres Strait Islanders and Rural, Regional and Remote communities</li> <li>Single quit support sessions</li> </ul> <p>Routine advice and clinical service delivery in Queensland Health facilities (Smoking Cessation Clinical Pathway)</p> <p>Targeted support programs and trials in priority population and settings</p> <p>QuitHQ internet based quit support</p> <p>Brief intervention training for health professionals</p>	<p>Mass media campaigns</p> <p>Social marketing campaigns</p> <p>Web-based information, fact sheets and guides</p> <p>13QGov Tobacco Laws Information Service and resource distribution</p>	<p>Population health surveys and surveillance</p> <p>Projects and partnerships with academic institutions</p>	<p>Coordination across Commonwealth and other jurisdictions responsible for tobacco control, nicotine and drug and alcohol policy</p> <p>Regular stakeholder meetings with</p> <ul style="list-style-type: none"> <li>Public health interest organisations</li> <li>Retailing peak bodies</li> <li>Universities and tobacco control academics</li> <li>Queensland Police Service</li> <li>Directors of Public Health Units</li> <li>Managers of Environmental Health Units</li> <li>Education Queensland and other school authorities</li> </ul>

## Objects of government action

In recognition of the benefits of smoking reduction achieved in Queensland to date, the continuing significant negative impact of smoking on the health of community, and in response to emerging risks of increased smoking rates, the Government has made commitments to consider options to increase the range of public places that are free from smoking and e-cigarette use, and to further restrict the supply, advertising and promotion of tobacco and other smoking products.

These commitments have been made in response to public health evidence on the negative effects of smoking, identified areas of concern for exposure to second-hand smoke as well as industry and community concerns about gaps in the existing regulatory framework.

The object of government action is further reducing the negative effects of smoking, improving the health and wellbeing of the community and ultimately reducing the costs of smoking on society. This can be achieved by:

- preventing young people from ever using smoking products
- supporting people that use smoking products to quit
- ensuring people are protected from second-hand smoke and e-cigarette vapour.

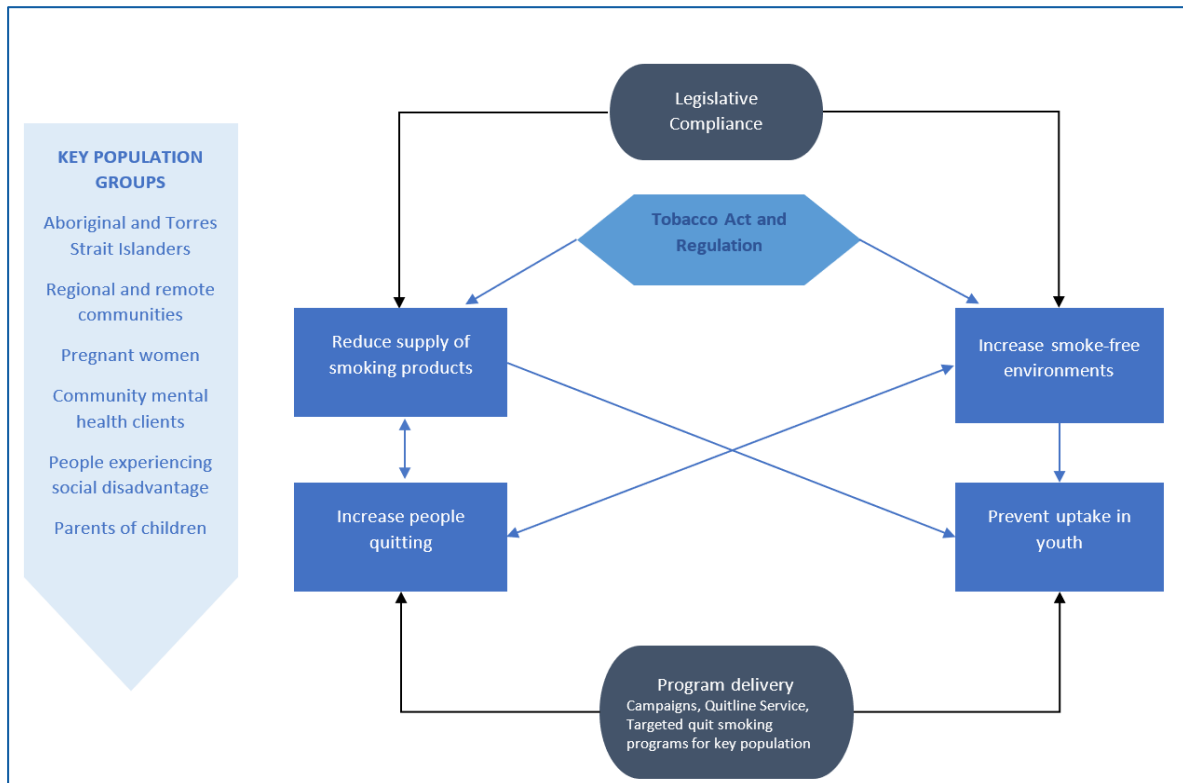
Government objectives do not seek to limit or remove a person's choice to smoke, rather they seek to reduce unintended health harms from exposure to second-hand smoke, create environments that make quit smoking attempts easier and to protect health by preventing or delaying the uptake of smoking.

Queensland's approach to reducing the negative effects of smoking is underpinned by a regulatory framework which supports and is in turn supported by the implementation of program delivery. This interaction is described at Figure 1.

The objective of the *Tobacco and Other Smoking Products Act 1998* (the Act) and *Tobacco and Other Smoking Products Regulation 2021* is to improve the health of members of the public by reducing their exposure to smoking products (including electronic cigarettes), by:

- restricting the supply of tobacco and other smoking products to children
- restricting the advertising and promotion of tobacco and other smoking products
- reducing public exposure to second-hand smoke from tobacco and other smoking products
- establishing a framework for monitoring, investigative and enforcement activities.

**Figure 1 – Intersection of regulatory framework and program delivery to reduce the negative effects of smoking**



## Identification of the problem

The Queensland community is supportive of preventive action to protect non-smokers and to help smokers to quit and are actively engaged in identifying where amendments could be made to reduce the negative effects of smoking. Queensland Health receives representations from stakeholders conveying concern about exposure to second-hand smoke, reports of youth accessing smoking products including e-cigarettes and tobacco, and concern regarding the promotion of smoking products in ways considered likely to increase smoking uptake by young people.

In addition to the ongoing delivery of programs to reduce the negative effects of smoking, assessment of the current regulatory environment has been undertaken in response to stakeholder feedback to detect problems or gaps that may slow progress toward the Government's objectives these have been identified as:

- environments and policies that promote smoking uptake by young people
- exposure to smoking products and smoking in settings that may prolong smoking by reducing quit attempts and successful quitting
- exposure to second-hand smoke and e-cigarette vapour in recreational outdoor settings that are out-of-step with community expectations
- information gaps in the current monitoring, investigative and enforcement framework of the Act
- illicit trade of tobacco products.

## Consideration of options and impact analysis

A range of options have been canvassed in response to these problems. These options and the alternatives that were investigated are summarised in the following section, and outlined in more detail in Part 2, Section 2. Each option considered has been analysed in relation to its potential impact on business and industry, the government, and the community.

Seven preferred options are put forward for public comment. These are:

1. Introducing a licensing scheme for wholesale and retail suppliers of smoking products.
2. Modernising advertising and display and promotion provisions for clarity and consistency.
3. Limiting the sale of smoking products at liquor licenced venues to a serviced bar or bottle-shop.
4. Prohibiting the sale and handling of smoking products by minors in their employment.
5. Introducing new designated outdoor smoking area (DOSA) requirements:
  - a. Restricting DOSAs to adults.
  - b. Prohibiting drinking in DOSAs.
  - c. Requiring a buffer between DOSAs and enclosed venue areas.
6. Introducing restrictions on smoking-only areas at outdoor eating or drinking places and requiring buffers around the perimeter of outdoor eating or drinking places.
7. Prohibiting smoking at outdoor markets, except for smoking only areas.

A further four options are out of scope for impact assessment as part of this consultation but are intended to be progressed as part of a comprehensive smoking reduction reform package. These are summarised in Part 2, Section 3:

1. Introducing penalties and improved enforcement options for the supply of illicit tobacco (tobacco that does not meet Commonwealth packaging and warning requirements).
2. Removing exemptions that allow a responsible adult to supply smoking products to minors.
3. Making carparks adjacent to schools smoke-free.
4. Making activities that are organised, outdoor, recreational events for under-18s smoke-free.

## Purpose of this document

This Consultation Regulatory Impact Statement has been prepared by Queensland Health to seek feedback on the impact of options that can help the government achieve its objectives.

Feedback will be used to inform next steps in the policy development process and provide an informed and transparent basis for decision making.

# Have your say

This is an opportunity for community members, industry and organisations to provide feedback on the options provided in this Consultation Paper. Feedback will be used to inform the Regulatory Impact Statement process and provide an informed, objective and transparent basis for decision making.

All stakeholders are invited to provide a response through question prompts provided on the Get involved website ([www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)) – search for ‘Reducing the negative effects of smoking in Queensland: Consultation Regulatory Impact Statement’.

If you require guidance on submitting feedback through Get involved, contact:

[smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au)

## Important note about confidentiality

In the interests of transparency and to promote informed discussion, Queensland Health would prefer responses to be made publicly available wherever this is reasonable. However, if a person making a response does not want that response to be public, that person should clearly note that in the response or by emailing [smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au).

While the department will endeavour to identify and protect material claimed as confidential as well as personal information of a respondent, if an application is received under the *Right to Information Act 2009* (the RTI Act) for this material there is no guarantee that information will not be disclosed.

# **Reducing the negative effects of smoking in Queensland**

## **Part 1: Overview of regulatory impact statements**

# Smoking product supply

## 1. Monitoring compliance of retail smoking product supply

### Context

Smoking products are widely available consumer goods; there are at least 7,400 retail outlets selling smoking products across Queensland. Because of the dangers smoking products pose to human health, the sale, advertising, promotion and use of smoking products is regulated. In Queensland, the *Tobacco and Other Smoking Products Act 1998* (the Act) regulates the supply of smoking products predominantly by prohibiting sales to children, banning displays and other methods of advertising, and requiring retailers to train their staff about their legal obligations. Environmental Health Officers in Public Health Units monitor and enforce compliance with retailing provisions in the Act.

### Current issues

Enforcement of the Act in retail settings has focussed on administrative enforcement, that is, communications, enforcement visits and education to encourage and facilitate compliance. To do this, Queensland Health requires the contact details and locations of suppliers.

Changes in the smoking product supply market are posing challenges for this approach to compliance monitoring and enforcement. With growing consumer interest in e-cigarettes, the smoking product market is changing and there are newer entrants supplying these products by wholesale and retail. Enquiries and complaints from retailers and the public indicate growing concerns about compliance with e-cigarette regulations, as well as suppliers engaging in the illicit tobacco trade.

The current Act allows Queensland Health to request information from wholesalers about supply of products in the preceding 12-month period. This provision is only effective when wholesalers are known, as is the case with the few, large tobacco manufacturers. Less is known about the supply chain in the burgeoning e-cigarette industry, or illicit trade. The current Act no longer facilitates gathering information about smoking products suppliers and thereby limits actions to prevent or respond to breaches of the law.

### Three options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo</b>	Smoking product suppliers, including wholesalers Community Queensland Government	Maintains the current legislative approach and has no impact on stakeholders.

Options	Stakeholders	Impacts
<b>Option 2 – Introduce a registration scheme for wholesale and retail suppliers of smoking products</b>		<p><b>Benefits</b></p> <p>For <b>smoking product suppliers</b> there will be:</p> <ul style="list-style-type: none"> <li>a reduction in some compliance costs – e.g. business time sourcing mandatory signage, compliance information and training.</li> <li>some improvement in compliance, creating fairer market.</li> </ul> <p>For <b>smoking product wholesalers</b> there will be:</p> <ul style="list-style-type: none"> <li>improved access to information about the legislation and requirements.</li> <li>removal imposts from requests from Government for customer records under status quo.</li> </ul> <p>For the <b>community</b> there will be improved awareness of smoking product suppliers and confidence in compliance monitoring and associated assurance that legal protections, particularly for minors, are upheld.</p> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>improved enforcement capacity to enhance compliance.</li> <li>reduced time sourcing retrospective details of smoking product suppliers from wholesaler.</li> <li>identification of e-cigarette product wholesalers and retailers.</li> <li>efficiencies in determining and executing State-wide smoking product supply and enforcement strategies with retailers.</li> <li>reduced time responding to enquiries about smoking product supply market.</li> <li>reduced time sourcing details on businesses subject to enforcement actions (e.g. for issuing fines).</li> <li>better market information and certainty.</li> <li>possibly increased reports of non-compliance from community and within the industry.</li> </ul> <p><b>Costs</b></p> <p>For <b>smoking product suppliers</b> there will be time taken to register as a smoking product supplier (estimated to be 30 minutes on commencement and to update changes as required)</p> <p>For <b>smoking product wholesalers</b> there will be:</p> <ul style="list-style-type: none"> <li>time taken to register as a smoking product supplier (estimated to be 30 minutes on commencement and to update changes as required.)</li> <li>time taken to check customers are registered as a smoking product supplier (e.g. time and costs to set up</li> </ul>
	Smoking product suppliers, including wholesalers  Community  Queensland Government	

Options	Stakeholders	Impacts
		<p>an e-commerce system that interfaces with registration information, noting most wholesalers will already have systems in place to do this due to requirements in other jurisdictions).</p> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>initial software and system establishment costs estimated to be approximately \$450,000.</li> <li>on-going system utilisation, maintenance and registration costs, estimated to be approximately \$300,000 per annum.</li> <li>communications with and resources for suppliers to support a registration scheme, estimated to be approximately \$500,000.</li> </ul> <p>There are no anticipated costs to the <b>community</b>.</p>
<b>Option 3 – Introduce a licensing scheme for wholesale and retail suppliers of smoking products</b>	<p>Smoking product suppliers, retail and wholesale</p> <p>Community</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For <b>smoking product retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>reduction in some compliance costs – e.g. business time sourcing mandatory signage, compliance information and training (estimated to be one hour annually).</li> <li>alignment with the regulatory approach in most other jurisdictions.</li> <li>increased assurance of fairer market position via proactive compliance in place for competitors.</li> </ul> <p>For <b>smoking product wholesalers</b> there will be:</p> <ul style="list-style-type: none"> <li>improved access to information about the legislation and requirements.</li> <li>removal of impost of requests from Government under status quo.</li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>improved health outcomes - via reduction in breaches of smoking product regulations, resulting in fewer young people smoking, more people quitting.</li> <li>improved awareness of smoking product suppliers.</li> <li>reduction in breaches by smoking product regulations.</li> <li>improved confidence in compliance monitoring of smoking product suppliers.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>cost recovery of current regulatory functions through licence fees.</li> <li>potential for enhanced enforcement with proactive capacity for compliance activity through additional resources.</li> </ul>

Options	Stakeholders	Impacts
		<ul style="list-style-type: none"> <li>reduced health care expenditure – via reduction in breaches of smoking product regulations, resulting in fewer young people smoking, more people quitting.</li> <li>reduced time sourcing retrospective details of smoking product suppliers from wholesalers.</li> <li>possibly increased reports of non-compliance from community and within the industry.</li> </ul> <p><b>Costs</b></p> <p>For <b>smoking product retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>time to complete a licence application, estimated to be 1-2 hours in the first year and 30 minutes – 1 hour to update changes as required.</li> <li>costs of an annual licensing fee, estimated to be between \$350 and \$500/annum (plus annual indexation) per outlet.</li> </ul> <p>For <b>smoking product wholesalers</b> there will be:</p> <ul style="list-style-type: none"> <li>time to complete application process.</li> <li>time taken to check customers hold a valid licence to supply smoking products.</li> </ul> <p>For the <b>community</b> the potential of increased costs being passed onto consumers was considered – but there is no evidence of this occurring in those jurisdictions with licensing.</p> <p>For the <b>Queensland Government</b> there will be licence set up costs including:</p> <ul style="list-style-type: none"> <li>initial software and system establishment costs.</li> <li>ongoing system utilisation, maintenance and licensing costs.</li> <li>assessment of applications.</li> <li>communications with suppliers.</li> </ul> <p>These are estimated to be approximately \$900,000-\$1.2m per annum, averaged over five years.</p>

**Option 3** is recommended. A fee-based licensing scheme would provide comprehensive and periodically updated supplier information to support engagement and communication with retailers, and match enforcement efforts to need. A licensing scheme would also create a conditional entry to trade, the ability to remove licences from those that breach their obligations and options to penalise or otherwise restrict any un-licensed trade.

Under a positive licensing scheme for wholesalers and retailers of smoking products an appropriate fee structure for licensing would achieve the desired objective, including currency of information and better compliance mechanisms. Potential cancellation of a purchased licence is a strong incentive for retailers to maintain compliance standards within

their business/es. A named entity would assist in efforts to identify persons responsible for compliance at a given venue, and a suitability assessment could prevent further involvement of criminal networks in smoking product supply.

The establishment of a licensing scheme for smoking product suppliers would support a range of beneficial regulatory activities:

- Communication and clarification of regulatory requirements to suppliers, including pending changes to the relevant regulations, with the ability to identify and brief newly licensed retailers.
- Monitoring of supply and compliance with requirements, including supply to and by minors, display and signage, promotions, and prices.
- Investigation of potential breaches, penalties and further action as needed.
- Proactive compliance activity such as retail audits enabled by additional funding via licenses.

More information on this topic, including discussion of impacts, is at Part 2, detailed RIS, Section 2.1

## 2. Advertising and promotion of smoking products at retail premises

### Context

Legislative controls on smoking product advertising and promotion commenced with the *Tobacco and Other Smoking Products Act 1998* (the Act) and have been strengthened over time. Most provisions were designed for tobacco and the marketing approaches in place when they were introduced - almost two decades ago. Following the inclusion of e-cigarettes in the Act in 2015, controls also apply to these products. With the exception of amendments to capture e-cigarettes as smoking products, there have not been substantial changes to advertising and promotion provisions over the past decade.

### Current issues

As interest in e-cigarettes intensifies, both in terms of retailers supplying the products and persons looking to access the products, retailers and manufacturers are testing limits of regulatory controls to exploit perceived gaps and maximise advertising and promotion of both tobacco and e-cigarettes. The provisions preventing advertising and promotion under the Act are wide-ranging but were drafted prior to the availability of e-cigarettes, and prior to wide-spread use of digital platforms for marketing and promotion. In combination that has resulted in some retailers acting beyond the intent of the provisions.

The growth in e-cigarette advertising and promotion is primarily targeted at children and young adults. This is expected to continue to drive demand for these products and lead to greater nicotine use through tobacco or e-cigarette products and increased harm to health. Queensland's legislative controls apply to retail premises and seek to reduce demand for smoking products in these environments. Increasingly digital marketing platforms are an extension of the retail premises and are being used to drive demand.

### Two options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo</b>	Smoking product suppliers, retail and wholesalers Community Government	Maintains the current legislative approach and has no impact on stakeholders.
<b>Option 2 – Modernise advertising and display and promotion provisions for clarity and consistency</b>	Smoking product suppliers, retail and wholesalers Community Government	<b>Benefits</b> For <b>smoking product retailers</b> there will be: <ul style="list-style-type: none"><li>• clarity on the application of provisions to current smoking products and current marketing approaches</li><li>• minimised risk of breaches through improved clarity.</li></ul> For <b>smoking product wholesalers</b> no expected benefits.

Options	Stakeholders	Impacts
		<p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>• improved clarity that e-cigarettes are smoking products and cannot be promoted in ways not provided for in the Act.</li> <li>• reduced harm by minimising smoking product advertising, lower rates of uptake of smoking products; and support for persons trying to quit smoking.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>• improved understanding of and compliance with advertising and promotion will assist to reducing demand for products.</li> <li>• contributions to reductions in harm from the use of smoking products.</li> </ul> <p><b>Costs</b></p> <p>For <b>smoking product retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>• steps to comply with the requirements and cease advertising and promotion representations that do not comply with provisions in the Act.</li> <li>• potential for reduced sales.</li> </ul> <p>For <b>smoking product wholesalers</b> there will be the potential for reduced sales.</p> <p>For the <b>community</b> there will be no expected costs.</p> <p>For the <b>Queensland Government</b> there will be costs associated with the development of State-wide training.</p>

**Option 2** is recommended. Undertaking a program of modernisation will contribute to reducing the demand for smoking products (including e-cigarettes) by ensuring that retail advertising and promotion aligns with the provisions of the Act. Costs to business are not increased as they are associated with being compliant with existing controls, which have been modernised for clarity. Option 2 also delivers clarity on the application of advertising and display restrictions to the supply of e-cigarette products. This will assist retailers to avoid breaching the controls and be compliant with restrictions.

The intention of government action is to resolve observed non-compliance through modernisation and clarity. Rectifying and ensuring that retailers and the community understand the scope of restrictions is the key focus of the recommended option. Penalties in the Act for provisions will be actioned for continued non-compliance following a period of education on modernised provisions.

More information on this topic, including discussion of impacts, is at Part 2, detailed RIS, Section 2.2

### 3. Supply of smoking products at liquor licensed venues

#### Context

The sale of tobacco products from vending machines is controlled by the *Tobacco and Other Smoking Products Act 1998* (the Act). Tobacco vending machines may only be provided at liquor licensed premises and must be located in areas where staff can easily observe the machine and children are not permitted. Tobacco vending machines may not display advertising or promotion. It is estimated there are 800 tobacco vending machines in venues across Queensland.

#### Current issues

Liquor licensed venues with smoking and drinking areas provide a unique environment where patrons are likely to be tempted to smoke through combined exposure to the smell of cigarettes, visibility of others smoking, and direct access to the purchase of tobacco products.

Smoking and alcohol consumption are paired recreational behaviours, smokers report that they smoke more when they drink alcohol, particularly in social environments where these activities are permitted to occur together. Research also indicates that quit attempts are more likely to fail in social environments where combined smoking and drinking are permitted and tobacco products are available for purchase, as is the case in liquor licensed venues.

#### Three options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo</b>	Licensees Vending machines owners Staff Community Queensland Government	Maintains the current legislative approach and has no impact on stakeholders.
<b>Option 2 – Require tobacco vending machines to be staff operated</b>	Licensees Vending machines owners Community Queensland Government	<b>Benefits</b> For <b>licensees</b> there will be: <ul style="list-style-type: none"><li>• reduced requirement for employees to continually monitor machines</li><li>• assistance to meet obligations to ensure that youth access to tobacco vending and avoid associated penalty.</li></ul> For <b>vending machine owners</b> there are no expected impacts.

Options	Stakeholders	Impacts
		<p>For the <b>community</b> there will be potential health gains through:</p> <ul style="list-style-type: none"> <li>• supporting recent/attempting quitters and those who want to reduce smoking</li> <li>• no access by minors to tobacco.</li> </ul> <p>For the <b>Queensland Government</b> there will be a contribution toward increased smoking cessation.</p> <p><b>Costs</b></p> <p>For <b>licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>• provision of staff training on change of process and responsibilities (time cost of between 2 and 10 mins per training session required)</li> <li>• staff time to facilitate the sale of tobacco products by vending machine (expected to be 2-5 minutes per transaction).</li> <li>• modification of service area cabinets (as required) to store smoking products between \$20–\$200</li> <li>• installation of new cabinets (as required) between \$500–\$4,000 based on 2 square metres.</li> </ul> <p>For <b>vending machine owners</b> there will be:</p> <ul style="list-style-type: none"> <li>• modification of a vending machine for staff operation (estimated to cost between nil and \$700 per machine for technician time)</li> <li>• write-offs if machines are not modifiable, up to \$10,000 per machine (expected to be up to 80 machines)</li> <li>• replacement of machines if modification is not feasible, estimated \$5,000 per machine (expected to be up to 80 machines).</li> </ul> <p>For the <b>community</b> there will be the potential increase in time taken to queue for service of tobacco products, estimated to be between 2 and 15 additional minutes.</p> <p>For the <b>Queensland Government</b> there will be a one-off requirement to train compliance officers in new requirements (estimated to take 10 minutes through online meeting with state-wide enforcement team).</p>
<b>Option 3 – Smoking products can be supplied only from a service area</b>	<p>Licensees</p> <p>Vending machines owners</p> <p>Community</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For <b>licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>• reduced requirements for employees to continually monitor machines</li> <li>• assistance to meet their obligations to prevent youth access to tobacco vending and avoid associated penalty</li> </ul>

Options	Stakeholders	Impacts
		<ul style="list-style-type: none"> <li>potential increased floor space in patron areas.</li> </ul> <p>For <b>vending machine owners</b> the location of vending in service staff-only areas may reduce the wear and tear on machines and extend the life of machines</p> <p>For the <b>community</b> there will be potential health gains for patrons through:</p> <ul style="list-style-type: none"> <li>supporting recent/attempting quitters and those who want to reduce smoking</li> <li>removed potential access by minors</li> <li>limiting youth exposure to smoking products in licensed settings.</li> </ul> <p>For the <b>Queensland Government</b> there will be a contribution toward increased smoking cessation.</p> <p><b>Costs</b></p> <p>For <b>licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>provision of staff training on change of process and responsibilities (time cost of 2-10 mins depending per session required)</li> <li>one-off cost time cost for the relocation of the tobacco vending machine to a service area (estimated to be between 10 minutes and 1 hour)</li> <li>time cost for staff to obtain tobacco products from machine dependant on location of machine estimated range 2-15 minutes.</li> <li>space previously occupied by a tobacco vending machine may need cosmetic work estimated to cost up to \$500</li> <li>potential loss of commission from sales estimated to be between \$42.70 and \$57.25 each year</li> <li>potential loss of rental income for vending machine location.</li> <li>modification of service area cabinets to store tobacco (as required) between \$20-\$200</li> <li>installation of new cabinets to store tobacco (as required) between \$500-\$4,000 for based on 2 square metres.</li> </ul> <p>For <b>vending machine owners</b> there will be:</p> <ul style="list-style-type: none"> <li>costs associated with relocation of machine by removalists where this is required range \$75-\$300.</li> <li>potential increase in the number of venues electing to no longer provide a vending machine. Loss of profits estimated to \$390 and \$520 per machine per year. Cost of decommissioned machines estimated to be \$4m state-wide or \$10,00 per machine.</li> </ul>

Options	Stakeholders	Impacts
		<p>For the <b>community</b> there will be a potential increase in time taken for patrons to queue for service of tobacco products, estimated to be between 2 and 15 additional minutes.</p> <p>For the <b>Queensland Government</b> there will be a one-off requirement to train compliance officers in new requirements. Estimated to take 10 minutes through online meeting with state-wide enforcement team.</p>

## Recommended option

Option 3 is recommended. This approach is expected to support successful quit smoking attempts and prevent impulse purchases by reducing direct access to tobacco products, and promotion of their availability. While tobacco products can still be provided at the venue, patrons will be required to locate and move to a service area to purchase tobacco.

The approach under option 3 ensures that the triggers posed by direct access to tobacco and the role that vending machines play in advertising the availability of tobacco are mitigated. This approach is balanced in so far as it allows the continuation of tobacco sales at venues while further limiting access and the proxy advertisement of products in order to support positive public health outcomes.

Relocating vending machines confers the benefit of reduced exposure for recent or attempting quitters to stimuli likely to trigger a relapse to smoking. It also will reduce the temptation of never smokers to experiment, by virtue of a diminished or less obvious physical space indicating the availability of tobacco, coupled with a new requirement for patrons to ask for a specific product rather select from a machine. This is particularly important in an environment where social smoking and drinking is permitted.

While tobacco products will remain available at the venue they will be required to be located similar to other retailers, that is behind a counter, and concealed by an opaque covering that is not distinct from the surroundings. Less prominence of tobacco availability is expected to reduce rather than increase demand as the additional trigger of a tobacco vending machine in the public area is removed. Vending suppliers have acknowledged that tobacco through vending is provided as a convenience for smokers and is not a meaningful revenue source.

Option 3 also addresses the inconsistencies under the current regulatory approach in requirements for a single point of sale and for a staff member to verify customer age. This will provide the added benefit of also reducing any risk that children and young people will gain access tobacco through vending machines as they will be in staff only areas and all tobacco supply will be subject to the standard age verification process.

More information on this topic, including discussion of impacts, is at Part 2, detailed RIS, Section 2.3

## 4. Sale of smoking products by minors

### Context

The *Tobacco and Other Smoking Products Act 1998* (the Act) prohibits the sale of smoking products to children under 18 years of age. Retailers of smoking products are required by law to ensure employees understand this obligation. There is no restriction on the age at which a person can sell smoking products. State regulation has the aims of protecting children and young people from the harmful effects of smoking and preventing initiation of smoking.

### Current issues

Bans on the advertising, display and promotion of smoking products at Queensland stores are in place to protect minors from becoming familiar with smoking products and viewing their use as a socially sanctioned, desirable and normal activity. This protection does not extend to minors employed in the sale of smoking products who, in the course of their duties, regularly access smoking products that are required by law to be concealed behind coverings to reduce their promotion.

Regular association with the sale of smoking products presents a risk of familiarity and acceptance that could contribute to smoking uptake. Adolescence is a stage of life with increased vulnerability to smoking products, where peer influence is paramount. There is clear evidence that the marketing efforts of the tobacco and e-cigarette industry continue to be targeted at this group.

Despite the provision of training, children tasked with sale of smoking products may not fully understand the health risks associated with smoking or the serious consequences of selling smoking products to other children. Peer pressure, wanting to avoid negative social consequences, or a lack of confidence to ask for proof of age may erode the benefits of preventive action for children.

### Three options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo. Minors continue to sell and handle smoking products</b>	Employers/Minors Retailers Community Queensland Government	Maintains the current legislative approach and has no additional impact on stakeholders.

Options	Stakeholders	Impacts
Option 2 – Retailers adopt self-regulation to prevent the sale and handling of smoking products by minors		<p><b>Benefits</b></p> <p>For <b>employees/minors</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced regulatory responsibility.</li> <li>reduced risk of smoking uptake through removal of exposure to smoking products as a part of employment.</li> </ul> <p>For <b>retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced risk of employees supplying smoking products in breach of controls.</li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>reduction in smoking rates thereby reducing exposure to second-hand smoke.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>reduction in normalisation and proliferation of smoking uptake and youth access to smoking products.</li> </ul> <p><b>Costs</b></p> <p>For <b>employees/minors</b> there will be:</p> <ul style="list-style-type: none"> <li>potential for reduction in available employment at retailers.</li> <li>this is estimated to limit employment at no greater than 30% of retailers that supply smoking products.</li> </ul> <p>For <b>retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>small increase in time to undertake for rostering to ensure that adults are available for smoking product supply.</li> <li>where required, costs to replace a minor with an adult ranging between \$7.71 and \$11.23 per employee per hour.</li> </ul> <p>For the <b>community</b> there are no costs expected.</p> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>one-off development of resources to support engagement with retailers for policy adoption - estimated to cost between \$26,405 and \$46,069 in staff capacity and resource production.</li> <li>staff capacity or consultancy arrangement to work with retailers and encourage adoption - estimated to be between \$25,000 and \$50,000.</li> </ul>
	Employees/Minors Retailers Community Queensland Government	

Options	Stakeholders	Impacts
<b>Option 3 – Prohibit the sale and handling of smoking products by minors</b>	Employers/Minors Retailers Community Queensland Government	<p><b>Benefits</b></p> <p>For <b>employees/minors</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced regulatory responsibility.</li> <li>reduced risk of smoking uptake through removal of exposure to smoking products as a part of employment.</li> </ul> <p>For <b>retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced risk of employees supplying smoking products in breach of controls.</li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>reduction in smoking rates brings benefits to the community including reduced exposure to second-hand smoke.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>reduction in normalisation and proliferation of smoking uptake, including youth access to smoking products.</li> </ul> <p><b>Costs</b></p> <p>For <b>employees/minors</b> there will be:</p> <ul style="list-style-type: none"> <li>potential for reduction in available employment at retailers.</li> <li>this is estimated to limit employment at no greater than 30% of retailers that supply smoking products.</li> </ul> <p>For <b>retailers</b> there will be:</p> <ul style="list-style-type: none"> <li>small increase in time to undertake rostering to ensure that adults are available for smoking product supply.</li> <li>where required costs to replace a minor with an adult ranging between \$7.71 and \$11.23 per employee per hour.</li> </ul> <p>For the <b>community</b> there are no costs expected.</p> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>develop resources to support engagement with retailers for regulation implementation - estimated to cost between \$26,405 and \$46,069 in staff capacity and resource production.</li> </ul>

## Recommended option

**Option 3** is recommended. This approach removes the risk that young workers will be regularly exposed to smoking products and related advertising and promotion in their employment. This is expected to reduce familiarisation with smoking products and lower the

risk of smoking initiation by minors. Preventing the sale of smoking products by children addresses the inconsistency of children selling a product that they cannot legally be supplied. It will also strengthen smoking prevention measures by ensuring that responsibility for the supply of smoking products rests with adults.

Option 2 outlines a similar approach to preventing minors from being involved in the supply of smoking products, which if widely adopted would achieve similar outcomes, however it is unlikely that voluntary adoption of this approach would achieve sufficient coverage to make it an effective option even with an extended phase-in. Lower impacts for stakeholders are only expected to be the case where the policy it is not adopted and therefore this option is not considered effective.

Option 3 is the preferred option. A regulatory amendment is the most effective option to achieve the objectives of Government action. Legislating that supply of smoking products by minors is illegal removes any risk that young workers will be regularly exposed to smoking products and related advertising and promotion in their employment. It also reduces the risk of minors succumbing to social pressure to supply other minors with smoking products. The current social and retail context of widespread demand for e-cigarettes by young people and retail practices increases the likelihood that this will occur. This is expected to reduce familiarisation with smoking products and lower the risk of smoking initiation by minors.

Increased compliance activity in response to community complaints and over the course of usual enforcement activities will continue to target and reduce non-compliance with regulatory controls, particularly sales to minors. Preventing minors from supplying these products also reduces the risk that young workers will become enmeshed in this enforcement activity.

More information on this topic, including discussion of impacts, is at Part 2, detailed RIS, Section 2.4

# Smoking product use

## 5. Smoking at liquor licensed venues

### Context

The option to provide a designated outdoor smoking area (DOSA) is available to liquor licensed premises that hold a commercial hotel, community club, or special facility (casino) licence. No eating, gaming or entertainment can occur at a DOSA, however smoking and drinking is permitted. Legislated requirements for DOSAs also limit the permitted size of a DOSA, impose buffers with other outdoor areas, and require a smoking management plan.

The Queensland smoking rate was 19% when DOSAs were introduced in 2006. Over time the smoking rate has almost halved to 10% in 2020. While there are less smokers in Queensland there has been little change in the establishment of DOSAs over the same period with Queensland Health research (2018) showing that 86% of eligible venues continue to provide at least one DOSA, which can be up to 50% of the outdoor licensed venue area.

### Current issues

DOSAs contribute to second-hand smoke exposure, with Queensland Health data showing that in 2018 almost one million Queenslanders (946,000) spent time in a DOSA, and more than half were non-smokers. Smoke-drift from DOSAs into other areas also occurs with data showing two in three patrons reporting smelling smoke in non-smoking areas.

The presence of a DOSA is reported to make it more difficult for people who have recently quit to remain non-smokers. Queensland Health data found the presence of a DOSA makes smokers more likely to smoke (64%), and less confident to resist smoking (51%).

### Six options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo</b>	Licensees Staff Community Queensland Government	Maintains the current legislative approach and has no additional impact on stakeholders.
<b>Option 2 – Require smoke-free buffers between DOSAs and enclosed venue areas</b>	Licensees Staff Community Queensland Government	<b>Benefits</b> For the <b>community</b> there will be potential health gains through: <ul style="list-style-type: none"><li>• reduction in exposure to second-hand smoke.</li><li>• Support for patrons that have recently quit smoking or are attempting to quit to be successful in their quit smoking attempt.</li></ul>

Options	Stakeholders	Impacts
		<p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>assist to reduce health burden associated with the negative health effects associated with exposure to second-hand smoke.</li> </ul> <p><b>Costs</b></p> <p>For <b>licensees</b> there will be requirement to:</p> <ul style="list-style-type: none"> <li>revise and update their Smoking Management Plan for the premises</li> <li>monitor compliance with buffer requirement.</li> <li>separate DOSAs from enclosed areas, the costs of which may include: <ul style="list-style-type: none"> <li>installing automatic door mechanism costs range between \$85 to \$756.</li> <li>relocation of existing furniture (estimated time cost up to three hours).</li> <li>installing solid buffer walls. Range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials.</li> </ul> </li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement for smokers to move further away from enclosed area to smoke.</li> </ul> <p>There is not expected to be additional costs for the <b>Queensland Government</b>.</p>
<b>Option 3 – Restrict DOSA access to adults</b>	<p>Licensees</p> <p>Staff</p> <p>Community</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For <b>licensees</b> of clubs there will be:</p> <ul style="list-style-type: none"> <li>potential benefit of attracting younger members to the club to play sport.</li> </ul> <p>For <b>staff</b> there is no expected benefit.</p> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>greater availability of smoke-free areas resulting in a reduction in children's exposure to second-hand smoke while at venues.</li> </ul> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>assist to reduce health burden associated with the negative health effects associated with exposure to second-hand smoke.</li> <li>May assist in reducing the rate of smoking as smokers have greater available smoke-free areas at some venues (e.g., Clubs)</li> </ul>

Options	Stakeholders	Impacts
		<p><b>Costs</b></p> <p>For <b>licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>• requirement to revise and update their Smoking Management Plan for the premises and monitor the area to ensure children are not present.</li> <li>• recommendation to install free signage to assist community compliance.</li> </ul> <p>For <b>staff</b> there will be a requirement to monitor DOSAs to ensure that children are not present.</p> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>• a requirement for parents and adults responsible for minors to ensure children do not spend time in the DOSA and are safely supervised elsewhere at the venue.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>• costs include one-off development of communication materials (for download) and enforcement team training at an estimated cost of \$4,500.</li> </ul>
<b>Option 4 – Reduce the outdoor licensed area that can be used for a DOSA</b>	<p>Licensees</p> <p>Staff</p> <p>Community</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For the <b>Community</b> there will be:</p> <ul style="list-style-type: none"> <li>• provision of greater smoke-free areas resulting in reduced exposure to second-hand smoke.</li> <li>• greater smoke-free area available to assist patrons who have recently quit smoking or are attempting to quit smoking.</li> </ul> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>• assist to reduce the negative health effects associated with exposure to second-hand smoke.</li> <li>• assist to reduce number of smokers as patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.</li> </ul> <p><b>Costs</b></p> <p>For <b>Licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>• requirement to revise and update the Smoking Management Plan for the premises.</li> <li>• potential need to change the physical layout of DOSA including relocation of furniture. Estimated time cost up to three hours.</li> <li>• potential installation or removal of solid buffer walls - if required is expected to range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials.</li> </ul>

Options	Stakeholders	Impacts
		<p>There are no costs expected for <b>staff</b>.</p> <p>For <b>Community</b> there will be:</p> <ul style="list-style-type: none"> <li>less available DOSA space for smokers.</li> </ul> <p>For <b>Government</b> there will be:</p> <ul style="list-style-type: none"> <li>initial development of communication materials (for download) and enforcement team training at an estimated cost of \$4,500.</li> </ul>
<b>Option 5 – Prohibit drinking in a DOSA</b>	<p>Licensees</p> <p>Staff</p> <p>Community</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>provision of greater smoke-free areas resulting in reduced exposure to second-hand smoke while at the venue.</li> <li>increased support for patrons that have recently quit smoking or are attempting to quit will spend less time in the DOSA as they will be located for drinking/dining at other areas. This is assumed to assist with successful quit smoking attempt.</li> </ul> <p>For the <b>Queensland Government</b> this will:</p> <ul style="list-style-type: none"> <li>reduce negative health effects associated with exposure to second-hand smoke.</li> <li>greater smoke-free area available to assist patrons that have recently quit smoking or are attempting to quit smoking.</li> </ul> <p><b>Costs</b></p> <p>For <b>licensees</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to revise Smoking Management Plan for the premises. Estimated time cost of up to two hours.</li> <li>may need to change layout or relocate DOSA including: <ul style="list-style-type: none"> <li>relocation of furniture. Estimated time cost up to three hours</li> <li>installation or removal of solid buffer walls. Range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials</li> <li>loss of income from patrons remaining in the DOSA instead of returning to other areas to purchase and consume a drink.</li> </ul> </li> </ul> <p>For <b>staff</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to monitor DOSA areas to ensure no drinking occurs.</li> </ul> <p>For the <b>community</b> there will be:</p>

Options	Stakeholders	Impacts
		<ul style="list-style-type: none"> <li>requirement for patrons who smoke to move to the DOSA to smoke. This is estimated to take 10 to 15 minutes on average, noting that some patrons may already use the DOSA in this way.</li> </ul> <p>For the <b>Queensland Government</b> there will be:</p> <ul style="list-style-type: none"> <li>initial development of communication materials and enforcement team training at an estimated cost of \$4,500.</li> </ul>
<b>Option 6 – Combined option of options 2, 3 and 5</b>	Licensees Staff Community Queensland Government	<p>Under this combined option the Act would be amended to require a smoke-free buffer between DOSAs and enclosed areas of liquor licensed venues, minors would be prevented from spending time in a DOSA and there would be no drinks, alcoholic or otherwise permitted to be taken into or consumed in DOSAs.</p> <p>The <b>benefits</b> and <b>costs</b> of this combined option include those described under options 2, 3 and 5 above.</p>

## Recommended option

**Option 6** is recommended. This option is expected to confer the most benefit as it provides a significant reduction in exposure to second-hand smoke for all patrons and ensures that DOSA placement prevents smoke from drifting into enclosed areas of the venue. While DOSAs could continue to be offered for the convenience of patrons at liquor licensed venues, by combining these options DOSAs are expected to be smaller in size and positioned at less prominent areas (e.g., not adjacent to openings between outdoor and enclosed areas). It is expected that venues will respond to the prohibition on drinking at a DOSA by choosing to significantly reduce the size of the DOSA and encouraging smokers to spend the majority of their time at other areas of the venue where drinks, food and entertainment are offered.

This option does impose costs on licensees, and to achieve compliance it is assumed that all venues will be required to make adjustments. The costs of these adjustments will vary according to the venue design and available space and will range between no cost for relocation of furniture to more substantial costs for structural changes or installation of a buffer screen. This option provides the greatest protection from second-hand smoke. The combination of preventing minors from spending time in a DOSA, smoke-free buffers between enclosed and outdoor licensed areas and a ban on drinking in the DOSA is expected to reduce the area provided as DOSAs and, as a consequence, reduce exposure to second-hand smoke at liquor licensed venues.

More information on this topic, including detailed discussion of the options and their expected impacts, is at Part 2, detailed RIS, Section 2.5

## 6. Smoke-free outdoor eating or drinking places

### Context

Queensland's vibrant food and beverage industry and climate provide ideal conditions for Queenslanders and our visitors to experience the food and drink on offer in outdoor spaces across the State. Outdoor eating or drinking places range in size, offering and permanence from agricultural shows, one-day food festivals and pop-up food stalls to established restaurants, cafes and dining and entertainment precincts.

### Current issues

Whilst the *Tobacco and Other Smoking Products Act 1998* (the Act) declares outdoor eating or drinking places to be smoke-free, unlike other smoke-free areas in the Act there is no prescribed smoke-free buffer. In addition, some venues provide areas where no food or drink is permitted but smoking is allowed.

As a result, smoking occurs directly adjacent to, or in some instances within, the venue area. The absence of a smoke-free buffer means that patrons of outdoor eating or drinking places may be exposed to second-hand smoke where they are eating and/or drinking. There is no safe level of exposure to second-hand smoke and exposure increases risks to health, particularly for those who suffer chronic respiratory illnesses such as asthma.

### Five options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo. No changes would be made to the outdoor eating or drinking place provisions in the Act</b>	Food/drink business and their staff Community Local Government Queensland Government	Maintains the current legislative approach and has no additional impact on stakeholders.
<b>Option 2 – Introduce a smoke-free buffer around specified seated or table based outdoor eating or drinking places</b>	Food/drink business and their staff Community Local Government Queensland Government	<b>Benefits</b> For <b>food /drink business</b> there will be: <ul style="list-style-type: none"><li>increased workplace protection for staff.</li><li>potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</li></ul> For the <b>community</b> there will be potential health gains through: <ul style="list-style-type: none"><li>reduced exposure to second-hand smoke at outdoor eating and drinking places.</li></ul>

Options	Stakeholders	Impacts
		<p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option will provide:</p> <ul style="list-style-type: none"> <li>reduction in burden of disease and associated health system costs from reduced exposure to second-hand smoke at outdoor eating or drinking places.</li> </ul> <p><b>Costs</b></p> <p>For <b>food and drink business</b> there will be:</p> <ul style="list-style-type: none"> <li>a requirement to identify buffer area and communicate to staff, estimated to take an initial period of up to two hours.</li> <li>potential loss of useable area.</li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement for smokers to walk further away from where food and/or drink is supplied to smoke.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b>.</p> <ul style="list-style-type: none"> <li>one-off increase in administrative burden to develop communication materials and provide enforcement training and education to a state-wide team at an estimated cost of \$4,500.</li> <li>possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month for a period of 6 months.</li> </ul>
<b>Option 3 – Introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places</b>	<p>Food/drink business and their staff</p> <p>Community</p> <p>Local Government</p> <p>Queensland Government</p>	<p><b>Benefits</b></p> <p>For <b>food and drink business</b> of clubs there will be:</p> <ul style="list-style-type: none"> <li>increased workplace protection for staff.</li> <li>potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</li> </ul> <p>For the <b>community</b> there the introduction of smoke-free buffer requirements will help reduce exposure to second-hand smoke.</p> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>lead to a reduction in the negative health effects associated with exposure to second-hand smoke at outdoor eating or drinking places.</li> </ul>

Options	Stakeholders	Impacts
		<p><b>Costs</b></p> <p>For <b>food and drink business</b> there will be:</p> <ul style="list-style-type: none"> <li>a requirement to identify buffer area and communicate to staff, estimated to take an initial period of up to two hours.</li> <li>potential need to establish systems for patrons to leave and re-enter if not already in place.</li> <li>recommendation to install free signage identifying the smoking-only buffer area.</li> <li>possible loss of business space at venues that offer a smoking-only area. For a two-metre square smoking-only area a further 32 square metres will be required to provide a buffer.</li> </ul> <p>For the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement for smokers to walk further away from where food and/or drink is supplied to smoke.</li> </ul> <p>For the <b>Queensland Government</b>.</p> <ul style="list-style-type: none"> <li>one-off increase in administrative burden to develop communication materials and provide enforcement training and education to a state-wide team at an estimated cost of \$4,500.</li> </ul>
<b>Option 4 – Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places</b>	<p>Food/drink business and their staff</p> <p>Community</p> <p>Local Government</p> <p>Queensland Government</p>	<p><b>Benefit</b></p> <p>For <b>food and drink business</b> there will be:</p> <ul style="list-style-type: none"> <li>increased workplace protection for staff.</li> <li>potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</li> </ul> <p>For the <b>Community</b> the introduction of smoke-free buffer requirements is likely to reduce community exposure to second-hand smoke at outdoor eating or drinking places.</p> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>reduce exposure to second-hand smoke at outdoor eating or drinking areas in Queensland.</li> </ul> <p><b>Costs</b></p> <p>For <b>food and drink business</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to identify external buffer area and communicate to staff, estimated to take an initial period of up to two hours.</li> </ul>

Options	Stakeholders	Impacts
		<p>For <b>Community</b> there will be requirement for:</p> <ul style="list-style-type: none"> <li>smokers to move further away from outdoor eating or drinking places. The impact may be greater in areas whether there are multiple eating or drinking places in close proximity e.g. a dining precinct or at large events.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For <b>Government</b> there will be:</p> <ul style="list-style-type: none"> <li>initial development of communication materials (for download) and enforcement team training at an estimated cost of \$4,500.</li> </ul>
<b>Option 5 – Combined options 3 and 4</b>	<p>Food/drink business and their staff</p> <p>Community</p> <p>Local Government</p> <p>Queensland Government</p>	<p>Under this combined option a smoke-free buffer would apply around the perimeter of all outdoor eating or drinking places as described under option 4. A smoking-only area could be provided, however the additional requirements described under option 3 would apply to the buffers surrounding these areas.</p> <p>The <b>benefits</b> and <b>costs</b> of this combined option include those described under options 3 and 4 above.</p>

## Recommended option

**Option 5** is recommended. Smoke-free protection will be increased at outdoor eating or drinking places through the introduction of smoke-free buffers around the perimeter of all outdoor eating or drinking places and additional restrictions for areas set aside within these places for smoking-only.

