

# Reducing the negative effects of smoking in Queensland

Decision Regulatory Impact Statement



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

Published by the State of Queensland (Queensland Health), December 2022

This document is licensed under a Creative Commons Attribution 3.0 Australia licence.



To view a copy of this licence, visit [creativecommons.org/licenses/by/3.0/au](https://creativecommons.org/licenses/by/3.0/au)

© State of Queensland (Queensland Health) 2022

You are free to copy, communicate and adapt the work, as long as you attribute the State of Queensland (Queensland Health).

### **For more information contact:**

Intellectual Property Officer, Department of Health, Queensland Health, GPO Box 48,  
Brisbane QLD 4001,  
email [ip\\_officer@health.qld.gov.au](mailto:ip_officer@health.qld.gov.au), phone (07) 3708 5069.

# Contents

---

<b>Executive summary</b>	<b>4</b>
<b>Part 1: Overview of regulatory impact statements</b>	<b>24</b>
Smoking product supply	25
1. Monitoring compliance of retail smoking product supply	25
2. Advertising and promotion of smoking products at retail premises	30
3. Supply of smoking products at liquor licensed venues	33
4. Sale of smoking products by minors	37
Smoking product use	42
5. Smoking at liquor licensed venues	42
6. Smoke-free outdoor eating or drinking places	47
7. Smoking at outdoor markets	51
<b>Part 2: Detailed regulatory impact statements</b>	<b>55</b>
Section 1: Introduction	56
1.1 Queensland Government commitment to reducing the negative effects of smoking	56
1.2 Smoking in Queensland	57
1.3 Regulatory and program context	59
1.4 Public health concerns	61
Section 2: Detailed regulatory impact statements	69
2.1 Monitoring compliance of retail smoking product supply	70
2.2 Advertising and promotion of smoking products at retail premises	105
2.3 Supply of smoking products at liquor licensed venues	127
2.4 Sale of smoking products by minors	157
2.5 Smoking at liquor licensed venues	182
2.6 Smoke-free outdoor eating or drinking places	218
2.7 Smoking at outdoor markets	244
Section 3: Other proposed regulatory reforms previously assessed for impact	271
3.1 Supply of illicit tobacco	272
3.2 Supply of smoking products to minors	274
3.3 Smoking at school carparks adjacent to school land	276
3.4 Smoking at under 18 organised recreational events	278
Section 4 – Glossary and abbreviations	280

# Executive summary

## Negative effects of smoking in Queensland

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.

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.

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. Electronic cigarettes (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.

## Multi-strategic approach to reducing the negative effects of smoking

Consensus guidance on best practice approaches for reducing smoking product use has been available for decades. Under the Framework Convention on Tobacco Control (FCTC) the World Health Organization (WHO) introduced the MPOWER measures in 2008. MPOWER are a set of six extensively researched, cost-effective and high impact measures that help countries address the negative effects of smoking. These measures include:

1. Monitoring tobacco use and prevention policies.
2. Protecting people from tobacco smoke.
3. Offering help to quit tobacco use.
4. Warning about the dangers of tobacco.
5. Enforcing bans on tobacco advertising, promotion and sponsorship.
6. Raising taxes on tobacco.

MPOWER measures are complementary and synergistic and achieved through implementation of a multi-strategy approach. For example, taxation on tobacco products assists smokers to quit, reduces the number of new smokers and protects people from second-hand smoke. Bans on advertising and promotion of smoking products along with quit smoking campaigns educate people about the health risks of smoking, alter public perceptions of smoking and assist with policy implementation.

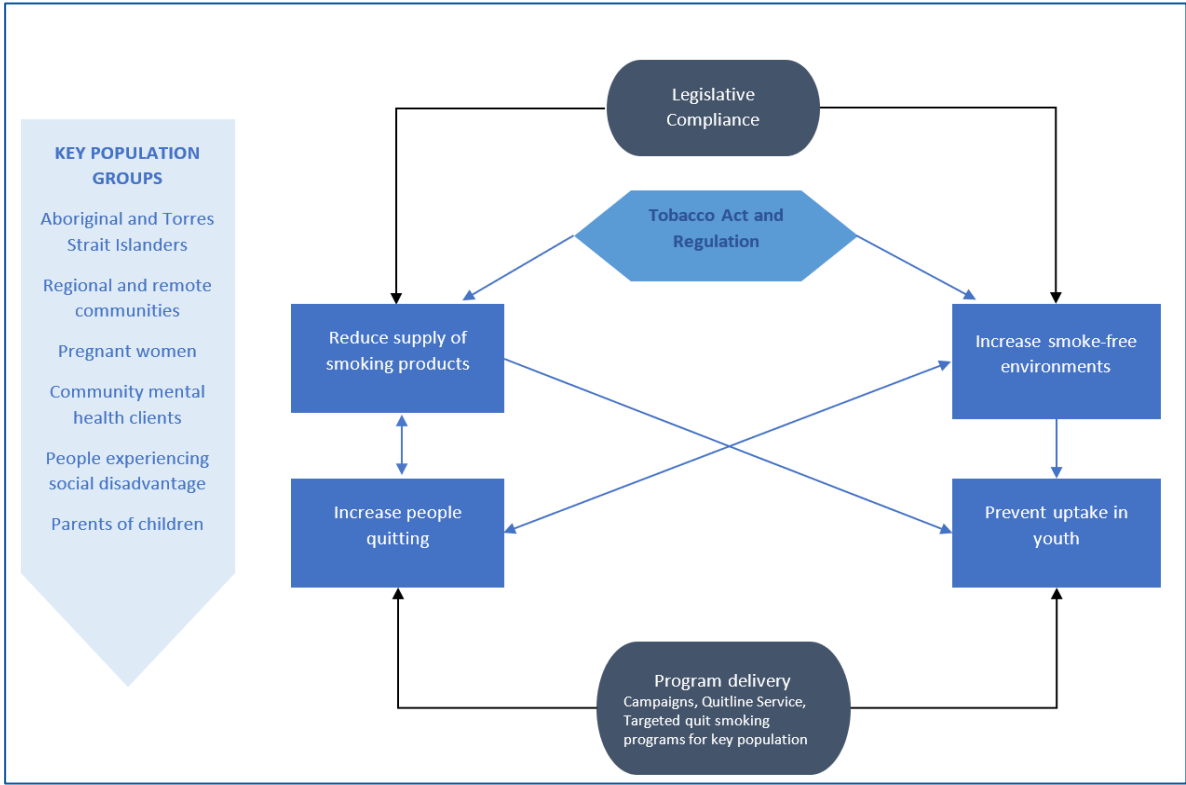
Queensland's approach to reducing the negative effects of smoking is aligned with the MPOWER measures. Figure 1 illustrates the program logic and intersection between the components of Queensland's multi-strategy approach and demonstrates the importance of investment in all MPOWER measures. As figure 1 shows legislated controls and enforcement on the supply and use of smoking products work alongside program measures to achieve short- and long-term impacts that are known to assist in achieving smoking reduction objectives. Collectively these measures address the negative effects of smoking.

Further detail about the elements that compose Queensland's multi-strategy approach are described at table 1 and include continual 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 implementation of MPOWER related measures 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. There is cumulative benefit of introduction and strengthening of regulatory and program approaches in unison.

**Figure 1 – Program logic: intersection of regulatory framework and program delivery to reduce the negative effects of smoking**



**Table 1 – Elements of Queensland Government’s multi-strategy approach to 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 and community 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

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.

The Government has made commitments to consider how Queensland's multi-strategy approach can be bolstered to ensure this objective is met. This includes consideration of 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 conveyed to Queensland Health about gaps in the existing regulatory framework. There is also a recognition of the benefits of smoking reduction achieved in Queensland to date.

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. Evidence demonstrated 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.

## Selecting options to address the negative effects of smoking

### Gap analysis

A gap analysis of Queensland's multi-strategic approach was undertaken to highlight areas that require further intervention to achieve full implementation of the MPOWER measures. This analysis considers the intergovernmental, multi-strategy approach taken in smoking product control and used a variety of sources including government strategy documents, published evidence, consultation feedback, complaints data and desk top reviews. Complaints data and sources are summarised below, and the gap analysis is summarised in the logic model presented at (figure 2).

**Figure 2 – Logic Model: Gap analysis Queensland's multi-strategic approach to reducing the negative effects of smoking**

Current Issues	Inputs	Analysis	Proposed options	Impacts	Outcomes	
<p>QLD second highest adult smoking rate in Australia.</p> <p>Smoking QLD's greatest cause of preventable morbidity and premature mortality.</p> <p>Smoking costs QLD \$27.4b annually.</p> <p>Tobacco use = 1 in 6 hospitalisations.</p> <p>Declines in smoking rates are slowing.</p> <p>Smoking is the leading contributor to the health gap for Aboriginal and Torres Strait Islanders.</p> <p>High levels of youth e-cigarette use.</p> <p>Regular community complaints about smoking product retail violations.</p>	<p><b>MPOWER Policy Areas – evidenced based practice</b></p>	<p>Gaps or risks to policies</p>	<p>Preferred options</p>	<p>Short - medium</p> <p>Long</p>	<p>Goals and objectives</p>	
	<p><b>Monitoring tobacco use and prevention policies</b></p>	<p>Inefficient monitoring and compliance of supply. Regulatory compliance response is not intelligence/data informed. Information gaps in supply market, particularly the e-cigarette market. No direct communication with smoking product suppliers about regulatory obligations.</p>	<p>Introduce a licensing scheme for wholesale and retail supply of smoking products.</p>	<p>Enhancement of compliance intelligence and monitoring systems.</p>	<p><b>Reduced Supply of Smoking products</b></p>	<p>Smoking rate reduced to 5% by 2030. 27% for Aboriginal and Torres Strait Islanders.</p>
	<p><b>Protecting people from tobacco smoke</b></p>	<p>Enact and enforce smoke-free environments. Bans in public places, particularly where communities and families gather.</p>	<p>Extend smoke-free areas including at outdoor markets, buffers at outdoor eating and drinking areas.</p>	<p>Increased compliance with laws and policies.</p>	<p>Compliance with regulatory controls leads to decreased demand and increased smoking product cessation.</p>	<p>Reduced morbidity and mortality.</p>
	<p><b>Offer to help to quit tobacco use</b></p>	<p>Second-hand smoke exposure continues at community events, youth gatherings and at liquor licensed premises. Buffer zones not consistently applied for second-hand smoke protection at public areas.</p>	<p>Require smoke-free buffer zones between a DOSA and the enclosed venue areas.</p>	<p>Reduced exposure to second-hand smoke.</p>	<p><b>Increased Smoke-free Environments</b></p>	<p>Increased In the proportion of Aboriginal and Torres Strait Islander babies with a healthy birthweight (91% by 2031).</p>
	<p><b>Warn about the dangers of tobacco</b></p>	<p>Support quit lines and other community initiatives in conjunction with easily accessible, low-cost pharmacological treatment where appropriate.</p>	<p>Prohibit underage persons being in a DOSA.</p>	<p>Decreased normalcy of smoking including for high risk/high prevalence groups.</p>	<p>Reduced health harms from extended smoke-free environments that eliminate exposure to second-hand smoke.</p>	<p>Reduction in health inequalities.</p>
	<p><b>Enforce bans on tobacco advertising, promotion, and sponsorship</b></p>	<p>Paired drinking and smoking activities in liquor licensed venues decrease quit attempts, normalise behaviours and increase second-hand smoke exposure.</p>	<p>Prohibit drinking in a DOSA.</p>	<p>Environments support smoking cessation.</p>	<p><b>Increased People quitting</b></p>	<p>Reductions in costs to health service of smoking product related illness.</p>
	<p><b>Raising taxes on tobacco</b></p>	<p>Require effective package warning labels. Implement counter-tobacco advertising. Implement anti-smoking education and campaign activities.</p>	<p>Limit the supply of smoking products at liquor licensed premises to service areas.</p>	<p>Reduced complaints about exposure to second-hand smoke.</p>	<p>Improvement in health and reduced costs from successful quit smoking attempts – including for high-risk and high prevalence groups.</p>	<p>Sustainability of health system.</p>
	<p><b>Enforce bans on tobacco advertising, promotion, and sponsorship</b></p>	<p>Enact and enforce effective legislation that comprehensively bans any form of direct or indirect tobacco advertising, promotion, and sponsorship.</p>	<p>Increasing trend in youth accessing and using smoking products including e-cigarettes.</p>	<p>Prohibit supply/handling of smoking products by underage persons.</p>	<p>Decreased access to tobacco/e-cigarettes by young people.</p>	<p>Improved productivity for Queenslanders.</p>
<p><b>Raising taxes on tobacco</b></p>	<p>Increase tax rates for tobacco products. Strengthen administration of controls to reduce the illicit trade in tobacco products.</p>	<p>Increasing availability of illicit tobacco – undermining health measures of warning labels and pricing policies (tax).</p>	<p>Prohibit the supply tobacco not complying with plain packaging or graphic health warnings and expand powers to seize non-compliant products.</p>	<p>Reduced addiction to nicotine among young people.</p>	<p><b>Prevent smoking uptake in youth</b></p>	
		<p>Remaining avenues of exposure to advertising and promotion in retail settings and liquor licensed venues.</p>	<p>Modernise signage, display and advertising restrictions.</p>	<p>Reduced supply to minors.</p>	<p>Avoided/delayed average age of youth initiation to smoking products.</p>	

Based on gap analysis and informed by stakeholder complaints and feedback problems or gaps have been detected 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.

The preferred options canvassed in CRIS complement those MPOWER strategies already in place, these investments are described in detail at Table 1. It is important to note that a multi-strategy approach is deemed best practice in addressing the negative effects of smoking, for this reason Queensland Health looks for opportunities to extend and build on existing strategies in place at a State and National level rather than selectively implement a particular approach. Further investment as proposed in the options identified in gap analysis and canvassed for introduction is expected to value add to the current strategies.