This will serve to remind smokers that they need to move further away from dining and drinking areas before they start to smoke. The additional requirements for smoking-only areas under this option will provide enhanced protection from second-hand smoke within the venue and provide a clear separation of smoking from other activities including eating, drinking and entertainment.

This option provides additional protection and is expected to achieve the objective of reducing exposure to second-hand smoke for patrons and staff of outdoor eating and drinking places. This is because of the combined benefits of moving smokers further away from the perimeter of the venue along with the introduction of a clear separation between eating or drinking areas and smoking-only areas within a venue. In addition, the requirement for the buffer area around smoking-only areas to be void of eating, drinking and entertainment will assist in ensuring these areas are located away from busy parts of the venue.

This combined option imposes the greatest regulatory burden on food and drink businesses, government and the community of the options considered. This includes responsibilities for proprietors of outdoor eating and drinking areas to take action on smoking adjacent to their

venue but provides the option to contact enforcement teams if there is a regular non-compliance.

More information on this topic , including discussion of impacts, is at Part 2, detailed RIS, Section 2.6

## 7. Smoking at outdoor markets

### Context

Markets are commonplace across urban, regional and remote communities in Queensland. Markets have broad appeal and are regularly visited by a wide cross section of the community including families with children, older Queenslanders as well as tourists. It is estimated that there may be more than 6,000 market events held across Queensland each year. They range in size, regularity and offerings, and can consist of stalls that provide food and non-food items. Markets are held in varied settings including on local government, business or community owned land. While many markets are located purely in outdoor settings, some include a mix of both indoor and outdoor areas.

### Current issues

Outdoor markets have fragmented protection from exposure to second-hand smoke for patrons and market vendors. Protection depends on:

- the setting or location (e.g. smoke-free school grounds)
- the type of offerings available for purchase (e.g. outdoor eating or drinking areas)
- the set-up of the market (e.g. fully fenced market with onsite food service).

The result is inconsistent protection from harmful exposure to second-hand smoke for people attending markets and market vendors and organisers.

This means that at most markets smoking can occur throughout the markets as patrons move around whilst smoking, exposing others to their second-hand smoke. Additionally, outdoor market vendors in non-food supply areas are not prevented from smoking at or close to their stall, risking further exposure of other vendors and market patrons to second-hand smoke. Markets are typically densely populated, which can make it difficult for people to avoid drifting second-hand smoke.

The application of fragmented smoking bans to markets also makes it difficult to provide clear messaging regarding expectations and responsibilities for providing smoke-free areas for the mix of market stakeholders which include community members, market organisers and stall operators.

### Four options were considered

Options	Stakeholders	Impacts
<b>Option 1 – Status quo. No changes to the provisions in the Act</b>	Market organisers Market vendors Community Local Government State Government	Maintains the current legislative approach and has no additional impact on stakeholders.

Options	Stakeholders	Impacts
Option 2 – Support market organisers to adopt and enforce a smoke-free policy	Market organisers Market vendors Community Local Government State Government	<p><b>Benefits</b></p> <p>For <b>market organisers</b> there will be:</p> <ul style="list-style-type: none"> <li>simplified requirements for the smoke-free approach making it easier for market organisers to communicate smoke-free requirements to vendors and patrons.</li> </ul> <p>For the <b>market vendors</b> and the <b>community</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced exposure to second-hand smoke while at markets where smoke-free policies are introduced.</li> <li>assistance for smokers to understand and comply with smoke-free requirements.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option:</p> <ul style="list-style-type: none"> <li>will assist to reduce exposure to second-hand smoke at markets where smoke-free policies are introduced.</li> <li>may also facilitate compliance with legislated requirements where these apply.</li> </ul> <p><b>Costs</b></p> <p>For the <b>market organisers</b> there will be:</p> <ul style="list-style-type: none"> <li>developing and communicating a smoke-free policy (estimated one-off time up to eight hours).</li> <li>ongoing management of smoke-free markets.</li> </ul> <p>For <b>market vendors and the community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to comply with the smoke-free policy.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b>.</p> <ul style="list-style-type: none"> <li>one-off cost to draft example policy, create and publish supporting materials and respond to initial queries arising is estimated to cost \$5,000.</li> </ul>
Option 3 – Prohibit smoking at outdoor markets with the provision for smoking-only area/s	Market organisers Market vendors Community Local Government State Government	<p><b>Benefits</b></p> <p>For <b>market organisers</b> there will be:</p> <ul style="list-style-type: none"> <li>legislated consistent smoke-free approach making it easier for market organisers to communicate smoke-free requirements to vendors and patrons.</li> <li>option to establish discrete smoking only areas allow market organisers to direct smoking activity to preferred areas.</li> </ul>

Options	Stakeholders	Impacts
		<ul style="list-style-type: none"> <li>potential to enhance the appeal of outdoor markets as a healthy smoke-free destination as smoking would be confined to smoking only areas.</li> </ul> <p>For the <b>market vendors and community</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced exposure to second-hand smoke while at markets where smoke-free policies are introduced.</li> <li>assistance for smokers to understand and comply with smoke-free requirements.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>assist to facilitate compliance with legislated requirements and reduce enforcement requirements.</li> <li>reduce exposure to second-hand smoke at markets.</li> </ul> <p><b>Costs</b></p> <p>For the <b>market organisers</b> there will be:</p> <ul style="list-style-type: none"> <li>planning for compliance and communicating legislated smoke-free requirements (estimated one-off time up to eight hours).</li> <li>ongoing management of smoke-free markets requirements.</li> </ul> <p>For <b>market vendors and the community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to comply with the smoke-free legislation.</li> <li>vendors have duty to inform people about requirements not to smoke in market areas if this is witnessed and pass on information of non-compliance to market organiser.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b>.</p> <ul style="list-style-type: none"> <li>initial development of communication materials and enforcement team training at an estimated cost of \$4,500.</li> <li>possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month.</li> </ul>
<b>Option 4 – Prohibit smoking at outdoor markets in their entirety</b>	Market organisers Market vendors Community Local Government	<p><b>Benefits</b></p> <p>For <b>market organisers</b> there will be:</p>

Options	Stakeholders	Impacts
	State Government	<ul style="list-style-type: none"> <li>legislated consistent smoke-free approach making it easier for market organisers to communicate smoke-free requirements to vendors and patrons.</li> <li>potential to enhance the appeal of outdoor markets as a healthy smoke-free destination.</li> </ul> <p>For the <b>market vendors and community</b> there will be:</p> <ul style="list-style-type: none"> <li>reduced exposure to second-hand smoke while at markets where smoke-free policies are introduced.</li> <li>assistance for smokers to understand and comply with smoke-free requirements.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b> this option will:</p> <ul style="list-style-type: none"> <li>assist to facilitate compliance with legislated requirements and reduce enforcement requirements.</li> <li>reduce exposure to second-hand smoke at markets.</li> </ul> <p><b>Costs</b></p> <p>For the <b>market organisers</b> there will be:</p> <ul style="list-style-type: none"> <li>planning for compliance and communicating legislated smoke-free requirements (estimated one-off time up to eight hours).</li> <li>ongoing management of smoke-free market requirements.</li> </ul> <p>For <b>market vendors and the community</b> there will be:</p> <ul style="list-style-type: none"> <li>requirement to comply with the smoke-free legislation.</li> <li>vendors have duty to inform people about requirements not to smoke in market areas if this is witnessed and pass on information of non-compliance to market organiser.</li> </ul> <p>For <b>Local Government</b> there is not expected to be any impact.</p> <p>For the <b>Queensland Government</b>.</p> <ul style="list-style-type: none"> <li>initial development of communication materials and enforcement team training at an estimated cost of \$4,500.</li> <li>possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month.</li> </ul>

## Recommended option

**Option 3** is recommended. This approach minimises the negative impacts for market organisers, vendors and patrons by providing flexibility to respond to the needs of patrons through discrete and manageable smoking areas for vendors and patrons, while still meeting the objective of reducing exposure to second-hand smoke.

While very similar approaches option 3 is recommended over option 4 as this option minimises the negative impacts for market organisers, vendors and patrons by providing flexibility to respond to the needs of patrons through discrete and manageable smoking areas for vendors and patrons, while still meeting the objectives.

Option 3 is consistent with other smoke-free provisions for similar areas such as major events facilities and outdoor eating and drinking places. Option 3 is therefore considered the option which most appropriately balances maximum effectiveness with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

More information on this topic, including discussion of impacts, is at Part 2, detailed RIS, Section 2.7

# **Reducing the negative effects of smoking in Queensland**

## **Part 2: Detailed regulatory impact statements**

# Section 1: Introduction

## 1.1 Queensland Government commitment to reducing the negative effects of smoking

Smoking remains one of the most pressing public health concerns in Queensland. No other single risk factor contributes as significantly to the burden of preventable death and disease, or to health inequality.

Through concerted legislative and program efforts there has been success in reducing smoking over recent decades. Queensland's adult smoking rate has more than halved and there is good evidence on which strategies work to prevent smoking uptake and assist smokers to quit. In addition, the Queensland community is very supportive of preventive action to protect non-smokers and to help smokers to quit.

However, significant challenges and risks remain. Queensland has the second highest smoking rate for current adult smoking in the country. The burden of disease associated with smoking is unequally distributed with greater impacts on persons living in rural and remote areas, those experiencing social disadvantage and Aboriginal and Torres Strait people.

There are new challenges, e-cigarettes have emerged to broaden the smoking product market and are promoted as less harmful, contained in attractive packaging and supplied in an array of interesting flavours. These products pose a significant risk for creating a new generation of Queenslanders for whom regular nicotine use is normal.

In response to advocacy from community, public health, and business stakeholders the Queensland Government is committed to further reducing the negative health effects of smoking and to preventing an increase in smoking through the use of tobacco or e-cigarettes. To achieve this the Government has committed to consideration of options to:

- increase smoke-free public places
- strengthen Queensland tobacco legislation retail provisions to reduce supply, including direct action on illicit tobacco at retail premises
- strengthen Queensland's advertising and promotion provisions.

Options in this document take forward this commitment and are designed to align with the national policy framework for reducing the harms associated with smoking outlined in the National Drug Strategy 2017-2026. This strategy guides efforts to reduce harm from smoking by reducing demand, preventing smoking uptake, supporting smokers to quit, reducing product use, and decreasing smoking product accessibility.

In addition, smoking reduction efforts are closely aligned with specific health targets identified in the National Agreement on Closing the Gap and Making Tracks Together—Queensland's Aboriginal and Torres Strait Islander Health Equity Framework. Reducing smoking is noted as an outcome driver for targets to close the gap in life expectancy and increase the proportion of Aboriginal and Torres Strait Islander babies with a healthy birthweight to 91%, within a generation (by 2031).

The options canvassed in this document respond to contemporary issues regarding smoking product use and supply and have been identified through community and industry feedback,

in-field observation and with regard to literature on evidence based smoking reduction responses. Our aim is to build on the success of previous action and to further reduce the negative effects of smoking in Queensland.

## 1.2 Smoking in Queensland

The Queensland Government provides information on the status of smoking in the *Health of Queenslanders 2020, Report of the Chief Health Officer*<sup>1</sup>. The following is a summary of information provided in the report and describes current smoking and e-cigarette prevalence for Queensland.

Of adult Queenslanders in 2020:

- 10% smoked daily (410,000)
- 5.5% were current (not daily) smokers
- 27% were ex-smokers
- 57% never smoked
- 22% of households with children had a current smoker living in the home.

The prevalence of adult daily smoking was 32% higher (12% compared with 8.9%) for males (230,000) than females (180,000). A higher percentage of young adults had never smoked, 67% of 18–29-year-olds compared to 52% of those aged 45 years and older.

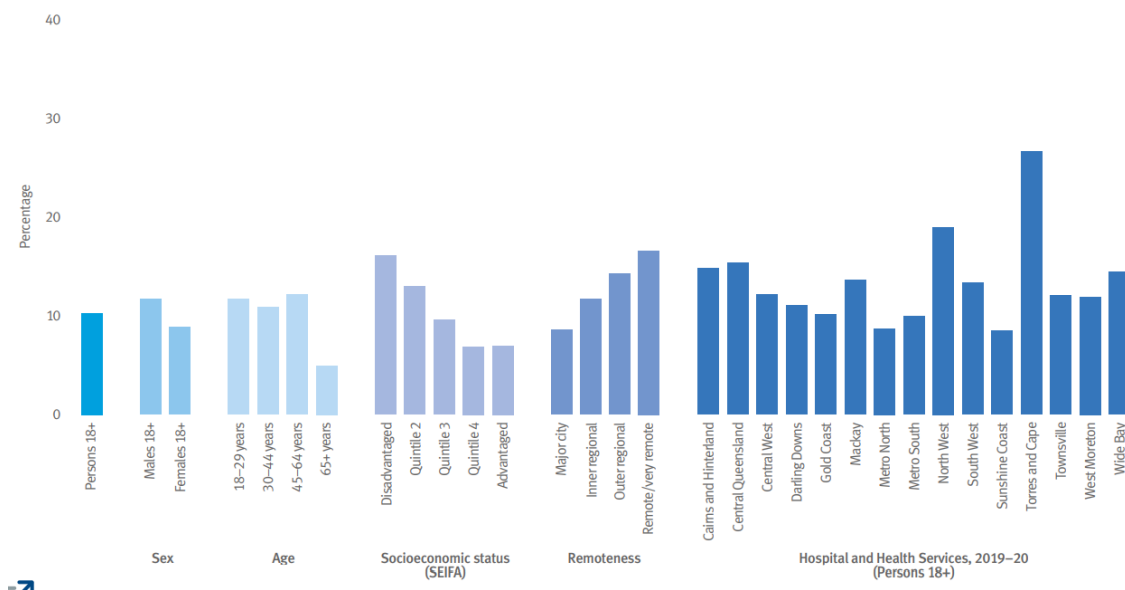
There is a socioeconomic gap in daily smoking in Queensland. In 2020, daily smoking prevalence in the most disadvantaged areas was more than double (2.3 times) that in advantaged areas (16% compared with 7.0%). Never smoking was associated with socioeconomic status—adults in the most advantaged areas were 33% more likely than those in the most disadvantaged areas to have never smoked (65% compared with 49%). Daily smoking prevalence was higher outside major cities—ranging from 36% higher in inner regional areas to 94% higher in remote/very remote areas in 2020.

In 2018–19, the daily smoking population prevalence for adult Aboriginal and Torres Strait Island people living in Queensland was 42% while 31% had never smoked. The adult age-adjusted daily smoking prevalence was similar to Aboriginal and Torres Strait Islander people living nationally (41% compared with 40%).

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<sup>1</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane

**Figure 2: Section 1.2, Adult daily smoking, Queensland 2020**



Amongst Queensland secondary school students aged 12–17 years in 2017:

- 77% had never smoked a cigarette (lower than the 82% nationally)
- 10% had just had a few puffs
- 6.9% (23,000) had smoked in the previous week (higher than the 5.0% nationally).

The latest available data shows that e-cigarette use is rising:

- In 2018-19, 13% of Queensland adults reported they had tried e-cigarettes, up from 10% in the previous survey (2015-16)
- In the latest (2017) national school-based survey, 16% of Queensland secondary school students reported they had used e-cigarettes. Subsequent school-based surveys have been delayed by the response to COVID-19, however indications from international surveys and compliance intelligence are that adolescent use of these products is rising
- Males were more likely to have ever tried an e-cigarette than females (15% compared with 11%) and to use them concurrently with tobacco cigarettes (3.2% compared to 1.4%).

Amongst Queensland secondary school students aged 12–17 years in 2017:

- 16% had ever tried an e-cigarette (higher than 12% nationally)
- of those that had tried e-cigarettes one third had done so in the previous month
- male students were more likely to have ever tried e-cigarettes (20% compared to 11%).

### 1.3 Regulatory and program context

Over recent decades the implementation of a multi-strategic approach to smoking reduction has resulted in declining smoking rates. In Queensland today there are more smoke-free homes and public places than ever before. The introduction by State and Commonwealth governments of smoking reduction initiatives over time have collectively contributed to

significantly reducing the smoking rate. Figure 3 shows the shared impact of sustained multi-strategy legislative and program approaches.

Smoking reduction approaches include legislative controls, mass media campaigns, smoking cessation services and targeted smoking cessation programs for priority populations.

Since 1998, smoking reduction measures have been implemented under the *Tobacco and Other Smoking Products Act 1998* (the Act) with the aim of improving public health by:

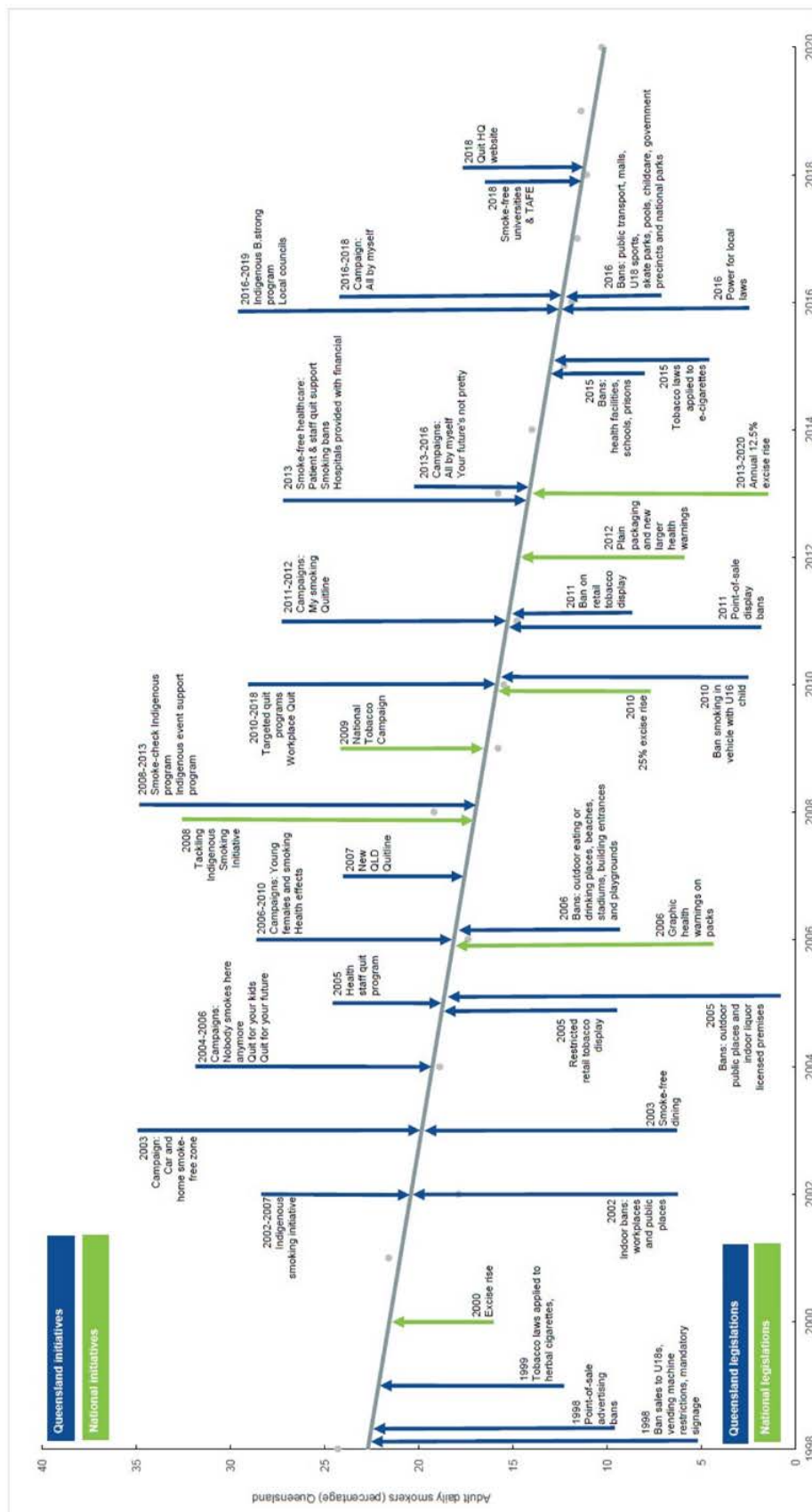
- restricting the supply of tobacco and other smoking products to children
- restricting the advertising and promotion of tobacco and other smoking products
- reducing public exposure to smoke from tobacco and other smoking products
- establishing a framework for monitoring, investigative and enforcement activities.

The Act has been incrementally strengthened over time in response to emerging supply issues and available evidence. The expansion of smoking product types was further reason for the Act to be strengthened in 2015 to capture e-cigarettes as smoking products.

Reference to a smoking product under the Act (and in this document) is inclusive of tobacco and e-cigarette products unless differentiated.

Compliance with the Act is predominantly monitored by Queensland Health Environmental Health Officers located in Public Health Units across the State. Progressive enforcement actions are taken in response to potential breaches including on the spot rectification (facilitated compliance), investigations, warnings, improvement notices, seizure, fines and prosecution.

**Figure 3: Section 1.3, Queensland smoking rate and collective impact over time of multi-strategy approach to smoking reduction by State and Commonwealth governments**



Alongside regulatory controls and enforcement Queensland Health provides population-wide and intensive smoking cessation support programs through the Quitline service. These programs are targeted for Aboriginal and Torres Strait Islander people, people in regional and remote communities, and people with or starting a young family. Clinical smoking cessation tools are also provided to equip Hospital and Health Services to deliver quit support to smokers who present at health facilities.

Communication strategies including mass media and targeted messaging are also undertaken to educate and inform the community, targeted populations and Queensland businesses. Messaging includes information about the harms to health from smoking product use and requirements for compliance with the restrictions on smoking produce use or supply.

Queensland's smoking reduction approach is aligned with Commonwealth Government initiatives and regulatory controls on smoking products which include, excise on tobacco products, restrictions on advertising, requirement for tobacco plain packaging and health warnings, and the regulation of nicotine prescribed for use in e-cigarette products.

## 1.4 Public health concerns

### Impact of tobacco use

While there have been significant gains in reducing smoking over the past two decades, smoking remains the single most preventable cause of morbidity and premature mortality in Queensland.

In 2015–16, the total cost of smoking in Queensland was estimated to be \$27.4b. This includes tangible costs associated with premature death, hospitalisations, other medical and social care costs, workplace absenteeism and tobacco spending. It also includes significant intangible costs including the value of life lost, pain and suffering<sup>2</sup>. The greatest share of the costs of smoking are borne by households, particularly by smokers, former smokers and their families<sup>3</sup>.

The health impacts of smoking include lung cancer and 18 other cancers and neoplasms, cardiovascular diseases such as coronary heart disease, type 2 diabetes, gastrointestinal disorders, hearing and vision disorders, infectious diseases, musculoskeletal conditions, neurological conditions, and respiratory diseases such as COPD<sup>4</sup>. Compared to adults who

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<sup>2</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane

<sup>3</sup> National Drug Research Institute. (2019). *Identifying the Social Costs of Tobacco Use to Australia in 2015/16*. Curtin University. Western Australia.

<sup>4</sup> Australian Institute of Health and Welfare. (2019). *Australian burden of disease study: impact and causes of illness and death in Australia 2015*. Cat. no. BOD 22. AIHW.

had never smoked, Australian current smokers die on average 10 years earlier and develop age-related diseases 10 years earlier<sup>5</sup>.

Nationally, smoking accounted for 9.3% of the total health burden (DALY) in 2015<sup>6</sup>. In Queensland this resulted in about 4,000 preventable deaths attributable to smoking. For the same period tobacco use accounted for the equivalent of 66,400 hospitalisations. The five leading conditions contributing to hospitalisations included COPD, lung cancer coronary heart disease, lower respiratory infections and other cardiovascular disease<sup>7</sup>.

Smoking is a leading contributor to health inequities based on socioeconomic status, geographical location and Aboriginal and Torres Strait Islander status. The daily smoking rate of Aboriginal and Torres Strait Islander peoples is almost three times that of non-indigenous Australians. Twenty-three per cent of the health gap between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians is attributable to tobacco smoking<sup>8</sup>.

## Impact of e-cigarette use

E-cigarettes are available commercially in most Australian States and Territories without nicotine, while products containing nicotine are available only by prescription from a medical practitioner as a non-approved therapeutic product for smoking cessation. As a recent entry to the smoking product market less is known about the effects of e-cigarettes on long or short-term health outcomes compared with tobacco.

E-cigarette products have been suggested as being of benefit to smokers trying to quit when used as a final smoking cessation option when all safe and proven methods have been exhausted<sup>9</sup>. Quality information on the health costs of e-cigarette use has been slow to emerge but is increasing and now provides more clear indication of risk.

While Governments across Australia adopted and publicly declared a precautionary approach to e-cigarettes that cautioned the community about the lack of data on safety and efficacy, those seeking to profit from their supply have widely promoted the products as less harmful and even beneficial to health. Messages of caution presented in public health communication are overwhelmed by industry representation of e-cigarettes as appealing, fun products that are safe to use and are effective as a quit smoking product. Suppliers have been observed to flaunt restrictions on advertising and display and to promote the products

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<sup>5</sup> Banks E, Joshy G, Weber MF, et al. (2015). *Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence*. BMC Medicine, 13, 1-10.

<sup>6</sup> Australian Institute of Health and Welfare. (2019). *Australian burden of disease study: impact and causes of illness and death in Australia 2015*. Cat. no. BOD 22. AIHW.

<sup>7</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020. Report of the Chief Health Officer Queensland*. Queensland Government. Brisbane

<sup>8</sup> Australian Institute of Health and Welfare. (2011). *Australian Burden of Disease study: Impact and cause of illness and death in Aboriginal and Torres Strait Islander people 2011*. Australian Burden of Disease Study series no.6 Cat. No. BOD 7.

<sup>9</sup> Royal Australian College General Practitioners, (2021). *Smoking Cessation Clinical Guidelines*. Royal Australian College General Practitioners. <https://www.racgp.org.au/clinical-resources/clinical-guidelines/key-racgp-guidelines/view-all-racgp-guidelines/supporting-smoking-cessation/pharmacotherapy-for-smoking-cessation>

available at their stores using social media platforms. As a result, consumers are unlikely to have access to full and balanced information on the harms and implications of e-cigarette use.

The latest available evidence does not support the use of e-cigarettes, with or without nicotine, to quit smoking. A recent Australian review found that e-cigarettes do not lead to smoking cessation, rather the pattern of use is more consistent with dual use of e-cigarettes with tobacco, substitution of tobacco with e-cigarettes and, of particular concern, uptake of e-cigarettes by people who have never smoked<sup>10</sup>.

In their position paper on e-cigarettes the Thoracic Society of Australia and New Zealand (TSANZ) considered recent reviews of the evidence including the National Academies of Science, Engineering and Medicine (NASEM) report on the *Public Health Consequences of E-cigarettes*<sup>11</sup>. Following consideration of evidence presented in reviews TSANZ concluded that e-cigarettes:

- have an adverse effect on lung health of which the long-term effects remain unknown
- are not suitable as consumer products for recreational use, part substitution for smoking, or long-term exclusive use
- smokers trying to quit should be directed quit smoking products tested and cleared for safety and efficacy in combination with behavioural counselling
- no specific e-cigarette product can be recommended as effective and safe for smoking cessation<sup>12</sup>.

A benchmark of e-cigarette value often cited by suppliers and consumers is that compared to tobacco, e-cigarette products are less harmful. The review by TSANZ considered this point, noting that given the thousands of e-liquid variants and device types it is not possible to draw a direct comparison. Exposure to certain toxins have been found to be less for some e-cigarette products than conventional tobacco, while for other e-cigarette products the exposure is greater<sup>13</sup>.

There is growing evidence that e-cigarettes with and without nicotine contain a range of toxic chemicals and cancer-causing agents. While the long-term health effects of exposure to these toxins remains unclear and may take decades to appear, the short-term harms of use are known to include:

- inflammation and injury to tissues, particularly heart and lung, associated with the inhalation of heated toxic chemicals

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<sup>10</sup> Banks, E. Beckwith, K. and Joshy, G. (2020). *Summary report on use of e-cigarettes and relation to tobacco smoking uptake and cessation, relevant to the Australian context*, Australian National University.

<sup>11</sup> National Academies of Science, Engineering and Medicine. (2018) *Public Health Consequences of E-cigarettes*, Washington, DC, The National Academies Press, 2018.

<sup>12</sup> McDonald, C.F, Jones, S. Beckert, L. Bonevski, B. et al. (2020). *Electronic cigarettes: A position statement from the Thoracic Society of Australia and New Zealand*, Respiriology. 2020.

<sup>13</sup> McDonald, C.F, Jones, S. Beckert, L. Bonevski, B. et al. (2020) *Electronic cigarettes: A position statement from the Thoracic Society of Australia and New Zealand*, Respiriology. 2020.

- burns and other injuries from exploding batteries
- poisoning from skin contact or ingestion of liquids designed for use in e-cigarettes.

E-cigarettes have also been found to promote or prolong tobacco smoking. The most recent global literature review completed for the Australian Government shows that:

- non-smokers who use e-cigarettes are around three times as likely to take up conventional smoking as their peers who don't use e-cigarettes
- there is insufficient evidence that e-cigarettes are a more effective smoking cessation aid than no intervention, non-nicotine e-cigarettes, or standard nicotine-replacement therapy<sup>14</sup>.

The National Health and Medical Research Council (NHMRC) advise that observed health impacts of e-cigarettes observed in the short term typically include mouth and throat irritation. There have also been observations of incidents where e-cigarettes have malfunctioned resulting in life threatening injury, permanent disfigurement or disability. In addition, there has been an increase in reports of nicotine poisoning due to exposure to or ingestion of e-liquids, with effects ranging from relatively mild symptoms, including irritation of the eyes and skin, nausea and vomiting, to severe life-threatening illness, and in some cases, death.

The chemicals in e-liquids vary widely, while many are safe for use in other products including as flavourings for food but are untested for the effect of vaporising and inhaling. In the United States and the United Kingdom in 2019 and 2020 e-cigarettes were linked to an outbreak of more than 2,800 young people presenting to emergency departments with acute mysterious respiratory illness which became known as e-cigarette or vaping associated lung injury (EVALI). While THC was eventually identified as the constituent of concern and removed from e-cigarette production, over the short course of the outbreak (around 6 months) sixty-eight young people lost their lives and others faced irreversible lung damage<sup>15</sup>.

## Youth uptake of nicotine use through e-cigarettes

Smoking initiation most commonly starts in teenage years, and the earlier the age of initiation, the more likely the smoker is to become dependent and continue to smoke throughout life. In Queensland, youth smoking rates are higher than the national average.

E-cigarette use amongst children is rising, the latest available data (2017) shows that 16% of Queensland secondary school students reported they had used e-cigarettes. Subsequent school-based surveys have been delayed due to school closure and other COVID-19 impacts, however indications from surveys in populations and markets similar to Australia and local

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<sup>14</sup> Banks, E. Beckwith, K. and Joshy, G. (2020). *Summary report on use of e-cigarettes and relation to tobacco smoking uptake and cessation, relevant to the Australian context*, Australian National University.

<sup>15</sup> Centres for Disease Control. (2020) *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*. [www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)

compliance intelligence is that adolescent use of these products is much higher than available figures indicate.

A recent New Zealand study of adolescent e-cigarette use found 27% students reported using e-cigarettes in the past week. Of those using e-cigarettes three quarters used the products daily and the majority (80%) were using very high nicotine levels (between 24mg-50mg). Only a very small number (2%) reported using nicotine-free products. Anecdotal reports from schools across the State as well as community complaints to Queensland Health indicate that similar level of use by children is occurring in Queensland.

There is now strong evidence that e-cigarettes are a gateway to nicotine addiction and smoking for young people. A recent global review of the evidence on e-cigarette use for Australian Governments found that “among people who have never smoked or are current non-smokers, those who use e-cigarettes are, on average, around three times as likely to take up smoking of combustible cigarettes as those who have not used e-cigarettes.”<sup>16</sup>

Young people are uniquely susceptible to nicotine addiction with the addictive potential so high that the US Surgeon General has declared that youth use of nicotine is unsafe. Potential negative health effects reported for children from e-cigarette use or exposure include:

- addiction and harms to the developing adolescent brain
- during pregnancy nicotine can cross the placenta and lead to multiple adverse consequences on foetal and post-natal development
- potentially harmful does of heated and aerosolised constituents of e-liquid, including solvents, flavourings and toxicants, the harms of which are not yet clear
- ingestion can cause acute toxicity and possibly death if the contents of refills or bottles containing liquids are consumed<sup>17</sup>.

## Exposure to second-hand smoke and vapour

Smoking and vaping (the use of e-cigarettes) also cause harm to bystanders. The effects of exposure to second-hand tobacco smoke emerged in the mid 1980's and are now well-established as causing cancer and cardiovascular disease among adults and respiratory diseases and infections in children and adults. Second-hand smoke has also been associated with diabetes and oral health problems, sudden infant death syndrome and a range of other serious health outcomes for children<sup>18</sup>.

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<sup>16</sup> Banks, E. Beckwith, K. and Joshy, G. (2020). *Summary report on use of e-cigarettes and relation to tobacco smoking uptake and cessation, relevant to the Australian context*, Australian National University.

<sup>17</sup> US Department of Health and Human Services. (2016). *E-cigarette Use Among Youth and Young Adults*. A Report for the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>18</sup> U.S. Department of Health and Human Services. (2006) *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

The Centers for Disease Control and Prevention advise that exposure to second-hand smoke increases the risk of cancer and coronary heart disease with:

- an increased risk of 20–30% of developing lung cancer and 25-30% increased risk of developing heart disease for non-smokers who are exposed to second-hand smoke at home or at work.
- concentrations of many cancer-causing and toxic chemicals higher in second-hand smoke than in the smoke inhaled by smokers.
- breathing second-hand smoke for even a short time having immediate adverse effects on the cardiovascular system and interfering with the normal functioning of the heart, blood, and vascular systems in ways that increase the risk of a heart attack.
- scientific evidence showing that there is no risk-free level of exposure to second-hand smoke<sup>19</sup>.

In addition, there is emerging evidence that like active smoking, second-hand smoke exposure is associated with depression and psychological distress<sup>20</sup>.

Children exposed to second-hand smoke are at greater risk of sudden infant death syndrome, acute respiratory infections, ear problems and more severe asthma. Infants and children are at increased risk of harm as their bodies are in a stage of rapid development and especially vulnerable to the poisons in second-hand smoke<sup>21</sup>. Children have less control over their environment and those exposed to smoking in home environments, or through regular exposure in the community are increased risk.

There is increased risk of exposure to second-hand smoke for persons experiencing social disadvantage who are more likely to reside in communities where smoking is more prevalent and exposure more likely to occur both in homes and at public and community facilities<sup>22</sup>.

Less is known about the potential effects of second-hand e-cigarette vapour however while e-cigarettes are known to emit less toxicants, compared with combustible tobacco, the aerosol is not harmless and contains solvents, flavourings and poisons. Exposure to particulate matter from exhaled vapour from e-cigarettes may exacerbate existing illnesses or increase the risk of developing diseases such as cardiovascular or respiratory disease<sup>23</sup>.

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<sup>19</sup> U.S. Department of Health and Human Services. (2006) *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>20</sup> Zeng YN and Li YM. (2015). *Secondhand smoke exposure and mental health in adults: A meta-analysis of cross-sectional studies*. Soc Psychiatry Psychiatr Epidemiol. <http://www.ncbi.nlm.nih.gov/pubmed/26661619>

<sup>21</sup> U.S. Department of Health and Human Services. (2006) *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>22</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane

<sup>23</sup> NHMRC, (2017). *CEO Statement: Electronic Cigarettes*, NHMRC. <https://www.nhmrc.gov.au/about-us/resources/ceo-statement-electronic-cigarettes#block-views-block-file-attachments-content-block-1>

While second-hand smoke in enclosed environments has been shown to linger and expose persons to harm for longer periods, exposure to second-hand smoke in outdoor environments tends to disperse and concentrations are likely to vary depending on factors including the proximity of smokers and physical attributes of the space such as partial enclosures (screening or a roof) as well as wind conditions<sup>24</sup>.

There is also evidence however that, subject to conditions, second-hand smoke at outdoor areas may become more concentrated increasing the risk of harms to health. This could occur where outdoor areas have a roof and walls but are not fully or substantially enclosed, for example at an outdoor dining area attached to a food and drink venue where part of the venue is provided for smoking. As the number of smokers increase in such environments the level of exposure has been observed to also increase and even be comparable to enclosed concentrations. Similarly a higher concentration of second-hand smoke has been recorded at high density outdoor areas and places where smokers congregate, such as directly adjacent to the perimeter of smoke-free areas<sup>25</sup>.

Regardless of concentration of second-hand smoke however the community, now familiar with the evidence that there is no safe level of exposure to second-hand, expects to have little to no exposure to second-hand smoke when in public places. As this awareness has grown there has been a corresponding increase in community support and controls like the introduction of smoke-free laws and policies that reduce this exposure<sup>26</sup>.

In addition to protecting against second-hand smoke, smoke-free policies and legislation assist to reduce the number of Queensland adults and children that smoke. There is evidence that smoke-free policies and legislation:

- create fewer opportunities to smoke.
- contribute to preventing smoking uptake by making smoking less commonplace or desirable.
- assist smokers who are trying to quit by disrupting entrenched behaviour to encourage more quit attempts and increase the chances of a successful quit attempt.
- can contribute to reduced cigarette consumption among smokers.
- act as a trigger for renewed quit attempts and act as a reminder to seek support to quit.
- may also assist to reduce smoking among pregnant women<sup>27</sup>.

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<sup>24</sup> Campbell MA, Ford C, & Winstanley MH. (2017) Ch 4. The health effects of secondhand smoke. 4.4 Measuring exposure to secondhand smoke. In Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria.

<sup>25</sup> Campbell MA, Ford C, & Winstanley MH. (2017) Ch 4. The health effects of secondhand smoke. 4.4 Measuring exposure to secondhand smoke. In Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria

<sup>26</sup> The Everyday Health Survey Tobacco Project. (2016). The Everyday Health Survey. Cancer Council Queensland. [https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco\\_Report\\_v06-1.pdf](https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco_Report_v06-1.pdf)

<sup>27</sup> Greenhalgh, EM., and Scollo, M. (2018) 15.9 Effectiveness of smokefree legislation in reducing exposure to tobacco toxins, improving health, and changing smoking behaviours. In Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria.

## Section 2: Detailed regulatory impact statements

This section contains seven detailed regulatory impact statements (RIS). Each statement provides information on the issue, the options considered to address the issue, and analysis of potential impacts of each option.

### Smoking product supply

	Topics	Part 2
1	Monitoring compliance of retail smoking product supply	Section 2.1
2	Advertising and promotion of smoking products at retail premises	Section 2.2
3	Supply of smoking products at liquor licensed venues	Section 2.3
4	Sale of smoking products by minors	Section 2.4

### Smoking product use

	Topics	Part 2
5	Smoking at liquor licensed venues	Section 2.5
6	Smoke-free outdoor eating and drinking places	Section 2.6
7	Smoking at outdoor markets	Section 2.7

## 2.1 Monitoring compliance of retail smoking product supply

### Context

While tobacco product use is now generally in decline, the negative health effects associated with smoking tobacco remains the single biggest driver of death and disability in Queensland. In addition, e-cigarettes have emerged in the past ten years as products of interest and are gaining popularity among young people. While the evidence continues to emerge, knowledge about the health risks associated with their use is becoming clearer (see Part 2, Section 1). In Queensland, e-cigarettes are regulated as “smoking products” in the same way tobacco is.

Smoking products are widely available consumer products. Tobacco smoking product supply has typically occurred in supermarkets, tobacconists, small and mid-size grocers, convenience stores, newsagents and petrol stations. A small amount of supply also occurs in liquor licensed venues. It is estimated that smoking products are available at around 7,400 Queensland retail stores<sup>28</sup>. This figure is based on data obtained from known tobacco wholesalers, of which there are only a few.

Less is known about e-cigarette suppliers conducting business in Queensland. It is likely that many tobacco suppliers captured in this estimate also supply e-cigarettes. However, with growing consumer interest in e-cigarettes, the smoking product market is changing and there are new wholesale and retail entrants to the market. Retailers now include web-based stores, pharmacies and discount novelty or variety stores. Some of these outlets may be relatively transient as retailers explore the market potential. The supply chain for e-cigarette products differs from tobacco products in terms of manufacture, wholesale and retail.

### Regulatory framework

The supply of smoking products in Queensland is controlled by the *Tobacco and Other Smoking Products Act 1998* (the Act). The objective of the Act is to improve the health of members of the public by reducing their exposure to tobacco and other smoking products. The Act achieves this by:

- restricting the supply of tobacco and other smoking products to children
- restricting the advertising and promotion of tobacco and other smoking products
- reducing public exposure to smoke from tobacco and other smoking products
- establishing a framework for monitoring, investigative and enforcements activities.

The Act imposes strict controls on the retail sale, display and promotion of smoking products including:

- prohibition on the sale of smoking products to children under 18 years of age

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<sup>28</sup> Queensland Health (2018). *Data gathered from Tobacco Wholesalers – retailers supplied in the previous 12 months* [unpublished data].

- complete display bans of smoking products at retail outlets and on vending machines
- requirements for retail suppliers of smoking products to train staff in understanding their legal obligations under the Act.

In addition to the restrictions in place under the Act, the supply of smoking products is also subject to Commonwealth regulations which apply to advertising, packaging and tobacco excise. States work in partnership with Commonwealth agencies to share intelligence on compliance with regulatory controls and undertake coordinated enforcement responses where indicated.

Nicotine and non-nicotine containing e-cigarettes are captured as smoking products by the Act and generally need to be retailed in the same way as tobacco. In addition, nicotine is in the Commonwealth Poisons Standard as a Schedule 4 prescription only product where it is for human use. The Poisons Standard is given effect in Queensland via the *Medicines and Poisons Act 2019*, which requires regulated substances to only be dealt with in ways authorised under that legislation. It is illegal to obtain, possess or sell nicotine for human use (other than in tobacco cigarettes, or nicotine replacement therapy) without a prescription from a medical professional.

Further, as a prescription only product, the *Therapeutic Goods Act 1989* (Commonwealth) and Orders underneath it will apply to nicotine containing e-cigarettes and related products. *Therapeutic Goods Act 1989* sets out controls relating to the quality and safety of products, including advertising, labelling and product appearance.

## Compliance monitoring

The supply of smoking products is monitored and enforced by Environmental Health Officers (EHOs) in Public Health Units across Queensland. EHOs monitor regulatory controls on smoking product supply through proactive enforcement activities, routine compliance checks and in response to complaints.

Queensland Health's graduated approach to compliance monitoring and enforcement includes a preference for early education, and minimal intervention and rectification of breaches that supports smoking product suppliers to meet their obligations under the Act. Investigations of suspect non-compliance are usually initiated by complaints; a strategy that appropriately targets finite compliance resources to where they are most likely required. Where necessary, enforcement responses are guided by a risk matrix which considers the consequences (human health or safety impacts) and the likelihood of compliance. Progressive enforcement actions are taken in response to potential breaches including on the spot rectification (facilitated compliance), investigations, warnings, improvement notices, seizure, fines and prosecution.

In Queensland awareness of suppliers is informed by local intelligence, usually developed over time through local knowledge, proactive efforts and in response to complaints. In addition, the Act authorises Queensland Health to request from smoking product manufacturers and wholesalers, information about retailers they have supplied with smoking products within the previous 12 months. This information can be used by Queensland Health to compile lists of suppliers. These lists can in turn be used to advise suppliers about matters relating to the Act, including supplier obligations, and to inform monitoring or enforcing compliance strategies.

## Other jurisdictions

All Australian jurisdictions have legislated requirements for the supply of smoking products and related processes in place to monitor compliance with these controls. Some use local government enforcement officers for compliance monitoring and enforcement, others use health enforcement officers for this process.

While Victoria takes a similar approach to Queensland for building awareness of suppliers, other Australian jurisdictions have introduced some form of registration or licensing system that applies to suppliers and sometimes wholesalers. These registration and licensing schemes facilitate the processes of monitoring compliance with legislated controls on the supply of smoking products.

Tasmania (TAS), the Northern Territory (NT) and South Australia (SA) operate positive retailer only licensing schemes. Western Australia (WA) and the Australian Capital Territory (ACT) have positive retailer and wholesaler schemes, and New South Wales (NSW) operates a legislated notification scheme for retailers only (similar to option 2 ). A comparison of current schemes in Australia is presented below at Table 2.

The Victorian Government has commissioned an illicit tobacco review<sup>29</sup>, and there have been indications in some recent media that Victoria is considering licencing the supply of smoking products, and this has been supported by retail associations<sup>30</sup>.

A positive licensing system prohibits participants from working in the industry unless they apply for and hold a licence issued by a regulatory authority. They must continue to meet the licensing requirements of trade. License systems charge fees to licensees.

A registration or notification system does not require people to have prior approval to work in an industry, but they are required to notify the regulator, may be expected to meet standards, and can be subsequently excluded from the industry on specific grounds prescribed by legislation. Fees are generally not charged for registration.

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<sup>29</sup> Victorian Government. *Illicit Tobacco Review*. Retrieved February 10, 2022 from <https://www.vic.gov.au/illicit-tobacco-review>

<sup>30</sup> AAACS. Joint Media Release. *Retail industry leaders welcome regulatory review to tackle Victoria's tobacco black market*. Retrieved October 27, 2021 from <https://www.aacs.org.au/joint-media-release-retail-industry-leaders-welcome-regulatory-review-to-tackle-victorias-tobacco-black-market/>

**Table 2: section 2.1, Jurisdiction comparison of smoking products licensing and registration schemes**

Jurisdiction	Registration	Licensing retail	Licensing wholesale	No scheme
Queensland				No cost
New South Wales	No cost			
Australian Capital Territory		\$519	\$519	
Victoria				No cost
Tasmania		\$558-\$1111		
South Australia		\$277		
Western Australia		\$283	\$707	
Northern Territory		\$230		

## Problem

The health and social harms of smoking products to users and their bystanders are well described and understood. Progressive quit support, campaigns and product regulation has been introduced in an effort to lower these risks to consumers, and to redress disinformation from manufacturers about the extent of harms and addictiveness associated with smoking products (refer to Part 2, Section 1).

Retailing controls in Queensland prohibit sales to children, ban displays and other methods of smoking product advertising. Retailers are required to train their staff in their legal obligations. The Act also requires some mandatory warning and quit support signage to be displayed at the point of sale.

Implementation of these regulations is premised on early education of retailers and wholesale representatives about their obligations under the Act, which in turn facilitates compliance and reduces the intervention and rectification efforts needed by EHOs (see above under *Compliance monitoring*).

This graduated, educational approach to enforcement is possible when Queensland Health and EHOs have an understanding of the market, including the number and location of suppliers, and other pathways to communicate messages to retailers, such as via peak industry representatives and major franchisors.

Currently, there is not up to date information about smoking product suppliers to support compliance monitoring and enforcement efforts.

Historically, intelligence about the retail market has been derived through what EHOs know about local tobacco product sellers and by activating of section 13A of the Act, which requires wholesalers to, on request, supply the details of all people they have supplied smoking products to in Queensland over a 12-month period.

These methods of obtaining information about suppliers and communicating with them have sufficed with regard to the regulation of tobacco product supply, because the types of stores selling tobacco, and their industry representatives, have been known, as have the very limited number of well-established and stable tobacco wholesalers in Queensland.

Local intelligence and section 13A are no longer useful for obtaining complete information about retailers and communicating information about their retailing obligations. The emergence of e-cigarettes as an ascendant smoking product has weakened the utility of these methods as the manufacturers and wholesalers of e-cigarette products are not well known to Queensland Health or EHOs. It is assumed there are many more wholesalers than the few, large, multinational corporations that trade in tobacco products.

E-cigarettes have also changed the profile of where smoking products are sold. Tobacco products have been traditionally sold in major supermarkets, independent grocers, tobacconists, petrol stations, convenience stores, newsagents and alcohol licensed premises. E-cigarettes are often retailed in these places, but also in different settings that are not currently in the purview of EHOs such as novelty stores, e-cigarette only retailers or 'vape bars', 'pop up' gift stores and – at least internationally – in adult stores. There is also a sizeable online market.

The current complaints profile about potential breaches of smoking product retailing laws echoes the gap in information about retailers. Recently, complaints about retailing mostly relate to misinformation or misunderstanding about compliance requirements relating to e-cigarette products, and increased school, parent and community reports about children accessing and using electronic cigarettes.

In some instances, identifying a responsible entity at stores found in breach of the Act has been challenging, hampering enforcement efforts.

Another driver of recent complaints is illicit tobacco, with reports that some retailers are selling illicit tobacco at reduced prices, undermining legitimate businesses. Some of these stores are reportedly new entrants to the market and some may be associated with organised criminal activity. While illicit tobacco has been found at stores associated with tobacco franchises, more recently 'pop-up' stores are appearing that typically operate on a cash only basis and often have no discernible responsible person in charge. There is no barrier to smoking product trade in Queensland.

Currently, the Act does not recognise smoking products as legitimate or illegitimate, and EHOs are unable to take any action on tobacco that is incorrectly packaged or sold without excise. Rather, those crimes are referred to the responsible Federal agencies that are part of the Illicit Tobacco Task Force. Some industry representatives, such as the National Retail Association, Master Grocers Australia, Australian Lottery and Newsagents Association and the Australian Association of Convenience Stores have advocated for more government intervention, including the ability for State health and crime agencies to be able to add value to Federal tax and tobacco authorities' efforts to disrupt retailers acting outside of the law. Those issues are canvassed in Section 3.1

## Objective

Efficient and effective monitoring of smoking product supply and mechanisms to prevent and penalise breaches of the Act.

### Consideration of options

	Description
Option 1	Status quo. Retailing and wholesaling of tobacco products does not require any notification to the regulator.
Option 2	Introduce a registration scheme for wholesale and retail suppliers of smoking products.
Option 3	Introduce a licensing scheme for wholesale and retail suppliers of smoking products.

### Option 1. Status quo

Retaining the status quo would mean:

- Maintaining existing regulatory and compliance mechanisms to monitor and control sale and supply of smoking products.
- Continuing to develop lists of suppliers using information from manufacturers under section 13A of the Act and/or local enforcement intelligence.

This option does not change or increase the regulatory burden for individuals or businesses.

**Table 3: section 2.1, option 1, costs and benefits**

Stakeholder	Impact
Smoking product suppliers	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Wholesalers	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Community	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Queensland Government	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>

### Assessment

The status quo does not facilitate the policy objective of effective monitoring of smoking product supply in Queensland. This would not improve market understanding to enable communication with smoking product suppliers and compliance monitoring of the industry. There is no mechanism to identify e-cigarette suppliers.

Compliance activity in the retail sector is difficult, and in the absence of timely information about retailers in or entering the smoking products market, there is limited potential for proactive regulatory action such as preventive education, spot checks or follow up with new retailers. Businesses operating in breach of regulations may not be known to regulators and may be difficult to identify. As a result, they may not face timely consequences for breaches.

## Option 2. Introduce a registration scheme for wholesale and retail suppliers of smoking products

Under this option, all smoking product suppliers would be required to register as a supplier. Registration or notification schemes have been used to support food and tobacco retailing in some jurisdictions.

Typical features of registration schemes, such as the one in place for tobacco retailing in NSW, are that:

- smoking product suppliers must register their details as a supplier of smoking products
- suitability of registrants is not judged or assessed
- registration is a one-off process, although registrants may be required to update their details if they change
- fees are not generally charged for registration
- businesses not registered and found to be supplying smoking products may face penalties
- general legislative obligations relevant to smoking product supply will apply<sup>31</sup>.

Under option 2, Queensland Health would obtain useful information regarding suppliers of smoking products, including the e-cigarette market. This information would support a range of activities relevant to communication, clarification, and compliance monitoring, particularly when conducting investigations. Further benefits include a clearer understanding of the relatively new and changing market in e-cigarette products.

Because registration is a once-off requirement, the currency of data may diminish over time. Experience in other jurisdictions has demonstrated that registration models that do not require registration renewals can have compromised data quality, as registration does not lapse and registrants fail to update their details, even when legislatively required to<sup>32</sup>. This might be mitigated in part by requiring wholesalers to ensure they only sell to registered retailers, and periodically requesting registration updates or confirmation to remain registered.

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<sup>31</sup> The Allen Consulting Group. (2002). Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements.  
[https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/\\$File/license.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/51D4A401FD339C40CA257BF000212035/$File/license.pdf)

<sup>32</sup> NSW Health (2015), *NSW Taskforce on Tobacco Retailing, Final Report and Recommendations*. Available from:  
<https://www.health.nsw.gov.au/tobacco/Documents/taskforce-tobacco-retailing-report.pdf>

**Table 4: Section 2.1, option 2, costs and benefits**

Stakeholder	Benefits	Costs
<b>Smoking product suppliers</b>	<p>Reduction of some compliance costs – e.g. business time sourcing mandatory signage, compliance information and training.</p> <p>\$30/annum</p> <p>Estimated to be one hour annually</p> <p>Some improvement in compliance, creating fairer market.</p>	<p>Time taken to register as a smoking product supplier.</p> <p>\$15/annum</p> <p>Estimated to be 30 minutes on commencement and to update changes as required.</p>
<b>Wholesalers</b>	<p>Improved access to information about the legislation and requirements.</p> <p>\$30/annum</p> <p>Estimated to be one hour annually.</p> <p>Removed impost of requests from Govt. for customer records under status quo.</p> <p>\$30/annum</p> <p>Estimated to be one hour annually</p>	<p>Time taken to register as a smoking product supplier.</p> <p>\$15/annum</p> <p>Estimated to be 30 minutes on commencement and to update changes as required.</p> <p>Time taken to check customers are registered as a smoking product supplier.</p> <p>Time and costs to set up an e-commerce system that interfaces with registration information \$1000/once off, noting most wholesalers will already have systems in place to do this due to requirements in other jurisdictions.</p>
<b>Community</b>	<p>Improved awareness of smoking product suppliers.</p> <p>Improved confidence in compliance monitoring of smoking product suppliers with associated assurance that legal protections, particularly for minors, are upheld.</p>	<p>None anticipated.</p>
<b>Queensland Government</b>	<p>Improved enforcement capacity to enhance compliance</p> <p>Reduced time sourcing retrospective details of smoking product suppliers from wholesaler.</p> <p>Identification of e-cigarette product wholesalers and retailers.</p> <p>Efficiencies in determining and executing state-wide smoking product supply and enforcement strategies with retailers.</p>	<p>Initial software and system establishment costs.</p> <p>On-going system utilisation, maintenance and registration costs.</p> <p>Communications with suppliers.</p> <p>Approximately \$450,000 initially, with an estimated ongoing cost of \$300,000 per annum.</p> <p>Communications and resources to support registration scheme.</p>

Stakeholder	Benefits	Costs
	<p>Reduced time responding to enquiries about smoking product supply market.</p> <p>Reduced time sourcing details on businesses subject to enforcement actions (e.g. for issuing fines).</p> <p>Better market information and certainty.</p> <p>Possible increased reports of non-compliance from community and within the industry.</p>	<p>Approximately \$500,000 once off.</p>

Note:

- Suppliers' wages costs based on Level 8 employee under the General Retail Industry Award, rounded up to \$30/hour to account for above award wages and or industry specific allowances.
- There are 7,400 tobacco retailers in Queensland selling traditional tobacco products obtained through known wholesalers.

### Assessment

This option would partially achieve the objective sought, relating to information about suppliers to support engagement communication and compliance activity. A registration scheme represents an inexpensive option for businesses, however there are increased costs for government to implement and service with no additional resources.

Additional limitations include:

- orientation of smoking product supply to continue to be a right, rather than a conditional privilege
- diminishing currency of information, relying on registrants to update information as changes occur
- at low or no cost, one-off registration creates expectation of low government priority and minimal service, with the expectation that supply regulations will not be proactively enforced
- unrecovered costs associated with establishing and maintaining the software, infrastructure and human resources to administer a registration scheme may detract from the resources available for frontline enforcement compared to the status quo.
- no suitability assessment of potential tobacco and e-cigarette suppliers.

### Option 3. Introduce a licensing scheme for wholesale and retail suppliers of smoking products

Under option 3, the Queensland Government would introduce a positive licensing scheme requiring retailers and wholesalers to apply for a licence prior to selling smoking products. This would involve periodic (e.g. annual) renewal and a licence fee, or smoking product supplier status would lapse and penalties would apply if supply continued.

These schemes (as in place in the ACT, NT, WA, SA and TAS) have most of the characteristics associated with option 2 (registration scheme) with the addition of:

- an application process that involves a suitability assessment
- a prescribed annual (or other periodic) fee.

Licensing schemes for suppliers of smoking products are used to identify and monitor the number, type and location of wholesale and retail outlets. They assist with smoking product regulation in the following ways:

1. Facilitating direct and targeted communication to smoking product suppliers.
2. Recovering costs of enforcement efforts, which allows smoking product regulation to be given the priority it demands within other stretched public health resources.
3. Preventing potentially unscrupulous suppliers entering the market.
4. Allowing administrative actions (e.g. conditions) to be placed on licensees.
5. Through the introduction of annual fees and the options to revoke or deny licences, more retailers are likely to perceive that smoking product supply is dangerous and treated similar to other activities which carry a significant health risk, and therefore abide by regulatory requirements.

This model would:

- require tobacco suppliers to register and periodically renew their smoking product supply licence online
- provide information about the scope and size of the smoking product supply market
- allow the collection of data that will form the basis of communication with smoking product suppliers, and inform public health and regulatory strategies
- allow regulators to remove a registrant's ability to trade upon continuing or multiple breaches of smoking-product regulations
- allow regulators to take steps to suspend and penalise trade by unlicensed suppliers.

A review of the literature about retail initiatives in smoking product supply found that the best available evidence supports licensing<sup>33</sup>.

Australia is a party to the World Health Organization's Framework Convention on Tobacco Control. Article 15, Clause 5 of the calls on Parties to "... endeavour to adopt and implement

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<sup>33</sup> Freeman, B and Chapman, S (2014), *Evidence of the impact of tobacco retail policy initiatives*. Available from <https://www.health.nsw.gov.au/tobacco/Documents/apdix-evidence-tob-retail-policy.pdf>

further measures including licensing, were appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.” The International Protocol to Eliminate Illicit Trade in Tobacco Products has been developed by the Parties to the Framework – and licensing is a core component. Licensing is also recognised as a means of reducing tobacco tax evasion by the World Bank and the International Monetary Fund<sup>34</sup>.

There is support within the retail sector for the establishment of a licensing scheme for smoking product suppliers in Queensland. This has been communicated through consultation with industry groups such as the National Retail Association, Master Grocers Australia, Australian Lottery and Newsagents Association and the Australian Association of Convenience Stores. Other organisations such as Cancer Council Australia, Heart Foundation and the Lung Foundation have also communicated their support for a licensing scheme.

The primary benefit to these groups is the potential for an enhanced and proactive approach to compliance activity to better ensure a fair, competitive, retail market with a high level of regulatory compliance.

The introduction of licence fees may prompt retailers for whom smoking product supply is uncommercial to cease supplying smoking products. In 2007, a reduction in the number of low volume tobacco retailers was observed when South Australian licence fees for tobacco retailers increased 15-fold<sup>35</sup>. Overall licensing does not appear to reduce supply; most jurisdictions have approximately one smoking product supply outlet per 700 persons regardless of the variation in licensing or notification requirements (or lack thereof).

## Suitability checks

The suitability assessment for licensing schemes of dangerous products typically includes a criminal history check, or some other legislated assessment of suitability by a government official. This could include a statutory declaration addressing suitability criteria by the applicant.

A fit and proper person test, similar to the one used to assess suitability for a liquor licence, permits or authorities could be used. This process would require a delegated authority within Queensland Health to consider, for example, if applicants:

- are declared bankrupt
- have had major convictions within the last 5 years
- have had substantial or repeated convictions under the Act
- can demonstrate that they know and understand the obligations of a licensee.

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<sup>34</sup> Scollo, M. In Depth 11B: *Licensing of tobacco sellers*. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2021. Available from <http://www.tobaccoinaustralia.org.au/chapter-11-advertising/indepth-11b-licensing-of-tobacco-sellers>

<sup>35</sup> Bowden, J. A., Dono, J., John, D. L., & Miller, C. L. (2014). What happens when the price of a tobacco retailer licence increases?. *Tobacco control*, 23(2), 178–180.

Previous reports and enquiries preference consideration of a positive licensing system that avoids unnecessary red tape for business<sup>36</sup>. There would be a degree of regulatory burden associated with a vetted application process, including the costs to business for compiling and submitting necessary paperwork and the responsibility of government to assess those applications and establish appropriate review procedures.

A tobacco retailing evidence review noted that most people that apply for tobacco retailing licences successfully obtain one. The review authors could not conclude if licensing does not prevent unsuitable applicants from becoming licensed or if the existence of the vetting process prevents unsuitable applicants from applying in the first place<sup>37</sup>.

## Fees and fee structures

Establishment of a fee structure for smoking product licensing in Queensland would be determined on the basis of full cost recovery for the price of licensing infrastructure, as well as directly related policy, education, monitoring and enforcement regulatory functions. These are estimated below in Table 5.

**Table 5: Section 2.1, Expected cost distribution of smoking product retail regulation**

Regulatory functions	First year estimated overall cost and percentage breakdown by function	Ongoing annual estimated costs and percentage breakdown by function
<b>Total estimate of smoking product licensing and compliance framework</b>	\$3.5m-\$4.5m	\$2.5-\$3.0m
<b>Regulatory policy development</b> Advisory and operational policy functions in respect of legislative framework, intelligence monitoring and reporting.	10%	15%
<b>Compliance and enforcement</b> Interactions with regulated entities, investigations, enforcement actions, legal fees.	42%	64%

<sup>36</sup> *Inquiry into tobacco licensing arrangements in Queensland (2016)*, Report No. 19, 55th Parliament, Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

<sup>37</sup> Freeman, B and Chapman, S (2014), *Evidence of the impact of tobacco retail policy initiatives*. Available from <https://www.health.nsw.gov.au/tobacco/Documents/apdix-evidence-tob-retail-policy.pdf>

Regulatory functions	First year estimated overall cost and percentage breakdown by function	Ongoing annual estimated costs and percentage breakdown by function
<b>Licensing systems and maintenance</b>  Software, applications processing, renewal, licensing and ongoing system maintenance.	24%	3%
<b>Communications and education</b>  Public and smoking product supplier education campaigns, training and resources, and Tobacco Laws phone service.	24%	18%

Different licensing frameworks could apply, e.g.:

- One size fits all fee structure per outlet (flat fee scheme).
- A tiered fee scheme based on the complexity or size of the business structure.

A flat fee structure is proposed as the size and complexity of a smoking product outlet makes no meaningful difference to the cost associated with including it in a compliance monitoring framework. However, the consultation questions seek feedback on fee structures.

Based on the costing above, the cost of a licensing system averaged over five years would be between \$350 and \$500 per smoking product outlet. In other Australian jurisdictions with fee-based smoking product licensing schemes, costs for a licence range between \$200 and \$1200 for retailers and \$500 and \$700 for wholesalers (see Table 2 above).

**Table 6: Section 2.1, option 3, costs and benefits**

Stakeholder	Benefits	Costs
<b>Smoking product suppliers</b>	Reduction of some compliance costs – e.g. business time sourcing mandatory signage, compliance information and training. \$30/annum Estimated to be one hour annually Aligns with regulatory approach in most other jurisdictions for national retailers.	Time to complete application process. \$30-\$60 in the first year and \$15-30 for subsequent renewals. Estimated to be 1-2 hours on commencement and 30 min-1 hour to update changes as required. Cost of annual licensing fee. Between \$350 and \$500/annum (plus annual indexation) per outlet

Stakeholder	Benefits	Costs
	Increased assurance of fairer market position via proactive compliance in place for competitors.	
Wholesalers	Improved access to information about the legislation and requirements. \$30/annum Estimated to be one hour annually	Time to complete application process. Estimated to be 10-20 minutes annually. Time taken to check customers hold a valid licence to supply smoking products.
	Removed impost of requests from Government under status quo. \$30/annum. Estimated to be one hour annually.	Time and costs to set up an e-commerce system that interfaces with licensing information \$1000/once off. Annual licensing fee. Estimated to cost between \$350 and \$500 (plus annual indexation) per wholesaler
Community	Improved health outcomes - via reduction in breaches of smoking product regulations, resulting in fewer young people smoking, more people quitting. Improved awareness of smoking product suppliers. Reduction in breaches by smoking product regulations. Improved confidence in compliance monitoring of smoking product suppliers.	Some businesses may pass the costs of licensing fees on to customers through price increases of smoking products or other goods – but there is no evidence of this currently occurring in jurisdictions with licensing.
Queensland Government	Cost recovery of current regulatory functions through licence fees. Potential for enhanced enforcement with proactive capacity for compliance activity through additional resources. Reduced health care expenditure – via reduction in breaches of smoking product regulations, resulting in fewer young people smoking, more people quitting. Reduced time sourcing retrospective details of smoking product suppliers from wholesalers. Possibly increased reports of non-compliance from community and within the industry.	Licence set up costs including: <ul style="list-style-type: none"> <li>• initial software and system establishment costs</li> <li>• ongoing system utilisation, maintenance and licensing costs</li> <li>• assessment of applications</li> <li>• communications with suppliers.</li> </ul> \$900,000-\$1.2m per annum, averaged over five years.

Note:

- Wages based on Level 8 employee under the General Retail Industry Award, rounded up to \$30/hour to account for above award wages and or industry specific allowances.
- There are 7,400 tobacco retailers in Queensland selling traditional tobacco products obtained through known wholesalers.
- Complaints will remain at relatively constant levels.
- Existing Queensland Health licensing infrastructure could be expanded to include a smoking product module.
- No discounting for loss of consumer enjoyment of smoking has been included as it is assumed most smoking avoidance will be as a result of young people never initiating smoking, and that smokers who successfully quit wish to do so.

## Assessment

Option 3 would achieve the objective in an effective and relatively efficient manner. A licensing model offers minimal administrative and financial burden, while still achieving the desired public health and regulatory outcomes. Comprehensive and periodically updated supplier information will support engagement and communication to suppliers about their obligations. The fee-paying licensing scheme will enable the ability to match enforcement efforts to need. It would also ensure the costs of administering and enforcing retailing smoking product laws are borne by suppliers.

The identification of licensees would also assist EHOs in issuing warnings, fines or other enforcement actions.

Nominating a responsible entity for smoking product supply at specific venues reinforces the notion that obligations come with the trade of smoking products. The potential for licence cancellation is a disincentive to breaches of the retail requirements under the Act. Conversely, where a venue is in breach of their obligations and operating without a licence, actions could be taken to suspend trade from that venue.

There are benefits to other proposed actions within this package of smoking regulations for simplified implementation if a licensing scheme was operationalised in Queensland.

A licensing scheme would complement illicit tobacco reforms, as:

- a profile of illicit tobacco trade could be developed that would support targeted enforcement efforts
- information held about retail premises in breach of the law could be readily obtained to support enforcement action, including sharing those details with responsible Federal agencies.

A licensing scheme would allow Queensland to share information with other jurisdictions that apply suitability assessments to potential smoking product suppliers.

## Recommendation

The status quo does not achieve the objective of facilitating compliance with the Act through accurate information of wholesalers and retailers. Recent changes in the market relating to nicotine e-cigarette products mean that traditional wholesalers of tobacco products no longer cover all the retailers selling products that are regulated under the Act.

The introduction of a registration scheme (option 2) for retailers and wholesalers would partially meet the objectives, providing specific information to regulators to support

communication and compliance initiatives. Compared to a licensing scheme (option 3), the following limitations reduce the positive impacts of a registration scheme:

- Information currency would be limited due to lack of a periodic renewal requirements or resources to effectively implement and enforce periodic renewal requirements.
- No increased compliance capabilities.
- A no or low fee registration system would come with significant costs to government and these would need to be offset from existing compliance resources, limiting or reducing the amount of 'in-field' compliance activity that would be possible.

The preferred option (option 3) is to adopt a positive licensing scheme for wholesalers and retailers of smoking products. An appropriate fee structure for licensing would achieve the desired objective, including currency of information and better compliance mechanisms. Potential cancellation of a purchased licence is a strong incentive for retailers to maintain compliance standards within their business/es. A named entity would assist in efforts to identify persons responsible for compliance at a given venue, and a suitability assessment could prevent further involvement of criminal networks in smoking product supply.

The establishment of a licensing scheme for smoking product suppliers would support a range of beneficial regulatory activities:

- Communication and clarification of regulatory requirements to suppliers, including pending changes to the relevant regulations, with the ability to identify and brief newly licensed retailers.
- Monitoring of supply and compliance with requirements, including supply to and by minors, display and signage, promotions and prices.
- Investigation of potential breaches, penalties and further action as needed.
- Proactive compliance activity such as retail audits enabled by additional funding via licenses.

Table 7 provides a comparative summary of registration and licensing schemes and their impact on key characteristics of an effective compliance monitoring system. On this assessment, Option 3 provides the greatest net benefit. This view is supported by the tobacco retail sector who have indicated support for a licensing scheme. In a recent submission to Government, Australian Association of Convenience Stores, Australian Lotteries and Newsagents Association and the Master Grocers Association advised that the no-cost registration scheme in NSW is poorly received by retailers due to a lack of compliance and enforcement activity. The same retailers advise Western Australia has the current best practice model.

There are limitations of licensing, including the ability to enforce the requirements of the Act on online, interstate or overseas suppliers. This limitation exists under all options, including the status quo. Law enforcement is challenging in borderless online environments, or where there is complexity about facts and jurisdictional issues. A pragmatic approach to enforcement would be required for suppliers outside of Queensland that make products available for sale in Queensland.

**Table 7: Section 2.1, comparison of options 2 and 3**

Criteria	Option 2 Registration scheme	Option 3 Positive licensing scheme
Information about retailers and wholesalers	Improved	Greatly improved
Improved and direct communication of regulatory requirements	Improved	Greatly improved
Improved compliance monitoring capacity	Improved	Greatly improved
Improved enforcement strategies	Improved	Greatly improved
Risk proportionate to Government action	Improved	Improved
Cost and ease of implementation for Government	Worse	Worse
Cost and ease of implementation for industry	Marginally worse	Worse
<b>Conclusion</b>	Not recommended	Recommended

## Consultation

Public support for a tobacco retailer licensing system is gauged in the National Household Drug Strategy Survey. Support among Queenslanders has been consistently high over the past three surveys and 62.3% of respondents supported the introduction of a licensing scheme for tobacco retailing in the most recent 2019 survey. Nationally, support was highest among non-smokers at 75.3%, with 32.1% of smokers in support of licensing<sup>38</sup>.

In recent consultations between the Department of Health and large and small retailing peak bodies, retailers have expressed support for the introduction of a licensing scheme, in recognition that it increases compliance capacity and the potential to remove retailers engaging in unlawful practices – such as the illicit tobacco trade - from the market.

In general discussions about the introduction of licensing the National Retail Association indicated support for licensing that includes a barrier to entry, fees and stringently applied conditions on what retailers can do before losing the ability to trade in smoking products.

<sup>38</sup> Australian Institute of Health and Welfare 2020. *National Drug Strategy Household Survey 2019*. Drug Statistics series no. 32. PHE 270. Canberra AIHW.

The Master Grocers Association recently advised the Department of Health that they would be supportive if there was provision to have a licence revoked due to illicit activity. This would need to be paired with enforcement and any fees associated with a licensing scheme would need to be reasonable for businesses. This is a shift from an earlier position held by the Association in opposition to licensing<sup>39</sup>.

Australian Association of Convenience Stores and Australian Lotteries and Newsagents Association have written to the Department of Health in support the introduction of a fee-based licensing scheme in the style of Western Australia's, which would include an application, fee, and annual renewals. Collectively, these retailers represent the majority of smoking product retailers and the bulk of tobacco products sold in Australia.

Other suppliers include liquor licensed premises, although the quantum of sales in these settings is negligible. In a 2018 study, outlets where alcohol can be consumed were more likely to rate cigarette sales as 'not important' than 'important'<sup>40</sup>.

The Lung Foundation, Cancer Council Queensland and the Heart Foundation have expressed strong support for positive, fee-based licensing schemes.

## Consistency with other policies and legislation

The Act was initially passed in 1998 and has undergone numerous amendments over time, including a progressive increase in the number of areas in Queensland to which smoke-free provisions apply, and controls relating to the supply of smoking products such as bans on sale to minors, promotions, display, required signage and so on. The primary benefit gained from the proposed action is access to current information regarding suppliers, to facilitate supplier awareness and compliance with controls mandated by the Act.

The existence of a licensing scheme for smoking product suppliers would greatly simplify the implementation of numerous other proposed actions. These are presented in other chapters within this document, with greatest benefit to:

- banning the sale of smoking products by persons under the age of 18
- modernising the Act to eliminate novel promotional and other related activities
- amendments to the controls relating to designated outdoor smoking areas (DOSAs) in liquor licensed premises
- amendments to the requirements for the sale of smoking products within liquor licensed premises
- pre-approved action to enable the seizure of illicit smoking products – disincentive of licence revocation for retailers.

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<sup>39</sup> *Inquiry into tobacco licensing arrangements in Queensland (2016)*, Report No. 19, 55th Parliament, Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

<sup>40</sup> Burton S, Ludbrooke M, Williams K, Walsberger SC, Egger S. *To sell or not to sell: cigarette sales in alcohol-licensed premises*. *Tobacco Control*. 2018 Nov;27(6):614-621. [To sell or not to sell: cigarette sales in alcohol-licensed premises \(bmj.com\)](https://doi.org/10.1136/tobaccocontrol-2018-024000)

## Comparison with other public health and licensing legislation

Other business retail environments that deal in the trade of items that supply hazardous products or substances that pose risks to the community are regulated and subject to licensing, in order to ensure the trade of those products is established in a way that prevents harm or maximises safety, e.g.:

- Personal appearance services licensing.
- Food business licensing.
- Liquor licensing.
- Pest control operator licensing.
- Pharmacy and medicines licensing.

Smoking product licensing systems are now commonplace across Australia.

## Competition principles

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

Queensland Health assessment is that the proposed licence fee range is not sufficiently large to restrict competition. This assessment is based on advice from retailing peaks about acceptable ranges for licensing fees and experience of licensing in other jurisdictions, where licensing fees have not changed the observable mix of smoking product retailers in the market. A desktop review of major tobacco franchisors indicates increases in the number of outlets in recent years, despite licensing in most Australian states and territories. In addition, by facilitating a more contemporary and responsive regulatory framework, the fee burden will, through improved enforcement of non-compliance, create a more equal, competitive environment for smoking product retailers.

## Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered. The preferred option of a licensing scheme may give rise to several fundamental rights issues. For example, licensing decisions will need to be subject to natural justice. There will also need to be secure privacy protections for licensees.

These will be comprehensively considered as part of implementation, with the licensing system subject to review rights. Further, Queensland Health will obtain personal information about business owners, such as criminal history, as part of determining a licence application and whether a person is a fit and proper person to hold a licence. Any potential breach of a person's right to privacy of information will be mitigated by requiring the confidentiality of such information to be maintained.

## Implementation and evaluation

### Implementation

Implementation of option 3 would occur through legislative amendment to the Act and subordinate legislation to enact the provisions. Penalties would also be established for:

- selling smoking products in Queensland without a licence.

- failing to produce evidence of a smoking product licence on request of an Authorised Officer.

These legislative changes would be supplemented by guidance material communication and appropriate notice to support wholesalers, retailers and the community to comply with the legislative provisions. A phase in period up to 12 months would be adopted to allow retailers and wholesalers time to apply for and obtain a licence. From that point in time all businesses supplying smoking products must be licensed, and new operators must obtain a licence prior to initiating the sale of smoking products.

Businesses would be supported through the Business Queensland portal to understand and apply and pay for the appropriate business licence. Information would also be housed on the Australian Business Licence and Information Service.

The Department of Health will commission the development of a module that integrates with existing licence databases related to public health regulation. The system management will be incorporated into staffing and business processes.

A flat fee is proposed with a single differentiation for retail versus wholesale outlets, whereby each outlet must be licensed separately. The final fee amount will be determined with consideration of costs available and feedback obtained through this consultation process.

Notice of expiry would be distributed by email eight weeks prior to a licence lapsing, and a confirmation of lapsed license will be sent eight weeks subsequent to expiry date. Anyone seeking to reapply for a licence that has lapsed may have an additional processing fee charged.

Department of Health will develop a communication and engagement plan and implement activities to raise awareness of the changed requirements among smoking product suppliers and enforcement agencies. The Tobacco Laws Service (13QGOV) will also be able to provide information, guidance and signage to support the implementation of the laws. Any additional impact of increased queries is likely to be temporary and manageable within existing human and financial resources dedicated to advisory functions.

## **Evaluation**

The impact and effectiveness of the recommended option (option 3) will be measured against the policy objectives of obtaining consistent and complete state-wide information on wholesale and retail suppliers of tobacco and e-cigarette products, and improved compliance strategies. Examples of data that could inform the success of the scheme will include:

- Trends in compliance activity and complaints received relating to retailers.
- Efficiencies gained in identifying and communicating with smoking product suppliers.
- Qualitative feedback from EHOs regarding proactive enforcement capacity improvements.
- Qualitative feedback from smoking product suppliers about the ease of the licensing system and perceptions of its impact on regulation and market practices.

## Stakeholder questions

1.1	The recommended option is to amend the <i>Tobacco and Other Smoking Products Act 1998</i> to require suppliers of smoking products to obtain a licence (option 3)? Please advise if you agree or disagree with this option and why.
1.2	<p>Have potential impacts been fully and accurately captured? Please provide any additional information and evidence that should be considered in the costs and benefits, including impacts related to:</p> <ul style="list-style-type: none"><li>• Applying for licences</li><li>• Proposed licensing fee range</li><li>• Enhanced compliance monitoring and enforcement.</li></ul>
1.3	Would you modify any aspect of the recommended option (licensing - option 3)?
1.4	<p>With regard to the preferred licensing fee framework, do you support:</p> <ul style="list-style-type: none"><li>• One size fits all flat fee structure.</li><li>• Tiered fee structure based on size and complexity of business structure. Other, please explain?</li></ul>
1.5	If a tiered structure is your preference, on what basis would you propose tiers to be defined?
1.6	What mechanisms exist to reduce licensing impacts on small business?
1.7	What mechanisms exist to ensure online and interjurisdictional suppliers are held to the same standard as Queensland based retailers?

## 2.2 Advertising and promotion of smoking products at retail premises

### Context

Commonwealth, State and Territory laws are in place to prevent smoking products from being advertised and promoted to the community. These restrictions aim to reduce demand for smoking products as part of a comprehensive approach to minimising harm from smoking product use<sup>41</sup>.

Legislative controls commenced with the *Tobacco and Other Smoking Products Act 1998* (the Act) and have been strengthened over time. Most provisions were designed primarily for tobacco and the marketing approaches in place when they were introduced almost two decades ago. Following the inclusion of e-cigarettes in the Act in 2015 retail restrictions also apply to these products. With the exception of amendments to capture e-cigarettes as smoking products, there have not been substantial changes to advertising and promotion provisions following the emergence of e-cigarette products and the digitisation of the marketing environment over the past decade.

### Regulatory framework

#### Queensland

The Act and *Tobacco and Other Smoking Products Regulation 2021* (the Regulation) restricts how retail premises can display, advertise and promote smoking products, including e-cigarettes.

Part 2A, Division 1 and Division 3 of the Act includes provisions that either prohibit or restrict:

- display of products in store
- display of pricing
- where products can be sold in store
- use of business names
- display of signage
- supply of objects or entitlements
- smoking products giveaways
- competitions that promote smoking products
- images of smoking consumption.

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<sup>41</sup> Department of Health. (2017). *National Drug Strategy 2017-2026*. Department of Health. <https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026.pdf>

## Commonwealth

The Commonwealth Government administers and enforces legislated bans on tobacco advertising of tobacco products under the:

- *Tobacco Advertising Prohibition Act 1992* (the TAPA)
- *Tobacco Advertising Prohibition Regulation 1993*

Commonwealth advertising laws ban messaging that may persuade people to buy, smoke, or use tobacco. They are broad in reach defining advertisement as any writing, still or moving picture, sign or other image, any audible message, or any combination of two or more things, which promote smoking or the use of tobacco products. The TAPA bans advertisements and promotion that are:

- in writing, images, audio or video
- signs or symbols, such as trademarks.
- published for the public to see and hear, including:
  - on the internet or other electronic media (e.g. mobile phones)
  - in films, videos or radio programs
  - on products such as t-shirts.

The TAPA also contains rules governing the format and content of internet point-of-sale tobacco advertising, including content which is permitted, required or prohibited from being included in internet point-of-sale advertising. The Commonwealth Regulation currently governs this field; no State or Territory has passed legislation that expressly deals with internet point of-sale tobacco advertising.

The Commonwealth Government also administers and enforces legislated requirements for the plain packaging of tobacco products under the:

- *Tobacco Plain Packaging Act 2011* (the TPPA)
- *Tobacco Plain Packaging Regulation 2011*

The TPPA regulates the packaging of all tobacco products to ensure that they are provided in plain packaging and labelled with mandatory health warnings. The laws respond to research which shows that industry branding and packaging design on tobacco products can mislead consumers about the harms of smoking, make smoking more appealing and reduce the effectiveness of health warnings on tobacco products.

The Therapeutic Goods Administration (TGA) regulates the advertising of therapeutic goods, including prescription medicines. In Australia, nicotine vaping products, such as nicotine e-cigarettes, nicotine pods, and liquid nicotine, are regulated as prescription medicines. The advertising of prescription medicines to consumers is generally prohibited in Australia. However, under a TGA permission a pharmacy that dispenses nicotine vaping products on

prescription may advertise (e.g. promote), with conditions, in limited media, where an individual may obtain nicotine vaping products with a prescription<sup>42</sup>.

### **Interaction between State and Commonwealth law**

Commonwealth instruments have not been amended to capture advertising and promotion of e-cigarettes and related products.

To the extent that there is any inconsistency between the Commonwealth Government and State and Territory laws relating to tobacco advertising, the Commonwealth Government prevails. Where a State or Territory law is more restrictive than, but not inconsistent with, the Commonwealth Government law, then a State or Territory law usually continue to apply. This applies to all aspects of advertising except for point-of-sale tobacco advertising for which state law applies in all cases.

### **Other jurisdictions**

All Australian jurisdictions have legislation in place restricting advertising and promotion of smoking products at retail outlets. While the intention of bans on advertising and display is very similar across States and Territories, provisions vary significantly in design and drafting.

Australian jurisdictions:

- completely prohibit display of smoking products
- significantly restrict display of price
- place limits on business advertisements
- restrict where products can be stored and accessed.

Some jurisdictions:

- have a positive licensing scheme which allows further controls on retail practices
- prohibit sponsorship activities by tobacco manufacturers, distributors or retailers.

All States and Territories place controls on e-cigarettes under their respective tobacco legislation. Queensland, New South Wales, Tasmania, Australia Capital Territory, South Australia and the Northern Territory capture the products as smoking products applying the same controls imposed for tobacco products. In Western Australia e-cigarettes have been determined to resemble tobacco products and cannot be sold.

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<sup>42</sup> Department of Health. (2021). *Advertising nicotine vaping products to the Australian Public*. Department of Health Therapeutic Goods Administration. <https://www.tga.gov.au/advertising-nicotine-vaping-products-australian-public>

**Table 8. Section 2.2, Jurisdictional comparison of controls on advertising and promotion of smoking products at retail premises**

	QLD	NSW	ACT	VIC	TAS	SA	WA	NT
<b>Prohibit display</b>	Y	Y	Y	Y	Y	Y	Y	Y
<b>Restrict display price</b>	Y	Y	Y	Y	Y	Y	Y	Y
<b>Limit business advertisement</b>	Y	Y	Y	Y	Y	Y	Y	Y
<b>Limit storage/ access to products</b>	Y	Y	Y	Y	Y	Y	Y	Y
<b>Positive licensing scheme</b>	N	N	Y	N	Y	Y	Y	Y
<b>E-cigarettes are smoking products by law</b>	Y	Y	Y	Y	Y	Y	N	Y

### Problem

The emergence of e-cigarette products in recent years has increased efforts by retailers and product manufacturers to find avenues to advertise and promote smoking products. Current advertising and promotion provisions, designed to reduce demand for smoking products, were mainly drafted more than fifteen years ago in response to the retail environment, marketing techniques and products of the time.

Over the last 5-10 years there has been an extension in the range of smoking products available with the emergence of e-cigarette products which are now observed to be widely stocked by retailers that have traditionally sold tobacco including; tobacconists, convenience stores, petrol stores and well as retailers new to smoking product supply such as specialist e-cigarette stores, discount and gift stores and others. E-cigarettes containing nicotine can be legally supplied by pharmacies on prescription.

While tobacco remains the dominant smoking product category, e-cigarettes continue to grow in popularity especially with adolescents and young adults. The latest available data shows that e-cigarette use is rising. In 2018-19, 13% of Queensland adults reported they had tried e-cigarettes, up from 10% in the previous survey (2015-16). In the latest (2017) national school-based survey, 16% of Queensland secondary school students reported they had used e-cigarettes. Subsequent school-based surveys have been delayed due to school closure and other COVID-19 impacts, however indications from international surveys and compliance intelligence are that adolescent use of these products is rising and is higher than available figures indicate. A recent New Zealand study of adolescent e-cigarette use found 27% of

students reported using e-cigarettes in the past week, of those using e-cigarettes three quarters used the products daily and the majority (80%) were using very high nicotine levels (between 24mg-50mg). Only a very small number (2%) reported using nicotine free products<sup>43</sup>. Anecdotal reports from schools across the State and complaints to Queensland Health indicate that similar level of use by Queensland students.

Tobacco and e-cigarette use harms the health of those who use the products as well as others through passive consumption of second-hand smoke or vapour. The risks of tobacco are well known with smoking harming nearly every organ in the body and causing many diseases, premature death and reducing good health in smokers<sup>44</sup>. Evidence on the risks to health from e-cigarette use continues to emerge, while they have a lower risk profile compared with tobacco, e-cigarettes are not without substantiated harm to health<sup>45</sup>. There is growing evidence that e-cigarettes with and without nicotine contain a range of toxic chemicals and cancer-causing agents. E-cigarettes have also been found to promote or prolong tobacco smoking. In addition there is now strong evidence that e-cigarettes are a gateway to nicotine addiction and smoking for young people. A recent global review of the evidence on e-cigarette use for Australian Governments found that “among people who have never smoked or are current non-smokers, those who use e-cigarettes are, on average, around three times as likely to take up smoking of combustible cigarettes as those who have not used e-cigarettes.” A more detailed summary of the harms of smoking products is provided at Part 2, Section 1.

Given concerns about e-cigarettes, Queensland is actioning a precautionary approach that is consistent with other Australian jurisdictions and leading international health agencies such as the World Health Organization. Since 2015, the Act has applied to e-cigarette devices and the restrictions for tobacco sale, display, advertising, and promotion also apply to these products, the aim of this action is to reduce harm by minimising demand.

As interest in e-cigarette use intensifies, retailers and manufacturers are testing limits of regulatory controls to exploit perceived gaps and maximise advertising and promotion of both tobacco and e-cigarettes. The provisions preventing advertising and promotion under the Act are wide-ranging but were drafted prior to the availability of e-cigarettes, and prior to wide-spread use of digital platforms for marketing and promotion. In combination that has resulted in retailers acting beyond the intent of the provisions to:

- use digital platforms (Facebook and other social media) to promote the store’s available smoking products, competitions, giveaways and other promotions

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<sup>43</sup> Asthma & Respiratory Foundation NZ. (2021). *A 2021 Report into Youth Vaping: The ARFNZ/SPANZ vaping in NZ youth survey*. Asthma & Respiratory Foundation NZ. <https://www.asthmafoundation.org.nz/assets/images/A-2021-report-into-youth-vaping.pdf>

<sup>44</sup> Winstanley, M.H., & Greenhalgh, E.M. (2019). 3.0 Introduction. In M.M. Scollo & M.H. Winstanley (Ed.), *Tobacco in Australia: Facts and issues*. Cancer Council Victoria. <https://www.tobaccoinaustralia.org.au/chapter-3-health-effects/3-0-background>

<sup>45</sup> Greenhalgh, E.M., & Scollo, M.M. (2018). 18B.5 *Safety and health risks of e-cigarettes*. In M.M. Scollo & M.H. Winstanley (Ed.), *Tobacco in Australia: Facts and issues*. Cancer Council Victoria. <https://www.tobaccoinaustralia.org.au/chapter-18-harm-reduction/indepth-18b-e-cigarettes/18b-5-safety>

- providing 'give-away' promotional bags at a nominal fee, e.g. five cents
- displaying multiple mandatory and permitted signs to signal availability of smoking products
- use the exemption for smoking products as a part of the business name to register and display additional names to promote a range of smoking products.

Some social media platforms have self-regulatory community or commerce standards that aim to prohibit promotion and trade in tobacco and/or e-cigarette content, however these may not apply to content posted by brick-and-mortar entities that sell tobacco or e-cigarettes.

The growth in e-cigarette advertising and promotion is primarily targeted at minors and young adults and is expected to continue to increase demand for these products leading to increased uptake of nicotine use and increased harm to health.

Queensland's legislative controls apply to retail premises and seek to reduce demand in these environments for smoking products, increasingly digital marketing platforms are an extension of the retail premises and are being used to drive demand for in-store purchase.

Internet point of sale, or ecommerce only websites are not retail premises under the Act. Commonwealth law governs the area, placing restrictions on the format of tobacco advertising and content which is permitted, required or prohibited from being included in internet point-of-sale advertising. This has not been extended to include e-cigarettes.

## Objective

The primary objective of government action is to protect health by reducing the demand for smoking products including e-cigarettes.

A further objective of government action is to ensure retailers and enforcement officers have clarity on how regulatory controls on smoking products apply to the supply of e-cigarette products.

## Consideration of options

Options	Description
Option 1	Status quo. No amendment to the current provisions in the Act.
Option 2	Modernise provisions for advertising, display and promotion to improve clarity and consistency.