Some of these strategies are shared or exclusive responsibilities of the Federal Government, for example:

- Monitoring tobacco use and prevention policies – As described under the column outlining research activities Queensland undertakes the Preventive Health Survey and production of the Chief Health Officer Report to monitor and report on smoking product use and prevention policies. Collaborative research with independent agencies is also supported. This is complemented by national monitoring activities through other instruments, such as the National Drug Strategy Household Survey and the Australian Secondary Schools Survey.
- Offering to help quit – under state-wide cessation programs Queensland Health invests over \$4m in providing population-wide free consumer self-referred cessation support via Quitline support annually. From 1 July 2021 to 20 June 2022 9,856 single tailored sessions were delivered and 3,626 people had participated in the intensive quit support program.
- In 2020-21, 52,082 smoking cessation activity counts were recorded in Hospital and Health Services, including oral health services and community mental health facilities. This data is indicative, as a result of incentive payments transitioning to outcome indicators supported by Queensland Weighted Activity Units in the reporting period. In addition, Quality Improvement Payments are made to Hospital and Health Services for providing smoking cessation support to hospital inpatients. Online brief intervention training to help up-skill staff in supporting patients to quit smoking is also available at Insight - Toolkits - Healthy Lifestyles. In primary care, the Commonwealth funded Medicare Benefits Schedule includes payment items for smoking cessation support.
- Warning about the dangers of tobacco – under communications and stakeholder engagement Queensland Health invests in social marketing campaigns to warn of the dangers of tobacco and e-cigarettes and promote quit services. The National Tobacco

Campaign is an investment that has been shown to value add to the other strategies in place. For example, when quit smoking campaigns run there is a corresponding increase in calls to quit smoking services. While there has been a hiatus in campaigns without significant national investment for some time it is expected that the completion of the draft National Tobacco Strategy will reinvigorate this investment.

- Raising taxes on tobacco – this is an exclusive responsibility of the Federal Government. Taxes have been imposed on tobacco products since federation. Successive and significant tax increases an excise and customs duty was increased by 25% on 30 April 2010, and 12.5% annually from 2013 to 2017.
- Protecting people from second-hand smoke – under policy, regulation and compliance State action has been strong to reduce exposure to second-hand smoke and this has assisted in reducing the negative effects of smoking – building on this success by addressing clear gaps is a State responsibility that is aligned with the national tobacco strategy.
- Enforce bans on advertising – under policy, regulation and compliance State and national efforts are aligned to ensure that retail advertisement and display and broader broadcast and online advertising is addressed. Analysis of the currency and coverage of these controls is undertaken to ensure that this strategy continues to be successful in evolving marketplace.

Some of these strategies are executed as part of whole of population multi-risk factor approaches, and it is not possible to cost the proportion of cost relating to smoking product use. Where responsibility is shared or the exclusive responsibility of the Federal Government, Queensland Health uses intergovernmental networks to endorse and encourage appropriate national responses.

### **Data on complaints and reports of non-compliance**

Queensland Health receives regular representations from community, business, health agency and non-government organisation (NGO) stakeholders regarding non-compliance and conveying concern and intelligence about potential and actual breaches of the Act. Stakeholders convey concern about issues related to smoking in several ways, including through the phone-based Tobacco Laws Information Service, legislative compliance reporting, online complaints forms and executive correspondence.

In 2021-22 a total of 968 calls were received to 13QGOV regarding the Act. The calls are mix of complaints about breaches of laws, queries about the laws and requests for resources. Of these calls, 375 were referred to Public Health Units, Preventive Health Branch and the Commonwealth Government for follow up.

Authorised Officers in Public Health Units are responsible for compliance monitoring and enforcement of a broad array of public health legislation relating to public health, major events, infection control, food safety, pest management, medicines and poisons, private health facilities and radiation safety. During 2021-22, there were 218 recorded complaints about potential breaches by to Public Health Units, representing 8% of all public health regulatory complaints. Some of these registered complaints arose from referrals from 13QGOV, others arise because of other intelligence or direct complaints. Complaints about breaches of the Act were mostly about smoking in outdoor public places (21.6%), smoking in enclosed places (16.5%), retail non-compliance with advertising, display and signage (14.2%), electronic cigarettes (13.3%) and sale/supply to minors (12.4%).

The Australian community are accustomed to the MPOWER regulatory strategies. Enforcement activity occurs predominantly in relation to community complaints about suspected breaches of the MPOWER regulatory strategies. The majority of complaints relate to breaches of retailing laws and smoking in public places.

It is difficult to estimate non-compliance rates precisely from the available data. However, assuming each retailing complaint relates to a unique retailer, there may be non-compliance at more than 10% of retailers. It is expected that, although complaints help target enforcement responses, non-compliance detections may be even higher if proactive compliance monitoring were in place. While the vast majority of non-compliance is remedied through facilitated compliance, or after written advice and warnings, a minority of matters progress to the issuance of penalty infringement notices and legal proceedings.

Licensing is expected to support greater adherence to existing retail controls and increase compliance with proposed new measures that are designed to address contemporary issues promoting or prolonging smoking, such illicit tobacco and sale by minors. In 2021-22 enforcement activity under the Act represented 29% of all enforcement action taken by Public Health Units under Queensland public health legislation, significantly higher than in 2020-21 where it was 9%. Authorised Officers recorded 158 inspections, 48 investigations, 36 written advices or warnings, 24 improvement notices and 116 Prescribed Infringement Notices. It must be noted that the profile of complaints, inspections and audits have been disrupted by the COVID-19 pandemic due to the nature of public health priorities changing and disruptions to the public health workforce.

Prior to the covid-19 pandemic there were generally more complaints, queries, inspections and audits relating to the Act. This may be a result of limited community engagement by Authorised Inspectors for their own safety, as well as changes community movement and event profiles. For example, during 2018-19, there were 374 recorded, a total of 1467 calls were received to 13 QGOV regarding the tobacco legislation. However, as a total and as a proportion of calls to 13QGOV, the number of calls requiring referral to a PHU for follow up has been increasing over time.

Changes in the complaints profile over time may also be explained by accessibility and people's preferences for digital engagement. In July 2022, in recognition that most community members wish to be able to interact digitally, Queensland Health released an online complaints function for the public to report breaches of smoking laws. Despite limited promotion, in the first month of operation it was used to lodge 43 complaints. Should that trend continue, Queensland Health can expect approximately a further 516 complaints in 2022-2023, and commensurate demand for increased public health compliance activity. The majority of the complaints received through the online form relate to potential breaches of smoking product retailing laws (70%) and smoking in public places (28%).

Complaints and suggested actions are also received through executive correspondence. Using data from correspondence received over a 6-month period it is estimated an additional 456 complaints are received a year. Executive correspondence includes that received directly or indirectly by Queensland Health for advice and/or response. The mix of complaints in the most recent six-month period (1 January 2021-30 June 2022) related to both e-cigarette and illicit tobacco breaches in a setting (69%), illicit tobacco breaches (14%), e-cigarettes (7%), smoke-free areas (4%) and other potential retailing offences (3%).

Other enforcement of the Act occurs through other agencies, for example, park rangers, Council and the Queensland Police Service – this data is not available.

**Table 2 - Annual complaints received**

Annual Complaints*	Smoke-free	Retailing	Other	TOTAL
Public Health Unit records (actual 2021-22 data)	83	95	40	218
Online complaints (estimate)	144	360	12	516
Other correspondence (estimate)	18	426	-	444
<b>TOTAL</b>	<b>245 (21%)</b>	<b>881 (75%)</b>	<b>52 (4%)</b>	<b>1178 (100%)</b>

Note: \*Complaints come from a variety of sources and are recorded in different ways.

### Preferred options for each proposal put forward in the CRIS included:

The preferred options are designed to work together to reduce the negative effects of smoking in Queensland. Collectively the reforms will assist to reduce the demand for smoking products, protect youth from promotion and access to products and increase protection from second-hand smoke. This will help maximise the positive outcomes for the Queensland community without imposing unreasonable costs on stakeholders.

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 were out of scope for impact assessment in the CRIS but were included in a separate section for community reference as they are intended to be progressed within the 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.

Where stakeholders noted these further options, it was typically about the recommendations to prevent the supply of illicit tobacco. This information was often aligned with feedback on the recommendation to introduce a licensing scheme for wholesale and retail suppliers of smoking products.

### Cost effectiveness of preferred options

In Australia, multiple jurisdictions fund the online publication *Tobacco in Australia*, which provides a contemporary up-to-date knowledge synthesis of tobacco control measures globally and in Australia. In *Chapter 17: The economics of tobacco control*, the authors summarise decades of peer reviewed literature on the costs and benefits of smoking in the Australian context, economic rationales for intervention in the smoking product market and evaluations of tobacco control interventions.

That resource details the high external costs of smoking to others' health, as well as business, individual and governments costs from loss of productivity, including high absenteeism. Moreover, it is noted that the high internal costs from smoking related illness are not borne freely by competent and rational smokers, as the addictive nature of nicotine is not fully understood. Most smokers regret smoking, wish to quit but are unable to do so and do not understand the range of illness and deaths caused by smoking.

A recent evidence synthesis by the Australian Partnership Centre found tobacco use was the modifiable risk factor with which the largest Australian health burden was associated, and there is considerable evidence that the MPOWER strategies, are effective to reduce smoking rates, noting strategies that are multicomponent are most effective. The regulatory strategies, such as smoke-free areas, advertising restrictions, pricing and warning measures are the most dominant in cost-effectiveness analyses.

Analysis of the cost effectiveness of the preferred options presented in the Consultation Regulatory Impact Statement (CRIS) were undertaken to assess the expected impact and determine if the costs are commensurate with the anticipated gains. Table 3 shows the summary information for the total costs of each preferred option, the expected Quality Adjusted Life Years (QALY) required to be saved to be cost effective and provides an indication of the number of persons the preferred option would need to assist to quit smoking or stay a non-smoker each year for the costs to be deemed effective.

As Table 3 shows each of the preferred options demonstrates cost effectiveness as the number of persons required to reduce their smoking or remain a non-smoker is low or very low. Consideration has been given to the selection of proposals and preferred options that align with evidence-based approaches that build on the controls in place in Queensland and are consistent with best-practice national and international approaches as shown in logic

models and discussed above. Selection of these options in the context of this evidence and within these frameworks provides a high level of confidence of effectiveness.

There is clear evidence that a multi-strategy approach is an effective way to address the negative effects of smoking. The preferred options are expected to reduce the negative effects of smoking in Queensland. They are based on strong international and national reviews of effective evidence-based approaches that have been tailored to address identified regulatory gaps in Queensland. Importantly, consistent with best-practice tobacco and smoking control approaches, these options are selected within the context of ongoing program investment and are designed to complement those program investments and the impact builds for greater effect rather than duplicates. Implementing these preferred options is expected to protect achievements in smoking reduction to date and address the emerging risks for an increase in smoking product use. There is considerable published evidence and experience in program uptake in Queensland to indicate that implementing strategies that disrupt typical smoking behaviour, such as new smoke-free areas or controls on supply have a positive impact on quit smoking attempts.

**Table 3 – Cost effectiveness of preferred options, annual costs**

Preferred option	Total annual costs	Cost effectiveness - QALYs required to cover costs (annual)	Reduced smoking for cost effectiveness (annual)
<b>Topic 1 – licensing</b>	<b>\$4,186,898.</b>	<b>65 QALYs</b>	<b>27 – quit smoking or 18 - remain non-smokers</b>
Basis for effectiveness: Increased compliance with laws and policies. Addressing non-compliance and securing good compliance with controls on the supply of smoking products underpins both existing and proposed regulatory retailing controls, with expected impacts on access to cigarettes for minors (reducing uptake) and effective controls encouraging cessation.			
<b>Topic 2 – modernising</b>	<b>\$599,850</b>	<b>9 QALYs</b>	<b>4 – quit smoking or 3 - remain non-smokers</b>
Basis for effectiveness: Assists smokers attempting to quit to avoid relapse. Prevents occasional smokers from transitioning to daily smoking. Compliance with advertising and promotional laws is already required however modernising will improve supplier understanding, increase compliance with controls and reduce smoking rates.			
<b>Topic 3 – vending</b>	<b>\$1,088,010</b>	<b>17 QALYs</b>	<b>7 – quit smoking or 5 - remain non-smokers</b>
Basis for effectiveness: Assists smokers attempting to quit to avoid relapse. Prevents occasional smokers from transitioning to daily smoking. There is evidence that 7 of 10 smokers wish to quit smoking (AIHW 2020). Liquor licensed venues are a place of high risk of relapse as smoking and alcohol are paired behaviours and smokers report finding it difficult to abstain in environments where smoking and drinking can occur in unison and products are easily available.			
<b>Topic 4 – sale by minors</b>	<b>\$6,788,721</b>	<b>106 QALYs</b>	<b>44 – quit smoking or 30 - remain non-smokers</b>
Basis for effectiveness: Prevents youth smoking uptake by delaying exposure to products thereby reducing familiarity and normalcy of smoking product use. E-cigarettes are in high demand from amongst minors. Handling smoking products is akin to advertising, for e-cigarettes this includes			

coloured packages, logos, brand names, and flavours. Minors supplying smoking products have direct access to products, increasing the risk of use or peer-to-peer supply. There is clear evidence that e-cigarette use is a gateway to future tobacco use.			
<b>Topic 5 – DOSAs</b>	<b>\$849,518</b>	<b>13 QALYs</b>	<b>6 – quit smoking or 4 – remain non-smokers</b>
Basis for effectiveness: Reducing smoking at or near busy public areas assists to prevent exposure to second-hand smoke, help smokers to quit, and prevent smoking uptake. There is evidence that smoke-free legislation reduces exposure to toxins, reduces consumption among continuing smokers, encourages smokers to quit and to remain abstinent, and reduces mortality rates from smoking-related illnesses.			
<b>Topic 6 – Buffers for outdoor eating/drinking</b>	<b>\$945,151</b>	<b>15 QALYs</b>	<b>6 – quit smoking or 4 – remain non-smokers</b>
Basis for effectiveness: Reducing smoking at or near busy public areas assists to prevent exposure to second-hand smoke, help smokers to quit, and prevent smoking uptake. There is evidence that smoke-free legislation reduces exposure to toxins, reduces consumption among continuing smokers, encourages smokers to quit and to remain abstinent, and reduces mortality rates from smoking-related illnesses.			
<b>Topic 7 – Markets</b>	<b>\$186,969</b>	<b>3 QALYs</b>	<b>1 – quit smoking or 1 – remain non-smokers</b>
Basis for effectiveness: Reducing smoking at or near busy public areas assists to prevent exposure to second-hand smoke, help smokers to quit, and prevent smoking uptake. There is evidence that smoke-free legislation reduces exposure to toxins, reduces consumption among continuing smokers, encourages smokers to quit and to remain abstinent, and reduces mortality rates from smoking-related illnesses.			
<b>TOTAL annual</b>	<b>\$14,645,117</b>	<b>229 QALYs</b>	<b>95 – quit smoking or 65 – remain non-smokers</b>

Notes:

- one off cost such as for changes to DOSAs have been annualised (over a ten-year period at 7% discount rate)  
The one-off costs total \$9,796,182m
- based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime
- a cost effectiveness threshold of \$64,000 per QALY is applied.