An option of retailer education was considered to improve clarity and retailer understanding of the application of advertising and display provisions in the modern context. Queensland Health has recently undertaken improvement of communication on web-based materials, retailer guides and liaised directly with industry associations to improve understanding of the restrictions. While education and communication will continue to play a key role in

supporting retailers to comply with restrictions, in isolation this is not expected to achieve the government objective.

### Option 1. Status quo - no amendment to the current provisions in the Act

Option 1 maintains the current provisions under the Act that prevent advertising and promotion of smoking products.

Under this option retailers, manufacturers and wholesalers of smoking products are expected to continue to test the limits of current regulatory controls as they seek to maximise advertising and promotion of tobacco and e-cigarettes. It is expected that advertising and promotion may increase under the status quo if no action is taken to prevent retailers circumventing current regulation in an attempt to increase demand.

**Table 9: Section 2.2, option 1, costs and benefits.**

Stakeholders	Impact
Retailers	Nil- status quo
Manufacturer/wholesaler	Nil- status quo
Community	Nil- status quo
Government	Nil- status quo

#### Assessment

This option does not change or increase the regulatory burden for individuals and businesses. Maintaining the status quo will not contribute to achieving the government objective of protecting the health of Queenslanders by reducing the demand for smoking products including e-cigarettes.

As the interest in these new products is strong amongst minors and young adults, it is expected that advertising and promotion will continue to increase demand. There are well established harms to health associated with the use of tobacco products and growing evidence of harms associated with e-cigarette use.

As e-cigarettes are newer products some retailers may not understand fully the application of the legislative restrictions to these products. Maintaining the status quo will not contribute to achieving the objective of assisting retailers and enforcement officers to have clarity on how regulatory controls on smoking products apply to the supply of e-cigarette products.

## Option 2. Modernise advertising and display and promotion provisions for clarity and consistency

This option will address the variation in advertising and promotional strategies observed between tobacco and electronic cigarettes which occur due to product and price differences, retailer understanding and community attitudes. Modernising will retain the original intent of the provisions but improve application so that restrictions on advertising, display, promotion are clear in the current retail context.

The Act prevents retailers from advertising a smoking product other than at a retail outlet and then limits how this may occur to options specifically provided for in relevant provisions (Part 2A, Division 1). Provision is made for the use of certain business names, display of prices, use of the term tobacconist, how products can be accessed when serving a customer and the display of signage at the point of sale.

The Act also includes bans on promotion of smoking products such as providing objects or entitlements that may promote a product, smoking products giveaways, competitions that promote smoking products or their consumption, or display of an image that promotes consumption of a smoking product.

Under this option amendments will be progressed to clarify the application of these provisions to current marketing approaches to achieve consistency in their application across all smoking products. The purpose is to address regulatory gaps and remove all doubt for retailers and enforcement officers of how provisions restricting advertising, display and promotion apply to the supply of e-cigarettes and related products.

Costs for business relate to steps they may need to take to achieve compliance with the existing provisions as the scope and application is modernised for clarity. Anticipated amendments are discussed below at Table 10 with examples of the observed issues and expected impacts for business provided. The costs and benefits of these options are discussed at Table 11.

Some technical and further amendments are also expected to be made to modernise the provisions including removal of provisions superseded by changes to the product and marketing environment and a review of the definition of advertise.

**Table 10. Section 2.2, Anticipated amendments to modernise advertising and promotion provisions**

Advertising	Observed issue	Clarification	Impact
Online advertising and promotion of a retail premises	Retail premises use digital marketing to promote the products available in store.  For example - websites or social media posts about what is available and new including brands, products,	Modernise to clarify that advertising and promotion restrictions under the Act apply to digital marketing used by a retail premises.  Includes all online formats including websites, social media	Retailers expected to comply with the requirements and cease online representations that do not comply with advertising and promotion provisions in the Act.

Advertising	Observed issue	Clarification	Impact
	flavours of e-liquids, competitions, discounts or imagery of consumption of a smoking product.	or platforms used to promote the retail premises.  Will clarify that image refers to moving or still.	Penalties are in place under for non-compliance (maximum 140 penalty units).  Applies to advertising and promotion associated with Queensland retail premises.
Display of signage at retail point of sale	Businesses are displaying multiple copies of the permitted and mandatory signs as a means to advertise the availability of smoking products.  In addition, display of signs advertising smoking product manufacturers has been observed at point of sale.	Clarify that the only signage permitted at point of sale is one mandatory sign and one permitted sign.  No other signage relating to smoking products, information on smoking product, or regarding manufacturers or wholesalers of smoking products permitted.	Retailers expected to comply with the requirements and ensure that only one of each mandatory sign or permitted sign are displayed.  Penalties are in place for non-compliance with display of the mandatory sign (maximum 20 penalty units).
Certain business names allowed	An exemption in the Act to allow businesses to make reference to smoking products in their business name was included in 2004 to prevent retailers with smoking products as a part of their business name from being in breach of new advertising restrictions introduced at the time.  With the emergence of e-cigarettes at Queensland stores in the last few years, retailers are registering and displaying additional business names at the same premises to advertise that they stock these products.	Clarify that the exemption from advertising restrictions, which allows certain business names, applies to the primary smoking product business located at the premises.  No other business names containing smoking products at the premises will be exempt from breach of advertising provisions.	Retailers expected to comply with the requirements and ensure that the retail premises uses only one business name that makes reference to smoking products.  The intention is to clarify that this practice is not in line with the intention of the exemption and prevent spread of the practice. Retailers that currently have more than one business name containing reference to a smoking product at the retail premises will be Grandfathered and permitted to retain the additional business names (for business names registered and signage installed prior to 1 Jan 2022 until de-

Advertising	Observed issue	Clarification	Impact
	For example - a retail premises selling smoking products and gift items with the business name 'Downtown Smokes' registering and displaying signage at the same premises a business name of 'Uptown Vapes'.		registered or name changed).  Further business names that do not include reference to smoking products would be unaffected.  Penalties are in place under for non-compliance (maximum 140 penalty units).
<b>Display descriptors closely linked with smoking products</b>	<p>Use of terms closely associated with e-cigarettes in advertising and promotion at the retail business either at the premises or online.</p> <p>Terms observed in field include:</p> <ul style="list-style-type: none"> <li>• smoke-less products</li> <li>• reduced harm products</li> <li>• tobacco-free</li> <li>• colloquialisms for e-cigarettes and related products (e.g. Vapes, puff bars, fruit puffs etc).</li> </ul>	Clarify that advertising and promotion restrictions under the Act apply to the display of descriptors closely linked with smoking products.	<p>Retailers expected to comply with the requirements and ensure that descriptors closely linked to smoking products are not displayed.</p> <p>Penalties are in place under for non-compliance (maximum 140 penalty units).</p>

Promotion	Observed issue	Clarification	Impact
<b>Sample packs or products provided for a nominal fee</b>	Offers of e-cigarette sample packs provided for a nominal fee (e.g. five cents) a bag as a special promotion to promote a smoking product store.	Clarify that offers of nominal fee products are considered equivalent to giveaways when they are used to promote the sale of a smoking product.	<p>Retailers expected to comply with the requirements and ensure that smoking product give-aways are not used to promote smoking products.</p> <p>Penalties are in place under for non-compliance (maximum 140 penalty units).</p>

Promotion	Observed issue	Clarification	Impact
Display of a moving image	Retailers of e-cigarettes have been observed to locate a television at the retail point of sale showing a documentary about the benefits of e-cigarettes.	Clarify that display of an image that promotes a person or thing consuming or being associated with smoking products relates to image that are moving or still.	Retailers expected to comply with requirements and ensure that no such images moving or still are displayed.  Penalties exist for non-compliance (maximum 140 penalty units).

**Table 11. Section 2.2, Option 2, costs and benefits**

Stakeholder	Benefits	Costs
Retailers	Clarity on the application of provisions to current smoking products and current marketing approaches.  Minimising risk of breaches through improved clarity.	Retailers take steps to comply with the requirements and cease advertising and promotion representations that do not comply with provisions in the Act.  Potential for reduced sales.
Manufacturer/wholesaler	Nil	Potential for reduced sales.
Community	Improves clarity that e-cigarettes are smoking products and cannot be promoted in ways not provided for in the Act.  Reduces harm by minimising smoking product advertising, lower rates of uptake of smoking products; and support for persons trying to quit smoking.	Nil
Queensland Government	Improved understanding of and compliance with advertising and promotion will assist to reducing demand for products.  Contributes to reducing harm from use of smoking products.	State-wide training and materials.

## Assessment

Option 2 ensures that provisions to restrict advertising, display, promotion, and sponsorship are a clear in the context of current smoking product range and the available marketing strategies.

Option 2 does not increase the regulatory burden on retailers as the original intent of the legislation is maintained. Rather, it will provide clarification and improve retailer understanding of how provisions restricting advertising, display and promotion apply to the supply of e-cigarettes and related products. This approach is expected to assist in achieving the government objective of reducing the negative health effects of smoking product use by reducing demand. This will contribute to reducing smoking uptake and supports current smokers in their attempts to stop using smoking products.

While some retailers may be concerned that further restrictions are being applied, the intention is to provide clarification and ensure that restrictions on display, advertising and promotion have significant coverage for tobacco and e-cigarette products. It will improve consistency in the application of provisions to both tobacco and e-cigarette supply.

Retailers who have implemented advertising and promotion approaches that are non-compliant with clarified provisions may need to make adjustments (e.g., change signage, remove displays) at cost to the business, to become fully compliant. While penalties are in place the intention is to move towards rectifying non-compliance through clarification and education.

## Consultation

The Department of Health undertook initial engagement with community stakeholders regarding the objectives of the Act inviting organisations to share any relevant matters regarding current or future measures designed to reduce the impact of smoking on the Queensland community.

The Department met with peak associations for retail including National Retail Association (NRA), Australian Lottery and Newsagents Association (ALNA), and Master Grocers Association (MGA). The NRA were supportive of measures to strengthen retail controls on all smoking products, ALNA noted that retail is volatile at present and seek opportunity to ensure members can prepare for changes and similarly MGA sought communication opportunities to support their members.

Requests for action on the supply of illicit tobacco and introduction of a licensing scheme to assist with monitoring and control of non-compliant retailers was the primary concern for each of the associations. These measures are discussed at section 2.1 and 3.1 of this document.

## Recommendation

Maintaining the status quo is not expected to be effective in reducing the harm as efforts to update information and advocate for compliance through retail associations have not yielded a change. In addition, under the status quo there would be no further clarity for retailers about the advertising and promotion requirements as they apply to current smoking products and digital advertising practices. Maintaining the status quo would not achieve the objectives and deliver the required benefits.

Option 2 is the recommended option as undertaking a program of modernisation will contribute to reducing the demand for smoking products including e-cigarettes by ensuring that retail advertising and promotion aligns with the provisions of the Act.

Costs to business are not increased as they are associated with being compliant with existing controls, which would be modernised for clarity. Option 2 also delivers clarity on the application of advertising and display restrictions for supply of e-cigarette products to retailers and enforcement teams. This will assist retailers to avoid breaching the controls and be compliant with restrictions.

The intention of government action is to resolve observed non-compliance through modernisation and clarity. Rectifying and ensuring that retailers and the community understand the scope of restrictions is the key focus of the recommended option. Penalties in the Act for provisions will be actioned for continued non-compliance following a period of education on modernised provisions.

This option is limited to Queensland retail premises and promotion of products supplied at their stores as this is the limitation of the provision made by the Act. Internet point of sale businesses are not subjected to the same controls. For tobacco products this is regulated by the Commonwealth, e-cigarettes are not recognised as smoking products by Commonwealth regulatory instruments.

Option 2 is therefore considered to most appropriately balance maximum effectiveness with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

## Consistency with other policies and legislation

### Competition principles

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

The approach taken will be to support retailers to improve compliance with existing regulations. Concession will be made to Grandfather businesses that have registered multiple smoking product names, which may impact competition between existing and future retailers. However, this is considered a reasonable balance to reduce the impact to existing businesses, while achieving the aim of preventing promotion of this type continuing and spreading.

## Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered.

## Implementation and evaluation

### Implementation

Implementation of option 2 would occur through legislative amendment to modernise provision in the Act and subordinate legislation as required to clarify the scope of the provisions in the current retail and marketing context. Penalties already in place for the provisions and would remain unchanged.

The Department of Health will develop a communication and engagement plan and implement activities to raise awareness of clarified requirements among retailers. In line with current legislative enquiry processes and previous implementation of new legislated controls, any additional impact of increased queries can be managed within existing human and financial resources.

## Compliance

Queensland Health Environmental Health Officers undertake compliance monitoring and enforcement of retail provisions under the Act. Queensland Health's regulatory model includes both proactive and reactive compliance including audits and inspections, compliance promotion and enforcement activities.

It is anticipated that a period of education and community awareness about the modernisation and clarification of advertising and promotion restrictions would initially occur through peak retail associations and through the provision of information materials on Queensland Government website. Following this, a period of proactive compliance monitoring and enforcement of the legislative requirements proposed under option 2 will be undertaken.

Ongoing compliance would be assessed through a combination of proactive and reactive monitoring by Queensland Health enforcement officers. Potential breaches of the requirements reported by the community would be investigated by enforcement officers and appropriate action taken including issuing warnings, penalty infringement notices (PIN) or undertaking prosecution.

## Evaluation

Achievement of the objective will be evaluated by monitoring compliance and population survey data:

- Smoking and cessation trends will be monitored through State population health surveys. These surveys are usually conducted every two years.
- Compliance assessment of the advertising and promotion requirements will indicate if the measures are being adhered to. This information will provide evaluation data on the number, frequency and type of breach at retail premises.

Evaluation of this proposal would be simplified if the proposed introduction of a licensing or registration scheme for retailers selling smoking products was concurrently introduced. Such a system would enable direct communication with affected retailers regarding the application of advertising and promotion restrictions.

## Stakeholder questions

2.1	The recommended option is to modernise provisions in the <i>Tobacco and Other Smoking Products Act 1998</i> about advertising, display and promotion to improve clarity and consistency (option 2)? Please advise if you agree or disagree with this option and why.
2.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
2.3	Would you modify any aspect of the recommended option (option 2)? Please provide details.
2.4	Please provide any evidence on whether implementation of option 2 will assist in reducing demand for smoking products.
2.5	Please provide evidence of any additional benefits you expect to occur from implementation of the recommended option (option 2)

## 2.3 Supply of smoking products at liquor licensed venues

### Context

Smoking products can be supplied at different retail channels including liquor licensed venues. A key difference in supply at liquor licensed venues is that, unlike other smoking product retailers who are restricted to supplying smoking products from a single service area, liquor licensed venues may supply products from a service area (such as a bar or bottle shop) in addition to tobacco vending machines. Tobacco vending machines may only be provided at liquor licensed premises. It is estimated there are around 800 tobacco vending machines at liquor licensed venues across Queensland.

### Regulatory framework

Under the *Tobacco and Other Smoking Products Act 1998* (the Act), liquor licensed venues are permitted to supply tobacco products from vending machines, as well as from a single service area such as a bar or a bottle shop. The Act does not place a limit on the number of vending machines that can be provided at a licensed venue.

In Queensland, tobacco vending machines are directly accessed by customers and no interaction is required with a staff member. This is different to some Australian jurisdictions that require staff operation of vending machines (see table 12). Under the Act, liquor licensed venues with a commercial hotel, community club or special facility (casino) licence are permitted to have onsite tobacco vending machines that:

- sell cigarettes packs only, not loose tobacco, blend or other smoking products (e.g. e-cigarettes)
- are placed within five metres of a bar area where staff can easily observe usage
- are placed within one metre of a gaming machine where staff can easily observe usage
- display the mandatory retail sign
- have compliant price tickets
- do not have signage promoting smoking products.

It is the responsibility of the licensee of the venue to ensure the tobacco vending machine meets all legislated requirements including price tickets and the placement of the machine. This responsibility rests with the licensee regardless of ownership or business interest in the machine.

As the responsible person, the licensee must ensure that tobacco vending machines are monitored and take prevention measures including training staff to ensure that there is no access by minors. They must also obtain written evidence from each employee acknowledging that they have received these instructions which include:

- taking reasonable steps to ensure that a child does not obtain a tobacco product from the vending machine, even if the product is for, or claimed to be for, an adult
- sighting acceptable evidence of age for a person before allowing the person to obtain a tobacco product from the vending machine, unless satisfied the person is an adult.

For clarity, a venue with an on-site bottle shop is generally considered to be one venue. In this instance, smoking products may be supplied from vending machines in addition to a bar area or bottle shop.

The Act also prevents suppliers or their employees from using promotional strategies to increase the sale of smoking products such as offering loyalty programs, upselling tobacco with purchase or otherwise drawing attention to the sale of smoking products.

### **Other jurisdictions**

Queensland's current legislative approach to the supply of smoking products at liquor licensed venue is consistent with Victoria, Western Australia and the Northern Territory. That is, tobacco products can be supplied from behind a service area (e.g. a bar or cash register point) and through supervised vending machines that are directly accessed by the customer.

New South Wales and South Australia also permit service area supply in addition to tobacco vending machines in liquor licensed venues, but staff involvement is required to facilitate vending transactions. Tasmania requires that all sales occur from a single point of sale that is a service area, and tobacco vending machines can only be located in areas accessed by staff e.g. behind the bar.

The Australian Capital Territory permits supply from behind a service area but has banned vending machines outright. Internationally, tobacco vending machines are banned in numerous countries including England, Ireland and Scotland, as well as thirty European countries<sup>46</sup>.

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<sup>46</sup> The Regional Office for Europe of the World Health Organization. (2013). *European Tobacco Control Status Report 2013*. World Health Organization. [euro.who.int/\\_data/assets/pdf\\_file/0011/235973/European-Tobacco-Control-Status-Report-2013-Eng.pdf](http://euro.who.int/_data/assets/pdf_file/0011/235973/European-Tobacco-Control-Status-Report-2013-Eng.pdf)

**Table 12. Section 2.3, Jurisdiction comparison of supply of smoking products at liquor licensed venues**

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
<b>Service area, including vending behind bar</b>	Y	Y	Y	Y	Y	Y	Y	Y
<b>Patron operated tobacco vending machines</b>	Y	Y	N	Y	Y	N	N	N
<b>Staff operated tobacco vending machines</b>	N	N	Y	N	N	Y	N	N
<b>Tobacco vending machines not permitted in public areas</b>	N	N	N	N	N	N	Y	N
<b>Ban on all tobacco vending machines</b>	N	N	N	N	N	N	N	Y

## Retail context

As Queensland does not operate a retailer registration scheme there is limited information available regarding the supply of tobacco products at liquor licensed venues.

Euromonitor data indicates that volume of sale in Australia at liquor licensed hotels, restaurants and bars is considerably lower than other retail channels such as supermarkets, tobacconists and convenience stores. When measured in terms of millions of sticks the amount supplied in these venues is negligible (see Table 13).

**Table 13: Section 2.3, Volume of the Australia tobacco cigarette market, by retail channel, millions of sticks<sup>47</sup>**

Retail channel	2016	2017
Supermarkets	8,244.4	7,734.2
Tobacconists/Tobacco specialists	2,652.7	2,489.0
Convenience stores	1,703.1	1,560.9
Petrol stations (Forecourt retailers)	934.5	857.8
Independent grocers	904.3	829.7
Other ('Non-grocery specialists' and 'Food/drink specialists')	301.4	281.2
Internet retailing	135.6	140.6
Newsagent-tobacconist/Kiosk	150.7	126.6
Hotels, restaurants, bars	30.1	28.1
Vending machines	15.1	0.0
<b>Total cigarette sales volume</b>	<b>15,072.0</b>	<b>14062.2</b>

In Queensland a business decision by liquor licensed venues to supply smoking products is likely to be influenced by the availability of an on-site smoking area. The Act makes provision for venues with a commercial hotel, community club or special facility (casino) licence to provide areas where smoking and drinking can occur together; there are around 2,300 such venues in Queensland. The availability of these areas at a venue makes the sale of smoking products more likely. Restaurants or cafes hold different liquor licence types and may only allow smoking in areas where no food or drink is permitted, consequently these venues are unlikely to supply smoking products.

<sup>47</sup> Adapted from: Scollo, M., & Bayly, M. (2021). 10.6 *Retail value and volume of the Australian tobacco market*. In M. Scollo, & M. Winstanley (Ed.), *Tobacco in Australia: Facts and issues*. Cancer Council Victoria.  
<http://www.tobaccoinaustralia.org.au/chapter-10-tobacco-industry/10-6-retail-value-and-volume-of-the-australian-tobacco-market>

In 2018, Queensland Health surveyed 1,500 liquor licensed venues eligible to provide smoking and drinking areas about smoking and the sale of tobacco at their venue<sup>48</sup>. The survey found that around half sold tobacco products (54%). Of those that sold tobacco products the most common method of sale was by tobacco vending machines (62%) followed by sale across the bar (29%) and sale through a bottle shop (25%), around 16% sold tobacco using multiple methods (bar or bottle shop in combination with vending).

The Queensland Hotels Association and Clubs Queensland advised in recent consultation that the presence of tobacco vending machines in venues was still evident but declining<sup>49</sup>. This decline is likely to continue as demand for tobacco decreases but it is anticipated that this will occur over an extended period and be further delayed by tobacco wholesalers and tobacconists subsidising machines as a promotional tool to increase demand.

The survey also asked about the importance of tobacco sales to the business. Over half of venue managers rated tobacco sales as not being important at all, 14% rated it as somewhat important and 6% as very important to the business.

Venues were asked if they had previously sold tobacco and their reasons for ceasing supply, the most common reasons were declining sales or low demand (30%), too expensive or problematic to stock (15%), compliance obligations (14%), did not want to promote smoking (14%), smoking bans (12%) and theft (11%).

For venues continuing to sell tobacco products, around one in three reported that they did so to keep customers happy or prevent them leaving to purchase cigarettes elsewhere. One in four indicated that there were no financial or other advantages to selling tobacco, and a small number (6%) reported that it is profitable to sell tobacco products<sup>50</sup>.

Tobacco vending machines have varied ownership and operation arrangements. Some vending machines are owned and maintained by the licensed venue, while others are owned and maintained by external operators under agreement with the licensed venue. Where ownership is external to the venue, this is typically by tobacco wholesalers or tobacconists, however tobacco vending owners may also include companies that supply other types of vending machines for drinks and convenience or snack foods. Anecdotal information from inquiries about tobacco vending machines suggests that there are a handful of tobacco vending machines operators in Queensland, predominantly large tobacconist franchisors who promote the machines to licensees and maintain and stock the machines. Licensees may be provided with a commission based on tobacco sales, reported to typically range between 5% and 10% of sales<sup>51</sup>.

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<sup>48</sup> McLaren, R., & Haszard D. (2018). *Understanding Designated outdoor smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research for Queensland Health.

<sup>49</sup> Queensland Hotels Association and Clubs Queensland, informal stakeholder consultation, May 24, 2021.

<sup>50</sup> McLaren R. and Haszard D. (2018). *Understanding Designated outdoor Smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

<sup>51</sup> Franchise Direct. *Cost of operating a vending machine*. Retrieved 27 October 2021 from <https://www.franchisedirect.com/vendingfranchiseopportunities/costofoperatingavendingmachine/121/301>

In other situations, control of the vending machine and its profits remain completely with the vending machine supplier. The supplier – often a tobacco wholesaler – may pay a fee for the right to place the machine on those premises and the terms of that placement and the associated fee will be venue-specific<sup>52</sup>.

**Figure 4: Section 2.3, Tobacco vending machines located at Queensland liquor licensed premises.**



## Problem

Direct access by consumers to tobacco products at liquor licensed venues that have smoking and drinking areas is problematic because it increases both the risk of failed quit smoking attempts, and the progression of social or young never-smokers to regular smoking. Declines in smoking across Queensland to date have largely been driven by the prevention of smoking initiation among younger age groups while cessation by current smokers has proven more challenging. This is demonstrated by a decrease in daily smoking rates between 2009 and 2020 of 36%, while over the same time smoking cessation rates increased by just 8.7%<sup>53</sup>.

While the volume of tobacco sales in liquor licensed venues is reported to be low, tobacco vending machines continue to be offered by some venues. Vending machine location has been restricted to observed or adult only areas of licensed venues as means of reducing unauthorised access to tobacco products by minors, but this has not addressed the impact

<sup>52</sup> British American Tobacco Australasia. (2010). *Submission to the ACCC regarding AHA's application for revocation of authorisation A90987 and new authorisation A91257*. Australian Competition and Consumer Commission. <https://www.accc.gov.au/system/files/public-registers/documents/D11%2B927.pdf>

<sup>53</sup> Queensland Health. (2020). *The health of Queenslanders 2020. Report of the Chief Health Officer Queensland*. Queensland Government. Brisbane.

vending has on quit attempts and smoking initiation among young adults. The World Health Organization considers the presence of tobacco vending machines to be a means of advertising and promotion, to protect public health they suggest banning direct access to tobacco, and the provision of tobacco vending machines<sup>54</sup>.

Smoking and alcohol consumption are paired recreational behaviours, smokers report that they smoke more when they drink alcohol, particularly in social environments where these activities are permitted to occur together. There are biological and psychological causes underpinning this, and a dose-response relationship between alcohol and tobacco consumption<sup>55</sup>. Quit attempts are more likely to fail in social environments where combined smoking and drinking are permitted and tobacco products are available for purchase, as in this case in liquor licensed venues<sup>56</sup>.

The continuing presence of tobacco vending machines at liquor licensed venues is also an environmental cue to smoke. This disrupts quit smoking attempts of recent and attempting quitters<sup>57</sup>. The majority of smokers would like to quit smoking, 61% of smokers reported undertaking at least one activity to attempt to quit in the latest National Drug Strategy Household Survey 2019<sup>58</sup>. The prevalence of smokers at liquor licensed venues is reported by stakeholders to be 20%, double the State average of 10% adult smokers, it is assumed therefore a large number of smokers attending these venues will be attempting or preparing to quit smoking.

Liquor licensed venues with smoking and drinking areas provide a unique environment where patrons trying to quit smoking are likely to be tempted to smoke through combined exposure to the smell of cigarettes, visibility of others smoking, direct access to the purchase of tobacco products<sup>59</sup>, and increased impulsivity brought on from alcohol consumption<sup>60</sup>.

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<sup>54</sup> WHO Framework Convention on Tobacco Control. (2021). *Challenges in domestic courts to tobacco vending machine bans (WHO FCTC articles 13 and 16)*. McCabe Centre for Law and Cancer. <https://untobaccocontrol.org/kh/legal-challenges/domestic-courts/vending-machines/>

<sup>55</sup> Shiffman, S., and Balabanis, M. (1996). *Do Drinking and Smoking Go Together?* Alcohol Health and Research World, 20(2), 107-110.

<sup>56</sup> Burton, S., Hoek, J., Nesbit, P. & Khan, A. (2015). *Smoking is bad, it's not cool...yet I'm still doing it: Cues for tobacco consumption in a 'dark' market*. Journal of Business Research. 68(10), 2067-2074. <https://doi.org/10.1016/j.jbusres.2015.03.004>

<sup>57</sup> Payne, T.J., Schare, M.L., Levis, D.J., & Colletti, G. (1991). *Exposure to smoking-relevant cues: Effects on desire to smoke and topographical components of smoking behavior*. Addictive Behaviors. 16(6), 467-79. [https://doi.org/10.1016/0306-4603\(91\)90054-L](https://doi.org/10.1016/0306-4603(91)90054-L)

<sup>58</sup> Australian Institute of Health and Welfare. (2019) *National Drug Strategy Household Survey 2019*. Australian Institute of Health and Welfare.

<sup>59</sup> WHO Framework Convention on Tobacco Control. (2021). *Challenges in domestic courts to tobacco vending machine bans (WHO FCTC articles 13 and 16)*. McCabe Centre for Law and Cancer. <https://untobaccocontrol.org/kh/legal-challenges/domestic-courts/vending-machines/>

<sup>60</sup> Burton, S., Spanjaard, D., & Hoek, J. (2013). *An investigation of tobacco retail outlets as a cue for smoking*. Australasian Marketing Journal. 21, 234-239. <https://doi.org/10.1016%2Fj.ausmj.2013.08.003>

The age of smoking initiation has increased in recent years, nearing 17 years old for first cigarette in 2019 (up from 14 years of age in 2001)<sup>61</sup>. This demonstrates the success of tobacco control policies with respect to minors and tobacco over time and suggests that the tobacco smoking prevention vanguard now needs to be focussed on older adolescents and young adults.

Young people in licensed venues are particularly vulnerable to tobacco promotion, and these settings have historically been a focus of big tobacco's marketing efforts to young adults<sup>62</sup>. While many of these advertising and promotion opportunities have been removed through successive regulations, direct access to vending machines in licensed venues increases the likelihood that young adult non-smokers in those settings will go on to smoke. A study from the United States analysed the influence of vending machines in adult only areas (e.g. bars) on smoking, finding that young adults (aged 19-31) living in jurisdictions that further restricted vending machine access in these settings were 55% less likely to have smoked recently than those in jurisdictions which allow vending in adult only areas. Consistently living in a jurisdiction with no vending in bars reduced the likelihood of ever smoking<sup>63</sup>.

The tobacco industry continues to pay to have retail outlets in licensed venues despite their relative unimportance as a source of sales<sup>64</sup>, underscoring that the value is not in the direct sales that occur in licensed settings per se, but as a means to recruit and sustain smokers as buyers of tobacco over a longer time period.

## Objective

The objective of government action is to support successful quit smoking attempts and reduce smoking initiation at liquor licensed venues.

## Consideration of options

Options	Description
Option 1	Status quo.
Option 2	Require tobacco vending machines to be staff operated.

<sup>61</sup> Australian Institute of Health and Welfare. (2020). *National Drug Strategy Household Survey 2019*. Australian Institute of Health and Welfare. <https://doi.org/10.25816/e42p-a447>

<sup>62</sup> Sepe, E., Ling, P.M., & Glantz, S.A. (2002). *Smooth moves: bar and nightclub tobacco promotions that target young adults*. American journal of public health, 92(3), 414–419. <https://doi.org/10.2105/ajph.92.3.414>

<sup>63</sup> Vuolo, M., Kelly, B.C., & Kadowaki, J. (2016). *Impact of Total Vending Machine Restrictions on US Young Adult Smoking*. Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco, 18(11), 2092–2099. <https://doi.org/10.1093/ntr/ntw150>

<sup>64</sup> British American Tobacco Australasia. (2010). *Submission to the ACCC regarding AHA's application for revocation of authorisation A90987 and new authorisation A91257*. Australian Competition and Consumer Commission. <https://www.accc.gov.au/system/files/public-registers/documents/D11%2B927.pdf>

Options	Description
Option 3	Require sale of smoking products from service area only (bar or bottle shop).

Consideration was given to a range of options. The options detailed below were deemed likely to contribute in a meaningful way to achieving the objective of supporting successful quit attempts and to reduce smoking initiation at liquor licensed venues. An option of self-regulation to reduce direct access to smoking products was considered and ruled out as unlikely to fully achieve the objective. Queensland Hotels Association noted that there is a trend away from the provision of tobacco vending machines. It is expected that this trend will be slow and further declines are expected to only occur where there is disruption to usual business at the venue, for example the venue undergoes a renewal and the machine no longer fits the area, or management have a change of view on the sale of smoking products at the venue.

The option to prohibit all supply of smoking products at liquor licensed retailers was also considered but excluded on the basis of being anti-competitive and that the objective could be achieved with a less restrictive option.

### Option 1. Status quo

Option 1 maintains the current provisions under the Act. This permits tobacco supply at liquor licensed venues to occur at multiple points of sale (vending machines, and bar or bottle shop service) and allows patrons of these venues to directly purchase cigarettes. As discussed in retail context above it is expected that the supply of tobacco from vending machines is unlikely to change much over the next five years.

**Table 14: Section 2.3, option 1, costs and benefits.**

Stakeholders	Impact
Licensee	Nil- status quo
Vending machine owner	Nil- status quo
Staff	Nil- status quo
Community	Nil- status quo
Queensland Government	No contribution to increasing smoking cessation rates

## Assessment

Maintaining the status quo will continue inconsistency in the supply of smoking products between liquor licensed venues and other types of smoking product retailers. The public will continue to have direct access to tobacco vending machines at some liquor licensed venues and Queensland will continue to lag behind controls on tobacco vending provided by other Australian and international jurisdictions.

The status quo has no additional impact for stakeholders; however it will not contribute to achieving the Government's objective of reducing smoking initiation and increasing quit smoking rates by reducing advertisement of and direct access to tobacco products at liquor licensed venues.

Under this option the provision of tobacco vending machines with direct public access areas will continue. Young people and patrons attempting to quit or who have recently quit smoking will continue to be subject to tobacco promotion and accessibility. This is likely to promote smoking and hinder quitting attempts.

Maintaining the current regulatory framework over the same period will not contribute to achievement of improved quit smoking rates and consequently will not contribute to further reduction in smoking related illnesses.

## Option 2. Require tobacco vending machines to be staff operated

This option would amend the Act to limit direct access to purchasing tobacco products at liquor licensed venues by requiring tobacco vending machines to be operated by staff. Patrons at the venues wishing to buy tobacco from a vending machine would be required to approach staff at a service area (bar) to purchase tobacco products.

This would require the licensee as the operator of the machine, or in consultation with an external operator, to ensure that tobacco vending machines provided at the venue are designed to only be operated by staff. Achieving this may include modification of an existing tobacco vending machine or replacement of a machine with an updated model with this functionality.

The amount of modification required to existing vending machines would be dependent on the type of tobacco vending machine in place but may include options such as:

- reprogramming settings
- addition of a locked barrier/cage segment fixed to the machine
- implementation of a token, remote or other activation system in place of notes, coins or card payment mechanisms.

Tobacco vending machines with the capability to be configured for staff-only access are currently available in Australia as this is a requirement imposed by law in New South Wales and South Australia (since 2008 and 2007, respectively). It is assumed that tobacco vending machines supplied in Queensland will be of a similar design to those provided in other Australian jurisdictions and more than 90% of machines will be modifiable using one of the strategies listed above. Costs of modification will vary. It is estimated that per machine this could range between no additional cost, for example where reprogramming can be performed within existing maintenance schedule, and an estimated upper bound of \$700 for

technician or trade time. Most machines that can take coins can be adjusted to take tokens, as they are designed to be modifiable for different currencies.

It is expected that fewer than 10% of machines (80 machines) will be unable to be modified and will require removal. If a machine cannot be modified it is unlikely to be current enough to be sold, as it will also not meet requirements in other jurisdictions. These may need to be written off or repurposed to supply a different product. These machines are expected to be older than 10 years and have an estimated depreciated value of up to \$10,000.

Replacement costs will vary dependent on the type of machine selected. Wall mounted machines are reported to cost about \$5,000, while floor standing machines are more expensive costing between \$10,000-\$28,000. Floor models are reported as being gradually phased out as they are imported and are expensive to repair as parts must also be imported<sup>65</sup>. Therefore, it is assumed that operators needing to replace machines would do so with wall mounted designs at a cost of around \$5,000 per machine.

Expenses relating to vending machine operation are not expected to change, these may include but are not limited to, general liability insurance, cost of keeping the machine stocked, and traditional business administrative costs. Monthly rental or commissions from external operators to licensees may be in place at some venues and would be unaffected if the machine was modified or replaced.

While this option does not prevent venues from continuing to provide tobacco vending machines, it is acknowledged that some may elect to remove machines and supply/store smoking products only from the service area. To be compliant with the Act, tobacco stored at the service area needs to be behind the counter either above or below counter height in a way that cannot be accessed by patrons. Further, tobacco products must be concealed behind an opaque covering that ensures they are not visible, this covering must not be distinct from surrounding areas.

Costs associated with supplying from the service area may include modification or installation of cabinets for the storage of tobacco products. Some venues may already be supplying from the service area, others may modify an existing drawer or cabinet for the storage of tobacco, and in some instances a new cabinet may need to be fitted. If modification is required, this could include a lock or the addition of an opaque covering the expected range is between \$20 and \$200 for materials and labour to achieve compliance. If a new cabinet is required to be installed this is expected to require no larger than two square metres to accommodate the volume of tobacco understood to be supplied at liquor licensed venues (see Table 13). Estimated costs range between basic cabinetry at \$250 a square metre up to \$2,000 for high end cabinetry<sup>66</sup>.

Venues that elect to remove a machine and supply from the service area may no longer receive commission on tobacco sales or rental income for placement of the machine. In the case of commissions, losses are likely to be off-set by venues directly receiving all tobacco

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<sup>65</sup> Direct communication with vending industry representative (phone conversation, October 2021).

<sup>66</sup> Service Seeking. *Cost of shop fitouts*. Retrieved October, 2021 from : <https://www.serviceseeking.com.au/blog/cost-of-shop-fitouts/>

related profit, rather than a 5-10% share of profit under commission for vending sales. Rental income is unique to location and difficult to estimate as the tobacco industry does not readily disclose its commercial arrangements. Information is sought from industry about this in the questions below.

Assuming the average price for a packet of 20 cigarettes is \$36 (supplied with a margin of 15%) when sold in a tobacco vending machines, each packet will provide a gross profit of \$5.50. From this the licensee under a commission arrangement of 5–10% of profit would receive between twenty-seven and fifty-five cents per packet. Assuming the average tobacco vending machine sells between three and four packets of cigarettes a week<sup>67</sup> this would provide the licensee revenue (at 10% commission) of between \$1.65 - \$2.20 a week or between \$85.80-\$114.40 each year in tobacco sales profit. If the same amount of tobacco was sold directly from the service area the licensee would receive all related profit for an annual average of between \$858-\$1,144. While a larger profit is conveyed in this approach licensees would be required to outlay funds for the initial bulk purchase of tobacco products, time for staff to order, monitor and stock cabinets and an expected difference in wholesale price for a small-scale supplier which could reduce the profit margin. There is limited information on the costs of wholesale or retail tobacco<sup>68</sup>. On balance venues are not expected to be better or worse off.

A benefit of this option for licensees is that the approach will assist their efforts, required by law, to prevent minors from accessing the machine to purchase smoking products. As all patrons purchasing tobacco will instead be required to approach staff for assistance the process of monitoring and verification of age where required will be simplified.

Patrons will be required to queue at the service area to purchase tobacco rather than directly using the vending machine. The time taken for a patron to purchase cigarettes from the service area rather than directly from a vending machine is assumed to increase by no more than 2–15 minutes depending on the layout and how busy the venues is at the time of purchase. The wide variability in venues and patron circumstances precludes measuring this impact in a meaningful way, however it is expected that in practice the impact would be no more than 2-15 minutes additional minutes to access, as most patrons would combine the purchase of smoking products with a planned visit to the service area. Where the venues have multiple bars (casinos, clubs) or the point of sale is from an onsite bottle-shop, the time taken for patrons to move to the single point of sale for tobacco is most likely be in the upper bounds of the increased time to move to the service area for tobacco purchase.

This option has the potential to reduce the impact imposed under current regulatory requirements that mandate constant observation of a vending machine. Instead, staff attention for tobacco sales would only be required to check for proof of age to enable the sale transaction to occur at the service area. Minimal staff training will be necessary in order

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<sup>67</sup> Based on calculations attributing a proportion of 2016 volume data to Queensland's estimated 800 machines.

<sup>68</sup> Scollo, M, and Bayly, M. 13.3 *The price of tobacco products in Australia*. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2021. Available from: <http://www.tobaccoinaustralia.org.au/chapter-13-taxation/13-3-the-price-of-tobacco-products-in-australia>

to ensure staff are familiar with their revised responsibilities for tobacco product sales, this is estimated to be a once off impact of between 2 and 10 minutes per staff member.

A twelve-month period of transition could be considered to allow licensees sufficient opportunity to arrange for and undertake modification to tobacco vending machines.

**Table 15: Section 2.3, option 2, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Liquor licenced venues operators</b>	<p>Reduced requirement for employees to continually monitor tobacco vending machines.</p> <p>Assists licensees to meet their obligations to ensure that youth access to tobacco vending machines and avoid associated penalty.</p>	<p>Provision of staff training on change of process and responsibilities. Time cost of between 2 and 10 mins per training session required.</p> <p>Staff time to facilitate the sale of tobacco products by vending machine expected to be 2-5 minutes per transaction.</p> <p>Modification of service area cabinets (as required) to store smoking products between \$20–\$200.</p> <p>Installation of new cabinets (as required) between \$500–\$4,000 based on 2 square metres.</p>
<b>Vending machine operators</b>		<p>Modification of a tobacco vending machine for staff operation is estimated to cost between nil and \$700 per machine for technician time.</p> <p>Write-off if machine is not modifiable, up to \$10,000 per machine (expected to be up to 80 machines).</p> <p>Replacement of a machine if modification is not feasible, estimated \$5,000 per machine (expected to be up to 80 machines).</p>
<b>Community</b>	<p>Potential health gains for patrons through:</p> <ul style="list-style-type: none"> <li>supporting recent/attempting quitters and those who want to reduce smoking.</li> <li>no access by minors to tobacco.</li> </ul>	<p>Potential increase in time taken for patrons to queue for service of tobacco products, estimated to be between 2 and 15 additional minutes.</p>

Stakeholders	Benefits	Costs
Queensland Government	Contributes to increasing smoking cessation rates.	One off requirement to train compliance officers in new requirements. Estimated to take 10 minutes through online meeting with state-wide enforcement team.

## Assessment

Option 2 would partially achieve the objective of increasing quit smoking rates by reducing advertisement of, and direct access to, tobacco products at liquor licensed venues.

The requirement for staff facilitation of tobacco purchases removes the opportunity for direct access to tobacco products, however tobacco vending machines will continue to be located in public areas of the venue and their presence will continue to act as an advertisement of the availability of smoking products.

This option may assist patrons attempting to quit smoking to avoid a relapse by adding a step in the transaction process and reducing an impulse purchase. Reducing harm by regulating the supply of drugs, including tobacco, is a central theme of the National Drug Strategy's approach to building safe, healthy and resilient communities through preventing, responding to, and reducing alcohol, tobacco and other drugs related health, social and economic harms<sup>69</sup>. It is assumed that options that seek to disrupt supply in line with this strategy will contribute to reducing tobacco consumption.

The presence of tobacco vending machines in public areas will however continue to be a trigger to smoke. This reduces the effectiveness of the option in reducing smoking and increases the risk that young adults who occasionally smoke will through the purchase of tobacco transition to daily smoking.

This option imposes considerable costs to businesses with only partial effectiveness in achieving the objective.

## Option 3. Smoking products can be supplied only from a service area

Under option 3, licensed venues, similar to other retail settings, will be required by law to only supply smoking products from a single point of sale at a service area such as a bar or bottle-shop. Like other retail stores, transactions would be required to be facilitated by a staff member with age verification process occurring as standard.

Tobacco vending machines would not be prohibited but would be required to be located at an area of the venue that is not directly accessible to patrons. This could include behind the bar, behind a counter in a bottle shop, or in a staff or storeroom area. Tobacco vending

<sup>69</sup> Department of Health. (2017) *National Drug Strategy*. Commonwealth of Australia.  
<https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026.pdf>

machines could operate in a storage and dispensing capacity or be removed from the venue. It is expected that payment would be made at the bar cash register and accessed by staff using a token, key or other access mechanism. Tobacco vending companies also have wall mounted machines suitable for location in service areas, which are designed to blend into bar areas<sup>70,71</sup>.

This option aims to ensure that tobacco is not directly accessible and is less visible as a proxy advertisement of tobacco availability. Reducing harm by regulating the supply of drugs, including tobacco, is a central tenant of the National Drug Strategy's approach to building safe, healthy and resilient communities through preventing, responding to, and reducing alcohol, tobacco and other drugs related health, social and economic harms<sup>72</sup>. It is assumed that approaches that seek to disrupt supply in line with this strategy will contribute to reducing tobacco consumption. All supply from a service area, whether through a tobacco vending machine or a cabinet would be required to comply with the current display restrictions including that display is:

- above, or below, but not on a counter where customers are served
- not visible to patrons
- concealed by a covering that is opaque, and is of a colour or design that does not make a feature of the covering as distinct from the surrounds
- capable of preventing more than a fleeting incidental view of no more than one square metre when the products are being accessed.

The Act also prevents suppliers or their employees from using promotional strategies to increase the sale of smoking products such as offering loyalty programs, upselling tobacco with other purchase or otherwise drawing attention to the sale of smoking products.

This option does not prevent the supply of tobacco products at licensed venues. The benefit to recent or attempting quitters will be the reduced presence of triggers and removal of direct accessibility to purchase tobacco products. This is expected to increase the likelihood of successfully quitting and contribute to a reduction in the costs of negative health and social effects smoking on the Queensland community (discussed at Part 2, Section 1). For young people, there will be a less obvious cue of smoking product availability and a barrier to purchase, which may discourage those thinking of experimenting with tobacco.

### **Impacts on volume of tobacco supplied**

It is anticipated that under this option sales would reduce by 50% due to a reduction in the number of attempting quitters and occasional smokers who are prompted to purchase tobacco directly from a vending machine.

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<sup>70</sup> Vending Machines Australia. *Cigarette vending machines for sale*. Retrieved October, 2021 from <https://www.vendingmachinesaustralia.com.au/cigarette-vending-machines-for-sale>

<sup>71</sup> Alibaba. *Bar cigarette vending machine*. Retrieved October, 2021 from <https://www.alibaba.com/showroom/bar-cigarette-vending-machine.html>

<sup>72</sup> Department of Health. (2017) *National Drug Strategy*. Commonwealth of Australia. <https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026.pdf>

Available data on tobacco sales, through vending machines specifically and licensed venues generally, indicates that the volume from tobacco vending machines is very low (Table 13). Based on latest available national volume data (2016) it is assumed that a vending machine supplies on average three or four packets of cigarettes a week or 156 to 208 packets a year<sup>73</sup>. A 50% reduction in sales at an average price of \$36 for a packet of 20 cigarettes (margin of 15%) this would mean a reduction in sales profit of between \$42.70 and \$57.25 (10% commission arrangement) each year to a licensee, and a reduction of between \$390 and \$520 in profits for a vending operator.

### **Impact on provision of tobacco vending machines**

To achieve compliance under this option licensees and vending operators will need to consider viability of tobacco vending machines at the venue with three possible scenarios identified, including that vending machines:

- can be relocated to a service area (e.g. bar or bottle shop)
- are removed and replaced with a different style of machine that fits the service area (e.g. wall mounted)
- removed and no longer provided at the venue.