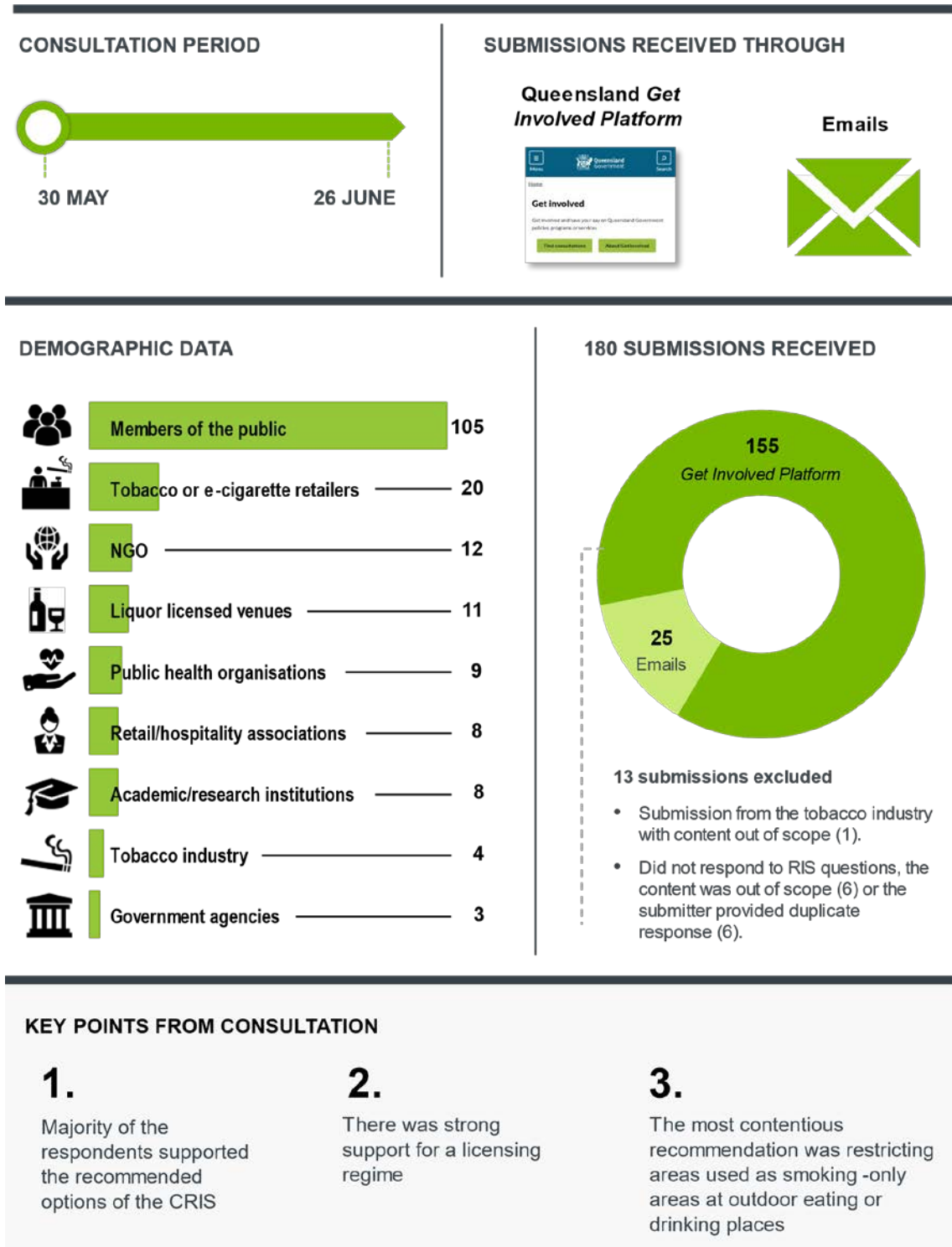
## Consultation on regulatory proposals

Proposals and preferred options were canvassed in the CRIS *Reducing the negative effects of smoking* which was released by the government for public comment on 30 May 2022 for a period of four weeks closing on 26 June 2022. Three stakeholders were provided an extension of one week to respond. A total of 180 responses were received from members of the public, businesses, peak bodies, health agencies and health researchers.

All stakeholders were invited to provide a response through a survey on the Queensland Government Get involved website ([www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)). In addition, an email address was provided for respondents to seek support or provide additional information, with 25 responses submitted through this email address.

A summary of stakeholder feedback on the proposals is summarised in the following section, and outlined in more detail in Part 2, Section 2. Consideration is given to feedback on the proposals regarding impact on business and industry, the government, and the community.

**Figure 3 - Overview of stakeholder consultation process**



## Assessment criteria for proposed amendments to CRIS options

To promote a consistent and transparent approach to assessing proposed changes to the options presented in the CRIS by stakeholders, assessment criteria has been developed. The assessment criteria are informed by the Office of Best Practice Regulation (OBPR) Regulation Impact Statement (RIS) requirements, and the assessment criteria set out in the CRIS. The assessment criteria are set out below and is applied against proposed changes for each proposal.

### **Addresses the regulatory problem**

This criterion assesses whether the proposed change to the CRIS options supports addressing the regulatory problem (unless it is challenging the definition of the regulatory problem).

### **Evidence provided to support proposal**

This criterion assesses whether the proposal is accompanied with evidence to justify a change to the CRIS options. The evidence should also be able to support quantifying the costs and benefits of the proposed change.

### **Proposal is proportionate to the risk the issue presents**

This criterion assesses whether the proposed change to the CRIS options represents a proportionate response to the regulatory problem. A disproportionate proposed change would deliver an inefficient and ineffective regulatory response.

### **Supports efficient compliance and enforcement practices**

This criterion assesses whether the proposed change to the CRIS options will promote clarity in the regulatory framework for regulated parties and the regulator. Opaque regulatory requirements can be cumbersome and costly for regulated parties to comply with, and for regulators to enforce.

### **Represents a net benefit to the community, compared to the options in the CRIS**

This criterion assesses whether the proposed change to the CRIS options will deliver a net benefit to community, relative to the other options in the CRIS. If the proposed change represents a net cost, it is an inefficient regulatory option.

### **Promotes consistency with domestic and WHO smoking control policies and regulations**

This criterion assesses whether the proposed change to the CRIS options is aligned with domestic and World Health Organization (WHO) smoking control policies. Inconsistent regulation can increase compliance costs for regulated parties if they are required to comply with different regulatory regimes.

## List of stakeholders

Stakeholders in '**bold**' have indicated that they 'prefer to keep my response private'. The submissions have been coded, analysed and used to inform general analysis of the options.

**Table 4 – List of stakeholders**

Stakeholder category	Stakeholder
<b>Academic/research institution</b>	Anonymous ( <b>#94</b> ) Catholic Education Rockhampton (#123) Western Sydney University (#127) National Health and Medical Research Council Centre of Research Excellence (#171) University of Queensland (#105) Queensland University of Technology (#168) Australian National University (National Tackling Indigenous Smoking) (#169)
<b>State/territory/local government agency</b>	Anonymous ( <b>#158</b> ) Department of Environmental Science – Queensland Parks and Wildlife Service (#179) The Local Government Association of Queensland (#180)
<b>Public health organisation (which includes health service delivery organisations)</b>	Gold Coast Public Health Unit (#1, #66) Anonymous ( <b>#129</b> ) Anonymous ( <b>#130</b> ) The Metro North Public Health Unit (#172) Central Queensland Public Health Unit Environmental Health Unit (#136) Gold Coast Hospitals and Health Service (#159) North Coast Aboriginal Corporation for Community Health (#164) Toowoomba Hospital (#112)
<b>Liquor licensed venue</b>	Anonymous ( <b>#31</b> ) Anonymous ( <b>#42</b> ) Anonymous ( <b>#82</b> ) Anonymous ( <b>#114</b> ) Anonymous ( <b>#124</b> ) Anonymous ( <b>#135</b> ) Anonymous ( <b>#122</b> ) ALH Group Portfolio (132 QLD Venues) (#156) Anonymous ( <b>#104</b> ) Anonymous ( <b>#131</b> )

Stakeholder category	Stakeholder
<b>Member of public</b>	Various members of the Queensland community (#2 #3 #4 #5 #6 #7 #8 #9 #10 #11 #12 #13 #14 #15 #16 #17 #18 #19 #20 #21 #22 #23 #24 #25 #26 #27 #28 #30 #32 #33 #34 #35 #36 #37 #38 #39 #40 #41 #43 #44 #45 #46 #47 #48 #49 #50 #52 #53 #54 #55 #56 #57 #58 #59 #60 #61 #62 #64 #65 #68 #69 #70 #73 #74 #75 #76 #77 #78 #79 #83 #84 #85 #86 #89 #90 #92 #95 #96 #99 #100 #101 #102 #103 #106 #108 #109 #110 #111 #113 #115 #116 #117 #119 #120 #121 #125 #128 #132 #133 #141)
<b>NGO</b>	AMA Queensland (#146) Australian Council on Smoking and Health (#148) Quit Victoria (#167) National Heart Foundation (#151) No More Butts (#153) Lung Foundation (#154) Cancer Council Queensland (#157) Queensland Aboriginal and Islander Health Council (#165)
<b>Tobacco or e-cigarettes retailer</b>	Anonymous (#63) Super Vape Store (#67) Anonymous (#71) Cignall (#72) Tobacco retailer (#80) Anonymous (#81) Anonymous (#88) Tobacco Station (#97, #107) Anonymous (#98) Anonymous (#118) Anonymous (#126) Anonymous (#134) Anonymous (#142) Anonymous (#143) Anonymous (#149, #87) Anonymous (#176) Anonymous (#170, #137)
<b>Retail/hospitality association</b>	National Retail Association (#140) Australian Lottery & Newsagents Association (ALNA) (#155) Anonymous (#160) Masters Grocers Australia (MGA) (#162) Clubs Queensland (#178) Queensland Hotels Association (#166) Anonymous (#145) Joint ALNA AACS MGA (#174)

Stakeholder category	Stakeholder
<b>Tobacco industry</b>	<p>Anonymous (#139) – included as input is on licensing regime</p> <p>British American Tobacco Australia (#173) – included as input is on licensing regime</p> <p>TabSol Australasia Pty Ltd (#177) – included as input is on licensing regime</p>

## Submissions by industry

Australia is a ratified signatory to the United Nation’s treaty of the World Health Organization, the Framework Convention on Tobacco Control (FCTC).

Article 5.3 of the FCTC, ‘Interference by the tobacco industry’, requires public officials to protect public health policies in relation to tobacco control “from commercial and other vested interests of the tobacco industry”. The FCTC defines the tobacco industry to be “tobacco manufacturers and wholesale distributors and importers of tobacco products”. This includes new and emerging products, such as e-cigarettes.

Respondents to the CRIS were required to identify if they were making a submission in the interests of a tobacco or e-cigarette manufacturer, importer or wholesaler. Further, respondents to the CRIS were asked to identify if they had received from or supplied services to the tobacco or e-cigarette industry.

The Australian Government Department of Health’s Guidance for Public Officials on Interacting with the Tobacco Industry has been used to determine how responses to the CRIS from the tobacco industry would be dealt with. That guidance notes the irreconcilable differences between the interests of the tobacco industry and public health policy interests and that direct and indirect lobbying approaches are used to subvert tobacco control policies. The guidance permits transparent interaction with the tobacco industry, only and to the extent strictly necessary to regulate the industry and its products.

The CRIS, Section 2.1, ‘Monitoring compliance of retail smoking product supply’, outlines options to regulate tobacco wholesalers through a registration of licensing scheme. Responses were received from four tobacco industry organisations. Three of these responses were included in the analysis to the extent they commented on the CRIS preferred option ‘Introduce a licensing scheme for wholesale and retail suppliers of smoking products’. One of the responses from the tobacco industry did not address this proposal. As such, that submission was excluded from the analysis. The respondents to the CRIS are listed above at table 4.

24 respondents declared having received or supplied services to the tobacco or e-cigarette industry. These respondents were tobacco wholesalers/importers (4), tobacco retailers (12), hospitality or retail associations (4), members of the public (1), public health organisations (2) and a liquor licensed venue. The member of the public and public health organisations were, on review, not considered conflicted based on the information provided about the nature of the services received or supplied.

## Purpose of this document

This decision Regulatory Impact Statement (RIS) has been prepared by Queensland Health to provide an overview of the feedback provided during consultation on the impact of proposals to reduce the negative effects of smoking in Queensland.

The purpose of this report is to summarise the key messages and issues submitted by stakeholders in response to the consultation Regulatory Impact Statement (CRIS). This report identifies the proposed changes suggested by stakeholders to the regulatory options in the CRIS and makes recommendations to whether the proposed changes should be adopted, with reference to assessment criteria.