Costs associated with relocation of a vending machines will vary. Some machines requiring relocation will be floor standing models, these are typically the size of a domestic fridge or smaller (see example at Figure 4) and are likely to be relocatable using a standard fridge trolley expected to be available at most venues. It is assumed that venue staff could facilitate this move safely. Where removalists are required to relocate a machine, it is expected that this may cost in the vicinity of \$75-\$300<sup>74</sup>. Similarly, there may be a small requirement for adjustment to area of the venue where the machine was located, for example if a wall requires repainting or section of carpet requires replacing. It is expected that this would be in the vicinity of \$500, based on handyman costs of up to four hours and costs of materials such as paint or carpet piece<sup>75</sup>. This cost may be offset in some venues by additional space that could be used for seating or an electronic gaming machine.

A venue may elect to supply smoking products from the service area as an outcome of removing the tobacco vending machine. Costs associated with supplying from the service area include potential modification or installation of cabinets for the storage of tobacco products. These costs are the same as those described under option 2. Similarly, venues that elect to remove a machine and supply from the service area may no longer receive commission on tobacco sales, this is expected to be balanced by venues directly receiving all tobacco related profit, rather than a 5-10% share of profit under commission for vending sales, also described under option 2.

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<sup>73</sup> Reference the estimate from Table one and proportional calculation (total volume divided by 5 largest States and averaged across the year)

<sup>74</sup> Canstar. *Removalist costs*. Retrieved October, 2021 from <https://www.canstar.com.au/home-loans/removalist-cost/>

<sup>75</sup> Service Seeking. *Cost of a handyman*. Retrieved October, 2021 from <https://www.serviceseeking.com.au/blog/cost-of-a-handyman/>

For instances where vending machine operators pay licensees to place their machine in the venue, little information is known about the value of this to operators and venues. Information on the financial arrangements under this approach is sought from stakeholders.

Where venues elect to remove vending and no longer supply smoking products, the entire commission or share-profit price will be forgone, as will any rental income.

The costs to tobacco vending machine owners as a result of venues removing machines may amount to about \$4m state-wide, assuming there are 800 machines in the State, 50% (n=400) of which are decommissioned at a current value of about \$10,00 a machine (estimated maximum depreciated cost for machines which are expected to be greater than 10 years old).

A legislated requirement that tobacco vending machines are not located in public areas has been implemented in Tasmania with a reduction over time in supply by vending machines. The Australian Capital Territory has completely banned tobacco vending machines. A twelve-month period of transition could be considered to allow licensees and external operators sufficient opportunity to arrange for and undertake relocation or replacement of vending machines.

**Table 16: Section 2.3, option 3, costs and impacts.**

Stakeholders	Benefits	Costs
<b>Liquor licenced venues operators</b>	<p>Reduced requirement for employees to continually monitor machines.</p> <p>Assists licensees to meet their obligations to prevent youth access to tobacco vending machines and avoid associated penalty.</p> <p>Potential increased floor space in patron areas.</p>	<p>Provision of staff training on change of process and responsibilities. Time cost of 2-10 mins depending per session required.</p> <p>One-off cost time cost for the relocation of the tobacco vending machine to a service area, estimated to be between 10 minutes and 1 hour.</p> <p>Time cost for staff to obtain tobacco products from machine dependant on location of machine estimated range 2-15 minutes.</p> <p>Space previously occupied by a tobacco vending machine may need cosmetic work estimated to cost up to \$500.</p> <p>Potential loss of commission from sales estimated to be between \$42.70 and \$57.25 each year.</p> <p>Potential loss of rental income for tobacco vending machine location.</p> <p>Modification of service area cabinets to store tobacco (as required) between \$20-\$200.</p>

Stakeholders	Benefits	Costs
		Installation of new cabinets to store tobacco (as required) between \$500-\$4,000 based on 2 square metres.
<b>Vending machine owner (licensee or external operator)</b>	Location of vending machine in service staff-only areas may reduce the wear and tear on machines and extend the life of machine.	Costs associated with relocation of machine by removalists where this is required range \$75-\$300.  Potential increase in the number of venues electing to no longer provide a vending machine. Loss of profits estimated to \$390 and \$520 per machine per year. Cost of decommissioned machines estimated to be \$4m state-wide or \$10,00 per machine.
<b>Community</b>	Potential health gains for patrons through: <ul style="list-style-type: none"> <li>• supporting recent/attempting quitters and those who want to reduce smoking</li> <li>• removed potential access by minors</li> <li>• limiting youth exposure to smoking products in licensed settings.</li> </ul>	Potential increase in time taken for patrons to queue for service of tobacco products, estimated to be between 2 and 15 additional minutes.
<b>Queensland Government</b>	Contributes to increasing smoking cessation rates.	One-off requirement to train compliance officers in new requirements. Estimated to take 10 minutes through online meeting with state-wide enforcement team.

## Assessment

Option 3 is expected to achieve the objective of supporting successful quit smoking attempts and reduced smoking initiation by removing direct access to tobacco products, and advertising of tobacco availability through placement of vending machines.

While tobacco products can still be provided at the venue, patrons will be required to locate and move to a service area to purchase tobacco. This measure is expected to prevent to a large extent impulse purchases by new smokers or recent and attempting quitters.

This option has the additional benefit of providing a consistent approach to retail supply of smoking products. For all other retailers the Act requires that smoking products are not within direct access of the community. Re-locating tobacco vending machines to a service or staff only area is consistent with this requirement.

Impacts of this option for licensees and staff predominately relate to relocation of the machine, and additional time to supply tobacco, although this is expected to be low given the reported small volume of sales at these venues. For vending operators the impacts are also associated with the relocation of machines, however this option may result in venues taking the decision to supply tobacco products differently and no longer facilitating the supply of tobacco from vending machines.

This option is expected to be effective in achieving the objective of assisting smokers trying to quit and reducing smoking initiation, the regulatory impact for venues and vending operators will vary on the basis of the ability to come to an agreement on supply arrangements that could be pursued under the limits of this option.

### **Consultation**

The Department of Health undertook initial engagement with community stakeholders regarding the objectives of the Act inviting organisations to share any relevant matters regarding current or future measures designed to reduce the impact of smoking on the Queensland community.

The Department met with peak associations for liquor licensed venues including the Queensland Hotel Association (QHA) and Clubs Queensland.

With regard to sale of tobacco in liquor licensed venues, both associations noted that tobacco vending machines remain available at establishments, but there is evidence that they are in slow decline. It was also noted that tobacco sales currently occur at service areas such as a bar or bottle shop. QHA noted that tobacco vending machines were typically owned by external operators and were likely to be located in venues under a lease or commission agreement.

### **Recommendation**

Option 3 is considered the option which most appropriately balances maximum effectiveness with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

The approach under option 3 ensures that the triggers posed by direct access to tobacco and the role that vending machines play in advertising the availability of tobacco are mitigated. This approach is balanced in so far as it allows the continuation of tobacco sales at venues while further limiting access and the proxy advertisement of products in order to support positive public health outcomes.

Relocating vending machines confers the benefit of reduced exposure for recent or attempting quitters to stimuli likely to trigger a relapse to smoking. It also will reduce the temptation of never smokers to experiment, by virtue of a diminished or less obvious physical space indicating the availability of tobacco, coupled with a new requirement for

patrons to ask for a specific product rather select from a machine. This is particularly important in an environment where social smoking and drinking is permitted<sup>76</sup>.

While tobacco products will remain available at the venue, they will be required to be located similar to other retailers, that is behind a counter, and concealed by an opaque covering that is not distinct from the surroundings. Less prominence of tobacco availability is expected to reduce rather than increase demand as the additional trigger of a tobacco vending machine in the public area is removed. Vending suppliers have acknowledged that tobacco through vending is provided as a convenience for smokers and is not a meaningful source of revenue<sup>77</sup>. This is also evident in the apparent low volume of sales reported by Euromonitor in Table 13. In addition, the cost of smoking products at liquor licensed venues is generally (~10%) higher than supermarkets as they are a convenience product and supermarkets discount below the recommended retail price.

There may be potential unintended consequences of making alcohol and tobacco available for purchase in a single transaction. However, it is unlikely to significantly increase sales of alcohol, as smokers are unlikely to go to the bar primarily for tobacco more than once in a visit. Queensland Health is of the view, based on the reported volume of tobacco sales at liquor licensed venues, that availability at the bar per se is not likely to prompt significantly more convenience or opportunistic purchases of tobacco, as the visual presence of tobacco availability would be low and dominated by other more profitable products.

Option 3 also addresses the inconsistencies under the current regulatory approach in requirements for a single point of sale and for a staff member to verify customer age. This will provide the added benefit of also reducing any risk that children and young people will gain access tobacco through vending machines as they will be in staff only areas and all tobacco supply will be subject to the standard age verification process.

This option is preferred over other options as it delivers greater achievement of the objective. Option 2 is expected to only partially deliver the desired outcome while conferring similar impacts on licensees, staff and vending operators. A continuation of the status quo under option 1 is also not preferred as it will not contribute to the achieving the Governments objective of increasing the success of quit smoking attempts. Patrons attempting to quit or who have recently quit smoking will continue to be exposed to tobacco promotion and direct accessibility to tobacco products and this is likely to continue to hinder their progress in successfully quitting smoking.

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<sup>76</sup> Burton S, Spanjaard D, Hoek J. *An investigation of tobacco retail outlets as a cue for smoking*. Aust J Marketing 2013; 21: 234-239.

<sup>77</sup> British American Tobacco Australia (2010), *Submission to the ACCC regarding AHA's application for revocation of authorisation A90987 and new authorisation A91257*. Available from: <https://www.accc.gov.au/system/files/public-registers/documents/D11%2B927.pdf>

## Consistency with other policies and legislation

### Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered. The preferred option of making smoking products only available from service areas of licensed venues may give rise to concern about vending machines as property in some instances.

Options to compensate non-tobacco industry vending operators have been considered. However, in this instance, the limitations are reasonable and necessary to restrict the availability of products known to be harmful and protect the health of the general public.

### Competition principles

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

Queensland Health assessment is that the proposal will have a neutral impact on competition.

## Implementation and evaluation

### Implementation

Implementation of option 3 would occur through legislative amendment to the Act and subordinate legislation as required. Penalties commensurate with current restrictions would apply to vending machine placement in a public area at liquor licensed venues after the one year phasing in period.

The Department of Health will develop a communication and engagement plan and implement activities to raise awareness of the changed requirements among licensees, employees and the community, prior to the commencement of the changes. In line with current legislative enquiry processes and previous implementation of new legislated controls, any additional impact of increased queries can be managed within existing human and financial resources.

The proposed one year phasing in period for this legislative change will enable retailers time to adjust their practices and modify the physical environment to ensure they are able to comply when the proposal takes effect.

### Compliance

Queensland Health Environmental Health Officers undertake compliance monitoring and enforcement of retail provisions under the Act. Queensland Health's regulatory model includes both proactive and reactive compliance including audits and inspections, compliance promotion and enforcement activities.

It is anticipated that a period of education and community awareness about the legislated changes and associated responsibilities would initially occur with hoteliers and licensed venues through the provision of information materials and a community campaign. Following this, a period of proactive compliance monitoring and enforcement will be undertaken.

Ongoing compliance would be assessed through a combination of proactive and reactive monitoring by Queensland Health enforcement officers. Potential breaches of the requirements reported by the community would be investigated by enforcement officers and appropriate action taken including issuing warnings, penalty infringement notices (PIN) or undertaking prosecution.

### Evaluation

Achievement of the objective will be evaluated by assessing compliance and population survey data:

- Smoking and cessation trends will be assessed over time through State population health surveys. These surveys are usually conducted every two years.
- Compliance assessment of the requirement to supply smoking products from a single service area at liquor licensed venues (including relocating tobacco vending machines) will assist to indicate if the measure is being fully adhered to. This information will provide evaluation data on the frequency and type of breach at liquor licensed venues.

### Stakeholder questions

3.1	The recommended option is to amend the <i>Tobacco and Other Smoking Products Act 1998</i> to ensure that smoking products can be supplied only from a service area at liquor licensed venues (option 3)? Please advise if you agree or disagree with this option and why.
3.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
3.3	Would you modify any aspect of the recommended option (option 3)? Please provide details.
3.4	<p>Please provide any evidence you have about the following things that could assist in better assessing costs and benefits of the options:</p> <ul style="list-style-type: none"> <li>• The number of suppliers of tobacco vending machines in Queensland.</li> <li>• The number of machines operating in Queensland, or per supplier.</li> <li>• The volume of tobacco sales through vending machines.</li> <li>• Value of older free-standing vending machines for resale.</li> <li>• Commission arrangements for sale of tobacco in vending machines between suppliers and licenses.</li> <li>• Lease arrangements for placement of tobacco vending machines.</li> </ul>
3.5	The recommended option assumes there will be less prompts to smoke if smoking products are supplied only from a service area. Please provide any evidence on whether implementation of option 3 will prevent young people smoking and assist smokers to succeed in quitting.
3.6	Please provide evidence of any additional benefits you expect to occur from implementation of option 3.

## 2.4 Sale of smoking products by minors

### Context

The *Tobacco and Other Smoking Products Act 1998* (The Act) controls the retail advertising, sale, display and promotion of smoking products. The Act also restricts where smoking products can be used in public, prohibits supply of certain products and details enforcement authority.

State regulation has the aims of protecting children under 18 years of age (minors) from the harmful effects of smoking and preventing smoking initiation. State controls operate alongside national controls for tobacco that increase the price (tobacco excise), reduce the appeal (plain packaging), inform about harms (mandatory health warnings), and reduce exposure to products (advertising, display, promotion bans). These national controls do not apply to e-cigarette products.

While the demand for tobacco from minors declined following the introduction of State and National measures over the previous two decades<sup>78</sup>, the recent rise in availability and popularity of e-cigarettes has created a resurgence in interest and demand for smoking products amongst persons aged 12-17 years.

### Regulatory framework

In Queensland, retailers are prohibited from supplying a smoking product to children and are required to ensure their employees also do not supply smoking products to children by taking specific prevention measures.

These prevention measures include:

- instructing the employee not to supply smoking products to anyone under 18 years of age in any circumstances, even if the supply is for, or claimed to be for, an adult
- instructing the employee that they must sight acceptable evidence of age for a person before supplying a smoking product to the person, unless satisfied the person is an adult
- warning the employee that should they supply smoking products to a minor they commit an offence against the Act
- employer obtaining written acknowledgement from the employee that they received and understand the instructions and warning.

The employment of people under 18 years of age is governed by the *Child Employment Act 2006* and the *Child Employment Regulation 2016*. This legislation protects children from being required to perform work that may be harmful to their health, safety or that compromises their mental, moral or social development. Under this regulation school aged children of working age (usually 13-17 years) have limits placed on the number of hours they

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<sup>78</sup> Greenhalgh, E.M., Hanley-Jones, S., Grace, C., Hagan, K., Scollo, M., & Purcell, K. (2020). 5.21 *Reducing tobacco access and supply*. In E.M. Greenhalgh, M.M. Scollo & M.H. Winstanley. (Ed.), *Tobacco in Australia: Facts and issues*. Cancer Council Victoria. <https://www.tobaccoinaustralia.org.au/5-21-reducing-tobacco-access-and-supply>

can work on any given school day (four hours) or non-school day (eight hours). This is capped at 12 working hours during a school week and 38 hours during a non-school week.

In addition, Australia is a signatory to the World Health Organization's Framework Convention on Tobacco Control. Article 16(7) states:

Each Party should, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.

### Other jurisdictions

Domestic law to ban the sale of smoking products by minors has recently been implemented by other States and Territories, including the Northern Territory (2019) and Western Australia (2020).

### Retail context

Smoking products remain widely available in Queensland and are sold at a range of retail outlets including supermarkets, tobacconists, convenience/takeaway stores, newsagents and petrol stations.

Precise numbers for smoking product outlets are not available as retailers do not need to register to supply in Queensland. However, from available data it is estimated that there are around 7,400 tobacco retailers across the State<sup>79</sup>. Less is known about more recently established e-cigarette supply in Queensland. Compliance intelligence indicates that these products are now widely available at tobacconists, convenience stores, petrol stations and retail stores that have not previously supplied smoking products such as gift, discount and e-cigarette-specific stores.

The Act requires that smoking products are only supplied from a single point of sale at retail outlets. This requirement functionally limits the number of staff involved at any given time in the supply of smoking products.

It is unclear how many minors are currently involved selling smoking products at retail outlets. Consultation and industry analysis indicate that while minors are involved in the supply of smoking products, a significant portion of supply is performed by an adult. This is based on indications that:

- larger stores such as supermarkets have policies in place to only station adults at the customer assistance counter at which smoking products are supplied

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<sup>79</sup> Queensland Health (2018). *Data gathered from Tobacco Wholesalers – retailers supplied in the previous 12 months* [unpublished data].

- retailers such as petrol stations, clubs, pubs, and wholesalers predominantly employ adults due to nature of the business, duties performed, services or goods provided and late opening hours.

Table 17 provides an estimate of the number of retailers of smoking products across Queensland and outlines where it is assumed retailers may employ minors in the supply of smoking products, including re-stocking and selling.

**Table 17: Section 2.4, Estimate of smoking product retailers employing minors.**

Type of supplier	Estimated number of outlets <sup>80</sup>	Assume minors employed
Convenience store	970	Yes
Large supermarket	787	No
Liquor stores	713	No
Milk bar/takeaway	130	Yes
Newsagent	552	Yes
Petrol station	1354	No
Pubs, clubs and restaurants	1154	No
Small independent supermarket	899	Yes
Tobacconist	545	Yes
Vape specialist store	Unavailable	Yes
Discount, gift store	Unavailable	Yes

<sup>80</sup> Queensland Health (2018). Data gathered from Tobacco Wholesalers – retailers supplied in the previous 12 months [unpublished data]

## Problem

Bans on the advertising, display and promotion of smoking products at Queensland stores are in place to protect minors from becoming familiar with smoking products and viewing their use as a socially sanctioned, desirable and normal activity.

This protection does not extend to minors employed in the sale of smoking products who, in the course of their duties regularly access smoking products that are otherwise required by law to be concealed behind coverings. Through regular handling of smoking products, minors in these roles develop an advanced knowledge and familiarity with brand names, variants, and in the case of e-cigarettes of a vast array of confectionary flavoured products, colourful appealing packaging and novel devices.

Research indicates there is a clear association between product familiarity, regular exposure to advertising/promotion and an increased risk of minors taking up smoking<sup>81,82,83</sup>. With one study finding a 15% increase in the uptake of smoking among youth who reported exposure to cigarette advertising compared to those who did not<sup>84</sup>. A major published review of the literature concluded that the evidence satisfies statistical criteria for determining a causal relationship between the advertising of smoking products and smoking initiation by minors, noting the criteria as:

- temporality - children are exposed to tobacco promotion prior to taking up smoking
- exposure - being exposed to advertising increases the risk of smoking over the non-exposed
- dose-response - the more exposed the population to advertising, the greater the likelihood of taking up smoking
- robust and consistent findings - observed across a large number of studies and populations, and controlled for confounding factors
- causality is theoretically and scientifically plausible
- no explanation other than causality fits the factual evidence<sup>85,86</sup>.

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<sup>81</sup> DiFranza JR, Wellman RJ, Sargent JD, Weitzman M, Hipple BJ, et al. *Tobacco promotion and the initiation of tobacco use: Assessing the evidence for causality*. Pediatrics, 2006; 117(6):e1237-48. <https://www.ncbi.nlm.nih.gov/pubmed/16740823>

<sup>82</sup> Lovato, C., Watts, A., & Stead, L. (2003). *Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours (review)*. Cochrane Database of Systematic Reviews. <https://doi.org/10.1002/14651858.CD003439.pub2>

<sup>83</sup> Lovato, C., Watts, A., & Stead, L. (2003). *Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours (review)*. Cochrane Database of Systematic Reviews. <https://doi.org/10.1002/14651858.CD003439.pub2>

<sup>84</sup> DiFranza, J.R., Wellman, R.J., Sargent, J.D., Weitzman, M., Hipple, B.J., & Winickoff, J. (2006). *Tobacco promotion and the initiation of tobacco use: Assessing the evidence for causality*. Pediatrics, 117(6), 1237-48. <https://doi.org/10.1542/peds.2005-1817>

<sup>85</sup> DiFranza JR, Wellman RJ, Sargent JD, Weitzman M, Hipple BJ, et al. *Tobacco promotion and the initiation of tobacco use: Assessing the evidence for causality*. Pediatrics, 2006; 117(6):e1237-48. <https://www.ncbi.nlm.nih.gov/pubmed/16740823>

<sup>86</sup> Wood, L, Letcher, T, Winstanley, M & Hanley-Jones, S. 5.15 *Tobacco advertising and promotion targeted at young people*. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2020. Available from: <https://www.tobaccoinaustralia.org.au/chapter-5-uptake/5-15-tobacco-advertising-and-promotion-targeted-at>

Research suggests that preventing exposure to smoking product advertising and promotion is a useful strategy to assist with denormalising smoking and reducing smoking initiation<sup>87,88</sup>.

The teenage brain is especially susceptible to the stimulatory and reinforcing properties of nicotine. There is evidence that using nicotine in adolescence harms parts of the brain that control attention, learning, mood and impulse control<sup>89</sup>. In addition the use of nicotine e-cigarettes in youth increases the risk of future addiction to other drugs, most notably the growing evidence of e-cigarette as a gateway to the use of tobacco products<sup>90</sup>. E-cigarette use also presents a risk of exposure to chemicals and toxins at levels that have the potential to harm health including ultra-fine particles that can be absorbed into the lungs, flavourings such as diacetyl which is linked to serious lung harm, volatile organic compounds, cancer causing chemicals and heavy metals such as nickel, tin and lead<sup>91</sup>. Additional information about the concerns regarding harms to health of e-cigarettes is provided at Part 2, Section 1.

While demand by minors for tobacco products has diminished over the last two decades, e-cigarette products which are not subject to national demand reduction controls are highly sought after by minors aged 12-17 years<sup>92</sup>. Minors employed to sell smoking products are directly exposed on a regular basis to marketing strategies designed to increase the appeal of e-cigarettes and attract new consumers. There is considerable evidence that these strategies are constructed to be attractive to minors<sup>93</sup>.

In addition, where minors are relied on for unsupervised supply at a retail store there is a risk that they may access smoking products for their own use or succumb to peer pressure to supply e-cigarette smoking products to other minors. Minors tasked with sale of smoking products may not fully understand or appreciate the health risks associated with smoking or the consequences of selling smoking products to other minors and may commit an offence against the Act. Peer pressure, wanting to avoid negative social consequences or lack of

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<sup>87</sup> Henriksen L, Schleicher N, Feighery E and Fortmann S. *A longitudinal study of exposure to retail cigarette advertising and smoking initiation*. Pediatrics 2010;126(2):232-8. Available from: <http://pediatrics.aappublications.org/cgi/reprint/peds.2009-3021v1>

<sup>88</sup> Melanie Wakefield, Daniella Germain, Sarah Durkin, Lisa Henriksen, *An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays*, Health Education Research, Volume 21, Issue 3, July 2006, Pages 338–347, <https://doi.org/10.1093/her/cyl005>

<sup>89</sup> US Department of Health and Human Services. *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA2016. Accessed July 27, 2018.

<sup>90</sup> Banks E, Beckwith K, Joshy G. *Summary report on use of e-cigarettes and impact on tobacco smoking uptake and cessation, relevant to the Australian context*. Commissioned Report for the Australian Government Department of Health, September 2020. Available at:<http://hdl.handle.net/1885/211618>.

<sup>91</sup> Centers for Disease Control and Prevention. (2021). *Quick Facts on the Risks of E-cigarettes for Kids, Teens and Young Adults*. Centers for Disease Control and Prevention. [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html)

<sup>92</sup> Queensland Health. (2020). *The health of Queenslanders 2020. Report of the Chief Health Officer Queensland*. Queensland Government. [https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0019/1011286/cho-report-2020-full.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0019/1011286/cho-report-2020-full.pdf)

<sup>93</sup> Centers for Disease Control and Prevention. (2021). *Quick Facts on the Risks of E-cigarettes for Kids, Teens and Young Adults*. Centers for Disease Control and Prevention. [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html)

confidence to ask for proof of age may make underage sales more likely by children. Western Australian (WA) passed legislation in late 2018 to prohibit sale by children, the policy was strongly supported with 86% of submissions indicating support or partial support for the proposal. Non-government organisations and individuals concurred that young people were more likely to sell to children and not ask for proof of age<sup>94</sup>.

In meetings with national retail associations where supply of smoking products by minors was discussed it was noted that the approach taken by Western Australia was assisted by a phase-in period for retailers to adjust. There was no indication of adverse effects of the approach raised in discussions.

Government action is required to reduce the considerable risk that minors employed to supply smoking products will, through familiarisation, become regular consumers of smoking products. Young people are greatly influenced by their sense of what is normal and attractive and tend to overestimate the prevalence of smoking and the social acceptability of smoking. Cancer Council Victoria advise in their analysis of the Australian Secondary School Alcohol and Drug Survey (2014) that two in three teenagers wrongly believe 'social' or occasional smoking is harmless<sup>95</sup>. The US Surgeon General's Report notes adolescence and emerging adulthood as stages of life with increased vulnerability to tobacco use, where peer influence is paramount and the marketing efforts of the smoking product industry continue to be targeted<sup>96</sup>.

Compared to those who have never smoked, Australian adult smokers die on average 10 years earlier and have negative health effects that include lung and 18 other types of cancers and neoplasms, cardiovascular diseases, type 2 diabetes, gastrointestinal, hearing and vision disorders, as well as musculoskeletal and neurological and respiratory conditions<sup>97</sup>. Younger age of smoking onset negatively influences likelihood of a successful quit attempt and each year of delayed onset is inversely associated with cardiovascular disease and all-cause mortality<sup>98</sup>.

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<sup>94</sup> Western Australia Department of Health. (2011) *Review of the WA Tobacco Products Control Act 2006*. Government of Western Australia.

<sup>95</sup> Centre for Behavioural Research in Cancer, Cancer Council Victoria (2016). *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2014*.  
<https://www.health.gov.au/sites/default/files/secondary-school-students-use-of-tobacco-alcohol-and-other-drugs-in-2014.pdf>

<sup>96</sup> Centre for Behavioural Research in Cancer, Cancer Council Victoria (2016). *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2014*.  
<https://www.health.gov.au/sites/default/files/secondary-school-students-use-of-tobacco-alcohol-and-other-drugs-in-2014.pdf>

<sup>97</sup> Centre for Behavioural Research in Cancer, Cancer Council Victoria (2016). *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2014*.  
<https://www.health.gov.au/sites/default/files/secondary-school-students-use-of-tobacco-alcohol-and-other-drugs-in-2014.pdf>

<sup>98</sup> Centre for Behavioural Research in Cancer, Cancer Council Victoria (2016). *Australian secondary school students' use of tobacco, alcohol, and over-the-counter and illicit substances in 2014*.  
<https://www.health.gov.au/sites/default/files/secondary-school-students-use-of-tobacco-alcohol-and-other-drugs-in-2014.pdf>

Younger age of smoking initiation is also associated with earlier onset of psychopathology which tobacco use is a risk factor for, such as depression and anxiety disorders<sup>99</sup>.

## Objective

The objective of Government action is to prevent smoking initiation by reducing the exposure of minors to the supply, promotion and advertising of smoking products.

### Consideration of options

Options	Description
<b>Option 1</b>	Status quo. Minors continue to sell and handle smoking products.
<b>Option 2</b>	Retailers adopt self-regulation to prevent the sale and handling of smoking products by minors.
<b>Option 3</b>	Prohibit the sale and handling of smoking products by minors.

## Option 1. Status quo

Option 1 maintains the status quo. Children and young people are permitted to sell smoking products to the adult community, provided they have written evidence that they have undertaken legislated prevention measures regarding their responsibilities for preventing the sale of smoking products to minors.

**Table 18: Section 2.4, option 1, costs and benefits.**

Stakeholders	Impact
<b>Employees/Minors</b>	Nil – status quo
<b>Retailers</b>	Nil – status quo
<b>Community</b>	Nil – status quo
<b>Queensland Government</b>	Nil – status quo

<sup>99</sup> Mumtaz Jamal, M.Sc., A. J. Willem Van der Does, Ph.D., Brenda W. J. H. Penninx, M.D., Ph.D., Pim Cuijpers, Ph.D., *Age at Smoking Onset and the Onset of Depression and Anxiety Disorders*, Nicotine & Tobacco Research, Volume 13, Issue 9, September 2011, Pages 809–819, <https://doi.org/10.1093/ntr/ntr077>

## Assessment

This option does not achieve the objective of preventing smoking initiation through product advertising and promotion. Children and young people will continue to be involved in supply of smoking products as a part of employment with likely exposure to industry marketing of smoking products, including e-cigarettes.

Minors tasked with the supply of smoking products will continue to have increased risk of smoking uptake through their employment in activities that normalise and familiarise them with tobacco and e-cigarettes.

The growing trend in interest and use of e-cigarette products means that continuing with the status quo does not resolve the current risk for children and young people of taking up smoking. It is expected that without action this trend in children and young people's use of e-cigarettes will continue to increase.

### Option 2. Retailers undertake self-regulatory ban on the sale and handling of smoking products by minors

Option 2 involves a policy change within the retail industry for adoption of self-regulation to prevent minors from handling or selling smoking products in Queensland. This option relies on the goodwill of those retailers who sell smoking products and employ minors, to:

- reach agreement to adopt the policy
- amend and implement business practices for consistent and sustainable enactment of the policy to achieve compliance.

Self-regulation would involve retailers ensuring that their employees who are minors do not sell or handle products that meet the definition of smoking products under the Act. For successful achievement of the objective full implementation by retailers of smoking products would be required to occur within a 12-month timeframe.

To achieve this, retailers may need to consider rostering arrangements to ensure that minors are assigned to different duties at the store, or that adult employees are present to action sale and handling of smoking products. It is assumed that capacity to adjust rosters to accommodate the approach will be feasible for many retail outlets. The period of 12 months implementation also provides an opportunity to accommodate employees who are close to achieving adult age.

It is assumed that due to other restrictions imposed on employment of minors such as caps on available times and number of hours as well as recommendation for supervision during financial transactions that many retailers would already have systems in place that allow for an adult to be present or employ adults rather than minors to cover a greater range of working hours.

There may be a disproportionate impact on family-owned businesses and small independent supermarkets that rely more heavily on minors as staff. There may also be a reduction in employment and hours available to minors in some areas. While not expected to be a widespread consequence, this may be the case in regional areas with fewer retail employment options.

Preventing minors from handling and selling smoking products does not prevent them from being employed at a retail outlet per se, and an arrangement could be implemented where

an employee calls for a supervisor when a smoking product transaction is required. Greater impact is assumed for retailers that rely on unsupervised minors to supply smoking products.

Queensland Health would engage with retailers and other relevant stakeholders to develop appropriate education and support materials. It is acknowledged that some retailers already have policies in place to prevent minors from handling or selling smoking products. Engagement with retailers would occur directly or through associations to achieve widespread adoption of a self-regulatory policy to prevent minors from handling or selling smoking products.

**Table 19: Section 2.4, option 2, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Employees /Minors</b>	Reduced regulatory responsibility. Reduced risk of smoking uptake through removal of exposure to smoking products as a part of employment.	Potential for reduction in available employment at retailers.  This is estimated to limit employment at no greater than 30% of retailers that supply smoking products.
<b>Retailers e.g. convenience stores, supermarkets, newsagencies</b>	Reduced risk of employees supplying smoking products in breach of controls.	Small increase in time to undertake for rostering to ensure that adults are available for smoking product supply.  Where required, costs to replace a minor with an adult ranging between \$7.71 and \$11.23 per employee per hour.
<b>Community</b>	Associated reduction in smoking rates brings benefits to the community including reduced exposure to second-hand smoke.	None anticipated
<b>Queensland Government</b>	Contributes to reduction in normalisation and proliferation of smoking uptake and youth access to smoking products.	Develop resources to support engagement with retailers for policy adoption - estimated to cost between \$26,405 and \$46,069 in staff capacity and resource production.  Staff capacity or consultancy arrangement to work with retailers and encourage adoption - estimated to be between \$25,000 and \$50,000.

Note estimated limitation of employment for minors (no greater than 30% of retailers) is based on assumptions:

- that less than half smoking product retailers employ minors in roles that require supply of smoking products (around 3,096 of estimated 7,400 retailers, see information at Table 17).
- of these 3,096 retailers around half (1,692 retailers) actively employ minors to supply smoking products. As these retailers are reported to generally have a low number of employees per establishment (average 3-4), it is expected that most shifts would be undertaken by adults without legislative limits on availability (due to age or education).

## Assessment

This option builds on the status quo by actively encouraging more businesses to take a voluntary policy approach to preventing minors from supplying smoking products. To be effective a sufficient proportion of retailers would need to implement the approach. While some segments of the retail sector are already using this approach it is unlikely that further retailers will adopt the approach swiftly or in sufficient numbers.

There may be a small number of retailers who utilise family members, who are minors, to sell and handle smoking products (for example at small family-run businesses). While some restrictions such as age and maximum hours do not apply to family members employed in a family business, it is assumed that all staff members, family or otherwise, are reimbursed under retail awards and provided safe work environments. For this reason the costs involved in replacing a no-cost family member who is a minor with an adult have not been considered. It is assumed that family members would be paid the minimum wage and so the difference between the cost of a minor and an adult is applied in the range provided.

Worksafe Queensland recommend that minors should be provided with access to supervision<sup>100</sup>. It is assumed therefore, that in most cases staff would be able to call on an adult for the supply of smoking products. Where retailers cannot supplement service in this way or swap duties to replace a minor with an adult there is likely to be a difference in cost. It is expected that this would be in the low bounds of this range with employees supplying smoking products more likely to be around 15-16 years of age given the responsibility associated with the task and the assumption that they are working independently and an adult is not available to conduct the sale.

This approach is not likely to fully achieve the objectives of Government action and may result in an extension of inconsistent approach between retailers with some that do not permit minors to supply smoking products while others continue to allow their involvement.

This approach is also expected to require significant resources from Queensland Health to engage with retailers to promote uptake of the policy. While a non-regulatory approach does allow flexibility for the retail sector, for the expected costs this approach does not efficiently resolve the problem.

## Option 3. Amend the Act to prohibit the sale and handling of smoking products by minors

Option 3 proposes an amendment to the Act to prevent minors from supplying smoking products as defined by the Act and require all handling and sales to be undertaken by an adult aged 18 years or over.

This option has the same processes and considerations discussed for option 2 but the ban on supply by minors would be mandated by law, rather than through self-regulation by

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<sup>100</sup> Workplace Health and Safety Queensland. (2021). *Young Worker Safety Toolkit*. Worksafe Queensland.  
<https://www.worksafe.qld.gov.au/>

retailers. A 12-month phase-in period would be provided to assist retailers to adjust to the requirement.

Western Australia (WA) and the Northern Territory (NT) have implemented a ban on the supply of smoking products by minors. While WA provided a two-year phase in period to allow retailers to adjust to the change, the NT did not provide a phase-in period. Retail associations have indicated that an adjustment period is useful and would enable their membership to adapt to the requirement.

It is acknowledged that the proposed amendment to prohibit the handling and sale of smoking products by minors would be in contrast with existing laws around the sale and service of alcohol. Minors are permitted to supply but not purchase alcohol in Queensland. However the context for supply of these products differs as alcohol supply by minors relates more to the service and catering industries where minors may work as waiters rather than selling the product directly to customers as is the case in a retail context. There is also a requirement to complete detailed training through a registered training organisation on the responsible service of alcohol prior to commencing employment and supervision for the duration of a shift.

**Table 20: Section 2.4, option 3, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Employees/Minors</b>	Reduced regulatory responsibility. Reduced risk of smoking uptake through removal of exposure to smoking products as a part of employment.	Potential for reduction in available employment at retailers.  This is estimated to limit employment at no greater than 30% of retailers that supply smoking products.
<b>Retailers e.g. convenience stores, supermarkets, newsagencies</b>	Reduced risk of employees supplying smoking products in breach of controls.	Small increase in time to undertake rostering to ensure that adults are available for smoking product supply.  Where required costs to replace a minor with an adult ranging between \$7.71 and \$11.23 per employee per hour.
<b>Community</b>	Associated reduction in smoking rates brings benefits to the community including reduced exposure to second-hand smoke.	None anticipated
<b>Queensland Government</b>	Contributes to reduction in normalisation and proliferation of smoking uptake, including youth access to illicit nicotine e-cigarettes and tobacco.	Develop resources to support engagement with retailers for regulation implementation - estimated to cost between \$26,405 and \$46,069 in staff capacity and resource production.

Note estimated limitation of employment for minors (no greater than 30% of retailers) is based on assumptions:

- that less than half smoking product retailers employ minors in roles that require supply of smoking products (around 3,096 of estimated 7,400 retailers, see information at Table 17).
- of these 3,096 retailers around half (1,692 retailers) actively employ minors to supply smoking products. As these retailers are reported to generally have a low number of employees per establishment (average 3-4), it is expected that most shifts would be undertaken by adults without legislative limits on their availability (due to age or education).

## Assessment

The establishment of a state-wide legislated ban would be an effective mechanism for separating youth employment from exposure to smoking product availability, promotion and advertising. As a mandated approach it will be implemented within a prescribed timeframe ensuring that all retailers abide by the same approach. This approach removes any risk that minors will continue to be exposed to smoking product promotion advertising and handling that builds familiarity.

Impacts for stakeholders are more significant under this option as they are mandated and will need to be in place within the prescribed period. Available information indicates that the vast majority of employers will be able to accommodate the change. A 12-month phase in period will assist to mitigate impacts. A similar phase in period was provided in Western Australia for the introduction of the ban on supply by minors that commenced in 2020. The impacts on employees are also more significant but are somewhat balanced by an expected limited loss of employment options, a reduction in regulatory responsibility and a reduced risk of smoking uptake.

## Consultation

Consultation with retail associations indicate that this proposal aligns with the current practice of large supermarkets, and that the vast majority of petrol and convenience franchises, and that newsagents and other convenience outlets could accommodate the change if a phase in period is provided. Mid-size grocery and family operated stores are most likely to be impacted.

An online survey hosted by the Cancer Council Queensland in 2016 sought public responses to smoking controls and future potential controls, including banning sale of cigarettes by minors. The sample of 736 respondents was not representative of the general population, however views expressed provide an indication of public opinion. Prohibition of tobacco sale by minors was supported by 85% of respondents, the highest level of support of the fourteen proposed regulations<sup>101</sup>. Findings of this survey indicate that a positive response can be expected from the general public in response to this proposal.

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<sup>101</sup> The Everyday Health Survey Tobacco Project. (2016). *The Everyday Health Survey*. Cancer Council Queensland.  
[https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco\\_Report\\_v06-1.pdf](https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco_Report_v06-1.pdf)

## **Recommendation**

The status quo is not preferred as while some retailers have discontinued the employment of minors for the supply of smoking products, others actively employ minors in roles that include this function. Under the status quo protection from regular exposure to advertising and promotion of smoking products is only increased for some minors rather than all.

Option 2 outlines a voluntary approach to preventing minors from being involved in the supply of smoking products, which if widely adopted would achieve similar outcomes to option 3, however it is unlikely that voluntary adoption of this approach would achieve sufficient coverage to make it an effective option even with an extended phase-in. Lower impacts for stakeholders are only expected to be the case where the policy it is not adopted and therefore not effective.

Option 3 is the preferred option. A regulatory amendment is the most effective option to achieve the objectives of Government action. Legislating that supply of smoking products by minors is illegal removes any risk that young workers will be regularly exposed to smoking products and related advertising and promotion in their employment. It also reduces the risk of minors succumbing to social pressure to supply other minors with smoking products. The current social and retail context of widespread demand for e-cigarettes by young people and retail practices increases the likelihood that this will occur. This is expected to reduce familiarisation with smoking products and lower the risk of smoking initiation by minors.

Increased compliance activity in response to community complaints and over the course of usual enforcement activities will continue to target and reduce non-compliance with regulatory controls, particularly sales to minors. Preventing minors from supplying these products also reduces the risk that young workers will become enmeshed in this enforcement activity.

Option 3 is therefore considered the option which most appropriately balances maximum effectiveness with expected regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

## **Consistency with other policies and legislation**

The Act was initially passed in 1998 and has undergone numerous amendments over time, including a progressive increase in the number of areas in Queensland to which smoke-free provisions apply, and controls relating to the supply of smoking products such as bans on sale to minors, promotions, display, required signage and so on.

The recommended option is consistent with controls on the supply of smoking products provided under the Act, including prevention of supply to minors and advertising and promotion provisions which aim to reduce the demand and access to smoking products for minors.

## **Fundamental legislative principles**

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered. The preferred option of prohibiting the supply of smoking-products by minors may limit employment rights for minors. However, the limitations are considered reasonable and necessary to restrict the availability of products known to be harmful and promote the health of the general public.

## **Competition principles**

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

Queensland Health assessment is that the proposal may affect business decisions that impact competition. However, the preferred option also supports competition by aligning the practices of all retailers with the current self-regulatory approach taken by some retailing segments.

## **Implementation and evaluation**

Implementation of option 3 would occur through legislative amendment to the Act and subordinate legislation (if required). A penalty would also be established for retailers employing minors for the sale of smoking products, this is expected to be similar to the penalties in place under the Act for failing to prevent sales to minors by implementing prevention measures which has a maximum penalty of 40 penalty units.

The Department of Health will develop a communication and engagement plan and implement activities to raise awareness of the changed requirements among retailers and the community, prior to the commencement of the changes. The Tobacco Laws Service (13QGOV phone line) will also be available to provide information, guidance and signage to support the implementation of the laws. Any additional impact of increased queries would be managed within existing human and financial resources.

A 12-month phase-in period is proposed for this legislative change to enable retailers time to adjust their practices and staffing allocation to ensure they are able to comply with the proposal when it comes into effect.

## **Compliance**

Queensland Health Environmental Health Officers (EHO's) located at Public Health Units have primary responsibility for compliance monitoring and enforcement of the Act, this would apply to the legislative changes proposed under option 3. Compliance is progressed under a contemporary regulatory model which includes both proactive and reactive compliance including audits and inspections, compliance promotion and enforcement activities.

Compliance monitoring and enforcement of the legislative requirements proposed under option 3 will be undertaken by Queensland Health in partnership with retailers and retail associations through the provision of information materials. Members of the community, including employees are encouraged report potential breaches of the Act using the 13QGOV phone line, where required Queensland Health EHOs will investigate and take appropriate enforcement action including providing education and information, issuing warnings and improvement notices, imposing a penalty infringement notices (PIN), or progressing prosecution.

## Evaluation

Achievement of the objective will be evaluated by monitoring compliance and population survey data:

- Prevention of smoking and nicotine e-cigarette uptake will be assessed over time through population surveys of the secondary student cohort which assess smoking rates for persons aged 12–17 years. These surveys are usually conducted every two years.
- Compliance with the requirement to prevent supply by minors will assist to indicate if the measure is being fully adhered to. This information will provide evaluation data on the number, frequency and type of breach across a range of retailer types.

Evaluation of this proposal would be simplified if the concurrently proposed introduction of a licensing or registration scheme for retailers selling smoking products was in place. Such a system would enable direct communication with affected retailers regarding the impacts of the prohibition of sale and handling of smoking products by minors.

## Stakeholder questions

4.1	The recommended option to amend the <i>Tobacco and Other Smoking Products Act 1998</i> is to prohibit the sale and handling (re-stocking, tidying) of smoking products by minors (option 3)? Please advise if you agree or disagree with this option and why.
4.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
4.3	Would you modify any aspect of the recommended option (option 3)? Please provide details.
4.4	What mechanisms exist to reduce impacts on small business of a ban on sale and handling of smoking products by minors?
4.5	Please provide any evidence on whether implementation of option 3 will assist in preventing young people from beginning to use smoking products including e-cigarettes.
4.6	Please provide evidence of any additional benefits you expect to occur from implementation of option 3.

## 2.5 Smoking at liquor licensed venues

### Context

A Designated Outdoor Smoking Area (DOSA) is an area of a liquor licensed venue where smoking and drinking is permitted but no eating, gaming or entertainment can occur. Patrons cannot be served in a DOSA, instead drinks are purchased at a bar to take into the DOSA.

DOSAs were introduced in 2006 when smoking bans for enclosed areas of liquor licensed venues commenced. Provision of a DOSA is an optional business decision that a venue may take to accommodate smokers at the venue. At the time of introduction, the policy intention was that DOSAs were:

- not to be the only useable outdoor area at the premises, or where patrons spend extended periods of time socialising. Accordingly, at least 50% of the outdoor licensed should be provided as smoke-free area
- intended to be an outdoor area where patrons can smoke before returning to their group or companion
- intended for smokers only, and not as a preferred place for families or children. Controls imposed to achieve this included no food or drink to be consumed or served, no gaming machines, no entertainment and limits on the size of a DOSA
- not intended to be overly inviting as this may encourage both smokers and non-smokers to use the area and expose patrons to second-hand smoke over longer periods of time.

When DOSAs were introduced the adult smoking rate in Queensland was 19%. The smoking rate has since reduced to 10% in 2020. This decrease has largely been driven by reductions in smoking uptake, particularly among young Queenslanders<sup>102</sup>. While the prevalence of smoking has almost halved since 2006 when DOSAs were introduced, over the same period the provision of DOSAs is unchanged. Almost 2,000 eligible liquor licensed venues continue to provide at least one DOSA, while a small number (5%) prefer to provide an area where smoking-only and no eating or drinking is allowed in place of a DOSA.

### Regulatory framework

Under the *Tobacco and Other Smoking Products Act 1998* (the Act), a DOSA may be provided at venues that hold a commercial hotel licence, community club licence or a commercial special facility licence (that contains a casino) under the *Liquor Act 1992*.

Legislated requirements for DOSAs, include:

- venues may have more than one DOSA, but the total area of all DOSAs must not be more than 50% of the whole outdoor liquor licensed area
- each DOSA must have a buffer on perimeter wherever it is next to other parts of an outdoor area that are ordinarily accessed by patrons. A buffer indicates a separation

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<sup>102</sup> Queensland Health. (2020) *The health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane.

between smoking and no-smoking areas. There are two options for the buffers, either a two-metre-wide area in which patrons cannot eat, drink or smoke or a 2.1-metre-high screen that is impervious to smoke

- it is a legal requirement that the remaining outdoor licensed area is no-smoking
- no gaming machines or entertainment can be in a DOSA
- food cannot be taken into or consumed in a DOSA, and no food or drink may be served to patrons in a DOSA
- staff can enter a DOSA to clear glasses and empty ashtrays
- the licensee must prepare and implement a Smoking Management Plan for the entire premises. The plan must:
  - identify DOSAs
  - identify outdoor areas where food is served
  - identify buffers
  - state how the licensee will minimise the exposure of staff and patrons to second-hand smoke
  - describe the training given to staff to ensure the laws and the plan are complied with
  - provide for signage in the premises to clearly identify where smoking is or is not allowed.