The decision RIS informs next steps in the policy development process and provides an informed and transparent basis for decision making.

# **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. A discussion of observed non-compliance and related issues is provided in the executive summary.

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.

### CRIS options for monitoring compliance of retail smoking product supply

The CRIS considered three options for monitoring compliance of retail smoking product supply. The recommended option was the introduction of a licensing scheme for wholesale and retail suppliers of smoking products (option 3).

Topic	Option 1	Option 2	Option 3
Monitoring compliance of retail smoking product supply	Status quo	Introduce a registration scheme for wholesale and retail suppliers of smoking products	Introduce a licensing scheme for wholesale and retail suppliers of smoking products

## **CRIS feedback on the recommended option**

The vast majority of respondents were supportive of the recommended option to introduce a licensing scheme for wholesale and retail suppliers of smoking products. A very small number of respondents agreed with the proposal but suggested the government adopt the more restrictive approach of banning the sale of smoking products completely.

Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action including:

- providing greater insights to and monitoring of the sector to inform understanding of the current market and target compliance activities
- enhancing enforcement capabilities, especially in respect of illicit tobacco sales and other unscrupulous industry practices
- improving consistency with other legislative approaches for harmful products.

A minority of respondents disagreed with the recommended option and did not support a licensing scheme being implemented.

Reasons provided for disagreeing with the recommended option included:

- costs for small business owners, including the cost of a licence and reduced sales
- potential for disproportionate cost impacts on small business
- a current reliance on the sale of smoking products, and a need for assistance to transition if licence costs are out of reach.

A very small number of respondents were unsure about the option noting that they were uncertain how this approach would change the availability of smoking product availability or use.

## **Final recommendation**

The CRIS recommended the introduction of a wholesale and retail licensing scheme (option 3). This continues to be the preferred option with three modifications:

- Queensland Health enforcement capability to be strengthened with targeted levels compliance audits
- different fees proposed for wholesalers to mitigate costs associated with monitoring supply chain information
- liquor licensed venues will not be required to submit a licence application and fee, and may be deemed a licence for sites registered as supplying smoking products.

The government objective in progressing this option is the efficient and effective monitoring of smoking product supply and mechanisms to prevent and penalise breaches of the Act. There was widespread support with this objective during consultation and agreement for government action through progression of the preferred option.

Option 3 provides 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.

A positive licensing scheme for wholesalers and retailers of smoking products, with appropriate fees, would achieve the desired objective of improved currency of information and better compliance mechanisms. Potential cancellation of a paid 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, advertising and promotions
- investigation of potential breaches, penalties and further action as needed
- proactive compliance activity such as additional retail audits

**Table 5 - Final recommendation costs and benefits**

Recommended option	Stakeholders	Impacts
<p><b>Option 3 – Introduce a licensing scheme for wholesale and retail suppliers of smoking products</b></p>	<p>Smoking product suppliers, retail and wholesale Community 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> </ul>

Recommended option	Stakeholders	Impacts
		<ul style="list-style-type: none"> <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> <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 – 60 minutes to update changes as required</li> <li>costs of an annual licensing fee, estimated to be between \$475 per 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> <li>costs of an annual licensing fee, estimated to be \$675 per annum (plus annual indexation).</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 \$3.5-\$3.7m per annum, averaged over five years.</p>

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. Except for 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 the 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 the 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.

### CRIS options for advertising and promotion of smoking products at retail premises

The CRIS considered two options for advertising and promotion of smoking products at retail premises. The recommended option was to modernise provisions for advertising, display and promotion to improve clarity and consistency (option 2).

Topic	Option 1	Option 2
<b>Advertising and promotion of smoking products at retail premises</b>	Status quo	Modernise provisions for advertising, display and promotion to improve clarity and consistency.

## **CRIS feedback on the preliminary recommendation**

The majority of stakeholders agreed there was a need for an improved and consistent approach to advertising, display and promotion of smoking products, including e-cigarettes, at retail premises, with some suggesting the same approach be taken for online stores.

Public health organisations, academics, retailers and members of the public were the strongest supporters of the proposed regulatory measure.

## **Final recommendation**

The CRIS proposed option 2 as the preferred option, recommending that the Act is amended to modernise advertising and display and promotion provisions for clarity and consistency. This remains unchanged following analysis of stakeholder views, information, and evidence.

The government objective in progressing this option is to protect health by reducing the demand for smoking products including e-cigarettes and ensure retailers and enforcement officers have clarity on how regulatory controls on smoking products apply to the supply of e-cigarette products. Option 2 continues to be preferred over the other option as it delivers greater achievement of the objective.

A majority of respondents support the proposal or would like to see government action go further in modernising controls on advertising and display and promotion of smoking products, particularly in the context of e-cigarette popularity and concerns regarding youth use of these products.

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 for all smoking products aligns with the provisions of the Act.

The amendments under option 2 are predominantly clarifications and modernising of current provisions and definitions and will impose very little additional cost on business, as for the most part they are already expected to be complying with the existing controls. Greater clarity will also assist retailers to avoid breaching the controls and be compliant with the restrictions. Likewise, enforcement teams are already familiar with and enforce the controls that are being modernised. Training to update awareness will be minimal and can be progressed through existing processes.

The amendments are expected to address grey areas that have emerged with the changes in product and advertising products helping retailers comply with legislative controls and assisting to reduce demand for smoking products. Option 2 is 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.

**Table 6 - Final recommendation costs and benefits**

Recommended option	Stakeholders	Impacts
<p><b>Option 2 – Modernise advertising and display and promotion provisions for clarity and consistency</b></p>	<p>Smoking product suppliers, retail and wholesalers Community 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>• clarity on the application of provisions to current smoking products and current marketing approaches</li> <li>• improved clarity.</li> </ul> <p>For <b>smoking product wholesalers</b> no expected benefits.</p> <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 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 reduce demand for products</li> <li>• contributions to reductions in health 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, audit and enforcement of laws.</p>

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.

#### CRIS options for supply of smoking products at liquor licensed venues

The CRIS considered three options regarding smoking product supply at liquor licensed venues. The recommended option was to amend the Act so that smoking products can be supplied only from a service area (option 3).

Topic	Option 1	Option 2	Option 3
<b>Supply of smoking products at liquor licensed venues</b>	Status quo	Require tobacco vending machines to be staff operated	Smoking products can be supplied only from a service area

#### CRIS feedback on the preliminary recommendation

The majority of respondents were supportive of the preferred option that smoking products can be supplied only from a service area, agreeing it is needed to reduce access to smoking products by minors and occasional smokers. Liquor licensed venues did not support the proposal.

There was also support for a more restrictive approach to be adopted with a range of respondents advocating that tobacco vending machines be completely banned or the supply of tobacco in liquor licensed venues completely prevented.

The government objective of this proposal is to support successful quit smoking attempts and reduce smoking initiation at liquor licensed venues. Respondents agreeing with the preferred option gave reasons aligned with the objectives of government action including:

- that removing direct access will reduce impulse purchases by intoxicated patrons
- light or occasional smokers would benefit from not having direct access to tobacco.

A minority of respondents disagreed with the preferred option and did not support restricting smoking product supply to a service area.

Reasons provided for disagreeing with the recommended option included:

- that there is very limited supply occurring from vending machines
- concern over costs to relocate storage of the products in non-public areas.

A very small number were unsure about the option noting that they were uncertain how this approach would change availability or use of smoking products.

### **Final recommendation**

The CRIS proposed option 3 as the preferred option, recommending that smoking products should only be supplied from a service area. This remains unchanged following analysis of stakeholder views, information, and evidence.

The government objective is to support successful quit smoking attempts and reduce smoking initiation at liquor licensed venues. A majority of respondents support the proposal or would like to see government action go further in reducing access to smoking products at liquor licensed venues.

After consideration of evidence and stakeholder feedback the CRIS recommendation continues to be 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. There was no support for this approach noted in consultation feedback.

Option 3 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 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 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 like other retailers, that is behind a counter, and concealed by an opaque covering that is not distinct from the surroundings.

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.

**Table 7 - Final recommendation costs and benefits**

Recommended option	Stakeholders	Impacts
<p><b>Option 3 – Smoking products can be supplied only from a service area</b></p>	<p>Licensees Vending machines owners Community 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> <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> </ul>

Recommended option	Stakeholders	Impacts
		<ul style="list-style-type: none"> <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 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> <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>

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 and requires products for sale to be concealed behind coverings to reduce their promotion. Retailers of smoking products are required by law to ensure employees understand these obligations. State regulation has the aims of protecting children and young people from the harmful effects of smoking and preventing initiation of smoking.

There is no restriction on the age at which a person can supply smoking products.

### 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.

Regular exposure to smoking products familiarises children with them and this can 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. Further, the tobacco industry directly promotes products to people retailing their products and incentivises retailers for sales activity.

There is current widespread demand for e-cigarettes by young people and increasing reports of questionable e-cigarette retailing practices.

Despite training, children tasked with the sale of smoking products may not fully understand the health risks associated with smoking or the serious consequences of selling smoking products, including e-cigarettes, 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.

### CRIS options for sale of smoking products by minors

The CRIS considered three options regarding sale of smoking products by minors. The recommended option was to amend the Act to prohibit the sale and handling of smoking products by minors (option 3).

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

## **CRIS feedback on the preliminary recommendation**

The majority of respondents were supportive of the preferred option amend the Act to prohibit the sale and handling of smoking products by minors. There was also a small amount of support for a more restrictive approach to be adopted.

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. Respondents agreeing with the preferred option gave reasons aligned with the objectives of government action including:

- allowing minors to sell smoking products creates a mindset that the products are socially sanctioned for use
- exposing minors to products may increase smoking uptake (including e-cigarette use).

A minority of respondents disagreed with the preferred option and did not support a ban on the supply of smoking products by minors.

Reasons provided for disagreeing with the recommended option included:

- wage costs and reduced staffing options
- disproportionate impact on small and regional businesses.

A very small number were unsure about the option noting that they were uncertain how this approach would change youth access or use of smoking products.

## **Final recommendation**

The CRIS recommended that the Act is amended to prohibit the sale and handling of smoking products by minors (option 3). This continues to be the preferred option with one modification based on stakeholder feedback:

- the 12-month phase in period is extended for small business to 24 months.

The government objective in progressing this option is to prevent smoking initiation by reducing the exposure of minors to the supply, promotion and advertising of smoking products. There was considerable agreement in consultation with this objective and support for government action through progression of the preferred option.

Retail stakeholders were concerned about the potential for a disproportionate impact on small business and businesses in regional areas. However, this was not ubiquitous with some retailers providing support for the approach and other respondents providing examples of small business in remote and regional areas stating an acceptance and readiness to operate in this manner. As noted in Section 1.1 the burden of disease associated with smoking is unequally distributed and persons living in rural and remote areas have higher smoking rates. Options to ensure smoking uptake is prevented are important in these areas.

There is considerable concern within the Queensland community about the increasing interest in and use of smoking products by young Queenslanders. Primary school children

have been reported as obtaining smoking products and many schools in the State are addressing incidence of use of smoking products such as e-cigarettes on campus.

Option 3 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.

It is noted that some stakeholders may be disproportionately impacted, particularly small businesses and this was presented in feedback. A modification to option 3 is proposed to vary the phase-in period by business type, with an extension for small business of a further twelve months to assist with implementation and allow businesses the opportunity to plan for the change.

Option 2 outlines a similar but self-regulatory approach to preventing minors from being involved in the supply of smoking products. It is unlikely that voluntary adoption of this approach would achieve sufficient coverage to make it as effective as option 3, even with an extended phase-in. Implementation would be more complex, with variable approaches to codifying self-regulation across industry sectors required, with lower impacts reserved only for those businesses that do not adopt a self-imposed policy. Therefore, this option is not considered cost 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.

**Table 8 - Final recommendation cost and benefits**

Recommended option	Stakeholders	Impacts
<p><b>Option 3 – Prohibit the sale and handling of smoking products by minors</b></p>	<p>Employers/Minors Retailers Community Queensland Government</p>	<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>

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

Under the *Tobacco and Other Smoking Products Act 1998* 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%). Current DOSA requirements create inconsistency in smoking management between different types of liquor licensed premises.

### CRIS options for smoking at liquor licensed venues

The CRIS considered six options regarding smoking at liquor licensed venues eligible for DOSAs. The recommended option was to amend the Act to introduce Option 6 which includes requiring smoke-free buffers with enclosed venue areas (option 2), limiting DOSA access to adults (option 3) and prohibiting drinking in a DOSA (option 5).

Topic	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
<b>Smoking at liquor licensed venues</b>	Status quo	Require smoke-free buffers between DOSAs and enclosed venue areas	Restrict DOSA access to adults	Reduce the outdoor licensed area that can be used for a DOSA	Prohibit drinking in a DOSA	Combined option of options 2, 3 and 5

## **CRIS feedback on the preliminary recommendation**

While a small majority supported the preferred approach, there was no uniform response from stakeholders regarding the recommended option to introduce further restrictions on DOSAs including smoke-free buffers with enclosed venue areas (option 2), limiting DOSA access to adults (option 3) and prohibiting drinking in a DOSA (option 5).

Members of the public, public health organisations and government agencies overall supported the implementation of further regulatory restrictions for DOSAs. Several public health organisations, health service stakeholders, members of public, and academic/policy institutions agreed that government action is required and supported the proposed combination of options. A small number of stakeholders agreed with the proposal but suggested the government adopt a more restrictive approach such as the complete removal of DOSAs at liquor licensed venues.

The primary objective in progressing regulatory action is to reduce the negative health effects of exposure to second-hand smoke at liquor licensed venues, and to support smokers at venues to succeed in their attempts to quit smoking. Respondents agreeing with the preferred option gave reasons aligned with the objectives of government action including:

- it is important to break the link between smoking and drinking studies show that smoking is correlated with alcohol consumption
- DOSAs should be accessible by adults only to limit exposure of second-hand smoke to minors.

Stakeholders from liquor-licensed venues and industry associations did not support the proposal and advocated for the status-quo. Reasons provided for disagreeing with the recommended option included:

- costs to business of infrastructure change
- impacts on return patronage if smokers move away from the venue
- existing self-regulatory controls on minors in DOSAs
- potential for unintended consequences (e.g. increase in drink spiking).

## **Final recommendation**

The CRIS proposed option 6 as the preferred option, recommending smoke-free buffers between DOSAs and enclosed venue areas, restricting DOSA access to adults, and prohibiting drinking in DOSAs. After consideration of evidence and stakeholder feedback the CRIS recommendation of option 6 continues to be preferred over other options.

The government objective in progressing this option is to reduce the negative health effects of exposure to second-hand smoke at liquor licensed venues, and support smokers at liquor licensed venues to succeed in their attempts to quit smoking. De-normalising the use of smoking products such as e-cigarettes as a part of social activities is a further benefit expected.

There was no uniform response from stakeholders regarding the recommended option. Most stakeholders that supported the recommended option were members of the public and public health organisations, who also provided suggestions on further regulatory

restrictions. Liquor licensed venue holders disagreed with the need for additional regulatory requirements.

Industry associations argued for option 1 (status quo), suggesting the current tobacco control laws are sufficient. Maintaining the status quo ignores that there is a problem that requires regulatory action. Assessment of the proposal, including stakeholder information provided, concluded that there is limited evidence to support maintaining the status quo, and no material information to demonstrate it provides a net benefit to the community when compared to the other options.

Other stakeholders also suggested a modification to the preferred option to include option 4, arguing that reduced DOSA size is important to achieve reduced second-hand smoke exposure. Assessment indicates that there would be benefit in reducing the size of DOSAs, but notes that this more restrictive approach needs more investigation of the cost implications and outcomes across a range of venues. It is considered that a likely impact of the preferred option will result in a reduction in the number and size of the areas provided for smoking. Further consideration will be given in the evaluation of the reforms to assess if option 4 may better address the regulatory problem.

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 assisting smokers to quit of the all the options considered. Submissions supporting the preferred option presented published evidence, or personal testimony that demonstrated the benefits of option 6, including reduced second-hand smoke exposure, and disrupting the habit of drinking and smoking in a public environment.

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, and less normalisation of smoking product use including e-cigarettes as part of social activities.

The option does impose costs on licensees and to achieve compliance it is assumed that all venues will be required to adjust the 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. Associations noted that the costs could be more than accounted for in the CRIS but did not provide clear advice as to what these could amount to.

DOSAs are variable, some are purpose built, however many venues utilise an existing space, such as a footpath, part of a deck or a courtyard as a DOSA. These DOSAs spaces may serve more than a single purpose throughout the day, e.g. as an eating area in the day and DOSA at night. Businesses will retain flexibility to implement DOSAs that protect the community while suiting their venue.

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.

**Table 9 - Final recommendation costs and benefits**

Recommended Option	Stakeholders	Impacts
<p><b>Option 6 – Combined options of 2, 3 and 5</b></p> <ul style="list-style-type: none"> <li>• <b>Option 2 – Require smoke-free buffers between DOSAs and enclosed venue areas</b></li> <li>• <b>Option 3 – Restrict DOSA access to adults</b></li> <li>• <b>Option 5 – Prohibit drinking in a DOSA</b></li> </ul>	<p>Licensees Staff Community Queensland Government</p>	<p><b>Benefits</b></p> <p>For the <b>community</b> there will be potential health gains through:</p> <ul style="list-style-type: none"> <li>• reduction in exposure to second-hand smoke and greater availability of smoke-free areas</li> <li>• reduction in children’s exposure to second-hand smoke while at venues</li> <li>• support for patrons that have recently quit smoking or are attempting to quit to be successful in their quit smoking attempt</li> <li>• preventing the normalisation of e-cigarette use with drinking.</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 more available smoke-free areas at some venues (e.g., Clubs).</li> </ul> <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><b>Costs</b></p> <p>For <b>licensees</b> there will be requirement to:</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> <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>

Recommended Option	Stakeholders	Impacts
		<ul style="list-style-type: none"> <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 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>• 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> <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>

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.

### CRIS options for smoke-free outdoor eating or drinking places

The CRIS considered five options regarding smoke-free outdoor eating or drinking places. The recommended option was to amend the Act to introduce the Option 5 which includes restrictions on areas used as smoking-only areas (option 3) and introducing a smoke-free buffer around the perimeter of all outdoor eating or drinking places (option 5).

Topic	Option 1	Option 2	Option 3	Option 4	Option 5
<b>Smoke-free outdoor eating or drinking places</b>	Status quo	Introduce a smoke-free buffer around specified seated or table based outdoor eating or drinking places.	Introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places.	Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places.	Combined option of options 3 and 4

### CRIS feedback on the preliminary recommendation

The majority of respondents agreed with the proposal to implement smoke free buffers and restrictions on areas used as smoking-only areas, agreeing it would reduce exposure to second-hand smoke. Members of the public and public health organisations supported the implementation of further regulatory restrictions for smoke-free outdoor areas.

Respondents agreeing with the preferred option gave reasons aligned with the objective of government action, including that the option:

- is likely to reduce exposure to second-hand smoke in areas that are smoke free including non-smoking patrons and employees
- will reduce smoking cues for smokers
- will improve employee health and productivity
- promotes consistency with other domestic regulations
- improves community outcomes by reducing the economic burden associated with the health and social costs of smoking.

Some liquor licensed venues disagree outdoor eating and drinking places should be further regulated, arguing that very few businesses provide areas for smoking only, and there may be unintended consequences, such as more smoking in other public places.

### **Final recommendation**

The CRIS recommended a combination of two regulatory options, referred to as option 5, to promote smoke-free outdoor eating or drinking places. Under implementation of option 5 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.

**Table 10 - Final recommendation costs and benefits**

Recommended Option	Stakeholders	Impacts
<p><b>Option 5 – Combined options 3 and 4</b></p> <ul style="list-style-type: none"> <li>• <b>Option 3 – Introduce restrictions on areas used as smoking-only areas at outdoor eating or drinking places.</b></li> <li>• <b>Option 4 – Introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places</b></li> </ul>	<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> <li>• reduced costs of insurance, cleaning.</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>• reduce exposure to second-hand smoke at outdoor eating or drinking areas in Queensland</li> <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> <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>• an option 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. The impact may be greater in areas whether there is multiple eating or drinking places in close proximity e.g. a dining precinct or at large events.</li> </ul>

Recommended Option	Stakeholders	Impacts
		<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> </ul>

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.

### CRIS options for smoking at outdoor markets

The CRIS considered four options regarding smoking at outdoor markets. The recommended option was to amend the Act to prohibit smoking at outdoor markets with the provision for smoking-only area/s (option 3).

Topic	Option 1	Option 2	Option 3	Option 4
<b>Smoking at outdoor markets</b>	Status quo	Support market organisers to adopt and enforce a smoke-free policy.	Prohibit smoking at outdoor markets with the provision for smoking-only area/s.	Prohibit smoking at outdoor markets in their entirety.

## **CRIS feedback on the preliminary recommendation**

The majority of respondents were supportive of the preferred option to prohibit smoking at outdoor markets with provision for smoking areas.

Other respondents agreed with a ban on smoking at markets and went further urging the government to adopt the more restrictive approach described in option 4 where smoking is prohibited at outdoor markets and there is no provision for a smoking area.

Respondents agreeing with the preferred option gave reasons aligned with the objectives of government action including:

- protection from second-hand smoke for children and families
- assists to improve health outcomes and reduce the health and social costs of smoking.

A minority of respondents disagreed with the preferred option and did not support a smoking ban being implemented. A small number were unsure about the option.

Reasons provided for disagreeing with the recommended option included:

- potential for costs to markets if adjustments required
- additional smoking controls are unnecessary as smokers already move away to smoke.

## **Final recommendation**

The CRIS proposed option 3 as the preferred option and this remains unchanged following analysis of stakeholder views, information, and evidence.

The government objective is to reduce exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland and reduce the negative effects of second-hand smoke. There was widespread support with this objective and for progression of the preferred option.

Although options 1 (status quo) and 2 (self-regulation) represent a less interventionist approach, they were assessed as very unlikely to elicit any change and achieve the objectives.

There is wide-ranging support in the consultation feedback for a statewide government ban on smoking at markets with both option 3 and option 4 receiving support from respondents.

Addressing concerns about second-hand smoke exposure is consistent with the objective of the Act which seeks to improve the health of members of the public by reducing exposure to second-hand smoke. Prohibiting smoking at markets will also contribute to lowering workplace risk of exposure to second-hand smoke for market vendors. Implementing a smoking ban across market areas also contributes to further de-normalising smoking behaviour, including the use of e-cigarettes in public places.

Both options 3 and 4 implement a ban on smoking anywhere at a market and with five-metres of a clearly defined market entrance. Option 3, differs from Option 4 in allowing market organisers to provide discrete smoking areas within the market area. Both options are assessed as being effective for achieving 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.

Consideration was given to reasons provided by stakeholders for a preference of option 4 including potential impact on litter and increased smoke-free protection however there was not sufficient evidence presented to warrant a modification on these grounds at this time. Option 3 is recommended over option 4. While the costs of implementing the options are similar, Option 3 offers flexibility for market organisers, vendors and patrons to use discrete and manageable smoking areas, while still meeting the objective of reducing second-hand smoke exposure. Provision of discrete smoking areas is consistent with smoke-free requirements at major events facilities and outdoor eating and drinking places.

Option 3 is considered the option which most appropriately balances maximum effectiveness with minimal regulatory burden for stakeholders, and therefore best addresses the problem in the most cost-effective way and will achieve the greatest benefit to the Queensland community.

**Table 11 - Final recommendation costs and benefits**

Recommended Option	Stakeholders	Impacts
<p><b>Option 3 – Prohibit smoking at outdoor markets with the provision for smoking-only area/s</b></p>	<p>Market organisers Market vendors Community Local Government Queensland Government</p>	<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> <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>

Recommended Option	Stakeholders	Impacts
		<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 will have the duty of informing 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>

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 Islander 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.

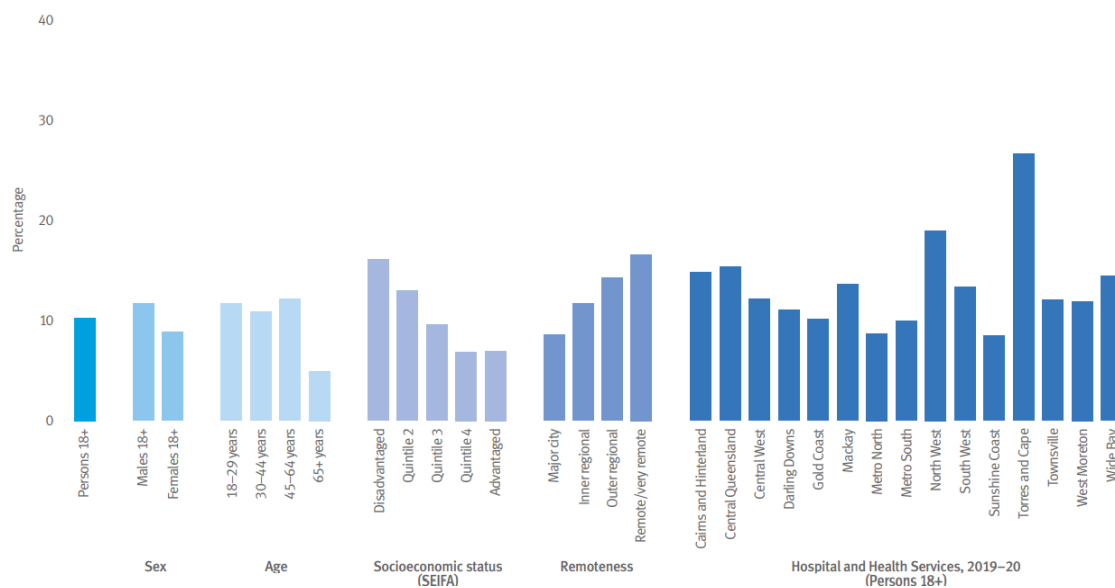
There is a socioeconomic gap in daily smoking in Queensland. In 2020, daily smoking prevalence in the most disadvantaged areas was more than double (2.3 times) that in advantaged areas (16% compared with 7.0%). Never smoking was associated with socioeconomic status—adults in the most advantaged areas 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%).

---

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

**Figure 4 - 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%).

In June 2022, during the public consultation period of the CRIS, NSW Health released updated [Population Health Survey](#) data on e-cigarette use. In 2021, there were significant increases from 2020 estimates of e-cigarette use:

- 16.2% of adults in NSW had used an e-cigarette at least once, up from 9.7% in the previous year

- 5.5% were current (daily or occasional) users of electronic cigarettes, up from 2.1% in the previous year.