The Smoking Management Plan is kept at the venue, it is not submitted to Queensland Health for approval. Further there is no requirement for the plan to be updated or renewed within a specified timeframe. The venue is required to display a sign in or near the DOSA stating that the plan is available for perusal on request. Enforcement teams or interested community members can request to view the plan.

Venues are not required to indicate the licensed areas in their Smoking Management Plan. Assessment of the proportion of licensed areas used as a DOSA area may be undertaken by enforcement teams following routine inspections or in response to a report of a suspected breach. Information on the proportion of licensed area used is sought on a case by case basis from the Office of Liquor and Gaming who regulate liquor licences.

A licensee must not allow anyone to smoke at the licensed venue other than in the DOSA. Penalties can apply to a licensee or smoker found to be in breach of the requirements. A venue that elects to have a DOSA is not entitled to also set aside a part of the venue as an area where smoking-only is allowed and no food or drink may be supplied or consumed.

Children's playground areas are located at some hotels and clubs, these are required by law to have a smoke-free buffer of at least 10 metres.

### **Other jurisdictions**

All Australian jurisdictions have legislation in place restricting smoking at outdoor areas of liquor licensed venues. Most jurisdictions restrict outdoor smoking area to no more than 50% of the venue's outdoor space, require buffers between smoking and non-smoking areas, and prohibit eating in smoking areas.

Tasmania (TAS), the Northern Territory (NT) and New South Wales (NSW) also include requirements that DOSAs are not located within four metres of dining areas (NSW), are not near an entry or ventilation intake (TAS) are not greater than other outdoor areas (TAS, NT).

The Australian Capital Territory (ACT) bans children from DOSAs. Under section 9H of the ACT *Smoke-Free Public Place Act 2003*, a licensee commits an offence if they fail to ensure there are no people aged under 18 in a DOSA.

### **Problem**

Current regulatory controls are insufficient to adequately reduce the risks to public health posed by DOSAs at liquor licensed venues which include:

- second-hand smoke exposure for patrons and staff
- reduced likelihood of successful quit smoking attempts.

### **Exposure to second-hand smoke**

It is well established that second-hand smoke causes coronary heart disease and lung cancer in non-smoking adults and induces and exacerbates a range of mild to severe respiratory effects in infants, children and adults<sup>103</sup>. There is increasing evidence that second-hand smoke exposure is associated with psychological distress<sup>104</sup>. More information about the negative effects of second-hand smoke on health is available in Part 2, Section 1.

Second-hand smoke exposure occurs at venues providing DOSAs through:

- patrons spending time in the DOSA, including non-smokers
- smoke drifting from the DOSA into adjoining enclosed and outdoor areas
- children accompanying adults into the DOSA.

Many Queenslanders spend time at liquor licensed venues that provide DOSAs such as hotels, community clubs or casinos. In 2017, just over half of Queensland adults visited these venue types at least monthly, and 36% visited at least once across the year<sup>105</sup>. The majority of patrons (79%) at these venues are not smokers (52% never smokers and 27% ex-smokers)<sup>106</sup>.

In 2017, close to a million Queenslanders (946,000) reported spending time in a DOSA and more than half were non-smokers<sup>107</sup>. Time spent by non-smokers in DOSAs most often occurs

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<sup>103</sup> US Department of Health and Human Services. (2006) *The health consequences of involuntary exposure to tobacco smoke: A report of the surgeon general*. Atlanta, Georgia: Centers for Disease Control and Prevention. Available from: [http://www.cdc.gov/tobacco/data\\_statistics/sgr/sgr\\_2006/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2006/index.htm)

<sup>104</sup> Zeng YN and Li YM. *Secondhand smoke exposure and mental health in adults: A meta-analysis of cross-sectional studies*. Soc Psychiatry Psychiatr Epidemiol, 2015. Available from: <http://www.ncbi.nlm.nih.gov/pubmed/26661619>

<sup>105</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

<sup>106</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

<sup>107</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

when patrons accompany family and friends who smoke into the DOSA, this is significantly more likely for patrons aged 18-34 years<sup>108</sup>.

The existing provisions for DOSAs under the Act unintentionally contribute to, or are inadequate to control, exposure to second-hand smoke. Queensland Health investigations indicate that the way provisions are implemented by liquor licensed venues can also reduce their effectiveness<sup>109</sup>. Investigations have found that:

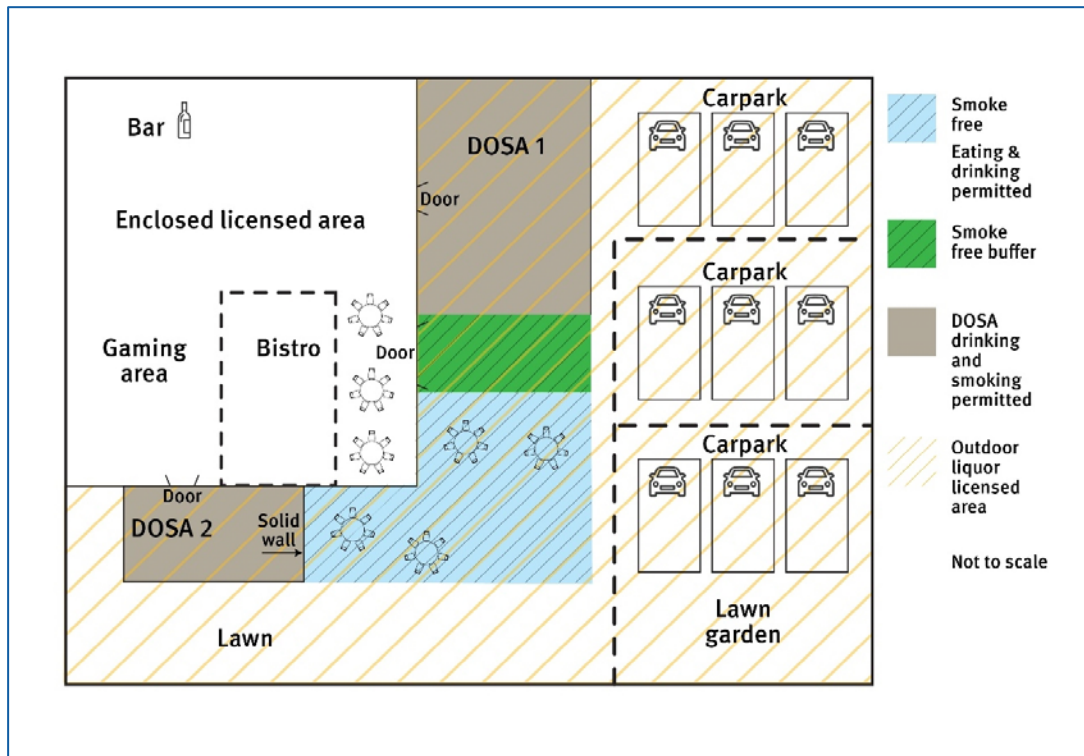
- larger DOSAs (relative to usual functional licensed area) can be established at venues where the licensed area also includes the carparks, gardens and grounds (by law a DOSA should not occupy more than half of the total outdoor licensed area), see example at Figure 5
- there are insufficient controls to prevent smoke-drift from DOSAs into other areas of the venue:
  - there is no legislative requirement for a buffer between the DOSA and enclosed areas, venues often have large bi-fold doors or windows between these areas and when these are open the smoking and non-smoking areas are not separated, see example at Figure 6
  - DOSAs are often placed in thoroughfares or entrances, including some public footpaths
- DOSAs are positioned or provided with amenity that encourages use by smoking and non-smoking patrons:
  - placement that provides views of entertainment at other areas of the venue or sporting fields (by law no entertainment can be provided in a DOSA)
  - attractively or comfortably furnished.

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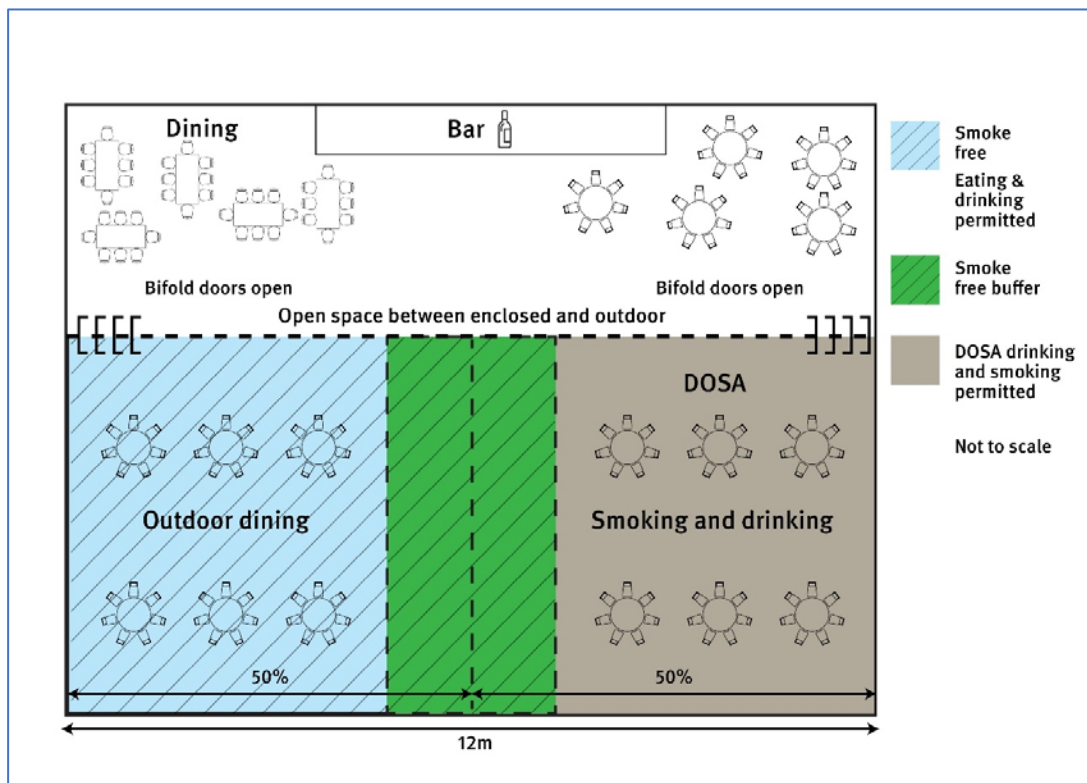
<sup>108</sup> McLaren R. and Haszard D. (2018). *Understanding Designated outdoor Smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

<sup>109</sup> Queensland Health. (2018) *Liquor Licensed Venue Inspection*. [Unpublished report]. Queensland Health.

**Figure 5: Section 2.5, Example of venue layout showing DOSA size relative to outdoor licensed area.**



**Figure 6: Section 2.5, Example venue layout showing no buffer between DOSA and enclosed area.**



There is no provision in the Act to prevent children from spending time in a DOSA. The Queensland Hotels Association indicate that some of their members have a policy of no children in DOSAs, there is no clear indication as to how many venues have this policy, it is assumed that this is around half of all DOSA eligible venues. Children have little or no control over the area of a venue they occupy, including time spent in a DOSA with exposure to second-hand smoke.

**Smoking and drinking areas lead to failed quit smoking attempts**

Smoking and alcohol consumption are paired recreational behaviours, smokers report that they smoke more when they drink alcohol, particularly in social environments where these activities are permitted to occur together<sup>110</sup>. Research also indicates that quit smoking attempts are more likely to fail in social environments where combined smoking and drinking are permitted and tobacco products are available for purchase<sup>111</sup>.

This is consistent with Queensland Health data which found that the presence of a DOSA at a venue influences the smoking choices of patrons. Two thirds (64%) of patrons who smoke report they are more tempted to smoke when a DOSA is provided, and around half report lower confidence in being able to resist smoking<sup>112</sup>.

While there have been declines in smoking across Queensland, these have largely been driven by reductions in smoking uptake, particularly among young Queenslanders, in comparison gains from smoking cessation are more modest. Between 2009 and 2020 daily smoking rates decreased by 36%, over the same time smoking cessation increased by 8.7%<sup>113</sup>.

**Objective**

The primary objective of Government action is to reduce the negative health effects of exposure to second-hand smoke at liquor licensed venues.

A secondary objective of Government action is to support smokers at liquor licensed venues to succeed in their attempts to quit smoking.

**Consideration of options**

Options	Description
Option 1	Status quo

<sup>110</sup> Shiffman, S., & Balabanis, M. (1996). *Do Drinking and Smoking Go Together?*. Alcohol health and research world, 20(2), 107–110.

<sup>111</sup> Burton, S., Hoek, J., Nesbit, P., & Khan, A. (2015). *“Smoking is bad, it’s not cool...yet I’m still doing it”: Cues for tobacco consumption in a ‘dark’ market*. Special Issue on Problem Gambling, Drinking, and Smoking, 68(10), 2067–2074.

<sup>112</sup> Queensland Health. (2017) *Queensland preventive health survey*. [Unpublished].

<sup>113</sup> Queensland Health. (2020) *The health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane.

Options	Description
Option 2	Require smoke-free buffers between DOSAs and enclosed venue areas
Option 3	Restrict DOSA access to adults
Option 4	Reduce the outdoor licensed area that can be used for a DOSA
Option 5	Prohibit drinking in DOSA area
Option 6	Combined hybrid of options 2, 3 and 5

Consideration was given to options that are realistic and achievable. A self-regulatory option was considered inappropriate given the scope of regulatory controls that are already in place for smoking in liquor licensed venues.

Completely removing DOSAs from liquor licensed venues was also considered and dismissed as unviable given the preference presented by industry in consultation meetings that DOSAs should continue to be an option for venues. Assessment indicates that the objectives of reducing exposure to second-hand smoke could be achieved with a less prohibitive option.

Reducing the number of DOSAs that a venue can provide was another option given consideration and dismissed. Queensland Health research indicates that the majority of venues have one (49%) or two (34%) DOSAs, this has been stable since 2011<sup>114</sup>. Only a small number of venues provide more than four DOSAs<sup>115</sup>. Preference has been given to exploring options that achieve the objectives while retaining alternatives that allow venues to accommodate their requirements.

Finally, consideration was given to amending the *Tobacco and Other Smoking Products Regulation 2021* to increase the requirements of the Smoking Management Plan. This could include requiring that the plan specifies the total liquor licensed area and proportion of this area provided as a DOSA, and is updated annually for submission to Queensland Health. While this approach would improve compliance information and investigation for current DOSA restrictions it was assessed as unlikely to lead to reduced exposure to second-hand smoke or to increase the success of quit smoking attempts at venues. The outcomes would not provide a benefit that justifies the regulatory burden this approach would impose on industry and government. This approach was therefore not further explored.

<sup>114</sup> McLaren R. and Haszard D. (2018). *Understanding designated outdoor smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

<sup>115</sup> McLaren R. and Haszard D. (2018). *Understanding designated outdoor smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

## Option 1. Status quo

Option 1 maintains the current provisions under the Act which allow certain liquor licensed venues to provide a DOSA that meets specified requirements. In addition, venues would also continue to develop and make available a Smoking Management Plan detailing how exposure to second-hand smoke will be reduced at the venue.

**Table 21: Section 2.5, option 1, costs and benefits.**

Stakeholders	Impact
Licensee	Nil – status quo
Staff	Nil – status quo
Community	Nil – status quo
Queensland Government	Nil – status quo

### Assessment

There is no safe level of exposure to second-hand smoke. Maintaining the status quo will continue to risk public health, which conflicts with the objective of government action to reduce exposure to second-hand smoke at liquor licensed venues.

While there is an indication from consultation that DOSAs are beginning to take less prominence at liquor licensed venues, available evidence is that the pace of this change is, and will continue to be, slow.

## Option 2. Require smoke-free buffers between DOSAs and other venue areas

This option proposes an amendment to the Act to introduce smoke-free buffers between DOSAs and enclosed areas at liquor licensed venues.

Currently the Act requires that a DOSA must have buffers on its perimeter wherever it is adjacent to other parts of the outdoor area ordinarily accessed by patrons. Each buffer must be either:

- a screen, impervious to smoke, at least 2.1 metres high
- an area at least two metres wide in which patrons are not permitted to eat, drink or smoke.

This option would extend the DOSA buffer requirements to also include the perimeter of a DOSA when it is adjacent to enclosed areas of the venue.

Creation of a buffer between enclosed and outdoor areas could be achieved at venues by:

- closing an existing opening between the areas (e.g. window or door)

- relocating DOSAs away from entrances
- installing an impervious screen.

To achieve compliance with this approach venues that have a non-permanent opening (e.g. doors or windows) can introduce measures to ensure that the opening remains closed, or is used to gain entry between areas but is otherwise closed. This could be achieved using an automatic door closing function (costs range between \$85 to \$756<sup>116</sup>), or the installation of free signage to request the door remains closed after use.

At venues (for example) with a large permanent opening or bifold doors designed to remain open while the venue is in use, the DOSA could be relocated a minimum of two metres away from the opening or moved to another area. Impacts associated with relocation of the DOSA area include re-positioning venue furniture, plants and other amenities to increase the eating and drinking areas and decrease the DOSA size. It is assumed that this could be achieved by staff at the venue as the relocation of tables and chairs is within the scope of usual employee activities (e.g. to accommodate groups or specific events).

Where a buffer between the DOSA and the enclosed area cannot be achieved, venues could install a solid screen at least 2.1 metres high and impervious to smoke to achieve the smoke-free buffer. Costs associated with this approach include installation of an impervious screen such as a stud wall, glass or Perspex panels. Costs associated with implementing these changes could range between \$40 and \$120 per hour for a carpenter<sup>117</sup>, plus the cost of materials ranging up to \$320 per square metre for laminated glass<sup>118</sup>.

Other regulatory controls which apply to DOSAs would continue unchanged including the requirement for buffers to separate the DOSA from other outdoor areas, that food cannot be taken into or consumed in the DOSA, that no food or drink can be served to patrons in the DOSA and that no gaming machines or entertainment may be provided in a DOSA. Venues would also be required update their Smoking Management Plan, detailing how exposure to second-hand smoke will be reduced at the venue including the new buffer areas.

Licensees have an obligation to ensure that DOSA buffers are compliant with requirements and may incur a penalty if non-compliance occurs, this penalty would continue and apply to new buffer requirements. This amount is set at a maximum of 140 penalty units and is consistent with penalties for non-compliance with other obligations to prevent gaming, eating and entertainment in DOSAs.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-

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<sup>116</sup> Bunnings. *Door hardware, door closers*. Retrieved October, 2021 from <https://www.bunnings.com.au/products/building-hardware/door-hardware/gas-struts-door-closers>

<sup>117</sup> Hipages. *Carpenter costs*. Retrieved at November, 2021 from: [2021 How Much Does a Carpenter Cost? - hipages.com.au](https://hipages.com.au/2021-How-Much-Does-a-Carpenter-Cost/)

<sup>118</sup> Hipages. *Glass and glazing costs*. Retrieved at November, 2021 from <https://hipages.com.au/article/how-much-does-glass-and-glazing-cost>

free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 22: Section 2.5, option 2, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Licensee</b>	Nil	<p>Revise Smoking Management Plan for the premises. Estimated time cost of up to two hours.</p> <p>May require automatic door mechanism costs range between \$85 to \$756.</p> <p>May need to change layout or relocate DOSA involving:</p> <ul style="list-style-type: none"> <li>relocation of furniture. Estimated time cost up to three hours.</li> <li>installation of solid buffer walls. Range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials.</li> </ul> <p>Monitor compliance with buffer requirement.</p>
<b>Community</b>	Reduced negative health effects of exposure to second-hand smoke.	Smokers need to move further away from enclosed area to smoke.
<b>Queensland Government</b>	<p>Contributes to reducing the negative health effects associated with exposure to second-hand smoke.</p> <p>Patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.</p>	Nil

Note:

- There are around 2000 venues in Queensland that provide a DOSA.

### Assessment

The creation of a buffer between enclosed and outdoor areas will reduce exposure to second-hand smoke for patrons at venues, including patrons not located in the DOSA. Queensland Health research indicates that smoke drifts between enclosed and outdoor

areas with three quarters of patrons reporting that they can smell smoke from the DOSA when located in the enclosed area of a venue<sup>119</sup>.

There will be additional costs and regulatory requirements on liquor licensed venues under this approach. The extent of the impact will be relative to the required change at a venue to achieve a buffer. For some this will be very minor (e.g. moving furniture) while for others this may include structural changes. It is assumed that more than half of venues will be able to create the buffer with without structural change.

Introducing a buffer between enclosed and outdoor DOSA areas will provide enclosed areas with the same protections afforded under the Act to patrons in adjacent outdoor areas. The current inconsistency in protection has been observed by Queensland Health Environmental Health Officers (EHOs) in the field, often in response to complaints about smoke-drift from a DOSA into an enclosed area. There is no recourse under the current provisions to prevent this from occurring.

Assessment of compliance by EHOs will continue in response to complaints and as part of proactive checks on smoke-free laws.

### Option 3. Restrict DOSA access to adults

This option would amend the Act to prevent children from spending time in a DOSA. Other regulatory controls which apply to DOSAs would continue unchanged, including the requirement for buffers to separate the DOSA from other outdoor areas, that food cannot be taken into or consumed in the DOSA, that no food or drink can be served to patrons in the DOSA and that no gaming machines or entertainment may be provided in a DOSA. Venues would also be required to maintain a Smoking Management Plan detailing how exposure to second-hand smoke will be reduced at the venue including ensuring children do not spend time in the DOSA.

As some DOSAs are located in public access areas, such as council footpaths or at an entry to a venue, the restriction would not apply to persons moving through the area. The restriction would prevent children from being seated or otherwise located for periods of time in the DOSA.

It is anticipated communication with patrons will be sufficient to achieve compliance with requirements and no amendment to DOSA design is required. Queensland Health would support the communication requirement through state-wide messaging and free signage.

Some venues may need to reassess the use of a DOSA, for example sporting clubs such as bowls and golf that have DOSAs located on the green. Clubs that wish to engage children in their sport may be required to modify use of the area to ensure that smoking does not occur when children are present. In this instance clubs can manage the use of DOSA areas through:

- communicating to club patrons that the sporting area does not function as a DOSA during times when children are attending for sport

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<sup>119</sup> McLaren R. and Haszard D. (2018). *Understanding Designated outdoor Smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

- using a different DOSA when children are participating at the club, if multiple are available.

While the Act prohibits smoking within 10-metres of children's organised sporting events this does not typically apply at venues that have DOSAs where sport is played. This is due to the definition of under-age sporting events which applies to organised sports intended for, or predominantly participated in, by children. In the case of bowls and golf clubs the number of children relative to adults is likely to be low and this ban will not apply.

Parents or guardians who choose to smoke at a venue will not be permitted to take their children into the DOSA. This will require them to arrange for children to remain with a companion or group they are with at a suitable part of the venue, while they smoke in the DOSA. Alternatively, parents or guardians can delay smoking until they leave the venue, further lowering the risk of children being exposed to second-hand smoke. This impact is consistent with existing regulations for well-established bans at enclosed public places where smokers need to plan for and manage their smoking, for example while attending a shopping centre, community library, cinema or concert.

The advice from hotel and community club associations has been that they support children not being permitted in a DOSA, noting that this is already implemented by some members. Queensland Health has not been advised that the approach, where already implemented, leads to unintended consequences such as young children being left unattended at a different part of the venue while a parent smokes in the DOSA.

Licensees have a current obligation to ensure that no food is taken into or consumed in a DOSA. Meeting the requirement to prevent children from spending time in a DOSA will be an extension of this obligation for the licensee under the Act and penalty for non-compliance may apply. This is typically 140 penalty units. However, provision for an occupier defence will be considered, similar to those in place under the Act for smoking at an outdoor eating and drinking area (s 26Z). Under this approach it would be a defence for the licensee to prove that they could not have reasonably been expected to be aware of the breach, or that they took action to prevent the breach and this was not complied with.

**Table 23: Section 2.5, option 3, costs and benefits.**

Stakeholders	Benefits	Costs
Licensee	Potential benefit to clubs seeking to attract younger members to the club to play sport.	Revise Smoking Management Plan for the premises. Estimated time cost of up to two hours.  Time to install free signage, estimated to be 10 to 15 minutes (one-off).
Staff	Nil	Monitor DOSA area to ensure children are not present.
Community	Provision of greater smoke-free areas resulting in children's reduced	Parents and adults responsible for minors will not be permitted to bring them into the DOSA and will need to

Stakeholders	Benefits	Costs
	exposure to second-hand smoke while at the venue.	ensure they are safely supervised by another member of the group.
Queensland Government	<p>Contributes to reducing the negative health effects associated with exposure to second-hand smoke.</p> <p>Patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.</p>	Initial development of communication materials (for download) and enforcement team training at an estimated cost of \$4,500.

Note:

- There are around 2000 venues in Queensland that provide a DOSA.

## Assessment

This option contributes to achieving the objective of reducing exposure by ensuring that children do not spend time in a DOSA. Children are vulnerable to the impacts of second-hand smoke and do not typically have control over where they spend time.

Venues are not expected to need adjustment of DOSA layout to achieve compliance with this requirement, the installation of signage and communication with patrons through the venues usual mechanism is expected to be sufficient. A small number (bowls and golf clubs) may need to adjust the use of the DOSA if children attend to play sport at the club. It is assumed that most clubs have multiple DOSAs and this could be accommodated by restricting smoking at one or more DOSA while children attend the club for sport.

Assessment of compliance by Environmental Health Officers will continue in response to complaints, and proactive checks undertaken on smoke-free areas as a part of usual business. Venues will be required to take steps to ensure children do not spend time in the DOSA, moving through will not be taken as spending time in a DOSA. A defence will be considered where venues could not have been expected to know a child was in the DOSA or where they have taken steps to rectify the child's presence in the DOSA which was not complied with.

## Option 4. Reduce the outdoor licensed area that can be used for a DOSA

Under this option the Act would be amended to reduce the maximum area that can be provided for DOSAs to no greater than 25% of the whole outdoor liquor licensed area.

Other regulatory controls which apply to DOSAs would continue unchanged including the requirement for buffers to separate the DOSA from other outdoor areas, that food cannot be taken into or consumed in the DOSA, that no food or drink can be served to patrons in the DOSA and that no gaming machines or entertainment may be provided in a DOSA. Venues would also be required to update their Smoking Management Plan detailing how exposure to second-hand smoke will be reduced at the venue.

The impact of reducing DOSA size for businesses will vary on the basis of the amount of licensed space available and the proportion currently used to provide as DOSA. To be compliant with requirements this may result in:

- no impact for venues that are currently using 25% or less of licensed outdoor area for DOSAs
- a requirement to reduce the size of the DOSA for venues using more than 25% of the outdoor licensed area for DOSAs.

At venues required to reduce the area provided for DOSAs the impacts and related costs may include:

- reducing the size of a DOSA
- repurposing the function of a DOSA.

The amount a DOSA needs to be reduced at a venue to achieve compliance with this approach will be proportionate to the area currently in use as a DOSA. Venues that use the current maximum of 50% of outdoor licensed area will need to halve the area used as DOSA, others may require less reduction to achieve compliance with new arrangement. Smoking Management Plans are not required under the Act to list the proportion of licensed area used for DOSAs, this is assessed on an individual basis. There is therefore no aggregate information indicating the number of liquor licensed venues that use the full 50% quota for DOSA areas, compared with a smaller proportion of the licensed area.

Similar to other venue areas, DOSAs contain furniture for patrons' use (including tables and chairs) and may have a horizontal or vertical buffer. A reduction in the size could be achieved through relocation of buffers. Where a horizontal buffer is in place this could involve re-positioning venue furniture, plants and other amenities to increase the eating and drinking areas and decrease the DOSA. It is assumed that this could be achieved by staff at the venue as the relocation of tables and chairs to accommodate large or small groups of change the venue for specific events is within the scope of usual employee activities.

Some venues may require structural changes to the outdoor areas of the venue to reduce DOSA size, this could include the removal or installation of an impervious buffer such as a stud wall, glass or Perspex panels. Costs associated with implementing these changes could range between \$40 and \$120 per hour for a carpenter<sup>120</sup>, plus the cost of materials ranging up to \$320 per square metre for laminated glass<sup>121</sup>.

A venue that provides multiple DOSAs may elect to achieve compliance by repurposing one or more of the DOSAs as an area where food or beverages may be supplied and consumed, and entertainment provided. The costs associated with repurposing a DOSA are similar to reducing the size of a DOSA and could involve furniture and furnishing relocation or structural changes such as the removal or installation of wall.

While there are costs associated with repurposing the size or function of the DOSA, this area will be available for a greater range of functions including dining and entertainment, rather than smoking and drinking only. It is expected that there will be benefits to health for smokers and non-smokers as a result of reducing exposure to second-hand smoke. Smokers

<sup>120</sup> Hipages. *Carpenter costs*. Retrieved November, 2021 from: [2021 How Much Does a Carpenter Cost? - hipages.com.au](https://hipages.com.au/article/how-much-does-a-carpenter-cost/)

<sup>121</sup> Hipages. *Glass and glazing costs*. Retrieved November, 2021 from: [https://hipages.com.au/article/how-much-does-glass-and-glazing-cost](https://hipages.com.au/article/how-much-does-glass-and-glazing-cost/)

would continue to have an area available for smoking at the venue, however smaller DOSAs are also assumed to reduce smokers' time in the DOSA.

Repurposed space could be promoted to entice new clientele including family groups into a wider range of areas at venues. Queensland Hotels Association noted a trend in members seeking to attract patrons by leveraging the growing interest in health and wellbeing in the community<sup>122</sup>. This reorientation aligns with industry analysis indicating that venues will need offer more family friendly experiences or high-quality menu or beverage options in response to a decline in per capita alcohol consumption and changing consumer preferences for healthier meal and drink choices<sup>123</sup>. Cancer Council Queensland found that 84% of respondents supported banning smoking within 10 metres of a child; approximately 75% of respondents said they try to avoid smokers in public places indicating that they are concerned with the health impacts of second-hand smoke and 66% supported banning all smoking in pubs and clubs<sup>124</sup>.

Licensees have a current obligation to ensure that DOSA buffers are compliant with requirements and may incur a penalty if non-compliance occurs, this penalty would continue and apply to new requirements. This amount is set at a maximum of 140 penalty units and is consistent with penalties for non-compliance with other obligations to prevent gaming, eating and entertainment in DOSAs. Queensland's enforcement approach is to educate and rectify non-compliance as a first response with penalties reserved for continued non-compliance or if a resolution cannot be achieved.

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<sup>122</sup> Queensland Hotels Association and Clubs Queensland, informal stakeholder consultation, May 24, 2021.

<sup>123</sup> Matthew Reeves. (2019, June). *Pubs, bars and nightclubs in Australia* (Australia Industry (ANZSIC) Report H4520). Ibisworld.

<sup>124</sup> The Everyday Health Survey Tobacco Project. (2016). *The Everyday Health Survey*. Cancer Council Queensland. [https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco\\_Report\\_v06-1.pdf](https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco_Report_v06-1.pdf)

**Table 24: Section 2.5, option 4, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Licensee</b>	Nil	<p>Venues required to revise their current Smoking Management Plan for the entire premises - estimate time cost up to 2 hours.</p> <p>Venues may need to change the physical layout of DOSA including relocation of furniture. Estimated time cost up to 3 hours.</p> <p>Installation or removal of solid buffer walls is expected to range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials.</p>
<b>Staff</b>	Nil	Nil
<b>Community</b>	<p>Provision of greater smoke-free areas resulting in reduced exposure to second-hand smoke while at the venue.</p> <p>Patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.</p>	Less available DOSA space for smokers.
<b>Queensland Government</b>	Contributes to reducing the negative health effects associated with exposure to second-hand smoke.	Initial development of communication materials (for download) and enforcement team training at an estimated cost of \$4,500.

Note:

- There are around 2000 venues in Queensland that provide a DOSA.

### Assessment

This option is expected to contribute to reducing second-hand smoke and the associated negative health impacts at licensed premises at venues currently using greater than 25% outdoor licensed area as a DOSA.

It is expected that the impact on liquor licensed venues will vary based on the proportion of outdoor area already being used as a DOSA. Venues that are already using 25% or less of the outdoor licensed area will have no impact, and there will be little reduction in second-hand smoke. The impacts and benefits are relative to the proportion of a DOSA that needs to be reduced is greater.

DOSAs are designed to suit the environment they are located in and the impact associated with modifying the environment to achieve compliance with new requirements is expected to vary by venue. It is assumed that at least half of venues could achieve compliance with the requirements without undertaking structural adjustments.

Assessment of compliance by Environmental Health Officers will continue in response to complaints, and proactive checks on smoke-free areas as a part of regular business.

### Option 5. Prohibit drinking in DOSA

Under this option the Act would be amended to prevent drinks, alcoholic or non-alcoholic from being taken into a DOSA and consumed.

This approach builds on and complements the existing restrictions for DOSAs which include the requirement for buffers that separate the DOSA from other outdoor areas, that food cannot be taken into or consumed in the DOSA, that no food or drink can be served to patrons in the DOSA and that no gaming machines or entertainment may be provided in a DOSA. Venues would also be required to update and continue to make available a Smoking Management Plan detailing how exposure to second-hand smoke will be reduced.

Similar to current obligations, under this option licensees would be required to monitor DOSAs to ensure that no drinks are taken into or consumed in a DOSA. Licensees are already required by law to ensure that DOSAs are monitored to prevent food from being taken in and consumed, it is assumed that this surveillance can be extended without additional impact to prevent patrons taking drinks into the DOSA.

While patrons may not be served in a DOSA, currently they may take a drink into a DOSA for consumption. Implementation of this option may result in a loss of income if DOSAs continued to be offered unchanged at the venue and smokers spend long periods in the DOSA without returning to other venue areas to purchase and consume drinks. Queensland Health research shows that three quarters of patrons stay for less than a half an hour in a DOSA (78%)<sup>125</sup>:

- 52% spend 10 minutes or less
- 26% spend 11-30 minutes
- 11% spend 31-60 minutes
- 11% spend more than an hour.

When asked about how removing drinking from the DOSA would influence their use of the space one in five (21%) current DOSA users reported that they would no longer go into them. A further 44% indicated that they would still go into the DOSAs, but for less time.

It is assumed that venues would reorient most of the DOSA space for use as eating and drinking areas as financial gain at hotels, clubs and casinos eventuates from the supply of food or drink rather than smoking. This reorientation aligns with industry analysis indicating that venues will need to consider offering more family friendly experiences or high-quality

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<sup>125</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

menu or beverage options in response to a decline in per capita alcohol consumption and changing consumer preferences for healthier meal and drink choices<sup>126</sup>.

There are a range of possible solutions that a venue may implement to adjust DOSAs, under this option, including that:

- venues repurpose a proportion of the DOSA for the supply of food or drink and create a smaller DOSA where smoking can continue
- venues with multiple DOSAs continue to provide one or more DOSAs for smoking and repurpose remaining DOSAs for the service of food, drink and entertainment
- venues decide to no longer provide a DOSA.

Impacts associated with achieving compliance with the requirement for no-drinking in DOSAs are similar to those described in options 2 and 4 for relocation of furniture and amenities or structural adjustments.

Prohibiting drinking at a DOSA may appear to be an equivalent approach to a venue setting aside an area where no food or drink can be provided but smoking can occur, but in practice DOSAs provide additional protection from second-hand smoke due to the restrictions imposed on these areas, as outlined in table below.

**Table 25: Section 2.5, Comparison of DOSA AND smoking-only area requirements.**

Protection/restriction	DOSA	Smoking only area	Proposal part 2, section 2.6
Requirement for buffers	Y	N	Y
Limit on size	Y	N	N
Ban on food consumed	Y	Y	Y
Ban on drink consumed	N	Y	Y
Ban on entertainment	Y	N	Y
Require a smoking management plan	Y	N	N
Require signage to indicate areas	Y	N	Y

Under an option recommended in Part 2, Section 2.6 of this document, smoking-only areas at outdoor eating and drinking places would be subject to increased restrictions including provision of a two-metre buffer around the smoking-only area, no food or drink to be taken

<sup>126</sup> Matthew Reeves. (2019, June). *Pubs, bars and nightclubs in Australia* (Australia Industry (ANZSIC) Report H4520). Ibisworld.

in or consumed, and no entertainment provided. The provision to set aside an area at an outdoor eating and drinking place for smoking-only is intended to cater to the needs of large outdoor eating and drinking places such as festivals, agricultural shows, or theme parks and zoos. Should this option proceed, DOSAs and areas used for smoking-only will be more aligned. The requirement for a two-metre horizontal buffer that surrounds the entire smoking-only area could make smoking-only areas difficult to accommodate at smaller spaces typical of liquor licensed venues. DOSA restrictions which allow vertical buffer (2.1 metre high screen impervious to smoke) are not available for smoking-only areas but can be used as a buffer at DOSAs. For this reason DOSAs are expected to continue to be the preferred method to accommodate smoking at liquor licensed venues.

Community club and hotel associations have indicated that they see a continuing role for DOSAs as useful dedicated smoking areas given the higher proportion of smokers among liquor licensed venue patrons, compared with the population smoking rate. They further advise that venues apportion DOSAs according to local needs, noting that there is an emerging trend for DOSAs to have less prominence.

Prohibiting drinking in the DOSA is expected to reduce the time patrons spend in the DOSA, thereby reducing their exposure to second-hand smoke.

Licensees have existing obligations under the Act to ensure that DOSAs comply with legislated requirements and they may incur a penalty if non-compliance occurs. This penalty would extend to the requirement that no drink is taken into or consumed in the DOSA. This amount is set at a maximum of 140 penalty units. Queensland's enforcement approach is to educate and rectify non-compliance as a first response with penalties reserved for continued non-compliance or if a resolution cannot be achieved.

**Table 26: Section 2.5, option 5, costs and benefits.**

Stakeholders	Benefits	Costs
Licensee	Nil	<p>Revise Smoking Management Plan for the premises. Estimated time cost of up to 2 hours.</p> <p>May need to change layout or relocate DOSA including:</p> <ul style="list-style-type: none"> <li>relocation of furniture. Estimated time cost up to 3 hours</li> <li>installation or removal of solid buffer walls. Range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials</li> <li>loss of income from patrons remaining in the DOSA instead of returning to other areas to purchase and consume a drink.</li> </ul>

Stakeholders	Benefits	Costs
Staff	Nil	Requirement to monitor DOSA areas to ensure no drinking occurs.
Community	<p>Provision of greater smoke-free areas resulting in reduced exposure to second-hand smoke while at the venue.</p> <p>Patrons that have recently quit smoking or are attempting to quit will spend less time in the DOSA as they will be located for drinking/dining at other areas eater smoke-free area. This is assumed to assist with successful quit smoking attempt.</p>	Patrons who smoke would need to move to the DOSA to smoke. This is estimated to take 10 to 15 minutes on average, noting that some patrons may already use the DOSA in this way.
Queensland Government	<p>Contributes to reducing the negative health effects associated with exposure to second-hand smoke.</p> <p>Patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.</p>	Initial development of communication materials and enforcement team training at an estimated cost of \$4,500.

## Assessment

This option is expected to considerably reduce exposure to second-hand smoke for all patrons and staff at the venue. This is based on the assumption that venues will elect to reduce the area provided as DOSA and encourage smokers to spend the majority of their time at other areas of the venue where drinks, food and entertainment are offered. This approach would see DOSAs align more closely with the original intent as places for smokers to move to briefly when they wish to smoke, and then return to a non-DOSA area.

Smokers will also benefit from a reduction in exposure to second-hand smoke as they are expected to spend less time in DOSAs. This has the potential to reduce their overall exposure. Smokers trying quit will also benefit from venues having more smoke-free area and reduced triggers to smoke. This is expected to assist with increasing the number of successful quit smoking attempts.

This option has greater costs for businesses than previous options as it is assumed that the majority of venues will require degrees of DOSA relocation or repurposing. DOSAs are designed to suit the environment they are located in, and the impact associated with modifying them to achieve compliance is expected to vary by venue. It is assumed that at least a third of venues could achieve compliance with the requirements without undertaking adjustments that are structural.

Under this option venues would continue to have the choice to accommodate smokers by offering a DOSA for smoking.

Assessment of compliance by Environmental Health Officers will continue in response to complaints and proactive checks on smoke-free areas as a part of regular business.

### Option 6. Combined option – Require smoke-free buffers between DOSAs and enclosed venue areas, restrict DOSA access to adults, and prohibit drinking in DOSAs

This option introduces a hybrid combination of options 2, 3 and 5.

Under this combined option the Act would be amended to require a smoke-free buffer between DOSAs and enclosed areas of liquor licensed venues, minors would be prevented from spending time in a DOSA and there would be no drinks, alcoholic or non-alcoholic permitted to be taken into or consumed in DOSAs.

The impacts associated with options 2, 3 and 5 are described above in detail and a summary is provided in the benefit and cost table below. The options require venues to amend the outdoor area at the venue in response to requirements that:

- smoke-free buffers are in place for DOSAs that bound an opening to an enclosed area of the venue
- children are not permitted to stay in a DOSA
- no drinking is permitted in a DOSAs.

It is assumed that the requirement for DOSAs to be areas where no drinking can occur will result in venues reorienting DOSAs for use as dining (eating and drinking) and entertainment areas or relocating DOSAs. Smoke-free buffers between enclosed areas and DOSAs may have a similar effect. Preventing children from entering and remaining at a DOSA will involve installation of free signage and other communication strategies. At venues where DOSAs and sport co-exist (golf and bowls clubs) there will be a requirement to reorient the DOSA to no smoking for the duration of children's attendance for sport.

Each venue is unique and the amount of relocation/reorientation required will depend on factors specific to the venue. It is expected that the implementation of options 2, 3 and 5 together will have greater impact than individual options, as more venues are likely to need to change the location or design of the DOSA to accommodate the combined requirements. However, it is expected that compliance with these requirements can be resolved with the same response, that is, a single assessment and relocation/reorientation of DOSAs can occur to achieve compliance.

For example, a venue with a large DOSA with open bi-fold doors between the DOSA and the enclosed space may reorient most of DOSA to dining and entertainment, continuing to use one end as a DOSA by leaving the doors between the indoor and outdoor areas closed at that end. Signage and monitoring of the area can be used to communicate that children and drinks are not permitted in the area. The same venue could reorient the whole area adjacent to bifold doors for dining and entertainment, directing smokers to a second DOSA located at the venue for smoking.

Licensees' obligation to monitor the requirements associated with providing a DOSA are not increased by implementing these options in combination, the level of monitoring required to ensure no food is taken in or consumed is sufficient to ensure there is also compliance with other restrictions. It is expected that there will be an additional short-term need to inform

patrons about any new requirements, but this will subside over time, as patrons adjust to new requirements and comply.

Licensees have existing obligations under the Act to ensure that DOSAs comply with legislated requirements and they may incur a penalty if non-compliance occurs. This penalty would extend to these combined requirements and noncompliance with would result in provision of education about requirements, a request to take action to resolve non-compliance or a penalty. This amount is expected to be consistent with current penalties in place for non-compliance with DOSA requirements which is set at a maximum of 140 penalty units.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 27: Section 2.5, option 6, costs and benefits**

Stakeholders	Benefits	Costs
Licensee	Nil	<p>Revise current Smoking Management Plan. Estimate of time up to two hours.</p> <p>May need to change the physical layout of DOSA including:</p> <ul style="list-style-type: none"> <li>relocation of furniture. Estimated to take up to three hours.</li> <li>installation or removal of solid buffer walls. Range between \$40-\$120 per hour for a carpenter, and up to \$320 per square metre for materials.</li> <li>time to install free signage 10 to 15 minutes (one-off).</li> </ul> <p>Modify the use of DOSAs when children attend to play sport.</p>
Staff	Nil	<p>Monitor DOSAs to prevent drinking and children entering and staying in the DOSA.</p>
Community	Reduced negative health effects from exposure to second-hand smoke.	<p>Patrons who smoke would need to move to the DOSA to smoke. This is estimated to take 10 to 15 minutes on average, noting that some patrons may already use the DOSA in this way.</p>

Stakeholders	Benefits	Costs
Queensland Government	<p>Contributes to reducing the negative health effects associated with exposure to second-hand smoke.</p> <p>Supports patrons who have recently quit smoking or are attempting to as greater smoke-free area is available.</p>	<p>Initial development of communication materials and enforcement team training at an estimated cost of \$4,500</p>

## Assessment

This option provides the greatest protection from second-hand smoke. The combination of preventing minors from spending time in a DOSA, smoke-free buffers between enclosed and outdoor licensed areas and a ban on drinking in the DOSA is expected to reduce the area provided as DOSAs and, as a consequence, reduce exposure to second-hand smoke at liquor licensed venues.

While DOSAs could continue to be offered for the convenience of patrons at liquor licensed venues, by combining these options DOSAs are expected to be smaller in size and positioned at less prominent areas (e.g. not adjacent to openings between outdoor and enclosed areas). It is expected that venues will respond to the prohibition on drinking at a DOSA by choosing to significantly reduce the size of the DOSA and encouraging smokers to spend the majority of their time at other areas of the venue where drinks, food and entertainment are offered.

This combined option is expected to ensure business practices more closely align with the original intent for DOSAs to be areas away from other patrons that smokers can move to briefly for smoking and then return to their group. Preventing children from remaining in the DOSA also aligns with the intention that these areas are not places for families to spend time.

Smokers will also have the benefit of a reduction in exposure to second-hand smoke from less time spent in the DOSA. This has the potential to reduce their overall exposure. Smokers trying quit smoking will also benefit from venues offering more smoke-free area as this will help to reduce cues to smoke. This is expected to assist with increasing the number of successful quit smoking attempts.

Of the options considered, this option has the greatest costs to businesses. To achieve compliance with the requirements the vast majority of DOSAs are expected to require at least some relocation or repurposing. It is expected that this can be resolved with the same response, that is venues will not need three separate implementation plans.

Assessment of compliance by Environmental Health Officers will continue in response to complaints and proactive checks on smoke-free areas as a part of regular business.