Use was highest among young people 16-24. Over 2020 and 2021, 32.7% of this age group were estimated to have used an e-cigarette at least once, and 11.1% reported current use. These estimates are translatable to Queensland, and cause of public health concern in light of the revised NHMRC statement on e-cigarette harms discussed in Section 1.4. <sup>2</sup>

### 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 5 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.

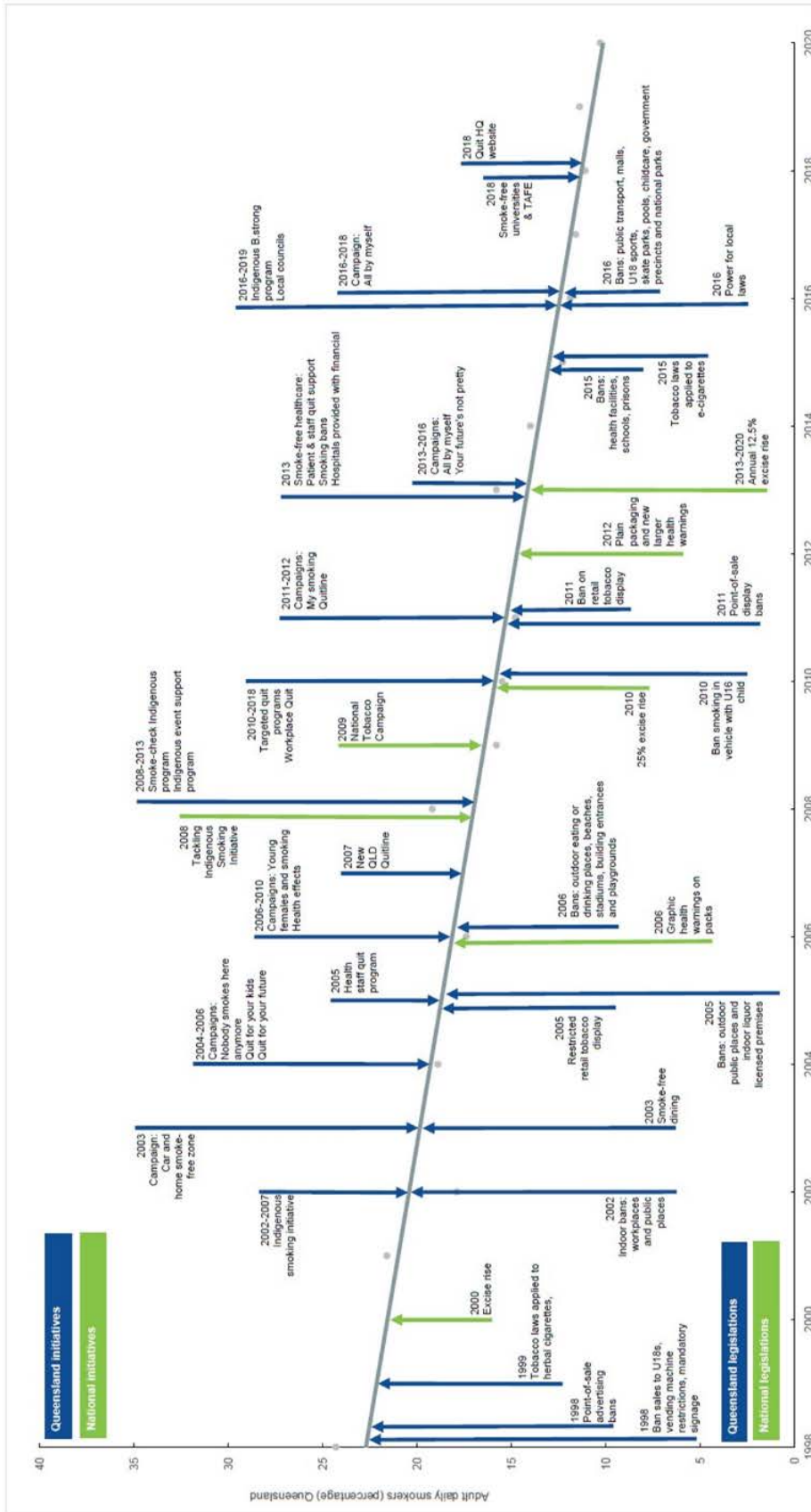
The Act has been incrementally strengthened over time in response to emerging supply issues and available evidence. The expansion of smoking product types was further reason for the Act to be strengthened in 2015 to capture e-cigarettes as smoking products. Reference to a smoking product under the Act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

---

<sup>2</sup> NSW Population Health Survey (SAPHaRI) (2022). Centre for Epidemiology and Evidence, NSW Ministry of Health <https://www.healthstats.nsw.gov.au/#/indicator?name=-beh-smo-ecig-phs&location=NSW&view=Trend&measure=prevalence&groups=Electronic%20cigarette%20use&compare=Electronic%20cigarette%20use&filter=Electronic%20cigarette%20use.Current%20user.Ever%20used>

**Figure 5 - 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>3</sup>. The greatest share of the costs of smoking are borne by households, particularly by smokers, former smokers and their families<sup>4</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>5</sup>. Compared to adults who

---

<sup>3</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane

<sup>4</sup> National Drug Research Institute. (2019). *Identifying the Social Costs of Tobacco Use to Australia in 2015/16*. Curtin University. Western Australia.

<sup>5</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>6</sup>.

Nationally, smoking accounted for 9.3% of the total health burden (DALY) in 2015<sup>7</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>8</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>9</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>10</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

---

<sup>6</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>7</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>8</sup> CHO Queensland Health. (2020). *The Health of Queenslanders 2020. Report of the Chief Health Officer Queensland*. Queensland Government. Brisbane

<sup>9</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>10</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>11</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>12</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>13</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>14</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

---

<sup>11</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>12</sup> National Academies of Science, Engineering and Medicine. (2018) *Public Health Consequences of E-cigarettes*, Washington, DC, The National Academies Press, 2018.

<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*, *Respirology*. 2020.

<sup>14</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*, *Respirology*. 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>15</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.

Since the publication of the CRIS, the NHMRC has updated its advice on e-cigarettes. The updated [CEO Statement on Electronic Cigarettes](#) notes increasing use of e-cigarettes since 2016, and reaffirms a precautionary approach to e-cigarettes, citing evidence from updated global systematic reviews, that:

- e-cigarettes can be harmful. All e-cigarette users are exposed to chemicals and toxins that can harm health
- e-cigarette poisonings have significantly increased over the past five years
- people who have never smoked may be more likely to take up tobacco smoking if they use e-cigarettes
- teenagers exposed to e-cigarette content are more likely to try e-cigarettes
- e-cigarettes are not proven safe and effective smoking cessation aids
- people may passively inhale e-cigarette emission in indoor environments.

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

---

<sup>15</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.

months) sixty-eight young people lost their lives and others faced irreversible lung damage<sup>16</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 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>17</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 doses of heated and aerosolised constituents of e-liquid, including solvents, flavourings and toxicants, the harms of which are not yet clear

---

<sup>16</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)

<sup>17</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.

- ingestion can cause acute toxicity and possibly death if the contents of refills or bottles containing liquids are consumed<sup>18</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>19</sup>.

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>20</sup>.

In addition, there is emerging evidence that like active smoking, second-hand smoke exposure is associated with depression and psychological distress<sup>21</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>22</sup>. Children have less control

<sup>18</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>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> 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>21</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>22</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.

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>23</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>24</sup>.

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>25</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>26</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 smoke, expects to have little to no exposure when in public places. As this awareness has grown there has been a corresponding increase in community support for controls like the introduction of smoke-free laws and policies that reduce this exposure<sup>27</sup>.

---

<sup>23</sup> CHO Queensland Health. (2020). The Health of Queenslanders 2020. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane

<sup>24</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>

<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> 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>27</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)

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>28</sup>.

---

<sup>28</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>29</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

---

<sup>29</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 12.

The Victorian Government has commissioned an illicit tobacco review<sup>30</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>31</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.

---

<sup>30</sup> Victorian Government. *Illicit Tobacco Review*. Retrieved February 10, 2022 from <https://www.vic.gov.au/illicit-tobacco-review>

<sup>31</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 12 - 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 no 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.

### Options considered in the CRIS

	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 13 - 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>32</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>33</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.

---

<sup>32</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>33</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 14 - 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:

- facilitating direct and targeted communication to smoking product suppliers
- recovering costs of enforcement efforts, which allows smoking product regulation to be given the priority it demands within other stretched public health resources
- preventing potentially unscrupulous suppliers entering the market
- allowing administrative actions (e.g. conditions) to be placed on licensees
- 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>34</sup>.

---

<sup>34</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>

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 further measures including licensing, where 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>35</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>36</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.

---

<sup>35</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.tobaccoin australia.org.au/chapter-11-advertising/indepth-11b-licensing-of-tobacco-sellers>

<sup>36</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>37</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>38</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 15.

**Table 15 - Section 2.1, expected cost distribution of smoking product retail regulation**

<b>Regulatory functions</b>	<b>First year estimated overall cost and percentage breakdown by function</b>	<b>Ongoing annual estimated costs and percentage breakdown by function</b>
<b>Total estimate of smoking product licensing and compliance framework</b>	<b>\$3.5m-\$4.5m</b>	<b>\$2.5-\$3.0m</b>
<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%
<b>Licensing systems and maintenance</b>	24%	3%

<sup>37</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>38</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
Software, applications processing, renewal, licensing and ongoing system maintenance.		
<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 figures 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 16 - below).

**Table 16 - Section 2.1, option 3, 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>Aligns with regulatory approach in most other jurisdictions for national retailers.</p> <p>Increased assurance of fairer market position via proactive compliance in place for competitors.</p>	<p>Time to complete application process.</p> <p>\$30-\$60 in the first year and \$15-30 for subsequent renewals.</p> <p>Estimated to be 1-2 hours on commencement and 30 min-1 hour to update changes as required.</p> <p>Cost of annual licensing fee.</p> <p>Between \$350 and \$500/annum (plus annual indexation) per outlet.</p>
<b>Wholesalers</b>	<p>Improved access to information about the legislation and requirements.</p> <p>\$30/annum</p>	<p>Time to complete application process.</p> <p>Estimated to be 10-20 minutes annually.</p>

Stakeholder	Benefits	Costs
	Estimated to be one hour 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
<b>Community</b>	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.
<b>Queensland Government</b>	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.

**Table 17 - 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

### Community feedback on the CRIS (30 May – 26 June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information or seek meetings. Questions in the online survey were not mandatory and all free text providing respondents the option to respond to topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 148 provided responses to at least one of the seven questions asked on this topic. Responses were received from members of the public, public health academics and organisations, non-government organisations, government agencies, health service providers, retail stores, liquor licensed venues and associations.

## The online survey asked stakeholders to respond to the following free text 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	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: <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	With regard to the preferred licensing fee framework, do you support: <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?

## Summary of stakeholder feedback

Table 18 shows the breakdown of overall agreement and disagreement with the preferred option. The vast majority of respondents were supportive of the preferred option to introduce a licensing scheme for wholesale and retail suppliers of smoking products. One of the liquor licensed respondents advised that their submission was representative of 132 venues under the company group (#156 ALH Group)

One non-government organisation and one retailer agreed with the proposal but suggested the government to adopt the more restrictive approach of banning the sale of tobacco products completely.

Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action including:

- providing greater oversight and enforcement of the sector to help increase understanding of the current market
- enhancing enforcement capabilities, especially in respect of illicit tobacco sales and other unscrupulous industry practices
- improving consistency with other legislative approach for harmful products (e.g. alcohol laws).














A minority of respondents disagreed with the preferred option and did not support a licensing scheme being implemented.

Reasons provided for disagreeing with the recommended option included:

- costs for small business owners including the cost of a licence and reduced sales
- potential for disproportionate impacts on small business
- a current reliance on sale of smoking products, and a need for assistance to transition if licence costs are out of reach.

A very small number of respondents were unsure about the option noting that they were uncertain how this approach would change smoking availability or level of use.

**Table 18 - Section 2.1, summary of consultation responses for topic 1**

Stakeholder cohort	 Agree license	 Disagree license	 Unsure	 More restrictive
 Academic/research institution	7	0	0	0
 Liquor licensed venue	5	3	0	0
 Member of public	55	29	4	0
 Non-government agency	6	0	0	1
 Public health organisation	9	0	0	0
 Retail/hospitality association	4	1	1	0
 State/territory/local government agency	2	0	0	0
 Tobacco or e-cigarette retailer	18	2	0	0
 Tobacco industry	2	0	0	0
<b>Total</b>	<b>108</b>	<b>35</b>	<b>5</b>	<b>1</b>

## Consideration of feedback

### Most respondents were supportive of the proposal to introduce a licensing scheme

Most respondents were supportive of the proposal to introduce a licensing scheme. Those in agreement with the recommended option noted that licensing would support the government to have direct oversight of who is selling and where. Respondents felt this approach was consistent with regulatory arrangements for alcohol and would align Queensland with other positive retailer licensing schemes in other jurisdictions such as Tasmania, Northern Territory, South Australia, Western Australia, Australian Capital Territory, and the legislated notification scheme for retailers in New South Wales.

Respondents also felt that a licensing scheme would better enable the government to communicate directly with smoking product suppliers, including enforcing their compliance

with the regulatory framework. The tobacco industry was also supportive of introducing a licencing scheme to reduce illicit tobacco sales and improve consistency with the other jurisdictions.

**Members of the public raised concerns about the potential financial implications of implementing a licensing scheme.**

The majority of the respondents that opposed the introduction of a licensing scheme were members of the public (29 of the 35 responses). Those that disagreed with introducing a licensing scheme expressed concern over the impact this will have on business owners, and the cost to customers. They suggested that sufficient mechanisms to reduce tobacco consumption are already in place.

These respondents also raised concerns about the cost of a licence, noting that if the cost is too high it will unfairly impact small businesses and will result in a subsequent loss of retail trade. One member of the public suggested that *“licencing [Sic] will disadvantage small business, this is a cash grab”* (#95). While a number of concerns were raised around the cost of licensing, evidence as to the level at which a cost would be inappropriate for small business was not quantified.

**Respondents suggested offering support to small businesses to transition away from tobacco sales.**

Two respondents made suggestions about ways in which small businesses could transition away from tobacco retail. One member of the public and one public health organisation suggested that small businesses could be bought-out of selling cigarettes. They suggested a one-off compensation payment from the government to help them transition away from their reliance on smoking sales into other product categories (#125, #129).

**Members of the public, academics and health service providers suggested amendments to the scope and application of the licensing scheme.**

Respondents provided a range of views relating to the scope of the licensing scheme and how it would be enforced. One member of the public suggested a separate licensing fee for the sale of vaping products (#25). An academic/research institution suggested that *“pharmacies that only supply nicotine vaping products via the TGA prescription arrangements should be treated differently to retailers, and be subject to an annual registration instead of obtaining a retail licence”* (#171).

One academic/research institution and one public health organisation also suggested capping the number of licences or gradually reducing the number of licences to decrease the number of tobacco retailers over time (#171, #172).