## Recommendation

Option 1 maintains the status quo and is not considered viable as it will not contribute to achieving the objective of reducing exposure to the negative health effects of second-hand

smoke for patrons and staff at liquor licensed venues in Queensland. It is assumed that the status quo will not contribute to supporting patrons attempting to quit smoking.

Options 2, 3 and 4 each contribute to reducing exposure to second-hand smoke, however implemented in isolation they would not provide consistent protection across venues. In particular it is assumed that option 4, which reduces the licensed area permitted to be used as a DOSA, is unlikely to yield useful reductions in exposure to second-hand smoke as the change is expected to not apply to all venues and only provide small changes at others. Option 5 presents a viable option for reducing second-hand smoke and assisting smokers to quit, however there will be no further protection for children and DOSAs can be located next to an opening to the enclosed area.

Option 6 introduces a hybrid combination of options 2, 3 and 5 as the recommended option. This option is expected to confer the most benefit for smoke-free protection and for smokers attempting to quit of the all the options considered.

Option 6 provides a significant reduction in exposure to second-hand smoke for all patrons, including children, and ensures that DOSA placement prevents smoke from drifting into enclosed areas. It is expected to significantly reduce exposure to second-hand smoke and lead to DOSAs having less prominence, which in turn is expected to assist in successful quit smoking attempts by patrons.

This option does impose costs on licensees and to achieve compliance it is assumed that all venues will be required to adjust DOSAs at the venue. The costs of these adjustments will vary according to the venue design and available space and will range between no cost for relocation of furniture and amenities to structural changes for the removal or installation of a buffer screen impervious to smoke. Actual costings from venues can be provided in response to this consultation to further assist in understanding the impacts of this option.

Option 6 is therefore considered the option which most appropriately balances maximum effectiveness with expected regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

## Consultation

The Department of Health undertook initial engagement with community stakeholders regarding the objectives of the Act inviting organisations to share any issues they were experiencing regarding smoking and identify opportunities to further reduce the impact of smoking on the Queensland community.

The Department met with the Queensland Hotels Association (QHA) and Clubs Queensland who indicated that DOSAs remain useful, dedicated, managed smoking areas. They noted that there were initial concerns about impacts of indoor smoking bans and DOSAs when introduced in 2006. However, members were compliant from the commencement and while there were short term financial impacts, businesses recovered. It was noted that previous legislative changes resulted in an increase in queries to their associations at the time of implementation.

The response to this Consultation RIS will assist in ensuring that the potential benefits and impacts for relevant stakeholders of the options presented are appropriately captured and will inform the final reform package to be presented in a Decision RIS to support government decision making.

## Consistency with other policies and legislation

### Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered.

The proposal is consistent with principles of natural justice and does not adversely affect rights and liberties of individuals or impose obligations retrospectively.

The proposal will intervene in some individual and business liberties, however it serves the legitimate objective of limiting people's exposure to harmful smoking products, which reduces second-hand smoke, smoking initiation and supports quit attempts. This is consistent with the fundamental legislative principles as the option protects the right to health for all.

### Competition principles

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

Queensland Health assessment is that there are no adverse effects on competition as a result of the option, and competition may be supported by more closely aligning requirements for classes of venues that currently are permitted to have DOSAs, with other types of licensed and unlicensed hospitality venues.

## Implementation and evaluation

### Implementation

Implementation of option 6 would occur through legislative amendment to the Act and subordinate legislation as required to enact the provisions. Penalties commensurate with current restrictions would apply as listed under the option description.

The Queensland Department of Health will develop a communication and engagement plan and implement activities to raise awareness of the changed requirements among licensees, employees and the community, prior to the commencement of the changes. In line with current legislative enquiry processes and previous implementation of new legislated controls, any additional impact of increased queries can be managed within existing human and financial resources.

A proposed phasing in period of one year is suggested for this legislative change to enable venues time to adjust their practices and modify the physical environment to ensure they are able to comply.

### Compliance

Queensland Health Environmental Health Officers undertake compliance monitoring and enforcement of provisions under the Act. Queensland Health's regulatory model includes both proactive and reactive compliance including audits and inspections, compliance promotion and enforcement activities.

It is anticipated that a period of education and community awareness about the legislated changes and associated responsibilities would initially occur with hoteliers and licensed venues through the provision of information materials and community messaging. Following

this, a period of proactive compliance monitoring and enforcement of the legislative requirements will be undertaken.

Ongoing compliance would be assessed through a combination of proactive and reactive monitoring by Queensland Health enforcement officers. Potential breaches of the requirements reported by the community would be investigated by enforcement officers and appropriate action taken including issuing warnings, penalty infringement notices (PIN) or undertaking prosecution.

### Evaluation

Achievement of the objective will be evaluated by assessing compliance and population survey data, for example:

- Smoking and cessation trend estimates will be monitored over time through State population health surveys. These surveys are usually conducted every two years.
- Compliance assessment of the requirements associated with providing a DOSA will assist to indicate if the measure is being fully adhered to. Complaints and inspections will provide data on the frequency and types of breaches.

Additional research surveying venue patrons and licensees could provide additional information about real impacts of the changes.

### Stakeholder questions

5.1	The recommended option is to amend the <i>Tobacco and Other Smoking Products Act 1998</i> to introduce a hybrid combination of requiring smoke-free buffers between DOSAs and enclosed areas, and restricting DOSA access to adults and prohibiting drinking in a DOSA? (option 6) Please advise if you agree or disagree with this option and why.
5.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
5.3	Would you modify any aspect of the recommended option (option 6)? Please provide details.
5.4	Please provide any evidence on whether implementation of option 6 will reduce exposure to second-hand smoke and help smokers at licensed venues to smoke less and quit.
5.5	Please provide evidence of any additional benefits you expect to occur from implementation of option 6.

## 2.6 Smoke-free outdoor eating or drinking places

### Context

Queensland has a vibrant food and beverage industry and this, combined with our climate, provides an ideal setting for Queenslanders and visitors to experience the food and/or drink on offer in outdoor spaces across the state.

Outdoor eating or drinking places range in size, offering and permanence from one day food festivals and pop-up food stalls/food vans to established restaurants, cafes and dining and entertainment precincts that provide outdoor areas for customers to enjoy the food and/or drink they have on offer.

### Regulatory framework

#### Queensland

The Queensland *Tobacco and Other Smoking Products Act 1998* (the Act) prohibits smoking at all commercial outdoor eating or drinking areas in Queensland. This is a broad-ranging smoking ban that applies to many public areas across the State. Compliance with smoking restrictions at an outdoor eating or drinking place is generally good (greater than 90%), however reports of smoking are observed for areas surrounding these places where smoking is not currently prohibited. Under the Act an outdoor eating or drinking place is defined as a place that meets the following criteria:

- not an enclosed place or residential premises
- persons at the place may consume food or drink provided from an on-site food service
- any of the following apply:
  - a person would reasonably expect the place has been provided for the purpose of consuming food or drink provided from an on-site food service, for example, an area on a footpath outside a cafe or takeaway food store containing tables and chairs or an outdoor area at a shopping centre, surrounded by food outlets, apparently provided for patrons to use while consuming food or drink purchased from the outlets
  - the place is bounded by a fence, for example, a fenced sporting ground at which persons may consume food or drink purchased at the ground or an area of a park, temporarily fenced off, at which a cultural festival is being conducted and where persons may eat food or drink purchased at the festival
  - the place is a liquor licensed premises.

Outdoor eating or drinking places are smoke-free while either food or drink is being provided, or is available to be provided, from an on-site food service; or food or drink provided from an on-site food service is being consumed at the place. Food or drink is taken to be provided from an on-site food service whether it is served to a person in the outdoor eating or drinking place or taken by a person from the on-site food service for consumption in the outdoor eating or drinking place.

The Act allows businesses to carve out part of their venue as an area where no food or drink can be taken or consumed. In effect this area is not part of the outdoor eating or drinking place and therefore that smoking ban does not apply. Some venues use this option to

provide a 'smoking-only' area. A smoking-only area cannot be provided where smoking is otherwise prohibited under the Act, for example within five metres of an entrance to an enclosed place or within 10 metres of a playground. There are no other restrictions imposed on the placement of these areas.

There are penalties for non-compliance with smoking bans in outdoor eating or drinking places, both for the person smoking and the occupier of the area. Occupiers must ensure smoking does not occur in the no smoking area of the business, direct anyone who is smoking to stop and if they refuse, not provide food or drink to them while they continue to smoke. Queensland Health Environmental Health Officers have a responsibility for compliance monitoring and enforcement of the laws in outdoor eating or drinking places and have authority to issue verbal and/or written advice or directions, improvement notices or penalty infringement notices where non-compliance is observed.

### **Local government**

Local governments may also have policies or requirements in place regarding outdoor eating or drinking places on local government land for example regarding establishment and requirements for footpath dining.

### **Other jurisdictions**

All State and Territory governments have smoking bans in place for outdoor dining areas, with some jurisdictions requiring smoke free buffers around these areas. Further, some jurisdictions have specific, or additional smoking bans for outdoor food fairs/festivals.

**Table 28. Section 2.6, Jurisdiction comparison of smoke-free outdoor eating and drinking places.**

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
<b>Smoking banned in outdoor dining areas</b>	Y	Y	Y signage required	Y	Y signage required	Y signage required	Y signage required	Y signage required
<b>Smoke free buffer around dining/drinking areas</b>	N	N	Y 4 metre buffer seated dining	N	Y 4 metre buffer or wall 2.1 metres high	Y 2 metre wall	Y 3 metre buffer or wall 2.1 metres high	N
<b>Specific or additional smoking bans that apply to outdoor food fairs/festivals</b>	N	Y	Y 10 metre buffer from food fair stall	N	Y smoke free food fairs and 10 metre buffer for food stall or vendor	N	Y 20 metre buffer designated areas or events	N

## Problem

Whilst the Act declares outdoor eating or drinking areas to be smoke-free, unlike other smoke-free areas in the Act there is no prescribed smoke-free buffer required where a venue provides smoking-only areas.

This means that smoking can occur directly adjacent to, or in some instances within the venue area. Smokers often move to an area where they see others smoking, which can result in a clustering effect and increased exposure to second-hand smoke. This issue has been raised by Queensland Health Enforcement Officers and was noted by Parliamentary Committee as being worthy of consideration by Government for inclusion in future extension of smoking bans<sup>127</sup>.

Smoking in close proximity to outdoor eating or drinking areas results in exposure to second-hand smoke for staff and patrons occupying the area, often for a sustained period of

<sup>127</sup> Health and Ambulance Services Committee (2015) *Report No. 6, 55<sup>th</sup> Parliament Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015*, Brisbane, Queensland.

time. Prolonged exposure increases risks to health, particularly for those who suffer chronic respiratory illnesses such as asthma. As discussed in detail in Part 2, section 1 there is no safe level of exposure to second-hand smoke. Ongoing exposure at outdoor eating and drinking places highlights a gap in achieving a key objective of the Act, **reducing the public's exposure to smoke from tobacco and other smoking products**.

Second-hand smoke exposure at outdoor eating and drinking areas has been reported to occur through:

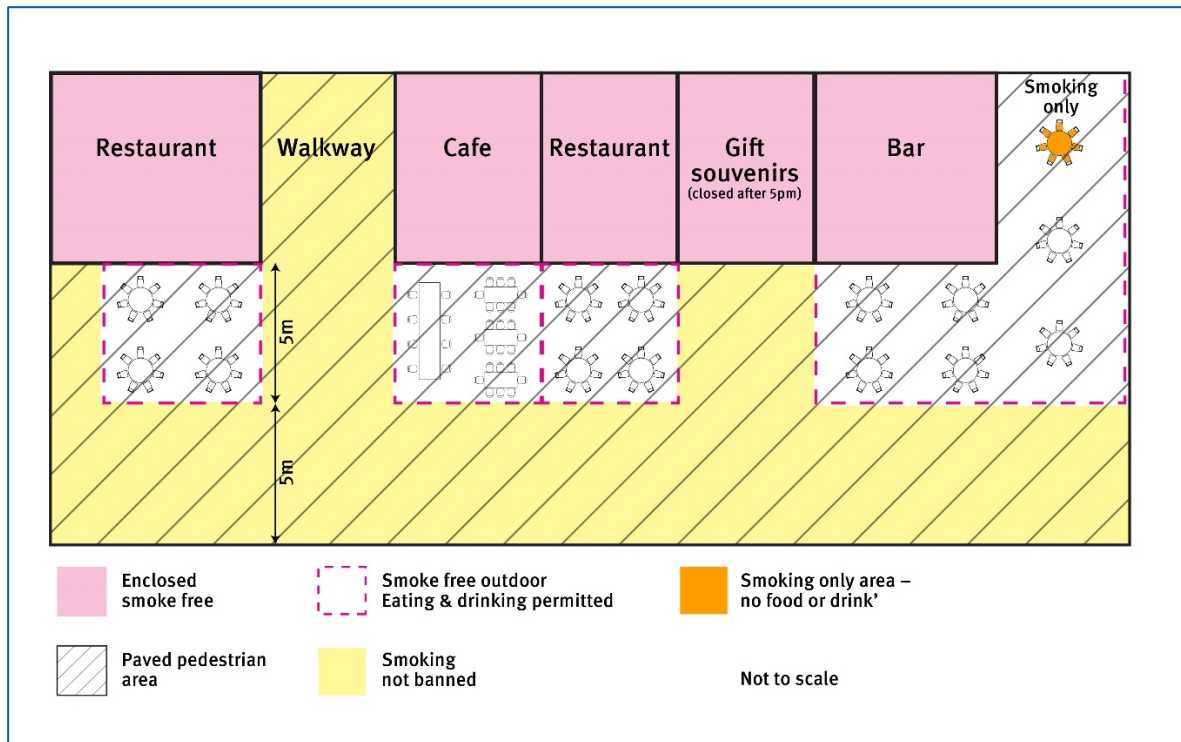
1. Smoking at areas immediately surrounding seated and table-based outdoor eating and drinking places in dining precincts where it is not possible to easily relocate and avoid this exposure. For example, smoking at a public footpath area that is directly adjacent to the business but not within the business will impact patrons seated or standing at bar style tables.

The current smoke-free provision would only apply to the business areas where food and drink is being supplied and would not apply to persons outside of this area who may be only a matter of steps away from the seated or table area. Smoking that occurs outside of the business area is beyond the control of the business to prevent. It is often not possible for diners once seated or located at a table to move as tables are required to be booked, the venue may be busy, or they may have ordered and be waiting on food. See example at Figure 7.

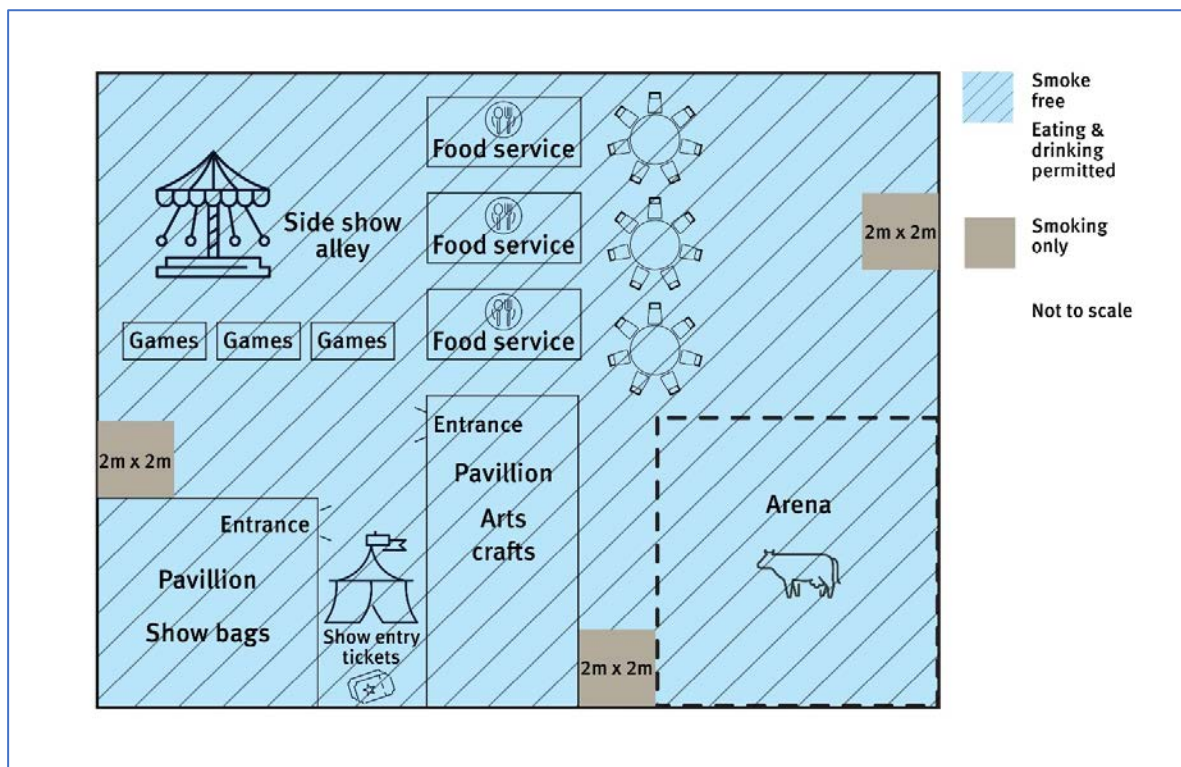
For businesses located in areas where smokers gather, (e.g. within five metres of a café at the end of a strip of eating places) this may result in diners electing to not return if exposed to unwanted second-hand smoke during their dining experience. There is no current provision available to patrons or businesses to prevent this negative impact on health or reduced patronage.

2. The provision of smoking only-areas at outdoor eating and drinking places. The current regulation permits these areas to be co-located with food and drink service areas allowing smoke to drift within a venue and to neighbouring venues where food and drink are being provided by staff and consumed by patrons. These are typically offered at venues with large areas to accommodate the smoking needs of the patrons without them needing leave the venue, for example at theme parks, agricultural shows, festivals and music concerts. See example at Figure 8.

**Figure 7: Section 2.6, Example dining precinct of small and medium outdoor eating and drinking venues showing smoking near outdoor eating areas and at smoking-only areas.**



**Figure 8: Section 2.6, Example smoking only areas within a large outdoor eating or drinking venue.**



The community is particularly attuned to the well documented risks to health from exposure to second-hand smoke and increasingly expect to be afforded smoke-free protection at the public places they gather to enjoy time together. Recent assessment of community expectation for protection from second-hand smoke conducted by the Cancer Council Queensland found that 84% of respondents supported banning smoking within 10 metres of a child; approximately 75% of respondents said they try to avoid smokers in public places indicating that they are concerned with the health impacts of second-hand smoke; and 66% supported banning all smoking in pubs and clubs.

## Objective

The objective of Government action is to reduce the negative health effects of exposure to second-hand smoke at outdoor eating or drinking places in Queensland.

### Consideration of options

	Description
<b>Option 1</b>	Status quo. No changes would be made to the outdoor eating or drinking place provisions in the Act.
<b>Option 2</b>	Introduce a smoke-free buffer around specified seated or table based outdoor eating or drinking places.
<b>Option 3</b>	Introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places.
<b>Option 4</b>	Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places.
<b>Option 5</b>	Combined option – Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places, and introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places.

Consideration was given to options that would achieve the objective that were also realistic and achievable. A self-regulatory option to adopt smoke-free policies or to provide a five-metre smoke-free buffer was considered but deemed inappropriate given the scope of regulatory controls that are already in place for outdoor eating and drinking places. In addition, the problem of smoking near outdoor eating or drinking places is often outside the control of the venue occupier, and therefore a non-regulatory option is unlikely to adequately achieve the objective.

Consideration was also given to removing the provision in the Act that allows an outdoor eating and drinking place to set aside part of their venue as an area where smoking is permitted but no food or drink can be consumed. Implementing this option would provide the benefit of reducing exposure to second-hand smoke where smoking-only areas are in place. However, this option was deemed inappropriate as it also would not address

problematic smoking occurring outside the control of the outdoor eating and drinking place and removing the provision is likely to have negative impact for the management of smoking at large venues such as theme parks, festivals and agricultural shows.

### Option 1. Status quo

Option 1 maintains the current provisions under the Act for outdoor eating or drinking places.

Smoke-free protection will apply within outdoor eating or drinking places, however exposure to second-hand smoke for patrons and staff will continue where smoking occurs in close proximity to an outdoor eating and drinking place, or where a smoking-only area is located close to food and drink service and consumption areas.

This option does not change or increase the regulatory burden for individuals or businesses.

**Table 29: Section 2.6, option 1, costs and benefits.**

Stakeholder	Impact
Food or drink businesses/providers and their staff	<ul style="list-style-type: none"> <li>• Nil – status quo</li> </ul>
Community	<ul style="list-style-type: none"> <li>• Nil – status quo</li> </ul>
Local Government	<ul style="list-style-type: none"> <li>• Nil – status quo</li> </ul>
Queensland Government	<ul style="list-style-type: none"> <li>• Nil – status quo</li> </ul>

### Assessment

Maintaining the current smoke-free arrangements will continue exposure to second-hand smoke for patrons at outdoor eating or drinking places when this occurs adjacent to the place or at an area of the place set aside for smoking-only.

This option does not contribute to achieving the objective of reducing patron and staff exposure to second-hand smoke at outdoor eating or drinking places in Queensland.

### Option 2. Introduce a smoke-free buffer around specified seated or table based outdoor eating or drinking places

Under this option provisions for outdoor eating or drinking places, as currently outlined in the Act, would remain and an additional legislated requirement would be introduced to provide a five-metre smoke-free buffer around all venues that have specified seated or table based outdoor eating or drinking areas. The intention of this option is to provide additional protection at outdoor eating or drinking areas where patrons cannot move to avoid smoking occurring in close proximity to the area they have booked or occupied. Specified seated or table-based areas may include tables and chairs, benches, stools, bean bags, picnic rugs or

grassed areas, and standing bar style tables that are provided for the purpose of consuming food or drink provided from an onsite food provider.

The requirement for a buffer would apply at all eating or drinking places that provide seated or table-based food or drink service. Small and medium venues such as cafes or restaurants are often located in high density areas of outdoor shopping or dining precincts and are likely to utilise their whole space for seated and table-based eating and drinking. At this type of venue the smoke-free buffer would be external and extend for five metres beyond the perimeter of the outdoor food and drink place.

At venues with larger grounds or outdoor space the smoke-free buffer would extend from table and chairs for five metres and could include area within the venue. This could include a café or restaurant situated in outdoor setting where the seated and table-based dining area does not take up the entire space. For example, a hotel with tables and chairs that take up half of an unfenced lawned area.

There would be no additional buffer area around large fenced outdoor eating and drinking places such as theme parks and temporary events such as festivals and agricultural shows. This is because these places are treated as one large outdoor eating and drinking place and smoking can only occur inside the fenced boundary at areas set aside for smoking-only.

There will be no requirement for occupiers of outdoor eating and drinking places to distinguish the smoke-free buffer area, the community is familiar with well-established unmarked buffer areas of the same distance at many public places. As with similar legislated smoke-free buffer areas under the Act, the five-metre smoke-free buffer would not extend into neighbouring residential or business premises. The expected effect within a dining precinct, where outdoor eating and drinking places are located in succession, would be to create a largely continuous smoke-free buffer area. The smoke-free buffer would not apply to pedestrians or motor vehicles travelling or passing through the area, and this is consistent with arrangements for buffer areas at similar public places.

Consistent with current smoke-free requirements at outdoor eating and drinking areas, penalties would be imposed on persons found to be smoking in breach of the five-metre smoke-free buffer area requirements. This includes an on the spot fine of two penalty units and a maximum court penalty of 40 penalty units. On-site food providers would continue to be responsible for ensuring that smoking restrictions are complied with at the outdoor eating or drinking places. Additionally, this may include communicating the smoke-free buffer requirement to patrons within their business premises where applicable. Where smoking occurs in the buffer outside their business area no occupier offence will apply, and businesses can report the occurrence to Queensland Health enforcement teams.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 30: Section 2.6, option 2, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Food or drink businesses/providers and their staff</b>	<p>Increased workplace protection for staff.</p> <p>Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</p>	<p>Identify buffer area and communicate to staff, estimated to take an initial period of up to 2 hours.</p> <p>Potential loss of useable area.</p>
<b>Community</b>	<p>Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</p>	<p>Smokers will be required to walk further away from where food and/or drink is supplied to smoke.</p>
<b>Local Government</b>	Nil	Nil
<b>Queensland Government</b>	<p>Reduction in burden of disease and associated health system costs from reduced exposure to second-hand smoke.</p>	<p>One-off increase in administrative burden to develop communication materials and provide enforcement training and education to a state-wide team at an estimated cost of \$4,500.</p> <p>Possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month for a period of 6 months.</p>

## Assessment

This option would contribute to reducing exposure to second-hand smoke of patrons and staff at outdoor eating or drinking places by providing a smoke-free buffer around specified seated and table areas. Protecting these areas is important due to the nature of seated and table-based areas where it is not always possible for people to move away/avoid smoke drift when eating or drinking.

This option imposes additional regulatory burden on food and drink businesses, government and the community. The additional burden for most food and drink businesses is anticipated to be minimal as most food and drink businesses seek to limit smoking within or near their business. The impacts are expected to largely fall on smokers to move further from food and drink areas to smoke.

This approach however only goes part-way to achieving the objective as there would continue to be smoke-drift within some venues where part of the area has been set aside as smoking-only. Providing a buffer around specified seated and table-based dining without

addressing the potential for exposure within the venue does not achieve the effect of complete smoke-free protection at outdoor eating and drinking areas. In addition, the requirement for a smoke-free buffer from seated eating and drinking places may be a confusing message for the community to adapt to and normalise.

### Option 3. Introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places

Under this option outdoor eating or drinking places that set aside part of their venue as a smoking-only area would be required by law to provide a suitable buffer separating smoking-only areas from food or drink service areas. As smoke-free buffers typically do not extend into neighbouring businesses or residential areas, the buffer must be located within the premises of the business providing the smoking-only area. This is to prevent a smoking-only area from being established within two metres of a boundary with a private residence or business and the smoke impacting these areas.

Outdoor eating or drinking places would be required to provide a clearly defined two-metre horizontal buffer around the smoking-only area. A buffer area of two metres is consistent with other buffer areas required in the Act to separate smoking areas from other public areas within a venue.

Other restrictions that would apply to the buffer area include that no food or drink could be taken into or consumed within the buffer, and no entertainment can be provided in the buffer. This is also consistent with requirements for buffers within a venue. If a two-metre buffer around smoking-only areas cannot be achieved within the footprint of the business premises, then a smoking-only area cannot be provided. This is to ensure that neighbouring businesses are not negatively impacted by the location of a smoking-only area next to a shared boundary with their premises.

Consistent with current smoke-free requirements at outdoor eating or drinking places, penalties would be imposed on persons found to be smoking in breach of the two-metre smoke-free buffer area requirements, this includes an on-the-spot fine of two penalty units or maximum court penalty of 40 penalty units. On-site food providers would continue to be responsible for ensuring that smoking restrictions are complied with at the outdoor eating or drinking places. Additionally, this would include communicating the smoke-free buffer requirement to patrons within their business premises where applicable.

There would be no impact of this option for businesses that do not offer a smoking-only area. There is limited data on the proportion of outdoor eating or drinking places offering smoking-only areas, however on the basis of available compliance intelligence and outcomes of consultation it is assumed that at least 75% of outdoor eating or drinking places do not provide smoking-only areas. Smoking-only areas are usually observed to be provided at temporary events (e.g. agricultural shows, music festivals) or large entertainment places (e.g. theme parks and zoos).

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 31: Section 2.6, option 3, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Food or drink businesses/providers and their staff</b>	<p>Increased workplace protection for staff.</p> <p>Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</p>	<p>Identify buffer area and communicate to staff, estimated to take an initial period of up to 2 hours.</p> <p>Businesses that have a smoking-only area and cannot accommodate additional buffer requirements for this area may need to establish systems for patrons to leave and re-enter if these are not already in place.</p> <p>Installation of free signage identifying the smoking-only buffer area.</p> <p>Loss of business space at venues that offer a smoking-only area. For a two-metre square smoking-only area a further 32 square metres will be required to provide a buffer.</p>
<b>Community</b>	<p>Introduction of smoke-free buffer requirements will help reduce exposure to second-hand smoke.</p>	<p>Smokers will be required to walk further away from where food and drink is supplied to smoke.</p>
<b>Local Government</b>	<p>Nil</p>	<p>Nil</p>
<b>Queensland Government</b>	<p>Reduction of Queenslanders exposed to second-hand smoke at outdoor eating or drinking places.</p>	<p>One-off increase in administrative burden to develop communication materials and provide enforcement training and education at an estimated cost of \$4,500</p>

### Assessment

This option partially achieves the objective of reducing exposure to second-hand smoke at outdoor eating or drinking places. While this option does contribute to reducing exposure within the venue, it does not prevent exposure to second-hand smoke from smokers located just outside the venue area.

Under this approach a venue would need to be large to accommodate the requirements for a two-metre buffer where no eating, drinking or entertainment could take place. Small and medium outdoor eating or drinking places typically do not currently provide a smoking-only area as the loss of business space of even an average sized smoking-only area (four square metre) is difficult to accommodate at a business of this size.

It is expected that the greatest impact of this option will be for large to very large outdoor eating or drinking places that already offer smoking-only areas such as theme parks, or temporary outdoor eating or drinking places such as agricultural shows or festivals. Data is not centrally collected on the number of outdoor eating or drinking places that currently offer smoking-only areas, however information from industry associations and compliance teams indicates this is likely to be a low proportion (less than a quarter) of outdoor eating or drinking places.

Impacts under this option relate to the requirement to accommodate a two-metre smoke-free buffer within the venue where food or drink cannot be taken or consumed and entertainment cannot be provided. For some large venues this will formalise current practice, while others will need to re-design or re-position the smoking-only areas. Where a venue cannot accommodate the required buffer for a smoking-only area a system of pass-outs may be considered such as a wrist band or stamp.

The benefits of this option will be realised at large venues that offer smoking-only areas to assist patrons from needing to leave the venue and return. The protection will be specific to areas adjoining the smoking-only area, but there will be no added protection from smoking occurring just outside the perimeter and beyond the venue's area of control.

#### Option 4. Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places

Under this option the Act will be amended to provide a five-metre smoke-free buffer around the perimeter of outdoor eating or drinking places.

The smoke-free buffer requirements are similar to those described under option 2 in most regards except the smoke-free buffer requirements would apply around the perimeter of all outdoor eating or drinking places rather than from seated and table-based outdoor eating or drinking areas. For most small to medium outdoor eating or drinking places the effect will be the same, as the entire area of these venues is typically utilised for seated and table-based food and drink service.

However, for large fenced outdoor eating and drinking places such as a theme parks, festivals or agricultural shows and other large fenced places with on-site food services, there would be a five-metre smoke-free buffer established around the circumference of the entire place. The smoke-free buffer would only apply to the external perimeter and would not apply to the smoking-only areas offered within a venue. While these areas not taken to be part of the outdoor eating or drinking area they are within the venue area.

There will be no requirement for occupiers of outdoor eating and drinking places to distinguish the smoke-free buffer area, the community is familiar with well-established unmarked buffer areas of the same distance at many public places. As with similar legislated smoke-free buffer areas under the Act, the five-metre smoke-free buffer would not extend into neighbouring residential or business premises. The effect within a dining precinct, however, where outdoor eating and drinking places are located in succession, would be to create a largely continuous smoke-free buffer area. The smoke-free buffer would not apply to pedestrians or motor vehicles travelling or passing through the area, which is consistent with arrangements for buffer areas at similar public places.

As with option 2 there will be no requirement for operators of outdoor eating or drinking places to distinguish the area of the smoke-free buffer, and the five-metre smoke-free buffer would not extend into neighbouring residential or business premises or apply to pedestrians or motor vehicles travelling or passing through the area.

A penalty consistent with those imposed on breaches of smoke-free public places, an on the spot fine of two penalty units or a maximum of 40 penalty units would apply for breaching a legislated smoke-free area, including at an outdoor eating and drinking place. On-site food providers would continue to be responsible for ensuring that smoking restrictions are complied with at the outdoor eating or drinking places. Additionally, this would include communicating the smoke-free buffer requirement to patrons within their business premises where smoking-only areas are provided.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 32: Section 2.6, option 4, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Food or drink businesses/providers and their staff</b>	Increased workplace protection for staff.  Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.	Identify external buffer area and communicate to staff, estimated to take an initial period of up to 2hours.
<b>Community</b>	Introduction of smoke-free buffer requirements is likely to reduce community exposure to second-hand smoke at outdoor eating or drinking places.	People who wish to smoke will need to move further away from outdoor eating or drinking places. The impact may be greater in areas whether there are multiple eating or drinking places in close proximity e.g. a dining precinct or at large events.
<b>Local Government</b>	Nil	Nil
<b>Queensland Government</b>	Reduction in exposure to second-hand smoke at outdoor eating or drinking areas in Queensland.	One-off increase in administrative burden to develop communication materials and provide, enforcement training and education at an estimated cost of \$4,500.

## Assessment

This option contributes to reducing exposure to second-hand smoke of patrons and staff at outdoor eating or drinking places in Queensland by providing a smoke-free buffer around the perimeter of eating or drinking places. This approach is similar to protection from second-hand smoke offered under previous options, in this instance imposing a smoke-free buffer around the whole outdoor eating and drinking place.

Additional regulatory burden is imposed on food and drink businesses, government and the community, however it is expected that the costs will be low for business as no adjustment to the venue is required and the buffer areas are outside the venue. Smokers will be the most impacted as they will need to move further away from outdoor dining areas to smoke. For venues, impacts are likely to be greatest for outdoor eating or drinking places with established smoking-only areas that will need to change of use of available space to facilitate a buffer for these areas.

The option has very low impacts for businesses and the community and it is predominantly smokers that are required to alter their actions by moving further away from an eating or drinking place for their smoking.

The objective of reducing exposure to second-hand smoke for patrons and staff would only partially be achieved as smoke-drift would continue within venues with smoking-only areas where part of the area has been set aside for smoking-only.

### Option 5. Combined option - Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places and introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places

This option introduces a hybrid combination of option 3 and option 4.

Under this combined option a smoke-free buffer would apply around the perimeter of all outdoor eating or drinking places as described under option 4. A smoking-only area could be provided, however the additional requirements described under option 3 would apply to the buffers surrounding these areas. The occupier of the venue would be required to distinguish the smoke-free buffer area for the smoking-only area and ensure that no food or drink consumed, and no entertainment occurred in the buffer.

Venues that currently provide a smoking-only area would need to consider the new requirements and make adjustments as required. Smoking-only areas are typically unfurnished and can be temporary or permanent. For example, a theme park may offer a permanent area, whereas a festival, agricultural show or similar event would establish the area for the duration of the event. Costs for a temporary smoking-only area will be lower as there is no requirement to move existing permanent structures and the areas can be set up to be compliant with the new requirement of a buffer area.

On-site food providers would continue to be responsible for ensuring that smoking restrictions are complied with at the outdoor eating or drinking places. Additionally, this would include communicating the smoke-free buffer requirement to patrons within their business premises where applicable. Where smoking occurs in the buffer outside their

business area no occupier offence will apply, and businesses can report the occurrence to Queensland Health enforcement teams.

A penalty consistent with those imposed on breaches of smoke-free public places, an on the spot fine of two penalty units or a maximum of 40 penalty units would apply for breaching a legislated smoke-free area, including at an outdoor eating and drinking place or in the smoke-free buffer. On-site food providers would continue to be responsible for ensuring that smoking restrictions are complied with at the outdoor eating or drinking places.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 33: Section 2.6, option 5, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Food or drink businesses/providers and their staff</b>	<p>Increased workplace protection for staff.</p> <p>Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.</p>	<p>Identify external buffer area and communicate to staff, estimated to take an initial period of up to 2 hours.</p> <p>Loss of business space at venues that offer a smoking-only area. For a 2-metre square smoking-only area a further 32 square metres will be required to provide a buffer.</p> <p>Installation of free signage identifying the smoking-only buffer area.</p> <p>Businesses removing a current smoking-only area may need to establish a 'pass-out' system for smokers to leave and re-enter. Costs could involve a stamp or wrist bands, staff time to provide these and check on re-entry.</p>
<b>Community</b>	<p>Introduction of a smoke-free buffer requirements is likely to reduce community exposure to second-hand smoke at outdoor eating or drinking places.</p>	<p>People who wish to smoke will need to move further away from outdoor eating or drinking places. The impact may be greater in areas whether there are multiple eating or drinking places in close proximity e.g. a dining precinct or at large events.</p>
<b>Local Government</b>	Nil	Nil

Stakeholders	Benefits	Costs
Queensland Government	Reduction of exposure to second-hand smoke at outdoor eating or drinking areas in Queensland.	One-off increase in administrative burden to develop communication materials and provision of enforcement training and education at an estimated cost of \$4,500.

## Assessment

This option contributes to reducing exposure to second-hand smoke of patrons and staff at outdoor eating or drinking places in Queensland by providing a smoke-free buffer around the perimeter of eating or drinking places and imposing additional restrictions on the provision of smoking-only areas.

This option provides additional protection and is expected to achieve the objective of reducing exposure to second-hand smoke for patrons and staff of outdoor eating and drinking places. This is because of the combined benefits of moving smokers further away from the perimeter of the venue along with the introduction of a clear separation between eating or drinking areas and smoking-only areas within a venue. In addition, the requirement for the buffer area around smoking-only areas to be void of eating, drinking and entertainment will assist in ensuring these areas are located away from busy parts of the venue.

This option imposes regulatory burden on food and drink businesses, government and the community. The burden is greatest for the ~25% of businesses assumed to have a smoking-only area within the grounds and the effect is the same as under option 3. Businesses will have no greater burden under a combined option 5 than the burden imposed individually by options 3 or 4. This is because under option 4 the buffer is external to the business area and there is very little impact on businesses. However, with the combination of an external buffer (option 4) and smoking-only area buffer (option 3), option 5 creates a greater smoke-free area without amplifying requirements for business.

While businesses will continue to have the choice of providing a smoking-only area if they determine that there is value in doing so, the additional restrictions will require a greater area at the venue to accommodate this decision. Given smoking-only areas are predominantly offered at large to very large venues it is expected that the impact will be focused at these places.

As with options 2 through 4, smokers will be required to alter their actions by moving further away from an eating or drinking place to smoke, which is consistent with visiting many public places. Smokers are well acquainted with the requirement to move away from smoke-free areas. Experience from previous implementation of legislated bans is that smokers adjust to these requirements quickly and the vast majority are compliant with smoke-free requirements.

## Recommendation

Option 1 maintains the status quo and is not considered viable as it will not contribute to achieving the objective of reducing exposure to second-hand smoke of patrons and staff at outdoor eating or drinking places in Queensland. Options 3 or 4 on their own do not provide sufficient additional protection against second-hand smoke. Similarly, option 2 provides enhanced protection to specified seated and table-based areas of many outdoor eating places, however this protection does not address the smoking-only areas within the venue.

Option 5 is the preferred option as it is likely to confer the most smoke-free protection of all the options considered. The approach under option 5 ensures that smoke-free protection is increased at outdoor eating or drinking places through the introduction of smoke-free buffers around the perimeter of all outdoor eating or drinking places. This will serve to remind smokers that they need to step further away from dining and drinking areas before they start to smoke. This will be of benefit to small and medium businesses positioned adjacent to an area where smokers gather, who have no current recourse to move smokers away from their premises. This option does not increase the responsibility of proprietors of outdoor eating or drinking areas to take action on smoking adjacent to their venue but provides the option to contact enforcement teams if there is a regular non-compliance observed.

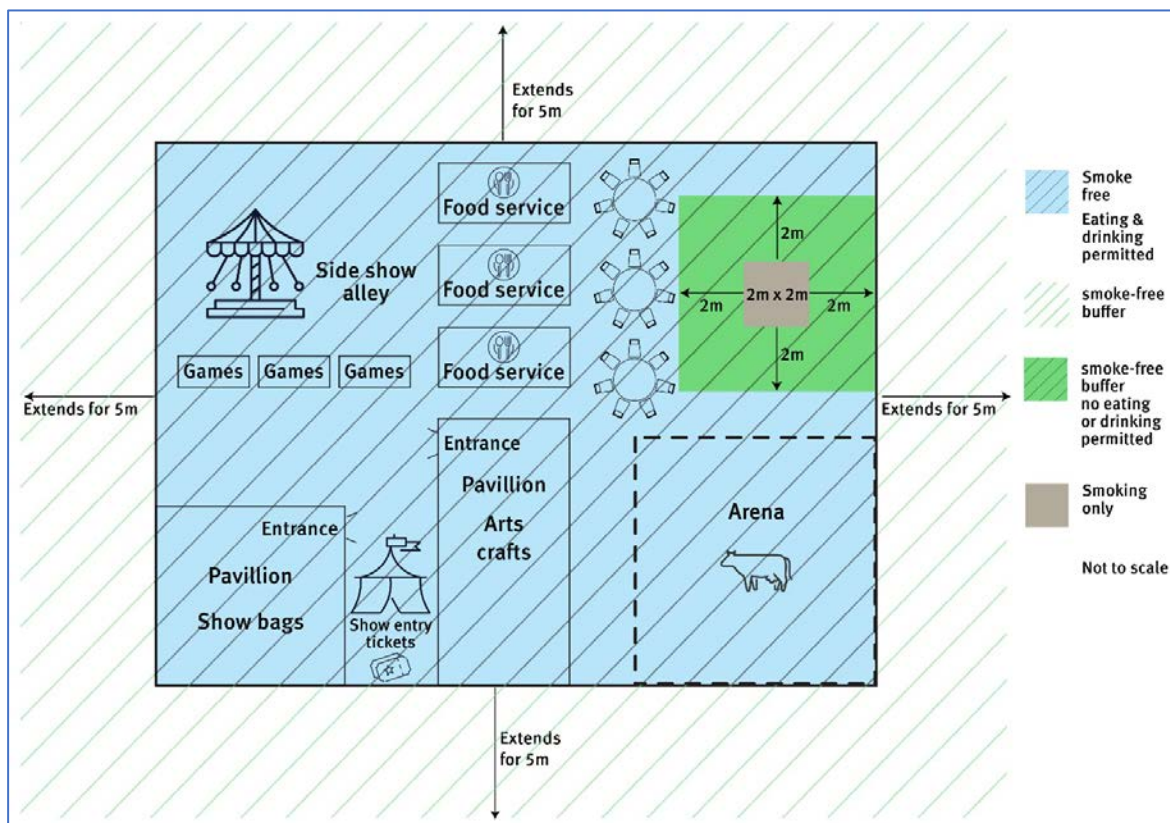
The additional requirements for smoking-only areas under this option will provide enhanced protection from second-hand smoke within the venue and provide a clear separation of smoking with other activities including eating and drinking, entertainment and seating or other furniture. Examples of the impact of Option 5 are provided below at figure 9 and figure 10.

This will require adjustment by business and community however the advanced protection provided for health justifies the requirements for business which are low and can managed flexibly. Option 5 is therefore considered the option which most appropriately balances maximum effectiveness with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

**Figure 9: Section 2.6, Indication of the impact of Option 5 on dining precinct of small and medium outdoor eating and drinking venues.**



**Figure 10: Section 2.6, Indication of impact of Option 5 on a large outdoor eating and drinking venue.**



## Consultation

The Department of Health undertook initial engagement with community stakeholders regarding the objectives of the Act, inviting organisations to share any issues they were experiencing regarding smoking and identify opportunities to further reduce the impact of smoking on the Queensland community.

The Department met with a peak organisation representing restaurants and caterers who anticipated that members would be generally supportive of action to reduce any impacts of smoking and strengthen legislative requirements around outdoor eating or drinking areas. They noted that it is rare for the cafes, restaurants and catering businesses they represent to have smoking-only areas on premises.

On the basis of consultation, it is assumed that the majority (greater than 80%) of second-hand smoke exposure at small to medium sized outdoor eating and drinking places occurs due to smoking taking place just outside the area under control of the business.

There is no available data on the proportion of outdoor eating or drinking places offering smoking-only areas, however on the basis of available compliance intelligence and consultation it is expected that at least 80% of outdoor eating or drinking places do not provide smoking-only areas. Further it is noted that these areas are typically only offered at temporary events (e.g. agricultural shows, music festivals) or very large entertainment places such as theme parks and zoos.

The response to this Consultation RIS will assist in ensuring that the potential benefits and impacts for relevant stakeholders of the options presented are appropriately captured and will inform the final reform package to be presented in a Decision RIS to support government decision making.

## Consistency with order with other policies and legislation

The Act was initially passed in 1998 and has undergone numerous amendments over time and has progressively increased the number of areas in Queensland to which smoke-free provisions apply, with the aim to reduce public exposure to smoke from tobacco and other smoking products.

The recommended option (option 5) is consistent with existing provisions in the Act which require either a five or 10-metre buffer around certain premises.

### Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered.

The proposal is consistent with principles of natural justice and do not adversely affect rights and liberties of individuals or impose obligations retrospectively.

The proposal will intervene in some individual and business liberties, however it serves the legitimate objective of limiting people's exposure to harmful tobacco and smoking products which reduces smoking initiation and supports quit attempts. This is consistent with the fundamental legislative principles as the option protects the right to health for all.

## **Competition principles**

The Competition Principles Agreement requires that legislation should not unduly restrict competition.

Queensland Health assessment is that there are no adverse effects on competition as a result of the option.

## **Implementation and evaluation**

### **Implementation**

Implementation of the recommended option 5 would occur through legislative amendment to the Act and subordinate legislation (if required) to enact provisions to establish a five-metre smoke-free buffer at outdoor eating or drinking places offered for the purpose of consuming food or drink provided from an onsite food provider.

It is proposed that there will be a transition period of 6 months to provide outdoor eating and drinking establishments to prepare for and implement the changes. As noted under option 5, it is proposed that penalties would be established for smoking within the five-metre smoke-free buffer area or for failure to maintain the additional requirements of the smoke-free buffer areas.

These legislative changes will be supplemented by guidance material, communication and appropriate notice to support food and/or drink businesses and the community to comply with the legislative provisions. Further, Queensland Health would assist local governments, dining precinct managers and event organisers to manage the preferred location of smoking areas, if required.

Queensland Health will also develop a communication and engagement plan to raise awareness of the changed requirements among food and/or drink businesses and the community, prior to the commencement of the changes. The Tobacco Laws Service (13QGOV) will also be able to provide information, guidance and signage to support the implementation of the laws. Any additional impact of increased queries would be managed within existing human and financial resources.