**Some academics and NGOs noted the importance of ensuring that online and interjurisdictional suppliers are held to the same standard as Queensland based retailers.**

Respondents that commented on this topic identified that it was a critical issue. Suggestions to address this matter included prohibiting indirect sales of smoking products and working with the Australian Government to strengthen national tobacco control laws (#148, #171).

Two NGOs noted that a prohibition on indirect sales is supported by the Guidelines for Implementation of Article 13 of the WHO FCTC, which recommends that internet sales of tobacco be banned. They also noted that similar provisions to South Australia could be introduced in the Act. The South Australian [Tobacco Products Regulation \(E-Cigarettes and](#)

[Review\) Amendment Act 2018](#) has made it an offence with a maximum penalty of \$10,000 for a person to sell a smoking product if the order for the product has been placed by mail, telephone, fax, email, internet or other electronic means.

### **Respondents did not present a uniform view on the fee structure of a licensing scheme.**

Forty (40) respondents supported a flat fee structure, while 46 supported a tiered fee structure (according to the size of business or annual sales), 19 selected 'other, please specify'.

Proponents of the flat fee structure included stakeholders from NGOs (#154, #157) who commented that this approach was most consistent with other states and territories. An NGO also noted that the retail margin on a pack of cigarettes is approximately \$2.50. A retailer can therefore make about \$900 a year from a customer who smokes a packet a day and buys exclusively from their shop. They stated that in that context a licencing fee of around \$405 per year, this "is a minor impost" (#157).

Those that supported a tiered fee structure noted the approach could be fairer for small businesses. Some respondents suggested that the tiered system could be based on the volume of tobacco units sold, "which will make the licensing fee proportional to the size of the business" (#79).

A public health organisation suggested the tiered system could incorporate public health risk (#172). Retailers such as tobacconists and specialist vape stores could be placed in a higher risk tier, with chain supermarkets placed in a lower risk tier with a corresponding lower licensing fee. Similarly, another public health organisation suggested that the tiered fee structure should be based on the complexity of the monitoring and enforcement required. Specialist stores such as tobacconists which sell large volumes and a wide range of products require more time to conduct compliance checks than retail food businesses, and would therefore attract a higher licensing fee (#136).

“

*...support a fee structure that covers licensing infrastructure, directly related policy and education, but does not support the notion that enforcement activity against the existing organised crime groups distributing illicit tobacco across Queensland should only be taken if the full cost can be borne by legitimate retailers... the State Government should invest in enforcement beyond cost recovery through a licensing scheme.” - (#174)*

### **Modifications proposed**

Three themes for modification to the recommendation in the CRIS were identified based on the stakeholder consultation findings. These options are listed and discussed below:

1. Excluding some licensed retailers from the licensing scheme.
2. Increasing monitoring and enforcement powers.
3. Increasing licensing fees.

### Exclude licensed retailers from the licensing scheme

Liquor-licensed venues were supportive of the introduction of a licensing scheme for the suppliers of smoking products from retail outlets, although stated that any licensing scheme “should not include suppliers of smoking products from licensed venues as these are already licensed and restricted trading environments” (#156). This position was endorsed by 132 members of a liquor-licensed venue business group.

Some liquor licensed venue respondents noted that 99.7% of smoking product sales are supplied by supermarkets, tobacconists, convenience stores, petrol stations and similar retail outlets and only 0.3% of smoking products are supplied by hotels, clubs, restaurants, and bars. Respondents noted that licensing 99.7% of the retail market will still meet the government objectives of identifying and monitoring the tobacco retail market (#156).

The same respondent stated that:

“

*“The sales [of liquor licensed venues] are negligible, representing 0.3% of the total volume of the Australian tobacco cigarette market. They are already licensed and registered and highly regulated by government. They are known entities with the responsible licensee easily identified and having passed probity as a fit and proper person to hold a liquor licence. Hotels are already subject to audit by Queensland Health, Office of Liquor and Gaming Regulation, Queensland Police, Office of Fair Trading and Local Government.” - (#156)*

**Table 19 - Section 2.1, assessment of modification proposal to exempt liquor licensed venues**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	No, this would not improve market understanding to enable communication with smoking product suppliers and compliance monitoring of the industry.
<b>Evidence provided to support proposal</b>	Yes, limited evidence is provided. References to the number of tobacco sales from liquor licensed venues is provided.
<b>Proposal is proportionate to the risk the issue present</b>	Unclear, further evidence regarding sales in liquor licensed venues would be required.
<b>Support efficient compliance and enforcement practices</b>	No, as it would exempt liquor licensed venues from the licensing scheme.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	Unclear, there is no significant benefit to the community at large. The benefit would be for liquor licensed venues.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	No, as Article 15 WHO FCTC calls Parties to “endeavour to adopt and implement further measures including licensing where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade”.

## Increase monitoring requirements and enforcement powers

Numerous respondents noted that the licensing scheme would only be successful if accompanied by appropriate enforcement. Stakeholders from NGOs stated that it is:

“

*...important that monitoring and enforcement of licensing requirements be undertaken locally (potentially through public health units), but with a strong centralised coordinating function, that has law enforcement capacity and connection with national agencies involved in reducing illicit tobacco. Fees from a licensing scheme could cover the operational costs of such a function.” - (#154, #157)*

A group of retail associations made a collective submission supporting the preferred option and advocating for enhanced enforcement, to address the supply of illicit tobacco products. This group suggested that alongside the administrative elements of the licensing system and current health enforcement workforce a State-funded illicit tobacco taskforce should be created with Queensland Police and liquor licensing officers. They estimate that illicit tobacco non-compliance is evident in three per cent of suppliers. The group were of the view that the licensing fee should cover the administration but not the additional enforcement component. Consideration of extension of legislative powers to enable seizure of products found to be illicit was also proposed (#174).

An NGO made a number of recommendations relating to the licensing scheme and what it should entail (#157). They noted that a tobacco retailer licensing scheme should:

- provide accurate information on the numbers, location and contact details of retailers
- be undertaken by staff with appropriate skills and support
- facilitate prompt and strong action against those who sell without a licence
- provide strong disincentives for licensed retailers to sell illicit tobacco
- make it easier for retailers to understand their legislative obligations
- make it cheaper and more efficient for the Queensland Government to ensure compliance by retailers with all relevant legislation
- operate on a cost-recovery model.

The NGO also noted the recommended option is broadly consistent with these objectives but suggested that implementation will be critical to its effectiveness.

The same stakeholder also suggested that resources beyond the estimated \$1.6m – \$1.92m would be required to regulate, investigate, and prosecute annually. They recommend that the Act be amended to allow for stronger monitoring, compliance, and enforcement, including covert operations (which may include allowing young people to be involved in testing compliance). They also recommended the amendment should include seizure of tobacco products not meeting plain-packaging requirements or without mandatory graphic health warnings. The same stakeholder also recommended that additional resources be provided to ensure regular (proactive) compliance checks occur.

An NGO suggested a licence condition should include mandatory quarterly sales reporting (#153). Similarly, another NGO suggested that additional reporting measures might include reporting on promotional expenditure including rebates to retailers, and the details of any other promotional or marketing activities; and volumes of wholesale sales by product type, brand, pack size and variant, and for agreed geographical areas (#157). An academic/research institution also suggested that routine public reporting should occur on the aggregated number of licensed retailers and quantity of tobacco products sold in each region, including the physical location of licensed retailers (#171). They suggested that making this information publicly available will allow for research to be undertaken on the tobacco retail sector.

**Table 20 - Section 2.1, assessment of proposed modification to increase monitoring and enforcement**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Yes, as it would increase government oversight and understanding of the tobacco retail market.
<b>Evidence provided to support proposal</b>	Yes, evidence provided to support proposal that the TOSP Act should be amended to increase enforcement powers. Limited evidence provided relating to increased monitoring requirements.
<b>Proposal is proportionate to the risk the issue present</b>	It appears so, however further research would be required.
<b>Support efficient compliance and enforcement practices</b>	Yes, the proposed changes would directly support increased compliance and enforcement.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	Yes, it appears that enhancing monitoring and enforcement would benefit the community as it would help ensure appropriate implementation of the licensing scheme.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	It appears so, however further research would be required.

### Increase licensing fee

Government, academics, and health service providers suggested modifications to the licensing regime to strengthen its focus and sustainability. One academic proposed a higher licensing fee to ensure there is adequate funding to set up the scheme and ensure appropriate enforcement. They noted that the cost seemed “*inappropriately low relative to other states*” (#127). This was echoed by another stakeholder from an academic/research institution who said that:



*The proposed licensing fee range appears very low when the addictiveness and harmfulness of smoked tobacco products are taken into account, the current significant community concern regarding illicit trade (particularly concern about supply of nicotine vaping products to children), and in comparison, to licence fees for alcohol retailing.” - (#171)*

The same stakeholder recommended setting the retail licence fee at a higher level, however no figure was provided.

**Table 21 - Section 2.1, assessment of proposed modification to increase the licensing fee**

<b>Criteria</b>	<b>Assessment</b>
<b>Addresses the regulatory problem</b>	Unclear. The proposed licensing fee range is sufficient to cover a response to the regulatory problem.
<b>Evidence provided to support proposal</b>	Yes. Limited evidence provided of the added benefit of increased license fees is provided. An alternate or appropriate increased licensing fee was not provided.
<b>Proposal is proportionate to the risk the issue present</b>	Unclear, further evidence regarding the benefit of increased license fees would be required.
<b>Support efficient compliance and enforcement practices</b>	Unclear. The proposed licensing fee range is sufficient to cover a response to the regulatory problem.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	Unclear. It is unclear what the added benefit would be to the community if license fees were increased.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	Yes. Increasing the fee could be consistent with licence fees from other states and territories, however the proposed licence fee also sits within the range of licensing fees in other Australian jurisdictions.

## Final recommendation

The CRIS recommended the introduction of a whole and retail licensing scheme under option 3. This continues to be the preferred option with three modifications based on stakeholder feedback:

- enforcement capability strengthened with strategic capability function and target levels compliance audits
- different fee level for wholesalers to mitigate costs associated with monitoring supply chain information
- liquor licensed venues will not be required to submit a full application, and may be deemed a licence for sites registered as smoking product suppliers.

The government objective in progressing this option is the efficient and effective monitoring of smoking product supply and mechanisms to prevent and penalise breaches of the Act. There was widespread support in consultation with this objective and agreement for government action through progression of the preferred option. Cost effectiveness of option 3 is summarised at table 24.

### Comparison of options

The majority of respondents agreed 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. In addition, stakeholders talked of matters of non-compliance impacting small to medium retailers that they consider require an improved

monitoring and enforcement. There was a strong view put forward that a licensing scheme with an appropriate fee level will assist to address these concerns.

Similarly, there was no preference expressed for the introduction of a registration scheme (option 2) for retailers and wholesalers. The CRIS assessed that this option would partially meet the objectives, providing specific information to regulators to support communication and compliance initiatives. However, in comparison to a licensing scheme (option 3), a number of limitations were identified that 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.

Table 17 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 of these options. The preferred option (option 3) continues to be to implement a positive licensing scheme for wholesalers and retailers of smoking products. Supported by an appropriate fee structure a licensing scheme 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 CRIS made the assessment that the establishment of a licensing scheme for smoking product suppliers would support a range of beneficial regulatory activities including:

- 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.

Stakeholders agreed with these benefits and provided strong support for the introduction of a licensing scheme across all retail associations including the Australian Association of Convenience Stores (AACS) and Australian Lotteries and Newsagents Association (ALNA), Master Grocers Association (MGA), Independent Grocers Association (IGA) and National Retail Association (NRA). These retail associations represent the vast majority of smoking product retailers and the bulk of tobacco products sold in Australia.

Collectively submissions indicate support for the introduction of a fee-based licensing scheme that includes an application fee, annual renewals, barrier to entry requirements, and

stringently applied conditions on what retailers can do before losing the ability to trade in smoking products. Retail associations and individual retailers shared the view that a licensing scheme is needed to assist with compliance monitoring and enforcement activity to remove retailers engaging in unlawful practices – such as the illicit tobacco trade - from the market.

### **Proposed modification - Exempt liquor licensed venues**

A modification to the preferred option was suggested to exempt liquor licensed venues from being required to hold a licence to supply smoking products as summarised at table 19. Low quantum of supply was provided as evidence for why a licence is not necessary, in addition that licensed premises are already required to undergo a fit and proper test to supply alcohol. The objective of the proposal and recommended approach is to monitor supply and ensure compliance, regardless of the quantity of supply. Adoption of this modification would not assist in meeting the objective, however it is recognised that by holding a licence to supply alcohol these venues are known entities that are identifiable and have passed probity tests. Option 3 has been modified, liquor licensed venues will not be required to submit a full application, and may be deemed a licence for sites registered as smoking product suppliers. A system will be developed to allow liquor licensed venues to notify that they supply smoking products on an annual basis in order to obtain a deemed licence. This will improve oversight of smoking product supply in line with the objectives, while reducing any duplicative burden on liquor licensed venues.

### **Proposed modification - Increase monitoring requirements and enforcement powers**

Stakeholders suggested that the preferred option be modified to be accompanied by enhanced monitoring and enforcement mechanisms that sit alongside the licensing scheme as summarised at table 20. This included suggestions of enhanced compliance capacity, enhanced legislative powers for officers, targeted enforcement and increased retail compliance checks.

Consideration has been given to mechanisms that can sit alongside the licensing scheme for enhanced compliance. The preferred option has been enhanced to include a centralised compliance strategy and coordination function to:

- facilitate data/intelligence led targeted compliance
- coordinate with agencies tasked with addressing organised crime and tax evasion
- strengthen Public Health Unit's ability to respond to compliance concerns through State-wide operational guidance, coordination, and workforce development.

In addition, the licensing scheme will include an enhanced compliance monitoring capacity which estimates audits of 10% of retailers each year. This is considered an efficient and effective way to address the identified requirement leverage value from the current workforces and operate in collaboration with the federal agencies responsible for illicit tobacco under the Illicit Tobacco Taskforce (ITTF). As noted in the Part 3 addendum to the CRIS a proposal will be progressed to provide authority under the Act to address illicit tobacco that breaches measures in place for plain packaging and health warnings.