Queensland Health will communicate legislative requirements to the community and food and drink businesses through established channels such as the Queensland Health and Queensland Government websites. Free no-smoking and smoking-only area signs will also be available for food and drink businesses to help facilitate implementation and compliance with the requirements.

Further, legislated smoking bans are monitored and enforced by authorised persons under the Act, predominately by Queensland Health Environmental Health Officers. Food and drink businesses and patrons will be able to report potential breaches to 13QGOV for referral and follow up.

### **Compliance**

Authorised Queensland Health staff undertake compliance monitoring and enforcement of smoke-free provisions under the Act. Queensland Health's regulatory model includes both proactive and reactive compliance including audits and inspections, compliance promotion and enforcement activities.

It is anticipated that a period of education and community awareness about the legislated changes and associated responsibilities would initially occur through the provision of information materials and a community campaign. Following this, a period of proactive compliance monitoring and enforcement of the legislative requirements proposed under option 5 will be undertaken. This will be undertaken as a component of the usual program of compliance activity undertaken by Queensland Health.

Ongoing compliance would be assessed through a combination of proactive and reactive monitoring by Queensland Health enforcement officers. Potential breaches of the requirements reported by the community would be investigated by enforcement officers and appropriate action taken including issuing warnings, penalty infringement notices (PIN) or undertaking prosecution.

Members of the community, including food and/or drink businesses will also be encouraged report potential breaches of the Act to 13QGOV and where required authorised persons can attend and take appropriate action based on risk.

### Evaluation

Achievement of the objective will be evaluated by:

- Smoking and cessation trend estimates from State population health surveys. These surveys are usually conducted every two years.
- Burden of disease measures which estimate the contribution of second-hand smoke to preventable disease.
- Compliance assessment of the requirement to introduce a smoke-free buffer and introduce additional requirements to provide a smoking-only area. Complaints and inspections will provide data on the frequency and types of breaches at outdoor eating and drinking places.

### Stakeholder questions

6.1	The recommended option is to amend the <i>Tobacco and Other Smoking Products Act 1998</i> to introduce a combination of smoke-free buffers around the perimeter of all outdoor eating or drinking places, and introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking areas (option 5)? Please advise if you agree or disagree with this option and why.
6.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
6.3	Would you modify any aspect of the recommended option (option 5)? Please provide details.
6.4	Please provide any evidence on whether implementation of option 5 will reduce exposure a to second-hand smoke at outdoor eating and drinking areas.
6.5	Please describe any additional benefits you expect to occur from implementation of option 5.

## 2.7 Smoking at outdoor markets

### Context

Markets are commonplace across urban, regional and remote communities in Queensland. The transient and diverse nature of markets and their co-location with other events makes it difficult to determine a precise number of markets across Queensland. Estimates from tourism, market and fair guides/websites indicate that there may be more than 6,000 market events held across Queensland each year<sup>128, 129</sup>.

Markets have broad appeal and are regularly visited by a wide cross section of the community including families with children, older Queenslanders, and tourists. They range in size, regularity and offerings, and can consist of stalls that provide non-food items such as homewares, crafts, clothing, knick-knacks, plants and second-hand goods, as well as stalls that provide food items such as fresh produce, condiments, spices, cooked or baked foods and drinks. Some stalls may also provide personal services such as massage. Smoking products including tobacco and e-cigarettes are prohibited from being supplied at temporary retail outlets and for this reason are generally not supplied at markets.

Markets are held in varied settings including local government areas such as parks, carparks, or esplanades, school grounds, and on business or community owned land. While many markets are located purely in outdoor settings, some include a mix of both indoor and outdoor areas.

### Regulatory framework

The Queensland *Tobacco and Other Smoking Products Act 1998* (the Act) does not include a specific legislated ban for smoking at markets, however the diverse function and location of markets makes it likely that some current legislated smoking bans also apply to areas of markets, and in some cases the entire market.

- Enclosed smoke-free areas:
  - Under the Act smoking is banned at enclosed public places and this restriction applies at all enclosed market areas and within five metres of any part of the entrance to enclosed areas.
- Outdoor eating and drinking places:
  - Under the Act smoking is prohibited at outdoor eating and drinking places including market areas where food or drink is supplied, and the areas set aside for its consumption.
  - Fenced markets with food and drink vendors are considered a single eating and drinking place and smoking is banned throughout the market.

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<sup>128</sup> *Wot's on in Queensland 2020 guide*. Retrieved October 2021 from [Wot's On In Queensland - Festival & Events Guide, Caravan Parks and Visitor Information Centres \(wotsoningld.com.au\)](https://www.wotsoningld.com.au/)

<sup>129</sup> Australian Markets and Fairs. *Markets* Retrieved October 2021 from [Australian Markets and Fairs](https://www.australianmarketsandfairs.com.au/).

- Market organisers can designate smoking only areas where no food and drink may be consumed, but smoking can occur. There are no restrictions on the number or location of smoking only areas that can be offered.
- Other outdoor places
  - Provisions of the Act for other outdoor public areas may also apply where they are located within the market area, for example smoking is prohibited within 10 metres of a playground, within five metres of public transport waiting points and all areas of pedestrian malls.
- Smoke-free facilities
  - Markets held at schools or on health facility land are also subject to bans on smoking within the grounds and for five metres beyond the boundary.

The Act also allows local government to create laws prohibiting smoking on local government land where State no-smoking laws are not in place. This authority was provided in response to local government State conference outcomes in 2013 and became active in 2016<sup>130</sup>. Under this authority it is feasible that a local government could introduce a local law prohibiting smoking at markets. Local Governments are not homogenous, and a variety of views have been expressed on the role of local government in introducing local laws banning smoking since this authority was provided. Indication from Queensland Health liaison with local government over time is that while governments some see a role in creating or enforcing smoking bans at areas of local significance or where the impact of litter is significant, this is generally not a widely held view<sup>131</sup>.

There are penalties for non-compliance with legislated smoking bans. Authorised persons, primarily Queensland Health Environmental Health Officers, have responsibility for compliance monitoring and enforcement and have authority to issue verbal and/or written advice or directions, improvement notices or penalty infringement notices where non-compliance is observed. Local government also have the option to undertake compliance action as permitted for State laws on local government land.

### **Other jurisdictions**

All state and territory governments have smoking bans in place for outdoor eating/drinking areas that could apply to some outdoor markets, similar to Queensland. Some jurisdictions have specific, or additional smoking bans for outdoor food fairs/festivals and outdoor community events which can include markets. Additionally, smoking laws like those in Queensland which are designed for a range of public indoor and outdoor places are also likely to apply to some areas of markets, where these are in place within a particular jurisdiction. An example might be where they are captured within the footprint of a food fair or market area, or smoking bans on school grounds.

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<sup>130</sup> Local Government Association of Queensland (2014) Communication with Department of Health unpublished.

<sup>131</sup> Health and Ambulance Services Committee (2015) *Report No. 6, 55<sup>th</sup> Parliament Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015*, Brisbane, Queensland.

**Table 34: Section 2.7, Jurisdiction comparison of smoking at outdoor markets.**

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
Smoking bans for outdoor eating/drinking areas	Y	Y	Y	Y	Y	Y	Y	Y
Specific or additional smoking bans that apply to outdoor food fairs/festivals	N	Y	Y	N	Y	N	N	N
Specific or additional smoking bans that apply to other outdoor community events e.g. markets	N	Y	N	N	Y	N	N	N

### Problem

Currently, outdoor markets have fragmented protection from exposure to second-hand smoke for patrons and market vendors. Protection depends on:

- the setting or location (e.g. smoke-free school grounds)
- the type of offerings available for purchase (e.g. outdoor eating and drinking areas)
- the set-up of the market (e.g. fully fenced market with onsite food service).

Queensland Health receive complaints about exposure to second-hand smoke at public areas where smoking bans are not in place, including at markets. There is no existing smoking ban that adequately applies to all parts of outdoor markets for protection from exposure to second-hand smoke. It is assumed that most of the estimated 6,000 markets held in the State each year are subject to incomplete protection from second-hand smoke. While a small proportion will have complete protection due to their location at smoke-free facilities such as schools or hospitals, most will have coverage that occurs only at parts of the market, for example where food is supplied or near playgrounds.

At the vast majority of markets smoking can occur as patrons move through the market whilst smoking, exposing others to their second-hand smoke. Additionally, outdoor market vendors in non-food supply areas are not prevented from smoking at or close to their stall, risking further exposure of other vendors and market patrons to second-hand smoke. Markets are typically densely populated, which can make it difficult for people to avoid drifting second-hand smoke.

In addition, the application of fragmented smoking bans to markets makes it difficult to provide clear messaging regarding expectations and responsibilities for providing smoke-free areas for the mix of market stakeholders which include community members, market organisers and stall operators.

It is well established that second-hand smoke causes coronary heart disease and lung cancer in non-smoking adults, and induces and exacerbates a range of mild to severe respiratory effects in infants, children and adults<sup>132</sup>. In addition to negative effects on health, an absence of controls on smoking at busy public areas increases the visibility of smoking, making it more difficult for persons trying to quit smoking to succeed and normalising the act of smoking within the community. More detailed information about the negative effects of second-hand smoke on health is available in Part 2, Section 1.

As smoking bans have been introduced over time the community has come to expect protection from exposure to second-hand smoke when participating in community events such as markets. Community sentiment in Queensland indicates a clear desire for protection from second-hand smoke. The Cancer Council Queensland found that 84% of survey respondents supported banning smoking within 10 metres of a child, and that approximately 75% try to avoid smokers in public places<sup>133</sup>. This provides an indication that the community generally prefer to be in places where they are not exposed to second-hand smoke, particularly where children are also present.

While market organisers can implement a policy to prevent smoking, this is understood to be the exception and most markets defer to compliance with State law. Indication from local government over time is that the introduction of smoking bans for areas that occur state-wide such as markets, is considered a matter for Queensland Health.

## **Objective**

The primary objective is to reduce exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland.

A secondary objective is to provide protection from the negative health effects of second-hand smoke at all markets across Queensland.

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<sup>132</sup> US Department of Health and Human Services. (2006). *The health consequences of involuntary exposure to tobacco smoke: A report of the surgeon general*. Atlanta, Georgia: Centers for Disease Control and Prevention. Available from: [http://www.cdc.gov/tobacco/data\\_statistics/sgr/sgr\\_2006/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2006/index.htm)

<sup>133</sup> Cancer Council Queensland (2016). *Everyday health survey*. [https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco\\_Report\\_v06-1.pdf](https://cancerqld.blob.core.windows.net/site/content/uploads/2019/02/170003-EDHS-Tobacco_Report_v06-1.pdf)

## Consideration of options

	Description
Option 1	Status quo. No changes to the provisions in the Act.
Option 2	Support market organisers to adopt and enforce a smoke-free policy.
Option 3	Prohibit smoking at outdoor markets with the provision for smoking-only area/s.
Option 4	Prohibit smoking at outdoor markets in their entirety.

### Option 1. Status quo

Option 1 maintains the current provisions under the Act where they apply to markets held in outdoor spaces. This will mean that smoke-free protection will continue to be inconsistent across outdoor markets in Queensland, ranging from complete bans to no protection.

Retaining the current controls maintains the risk of exposure to second-hand smoke or vapour from e-cigarettes, which are growing in popularity and use. The risk of exposure from e-cigarettes may increase over time, as community understanding about the health risks of these products is mixed and the use of these products is more likely to occur outdoors.

**Table 35: Section 2.7, option 1, costs and benefits.**

Stakeholder	Impact
Market organiser	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Market vendors	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Community	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
Local Government	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>
State Government	<ul style="list-style-type: none"><li>• Nil – status quo</li></ul>

### Assessment

This option does not change or increase the regulatory burden for individuals or businesses. While continuing to provide fragmented protection from second-hand smoke exposure at markets, this option does not achieve further reduction in exposure to second-hand smoke for persons attending or working at outdoor markets in Queensland.

The inconsistencies in smoke-free protection would remain. As only certain areas or types of markets will be subject to smoking bans, smoking can continue to occur in non-food and drink related areas of most outdoor markets.

## Option 2. Support market organisers to adopt and enforce smoke-free policies

Under this option, Queensland Health will develop a standardised smoke-free policy with supporting resources for voluntary adoption by market organisers. The policy will introduce smoke-free requirements for all outdoor areas of the market and within five-metres of clearly designated entrances and exits. Establishment of discrete smoking only areas will be allowed.

To support market managers to implement the smoke-free policy, Queensland Health will provide:

- A policy template which could be tailored by markets outlining a standard requirement for all outdoor market areas to be smoke-free, with smoking only areas allowed and no smoking within five metres of clearly defined entrances and exits.
- Implementation supports such as:
  - a communication plan template and materials including information about stakeholders to inform and engage with regarding the policy, and materials to facilitate implementation of the policy (e.g. free signage, website content and information for vendors)
  - guidance for establishing a smoking only area to ensure impacts on neighbours, market patrons and vendors are minimised. This would likely include advice about the location of smoking only areas such as not in areas where smoking is otherwise prohibited under the Act (e.g. within ten metres of a children's playground or on school grounds or within five metres of a school's boundary)
  - considerations for monitoring and enforcement of the requirements of the policy by market organisers.

This information would be made available on the Queensland Health website.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 36: Section 2.7, option 2, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Market organisers</b>	Simplifying the smoke-free approach makes it easier for market organisers to communicate smoke-free requirements to vendors and patrons.	<p>Tailoring and communicating a smoke-free policy is estimated to take an initial period of up to eight hours.</p> <p>Management of smoke-free markets is estimated to take between 20 minutes and one hour per market for signage, set-up of smoking only areas and additional time or resources to monitor compliance, depending on the size and duration of the market.</p> <p>The proportionality of this impact may be different for different types of markets and dependent on available capacity or systems.</p>
<b>Market vendors</b>	<p>Introduction of a smoke-free policy is likely to reduce vendor exposure to second-hand smoke.</p> <p>Simplifying the smoke-free approach makes it easier to understand and comply with smoke-free requirements.</p>	Under a smoke-free policy, market vendors would need to move to a smoking only area or leave the market temporarily to smoke. It is estimated that this would take 10 to 15 minutes on average and noted that some markets may already require this.
<b>Community</b>	<p>Introduction of a smoke-free policy is likely to reduce community exposure to second-hand smoke while at the relevant markets.</p> <p>Simplifying the smoke-free approach makes it easier for smokers to understand and comply with smoke-free requirements.</p>	Under a smoke-free policy, market patrons who smoke would need to move to a smoking only area or leave the market temporarily to smoke. This is estimated to take 10 to 15 minutes on average and noted that some markets may already require this.
<b>Local Government</b>	Nil	Nil
<b>Queensland Government</b>	<p>Reduction of exposure to second-hand smoke at markets where smoke-free policies are introduced.</p> <p>Simplifying the smoke-free policy approach is expected to also facilitate compliance with legislated requirements where these apply.</p>	One off cost to draft example policy, create and publish supporting materials and respond to initial queries arising is estimated to cost \$5,000.

## Assessment

This option would not increase the regulatory burden on government, businesses or the community as it would be optional to implement.

This option may contribute to reducing exposure to second-hand smoke for persons attending or working in participating outdoor markets where the policy is adopted. As implementation of a smoke-free policy would not be compulsory, uptake by markets is likely to be slow and incremental. Consultation undertaken to-date indicates that markets are often independent and not all market types are represented by peak organisations. This will make it difficult to identify and communicate with market organisers, further impacting the likelihood that smoke-free policies will be widely adopted.

This option also does not simplify or improve consistency in smoke-free requirements that apply at outdoor areas of markets. Limited or gradual introduction of smoke-free policies would largely result in a continuation of the status quo, rather than providing a resolution to the composite of smoke-free requirements that currently apply at outdoor markets. Inconsistent implementation may also serve to increase confusion for market customers and vendors as some markets take up the voluntary policy and others do not.

### Option 3. Prohibit smoking at outdoor markets with the provision for smoking only areas

Under this option, the Act will be amended to prohibit smoking at outdoor market areas and within five-metres of clearly identified market entrances and exits. The smoking ban will apply to all markets open to the public whether on the payment of money, or ticketed entry requirement. Establishment of discrete smoking only areas will be allowed.

This is a similar approach to that outlined in option 2, however the smoking ban would be mandatory and implemented as follows:

- Smoking will be banned at all outdoor market areas and within five-metres of market entrances and exits where these can be clearly defined.
- Smoking only areas could be established by market organisers if they choose. A five-metre buffer is required to separate the smoking only area from the market area. No food or drink could be consumed in either the smoking only area or buffer area and they must be clearly designated and located in areas where smoking is not otherwise prohibited.
- Penalties will be created to apply to a person smoking within the non-smoking areas of markets and not complying with a direction to stop smoking by an authorised person, the market organiser or their agent (e.g. employee, market vendor or security staff).
- Market organisers will be responsible for ensuring that smoking restrictions are complied with at the market area including providing directions to stop smoking, providing information that it is an offence not to comply, and reporting non-compliance to enforcement agencies. Penalties will apply to market organisers observing non-compliance and taking no action.
- Queensland Health will communicate legislative requirements to the community and market organisers through established channels such as the Queensland Health and Queensland Government websites.

- Signage and guidance will be provided to market organisers regarding the establishment of smoking only areas to their impact in terms of visibility and smoke-drift.
- Legislated smoking bans are monitored and enforced by authorised persons under the Act, predominately Queensland Health Environmental Health Officers. Market organisers and patrons will be able to report potential breaches to 13QGOV for referral and follow up.

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 37: Section 2.7, option 3, costs and benefits.**

Stakeholders	Benefits	Costs
<b>Market organisers</b>	<p>A legislated consistent smoke-free approach makes it easier for market organisers to communicate smoke-free requirements to vendors and patrons.</p> <p>The option to establish discrete smoking only areas allows market organisers to direct smoking activity to preferred areas.</p> <p>Potential to enhance the appeal of outdoor markets as a healthy smoke-free destination as smoking would be confined to smoking only areas.</p>	<p>Reviewing requirements, ordering signage, establishing processes and communicating requirements to staff and vendors is estimated to take an initial period of up to 8 hours. Future onboarding processes for new staff or vendors would require a minor addition to advise of smoke-free requirements.</p> <p>On-going management of smoke-free requirements is estimated to take up to an hour per market for signage installation and set-up of smoking only areas. Additional time/resources to maintain a smoke-free environment and act on non-compliance will depend on the size and duration of the market.</p> <p>It is noted that the proportionality of this impact may be different for different types of markets and depend on available capacity.</p>

Stakeholders	Benefits	Costs
Market vendors	<p>Legislated smoke-free requirements are likely to reduce vendor exposure to second-hand smoke.</p> <p>Simplifying the smoke-free approach makes it easier to understand and comply with smoke-free requirements.</p>	<p>Market vendors who smoke would need to move to a smoking only area or leave the market temporarily to smoke. It is estimated that this would take 10 to 15 minutes on average, noting some markets may already require this.</p> <p>Market vendors who do not provide an onsite food and drink service would need to notify people to stop smoking in non-smoking areas if this is witnessed and pass on information of non-compliance to market organiser.</p>
Community	<p>Introduction of a smoke-free requirement will reduce community exposure to second-hand smoke.</p> <p>Simplifying the smoke-free approach makes it easier to understand and comply with smoke-free requirements.</p>	<p>For markets that do not already have smoke-free policy or dedicated smoking areas in place, market patrons who smoke would need to move to a smoking only area or leave the market temporarily to smoke. This is estimated to take 10 to 15 minutes on average, noting that some markets may already require this.</p>
Local Government	Nil	Nil
Queensland Government	<p>Reducing exposure to second-hand smoke at markets.</p> <p>Simplifying the smoke-free policy approach is expected to facilitate compliance and minimise the need for enforcement action.</p>	<p>Initial development of communication materials and enforcement team training at an estimated cost of \$4,500.</p> <p>Possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month.</p>

## Assessment

This option reduces exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland by introducing a legislated smoking ban. The introduction of a legislated requirement means that there will be a commencement date for the implementation of the smoking ban and from this point forward smoking will be prohibited. This is considered an effective means of achieving widespread protection from second-hand smoke in a relatively short time frame. This option also achieves consistency in the application of smoke-free requirements for outdoor markets in Queensland.

This option imposes additional regulatory burden on market organisers, non-food and drink vendors, government and the community. It is noted that there may be no additional impact

for market organisers who are already operating smoke-free markets. Some market vendors as agents of the occupier (market organisers) would have a new responsibility to direct people to stop smoking in non-smoking areas if this is witnessed, and to pass on information of non-compliance to market organiser. It is noted there will be no additional impact for vendors who provide an onsite food and drink service at of markets as they already have similar occupier responsibilities under the Act.

While this option increases regulatory responsibility for market organisers and non-food vendors, the impacts are considered low and relate mostly to initial set-up of processes such as where smoking-only areas might be placed, communicating with market vendors and patrons. Market organisers and vendors will have a role in achieving compliance by reminding patrons about the smoking requirements, however there is no responsibility for enforcement action so this impact is also low. The facility under this option to provide a smoking only area is likely to be beneficial in assisting market organisers to encourage compliance with the smoking ban and reduce the time impact for market vendors and patrons who smoke and will be required to leave the market area to smoke.

#### Option 4. Prohibit smoking at outdoor markets in their entirety

Under this option, smoking will be prohibited at all outdoor market areas and within five-metres of market entrances and exits where these can be clearly identified. The smoking ban will apply to all markets open to the public whether on the payment of money, or ticketed entry requirement. This is a similar approach to the smoking ban outlined in option 3, however under this option smoking only areas would not be allowed within market areas.

Market organisers and vendors may have concerns that they may lose business under this option if smokers are asked to leave the market area to smoke. It is assumed that the impact on business is likely to be neutral as while it is possible that smokers may spend less time at the market it is also possible that non-smoking patrons, particularly families with children, may be more likely to stay longer.

Research into the economic impact of smoke-free policies on the hospitality industry forms may provide some further evidence of impact. Studies not associated with the tobacco industry reported little to no impact on business and some indication of small positive effect. These were consistently rigorous and used objective scientific data such as sales, taxation or employment figures. Studies identified on websites or associated with the tobacco industry, in contrast, consistently reported negative economic impacts, these studies however were based on subjective data such as opinion surveys and had poor methods<sup>134,135</sup>. While research has focussed on the hospitality sector more broadly, it is reasonable to assume that economic impacts for smoke-free markets would be similar.

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<sup>134</sup> IARC Handbooks of Cancer Prevention, *Tobacco Control*, Vol 13: *Evaluating the effectiveness of smoke-free policies*. (2009:Lyon, France). Available at [IARC Publications Website - Evaluating the Effectiveness of Smoke-free Policies](#)

<sup>135</sup> [Scollo, M. Lal, A. Hyland, A & Glanz, S. \(2003\). Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry. Tobacco Control 12: 13-20.](#)

To facilitate and assess compliance a period of community education would be undertaken through stakeholders and web-based promotion followed a period of pro-active compliance assessment. This activity would be scheduled within the limits of current capacity and budget as per standard compliance activity with the Act. Previous implementation of smoke-free legislation indicates that the community normalise the change quickly and this is sufficient.

**Table 38: Section 2.7, option 4, costs and benefits.**

Stakeholders	Benefits	Costs
Market organisers	<p>A legislated, consistent smoke-free approach makes it easier for market organisers to communicate smoke-free requirements to vendors and patrons.</p> <p>Potential to enhance the appeal of outdoor markets as a healthy smoke-free destination.</p>	<p>Reviewing requirements, ordering signage, establishing processes and communicating requirements to staff and vendors is estimated to take an initial period of up to 8 hours. Future onboarding processes for new staff or vendors would require a minor addition to advise of smoke-free requirements.</p> <p>Management of smoke-free requirements is estimated to take up to 30 minutes per market. Additional time/resources to act on or report non-compliance and to manage movement in and out of markets where a fee is charged is likely to be incurred, but will depend on the size and type of market.</p> <p>It is noted that the proportionality of this impact may be different for different types of markets and their available capacity or systems.</p>
Market vendors	<p>Legislated smoke-free requirements likely to reduce vendor exposure to second-hand smoke.</p> <p>Simplifying the smoke-free approach makes it easier to understand and comply with smoke-free requirements.</p>	<p>Market vendors who smoke will need to temporarily leave the market area to smoke. It is estimated that this would take 10 to 30 minutes, depending on the size of the market. It is noted that some markets may already require this.</p> <p>Market vendors who do not provide an onsite food and drink service would need to instruct people to stop smoking in the market if this is witnessed, and pass on information of non-compliance to the market organiser.</p>

Stakeholders	Benefits	Costs
Community	<p>Introduction of a smoke-free requirement will reduce community exposure to second-hand smoke.</p> <p>Simplifying the smoke-free approach makes it easier to understand and comply with smoke-free requirements.</p>	<p>For markets where these requirements are not already in place, market patrons will need to temporarily leave the market. This is estimated to take between 10 and 30 minutes depending on the size of the market.</p>
Local Government	Nil	Nil
Queensland Government	<p>Reducing exposure to second-hand smoke at markets.</p> <p>Simplifying the smoke-free requirements is expected to facilitate compliance.</p>	<p>Initial development of communication materials and enforcement team training at an estimated cost of \$4,500.</p> <p>Possible small increase in enquiries to phone information service on smoking laws. Based on a 5% increase in the number of calls this is estimated to be an impact of \$60 per month.</p>

## Assessment

Similar to option 3, this option (4) reduces exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland by introducing a legislated smoking ban and the same outcomes are expected in terms of reducing second-hand smoke exposure and increasing consistency in smoking bans. Market organisers and vendors would also have similar level of impact. However, in comparison to option 3 this option does not allow a smoking only area to be provided so the impacts associated for market organisers requirement to manage compliance with smoking bans may be greater.

This option imposes additional regulatory burden on non-food and drink vendors, government and the community. It is noted that there may be no additional impact for markets organisers who are already operating in this way. Some market vendors would have a new role to direct people to stop smoking in the market area if this is witnessed, and pass on information of non-compliance to the market organiser. It is noted there will be no additional impact for vendors who provide an onsite food and drink service at markets as they already have similar occupier responsibilities under the Act.

## Recommendation

Options 1 and 2 will not achieve the objectives of reducing exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland, or improved consistency in smoke-free protections at markets. Therefore, these options are not considered viable.

Options 3 and 4 effectively meet the objectives of reducing exposure to second-hand smoke by persons attending or working at outdoor markets in Queensland and providing consistent smoke-free requirements and protections across outdoor markets in Queensland. Further, they contribute to achieving the object of the Act to improve the health of members of the

public by reducing exposure to second-hand smoke for patrons and persons working at the market. This focus is part of a broader policy which seeks to protect the health of Queenslanders from exposure to second-hand smoke and prevent smoking uptake by further de-normalising smoking behaviour. These options also limit risks of exposure to second-hand smoke for market vendors of outdoor markets. Lowering these risks is vital to providing a safe workplace.

Option 3 is recommended over option 4 as this approach minimises the negative impacts for market organisers, vendors and patrons by providing flexibility to respond to the needs of patrons through discrete and manageable smoking areas for vendors and patrons, while still meeting the objectives. Option 3 is consistent with other smoke-free provisions for similar areas such as major events facilities and outdoor eating and drinking places. Option 3 is therefore considered the option which most appropriately balances maximum effectiveness with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

## Consultation

The Department of Health undertook initial engagement with market, retail and food and beverage peak organisations, government and non-government health agencies and regarding the objectives of the Act. Organisations were invited to share any issues they were experiencing regarding smoking and identify opportunities to further reduce the impact of smoking on the Queensland community. Stakeholders engaged indicated support for smoke-free markets.

The responses to this Consultation RIS will assist in ensuring that the potential benefits and impacts for relevant stakeholders of the options presented are appropriately captured and will inform the final reform package to be presented in a Decision RIS to support government decision making.

## Consistency with other policies and legislation

The Act was initially passed in 1998 and has undergone numerous amendments over time, including a progressive increase in the number of areas in Queensland to which smoke-free provisions apply. The recommended option is consistent with the smoke-free approach, including responsibilities for occupiers, that has been taken for similar types of activities (e.g. outdoor eating and drinking places and major event facilities) already legislated under the Act.

### Fundamental legislative principles

The fundamental legislative principles under the *Legislative Standards Act 1992* have been considered.

The proposal is consistent with principles of natural justice and do not adversely affect rights and liberties of individuals or impose obligations retrospectively.

The proposal will intervene in some individual liberties, however it serves the legitimate objective of limiting people's exposure to harmful smoking products which reduces smoking initiation and supports quit attempts. This is consistent with the fundamental legislative principles as the option protects the right to health for all.

## Competition principles

The Competition Principles Agreement requires that legislation should not unduly restrict competition. Queensland Health assessment is that there are no adverse effects on competition as a result of the option.

## Implementation and evaluation

### Implementation

Implementation of the recommended option (option 3) would occur through legislative amendment to the Act and subordinate legislation (if required) to ban smoking in all outdoor market areas and within five-metres of clearly defined entrances and exits, while allowing smoking only areas to be established by market organisers if they choose. A smoking only area would be a clearly designated part or parts of an outdoor area of a market where smoking is not otherwise prohibited under the Act and is established by the market organiser as an area where smoking is allowed, and food and drink is not to be consumed.

Consideration and guidance will be provided about the interaction between these provisions and other provisions within the Act, including interaction with provisions for outdoor eating and drinking places, school facilities, children's playgrounds and designated smoking areas within relevant licensed premises.

As noted under option 3, it is proposed that penalties consistent with those for existing smoke-free areas would be established for:

- smoking within a market or within five-metres of the entry and exit (outside a smoking only area) with a maximum of 20 penalty units or an on the spot infringement of two penalty units
- occupiers of markets, if a person smokes within a banned area, unless the occupier was not aware, and could not have reasonably been expected to be aware, that this was happening, or the occupier or agent of the occupier directed the person to stop smoking and told the person it was an offence not to comply with a direction to stop smoking. Maximum penalty of 140 penalty units applies.

These legislative changes will be supplemented by guidance material, communication and appropriate notice to support market organisers, vendors and the community to comply with the legislative provisions.

Queensland Health will also develop a communication and engagement plan and implement activities to raise awareness of the changed requirements among market organisers, vendors and the community, prior to the commencement of the changes. The Tobacco Laws Service (13QGOV) will also be able to provide information, guidance and signage to support the implementation of the laws. Any additional impact of increased queries would be managed within existing human and financial resources.

### Compliance

Authorised persons who are predominantly Queensland Health Environmental Health Officers have primary responsibility for compliance monitoring and enforcement, including legislative changes proposed under the recommended option (option 3). Officers undertake proactive and reactive compliance including audits and inspections, compliance promotion

and enforcement activities. Local governments also have the option to undertake compliance action as permitted for State laws on local government land.

Queensland Health Environmental Health Officers will work in partnership with market organisers and vendors to ensure compliance. Market organisers and vendors can display signage at markets to communicate requirements and undertake their occupier responsibilities. Members of the community, including market vendors will also be encouraged to report potential breaches of the Act to 13QGOV and, where required, authorised persons can attend and take appropriate action based on risk. The compliance and enforcement options available to authorised persons under the Act include:

- verbal and/or written advice or directions
- improvement notices
- penalty infringement notices (PINs)
- seizure
- prosecution.

### Evaluation

The impact and effectiveness of the recommended option (option 3) will be measured against the policy objectives of reducing exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland using the following measures:

- Number of complaints received that smoking is occurring within the smoke-free market areas and enforcement action taken, as recorded by Public Health Units and reported quarterly.
- A post implementation study of compliance - observed smoking and vaping at a selection of markets.

### Stakeholder questions

7.1	The recommended option is to amend the <i>Tobacco and Other Smoking Products Act 1998</i> to prohibit smoking at outdoor markets with the provision for smoking only areas? (option 3) Please advise if you agree or disagree with this option and why.
7.2	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
7.3	Would you modify any aspect of the recommended option? Please provide details.
7.4	Are you aware of any local government/council restrictions that are currently applied to outdoor markets in your area? If yes, please provide details of restrictions and locality or jurisdiction.
7.5	Please provide any evidence on whether implementation of option 3 will reduce exposure to second-hand smoke at outdoor markets.
7.6	Please describe any additional benefits you expect to occur from implementation of option 3.

## Section 3: Other proposed regulatory reforms previously assessed for impact

As part of a comprehensive package aimed at reducing smoking rates in Queensland, several other issues are intended to be addressed through amendments to the Act.

These proposals have previously been assessed as having important benefits to the community without significant adverse impacts. They are therefore out of scope for the purpose of this consultation about regulatory impact. However, they are outlined here to give the community a complete understanding of the issues that are intended to be addressed. Inclusion in this paper also allows the community to consider the cumulative impact of reforms and provide feedback about implementation.

Illicit tobacco has become a significant concern for retailers who feel their business is being undermined by the availability of cheaper, illegal products at competitors' stores. The Act does not contain provisions that recognise or penalise illicit tobacco. When Queensland Health Environmental Health Officers or consumers identify or report the availability of illicit tobacco, this information is referred to the federal agencies of the Illicit Tobacco Task Force, as the body with the full array of powers to investigate and issue significant penalties for breaches. Options have been proposed that would better align Queensland's laws with national laws. This proposal complements the proposed approach to smoking product supply licensing in Part 2, Section 2.1.

The other three options relate to reducing exposure to second-hand smoke and availability of smoking products to minors. Reforms are proposed that would extend smoke-free areas to carparks that are provided for school use on land adjacent to schools, and places that host organised youth-based activities. Finally, exemptions that permit the supply of smoking products to children by responsible parents and guardians would be removed.

### Smoking product supply

	Topics	Part 2
1	Supply of illicit tobacco	Section 3.1
2	Supply of smoking products to minors	Section 3.2

### Smoking product use

	Topics	Part 2
3	Smoking at school carparks located adjacent to school land	Section 3.3
4	Smoking at under 18 organised recreational events	Section 3.4

## 3.1 Supply of illicit tobacco

### Context

Illicit tobacco includes products that have been grown, manufactured, produced, imported, purchased, distributed, sold or possessed in a manner that is not compliant with legislation. This could include tobacco products for which legally required duties and taxes are not paid (tobacco excise), or products which do not comply with the legal requirements for plain packaging and graphic health warnings.

### Current issues

Tobacco products cause significant and serious harms to the health of those that use them and to bystanders. Illicit tobacco products undermine proven harm prevention strategies including mandated health warnings, plain packaging and tobacco excise.

These policy measures reduce tobacco consumption and assist to increase quit smoking attempts. Smokers who have access to un-taxed cigarettes are less likely to say that they will make a quit attempt and to make such an attempt than those who only buy full-priced cigarettes.

There is currently no offence for selling illicit tobacco products in the Act. Queensland Health Environmental Health Officers refer potential breaches to the relevant Federal agencies authorised to take enforcement action under tax legislation. There is strong support from the retail sector and federal agencies for State based compliance action to disrupt the supply of illicit tobacco products at retail stores.

Queensland businesses report significant losses from the supply of illicit tobacco and have strongly called for urgent additional action to prevent the supply of tobacco products that are illicit.

### Three options were assessed

	Description
Option 1	Status quo. No changes.
Option 2	Amend the Act to allow seizure of tobacco products not meeting plain-packaging requirements or without mandatory graphic health warnings.
Option 3	Education program for retailers and the community about the negative community impacts of illicit tobacco sale.

**Option 2** is recommended. This option amends the Act to include an offence provision prohibiting the sale of tobacco in packaging that does not meet Commonwealth plain packaging and health warning requirements.

This proposal responds to calls for action on the supply of illicit tobacco raised by Queensland businesses and acknowledges the legitimacy of retailers operating in

compliance with the law. Recognising Commonwealth requirements in State law will allow Queensland enforcement officers to take complementary action.

This regulatory proposal has been previously assessed for regulatory impact and will proceed as a part of reforms to be considered for introduction. For further information or comments on this proposal please email [smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au)

## 3.2 Supply of smoking products to minors

### Context

In Queensland, the Act restricts the supply of tobacco and other smoking products to children, restricts advertising and promotion of tobacco and other smoking products and prohibits smoking in certain places. Whilst the Act prohibits the sale of smoking products by adults to children, it is not currently an offence for a responsible adult, such as a parent or guardian, to supply a smoking product to a child.

### Current issues

Smoking continues to be a leading cause of preventable death and disease in Queensland despite a significant reduction in rates over recent decades. Smoking rates are now at 10% of the adult Queensland community, down from 19% in 2008. A key success has been preventing young people from ever starting to smoke with rates for this age group down to 6.9%. Most adults who smoke start in their teenage years. Evidence suggests that the younger the age of smoking initiation, the more likely the person is to become dependent on tobacco and, therefore, a lifelong smoker.

Smoking often happens in the context of family and social networks making the supply of tobacco by family and peers an important source of smoking products for young experimental smokers. Supply of tobacco by family and friends is very influential in smoking initiation, experimentation, and progression to regular smoking. Many studies have found that parental tobacco use is linked with higher rates of child and adolescent smoking initiation, escalation to regular smoking and smoking into adulthood<sup>136</sup>.

Queensland is the only jurisdiction that provides an explicit exemption for a responsible adult to supply smoking products to a child.

### Three options were assessed

	Description
Option 1	Status quo. No change.
Option 2	Implement an education program.
Option 3	Amend the Act to remove the exemption for supply of tobacco and other smoking products by responsible adults to children.

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<sup>136</sup> Leonardi-Bee J, Jere ML, Britton J, *Exposure to parental and sibling smoking and the risk of smoking uptake in childhood and adolescence: a systematic review and meta-analysis*. Thorax 2011;66:847-855.

**Option 3** is recommended. This option would amend the Act to include an offence for any person, whether a parent, guardian, shop keeper or any other persons to provide smoking products to children. This proposal would bring Queensland into line with other States and Territories across Australia which specifically prohibit smoking products being provided to minors under any circumstances.

The law would be amended in accordance with principles that uphold the rights of children and families, with the aim of intervention being to support parents and guardians to fulfil their responsibilities to care and supervise children. Enforcement would be focussed on education, diverting families away from the consequences of penalties. A responsible guardian would not be prosecuted without a process of review.

This regulatory proposal has been previously assessed for regulatory impact and will proceed as a part of reforms to be considered for introduction. For further information or comments on this proposal please email [smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au)

### 3.3 Smoking at school carparks adjacent to school land

#### Context

In 2015, smoking bans were introduced at Queensland public and private school land, including a five- metre buffer around the school boundary. Many schools have carparks located adjacent to school land that are provided for school community use including drop-off and collection of children from school and for parents and visitors to attend school events.

#### Current Issues

The legislated five-metre smoke-free buffer at schools does not cover the full area of these carparks. Schools report that parents and caregivers smoke at their cars while they wait for children. Smoke from these areas drifts into the school, across other cars parked nearby, often with young siblings present, and is observed by students as they enter or leave the school.

Allowing adults to smoke in areas close to or nearby school facilities undermines the existing legislative framework as it provides an environment for second-hand smoke to travel into smoke-free areas. In addition, allowing adults to smoke close to school facilities also undermines the efforts of school principals, who are required by the *Education (General Provisions) Act 2006*, to provide a safe and appropriate environment for children to learn in.

Given the significant risks to the health of children, the Queensland government is seeking to limit the risk of children being exposed to second-hand smoke either in a school facility or while entering or exiting a school facility by extending legislation to cover adjacent carparks.

In addition, as children and young people are more likely to view smoking as socially acceptable when they regularly see people smoking, ensuring children do not see smoking at or near their place of learning will help to de-normalise smoking behaviour and prevent children from ever starting to smoke.

#### Two options were assessed

	Description
Option 1	Status quo. No change.
Option 2	Amend the Act to prohibit smoking in carparks directly adjacent to a school facility and provided for school community use.

**Option 2** is recommended. This option extends the existing legislated smoking ban in place for school land increases smoke-free protection for children, staff and families. This approach is expected to limit the risk of children being exposed to second-hand smoke or smoking behaviour while attending school facilities. Clear and mandated smoking bans will

support the efforts of school communities who report that preventing smoking in carparks outside the smoke-free buffer has been difficult to manage.

This regulatory proposal has been previously assessed for regulatory impact and will proceed as a part of reforms to be considered for introduction. For further information or comments on this proposal please email [smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au)

## 3.4 Smoking at under 18 organised recreational events

### Context

The Act prescribes many outdoor public areas as smoke-free including government precincts, patrolled beaches, outdoor swimming areas, outdoor shopping malls, children's playgrounds and skate parks. In 2016, amendments to the Act extended smoke-free public areas to provide protection at many places where Queenslanders spend time together for work or entertainment, such as children's sporting events and parts of national parks. The focus of the reforms was to protect children and families from the effects of second-hand smoke, reduce the normalcy of smoking to prevent children from ever starting to smoke and provide an environment that encourages adult smokers to quit.

The Act bans smoking within 10-metres of children's organised sporting events to protect children from the effects of second-hand smoke and prevent children from ever starting to smoke.

This protection does not extend to organised non-sporting outdoor events such as Scouts, Guides, Brigades, or group based cultural and youth activities.

### Current issues

Ensuring that all children have a healthy start to life is a priority to prevent chronic health issues in later stages of life. It is critical that safe and suitable areas for children to participate in sport and outdoor recreation activities are provided to encourage greater participation.

At present, under-age sporting activities which occur at sporting venues, such as cricket or football clubs, are considered smoke-free areas under the Act. However, due to the definition of sporting ground in the Act, locations which provide for underage organised outdoor recreation activities are not captured and as such are not considered to be smoke-free areas.

Children may be exposed to second-hand smoke whilst participating in organised outdoor recreational activities either through smoking by adults engaged in the delivery of activity, or by parents and friends observing the activity or waiting to collect children.

### Three options were assessed

	Description
Option 1	Status quo. No change.
Option 2	Support education and self-regulation to adopt and enforce a smoke-free policy.
Option 3	Amend the Act to clarify that the prohibition on smoking for under-age sporting activities applies to both sporting and other organised outdoor recreation activities.

**Option 3** is recommended. This option reduces children's risk of exposure to second-hand smoke in a comprehensive manner when attending outdoor recreational activities. A consistent approach is achieved for all outdoor children's recreational activities regardless of whether they are sports based or otherwise.

This regulatory proposal has been previously assessed for regulatory impact and will proceed as a part of reforms to be considered for introduction. For further information or comments on this proposal please email [smokingreduction@health.qld.gov.au](mailto:smokingreduction@health.qld.gov.au)

## Section 4 – Glossary and abbreviations

### 4.1 Glossary

Term	Definition
<b>Adults</b>	Persons aged 18 years and older.
<b>Causal relationship</b>	When one variable causes a change in another variable.
<b>Children</b>	Person aged under 18 years of age.
<b>Current smoker</b>	Reported smoking daily, weekly or less than weekly. For adults, daily smoker is most commonly used, whereas for young people aged 15–24 years, smoked within the previous week is more commonly used.
<b>DALYs</b>	Disability-adjusted life years (DALYs) are a time-based measure that combines years of life lost (YLLs) due to premature mortality and years of life lost due to time lived in states of less than full health, or years of healthy life lost due to disability (YLDs). One DALY represents the loss of the equivalent of one year of full health. Using DALYs, the burden of diseases that cause premature death but little disability (such as drowning or measles) can be compared to that of diseases that do not cause death but do cause disability (such as cataract causing blindness).
<b>Designated Outdoor Smoking Area (DOSA)</b>	An area of a liquor licensed venue where smoking and drinking is permitted but no eating, gaming or entertainment can occur. Patrons cannot be served in a DOSA, however drinks may be taken into and consumed in the DOSA.
<b>Electronic cigarette (e-cigarette)</b>	Devices designed to produce a vapour that the user inhales. Usually contain a battery, a liquid cartridge and a vaporisation system and are used in a manner that simulates smoking.
<b>Ex-smoker</b>	A person who has smoked at least 100 cigarettes or equivalent tobacco in his or her lifetime but does not smoke at all now.
<b>Illicit tobacco</b>	Tobacco products that have been grown, manufactured, produced, imported, purchased, distributed, sold or possessed in a manner that is not compliant with legislation.
<b>Minors</b>	A person under the age of 18 years.
<b>Non-smoker</b>	A person who has never smoked more than 100 cigarettes or equivalent tobacco in his or her lifetime, or an ex-smoker.
<b>Penalty Unit</b>	The current penalty unit amount is set at \$137.85

Term	Definition
<b>Penalty infringement notice</b>	A fine prescribed by regulation and issued for a breach of an offence in lieu of prosecution through the Courts.
<b>Premises</b>	Includes – <ul style="list-style-type: none"> <li>• A building or other structure; and</li> <li>• A part of a building or other structure; and</li> <li>• Land where a building or other structure is situated</li> </ul>
<b>Smoker</b>	A person who reports currently smoking daily, weekly or less often than weekly. Daily smoking is most commonly used.
<b>Smoking products</b>	Includes tobacco products, herbal cigarettes, loose smoking blend, personal vaporisers (such as electronic or e-cigarettes, e-cigars, vape pens) personal vaporiser related products, smoking related products or a package or carton of any of these things.
<b>Status quo</b>	The situation as it currently exists.
<b>The Tobacco and Other Smoking Products Act 1998</b>	Provides the legislative framework for restricting the supply of tobacco and other smoking products to children, restricting advertising and promotion of tobacco and other smoking products, and prohibiting smoking in certain places, and for other purposes.
<b>YLD</b>	One YLD represents the equivalent of one full year of healthy life lost due to disability or ill-health. This metric allows comparison of different disabilities in terms of overall impact across the population.
<b>YLL</b>	Years of life lost (YLL) is a measure of premature mortality that takes into account both the frequency of deaths and the age at which it occurs. YLLs are expressed per 100 000 population.

## 4.2 Abbreviations

Term	Definition
13QGOV	13 74 68 (Tobacco Laws Service)
ACT	Australian Capital Territory
ATO	Australian Taxation Office
DALYs	Disability-adjusted life years (defined in glossary)
DOSA	Designated Outdoor Smoking Area
EHO	Environmental Health Officer
ITTF	Illicit Tobacco Taskforce
NSW	New South Wales
NT	Northern Territory
SA	South Australia
TAS	Tasmania
The Act	<i>The Tobacco and Other Smoking Products Act 1998</i>
VIC	Victoria
WA	Western Australia
WHO	World Health Organization
YLD	Years of healthy life lost due to disability (defined in glossary)
YLL	Years of life lost (defined in glossary)