Collaboration with QPS and ITTF agencies (ATO, Border Force, ACIC etc) will ensure that necessary skills and powers are engaged where required to address complex issues of illicit

product supply, including where links are indicated with organised crime, tax evasion and other compliance matters beyond the scope of the Act.

### **Proposed modification - Increase licensing fee**

Stakeholders also suggested an increase to the licensing fee proposed in the CRIS as summarised at table 21. The view presented is that the amount is out-of-step with other jurisdictions and a higher fee is required for appropriate enforcement. The fee for retailers is within the range proposed in the CRIS remains appropriate to meet the objectives of the proposal which include monitoring and enforcement to prevent non-compliance with the Act. In addition, a fee for retailers within this range is appropriate to keep costs low for business.

There was acceptance generally in submissions of a fee within the order of the range provided if this is paired with sufficient enforcement and action on the supply of illicit tobacco. Retail associations advocated for a fee at the lower end of the range, while public health advocates suggested a higher fee as a deterrent and to assist with sufficient enforcement. The Proposed fee of \$475 for retailers and \$675 for wholesalers will facilitate the implementation of a licensing scheme model that delivers the most benefit to government and retailers with the least impost on business in terms of cost and administration. While the CRIS did not propose a higher fee for wholesalers, this modification is proposed to mitigate costs associated with monitoring the supply chain information under authority provided by section 13A of the Act.

### **Licensing framework and fees**

Some respondents suggested a tiered scheme is introduced to reduce impacts on small business. The suggestion is that a tiered scheme uses data on volume of sales to determine the level of fee paid, this likely to be burdensome on retailers, especially small business. Further, fees based on sales volume set by States may be characterised as excise and be constitutionally invalid. The licensing fee and delivery model have been considered in the context of available evidence and information provided by retailers directly and through associations and is an amount set based on cost recovery for regulatory and policy development, compliance and enforcement, licensing systems and maintenance, communications and education. The fee for retailers is at the upper end of the range suggested in the CRIS as this accommodates enhanced functions to support compliance, and system capability enhancements to minimise administrative burden on suppliers, and functions advocated for such as a searchable public database. This increased cost is reflected in the change to the projected annual cost at table 22.

There are limitations of licensing, including the ability to enforce the requirements of the Act for 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. Specific online controls or bans require national uniformity; the issues noted in the consultation will be progressed through national policy networks.

**The preferred option remains the introduction of a wholesaler and retailer licensing scheme.**

Stakeholder evidence and statements from a wide cross section of the supply market, enforcement agencies, public health researchers, practitioners and NGOs's confirms the need for government action. The preferred CRIS option and has been assessed as appropriate and aligned with the concerns and expectations of industry.

This option also presents a cost-effective approach. The proposed model includes a cost-recovery scheme that utilises existing enforcement agencies enhancing and extending these with a centralised strategic function, improved communication and education and increased action in stores to prevent non-compliance.

Licensing fees have been set at a rate that is sufficient to fund the required functions and achieve the objectives, balanced with the requirements from stakeholders feedback to consider setting a fee level that does not unfairly disadvantage small to medium retailers. There are costs to government in establishing a licensing scheme however, once in place, the scheme is cost recovery and will facilitate improved mechanisms to encourage compliance. In comparison a notification scheme under option 2 would require similar costs to establish and provide no cost-recovery to maintain the system, improve education and enhance compliance action. Maintaining the status quo has no associated new cost, but does not provide funds that allow for enhanced compliance monitoring to be progressed.

Based on stakeholder support, assessment of evidence and costs, comparison of the fees for licensing service in other jurisdictions, and delivery of enhanced compliance monitoring functions the modified option 3 is considered a cost-effective approach that generates the most net benefit to the Queensland community.

**Table 22 - Section 2.1, expected cost distribution of recommended option**

<b>Regulatory functions</b>	<b>First year estimated overall cost and percentage breakdown by function</b>	<b>Ongoing annual estimated costs and percentage breakdown by function</b>
<b>Total estimate of smoking product licensing and compliance framework</b>	<b>\$3.5m-\$4.5m</b>	<b>\$2.9-\$3.2m</b>
<b>Regulatory policy development</b> Advisory and operational policy functions in respect of legislative framework, intelligence monitoring and reporting.	22%	24%
<b>Compliance and enforcement</b> Interactions with regulated entities, investigations, enforcement actions and legal fees.	53%	58%
<b>Licensing systems and maintenance</b>	22%	15%

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

**Table 23 - Section 2.1, costs and benefits of recommended option**

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>Aligns with regulatory approach in most other jurisdictions for national retailers.</p> <p>Increased assurance of fairer market position via proactive compliance in place for competitors.</p>	<p>Time to complete application process.</p> <p>\$30-\$60 in the first year and \$15-30 for subsequent renewals.</p> <p>Estimated to be 1-2 hours on commencement and 30 min-1 hour to update changes as required.</p> <p>Cost of annual licensing fee.</p> <p>Estimated to cost \$475 per annum (plus annual indexation) per outlet.</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>Time to complete application process.</p> <p>Estimated to be 10-20 minutes annually.</p> <p>Time taken to check customers hold a valid licence to supply smoking products.</p>
	<p>Removed impost of requests from Government under status quo.</p> <p>\$30/annum.</p> <p>Estimated to be one hour annually.</p>	<p>Time and costs to set up an e-commerce system that interfaces with licensing information \$1000/once off.</p> <p>Annual licensing fee.</p> <p>Estimated to cost \$675 (plus annual indexation) per wholesaler.</p>
<b>Community</b>	<p>Improved health outcomes - via reduction in breaches of smoking</p>	<p>Some businesses may pass the costs of licensing fees on to customers through</p>

Stakeholder	Benefits	Costs
	<p>product regulations, resulting in fewer young people smoking, more people quitting.</p> <p>Improved awareness of smoking product suppliers.</p> <p>Reduction in breaches by smoking product regulations.</p> <p>Improved confidence in compliance monitoring of smoking product suppliers.</p>	<p>price increases of smoking products or other goods – but there is no evidence of this currently occurring in jurisdictions with licensing.</p>
<p><b>Queensland Government</b></p>	<p>Cost recovery of current regulatory functions through licence fees.</p> <p>Potential for enhanced enforcement with proactive capacity for compliance activity through additional resources.</p> <p>Reduced health care expenditure – via reduction in breaches of smoking product regulations, resulting in fewer young people smoking, more people quitting.</p> <p>Reduced time sourcing retrospective details of smoking product suppliers from wholesalers.</p> <p>Possibly increased reports of non-compliance from community and within the industry.</p>	<p>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>\$3-\$3.5m per annum, averaged over five years.</p>

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 will 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.

**Table 24 - Cost effectiveness of monitoring of retail smoking product supply**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <p>Government</p> <ul style="list-style-type: none"> <li>Set up and administration of licensing scheme, average = \$4m (\$3.5-\$4.5m)</li> </ul> <p>Business</p> <ul style="list-style-type: none"> <li>Time costs per retailer (n=7400) @\$60 = \$444,000</li> <li>Time costs per wholesaler (n=50) @\$1,000 = \$50,000</li> </ul> <p>Total - \$4,494,400 X 0.142 = <b>\$638,148</b> annualised</p> <p><b>Annual costs</b></p> <ul style="list-style-type: none"> <li>Cost of licence per retailer at upper edge of band (\$475, n=7400) = \$3,515,000</li> <li>Cost of licence per wholesaler at upper edge of band (\$675, n=50) = \$33,750</li> <li>Government enforcement and communications costs captured in annualised costs.</li> </ul> <p>TOTAL ANNUAL COST: \$638,148 + \$3,548,750 = <b>\$4,186,898</b></p>	<p>The total annual intervention cost is <b>\$4,186,898</b>.</p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 65 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 27 persons to quit or 18 persons to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p>	<p>Increased compliance with laws and policies. Compliance with smoking retailing laws underpins both existing and proposed regulatory retailing controls, such as:</p> <ul style="list-style-type: none"> <li>Ensuring smoking products are not sold to minors.</li> <li>Advertising and promotional controls are adhered to.</li> <li>Advertising and promotion controls are extended to ensure minors to not handle or supply smoking products.</li> <li>Illicit tobacco trade is minimised and the quit smoking value of pricing controls is protected.</li> </ul> <p>This intervention can reduce the number of smokers by 27 persons or prevent 18 persons from becoming a smoker annually, based on evidence that:</p> <ul style="list-style-type: none"> <li>Pricing controls are the single most important factor in quitting decisions.</li> <li>Good compliance with supply controls prevents youth smoking product uptake.</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Notes and assumptions:

- need to adjust a website, or signage to assumes a 15% non-compliance rate among retailers, of which half need to adjust physical signage.
- potential for reduced sales is based on a profit margin of \$2.50 per packet of cigarettes, purchased daily (\$912.50 per annum) and affecting half non-compliant retailers (n=555).

## 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 or deemed licence
- failing to produce evidence of a smoking product licence or registration 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 suppliers time to apply for and obtain a licence or registration. From that point in time all businesses supplying smoking products must be licensed as applicable, 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 processes to apply and pay for the appropriate business licence. Information would also be housed on the Australian Business Licence and Information Service.

Queensland 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 licensing administration team will be engaged to facilitate the processing and renewal of applications.

A flat fee for retail and wholesale suppliers is proposed with a licence required for each outlet or wholesale supplier, other than liquor licensed venues. The final estimated fee amount has been determined with consideration of costs available and feedback obtained through this CRIS process and further assessment of licensing system requirements and associated costs to establish and maintain this infrastructure.

Notice of renewal would be distributed by email eight weeks prior to a licence lapsing. A licence will be required to be renewed within 30 days of the expiry date. A confirmation of lapsed licence will be sent by mail within eight weeks of the expiry date. Anyone seeking to reapply for a licence that has lapsed may have an additional processing fee charged. There are no proposed non-recurrent fees for licence variations such as change in business particulars like address or name or contact details. Should an applicant wish to change the details of the licensee this will be considered a new application as suitability checks will be required, in this case standard licence fees will apply.

In response to stakeholder expectation of strong enforcement action and assist to address illicit tobacco supply a centralised compliance strategy function will be provided as a part of the licence model alongside enhanced level of compliance action which will aim to assess compliance of 10% of retail stores annually. Stakeholder feedback estimated that illicit tobacco related non-compliance was evident at 3% of suppliers, this approach will use coordinated information from relevant agencies to target compliance action and exceeds the suggested.

This additional function will allow Queensland Health to operate an intelligence-led targeted compliance process that coordinates and supports enforcement teams to act on suspected supply of illicit tobacco or other serious or systemic non-compliance matters such as sales to minors. A centralised compliance strategy and coordination function would coordinate efforts in collaboration with Queensland Police Service and the Federal Illicit Tobacco Taskforce (ITTF) to identify suppliers suspected to be supplying illicit products, triage responses and collaborate where appropriate on enforcement action.

Illicit tobacco circumvents the public health measures designed to reduce demand for products including plain packaging, health warnings and payment of excise. As a health agency Queensland Health will continue to focus on the implementation of legislated controls under the Act for the promotion and improvement of health. Matters of excise

evasion or criminal activity are out-of-scope for health-based enforcement teams and tobacco legislation.

Collaboration with QPS and ITTF agencies will ensure that necessary skills and powers are engaged where required to address complex issues of illicit product supply, including where links are indicated with organised crime, tax evasion and other compliance matters beyond the scope of the Act.

Communication and engagement with retailers to ensure that they are aware of requirements, timeframes and processes are an important part of successful implementation of the proposal. Queensland Health will develop and implement communication activities and materials to raise awareness of the requirements among smoking product suppliers and enforcement agencies. This will include web-based, hard copy and correspondence methods.

The Tobacco Laws phone service (13QGOV) is available to assist stakeholders with information about legislative requirements. This service will be updated with information on smoking product licensing to ensure a rapid response to supplier requests for guidance on licensing or signage orders. This service also refers requests for further information to the policy team, and allegations of non-compliance are provided to enforcement teams for investigation. This service will be boosted during the phase in of implementation however 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 and wholesalers
- 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
- qualitative and quantitative information from collaborative partners (QPS and ITTF) regarding impacts of collaborative action.

### **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.

### **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.

### **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.

## 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>39</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.

---

<sup>39</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>40</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.

---

<sup>40</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 25 - 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>41</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>42</sup>. Evidence on the risks to health from e-cigarette use continues to emerge, while they currently have a lower risk profile compared with tobacco, e-cigarettes are not without substantiated harm to health<sup>43</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

---

<sup>41</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>42</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>43</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 e-commerce 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.

### Options considered in the CRIS

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 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 26 - 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 and drive 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 27 with examples of the observed issues and expected impacts for business provided. The costs and benefits of these options are discussed at table 28.

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 27 - Section 2.2, anticipated amendments to modernise advertising and promotion provisions.**

Advertising	Observed issue	Clarification	Impact
<b>Online advertising and promotion of a retail premises</b>	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
	<p>flavours of e-liquids, competitions, discounts or imagery of consumption of a smoking product.</p>	<p>or platforms used to promote the retail premises.</p> <p>Will clarify that image refers to moving or still.</p>	<p>Penalties are in place under for non-compliance (maximum 140 penalty units).</p> <p>Applies to advertising and promotion associated with Queensland retail premises.</p>
<p><b>Display of signage at retail point of sale</b></p>	<p>Businesses are displaying multiple copies of the permitted and mandatory signs as a means to advertise the availability of smoking products.</p> <p>In addition, display of signs advertising smoking product manufacturers has been observed at point of sale.</p>	<p>Clarify that the only signage permitted at point of sale is one mandatory sign and one permitted sign.</p> <p>No other signage relating to smoking products, information on smoking product, or regarding manufacturers or wholesalers of smoking products permitted.</p>	<p>Retailers expected to comply with the requirements and ensure that only one of each mandatory sign or permitted sign are displayed.</p> <p>Penalties are in place for non-compliance with display of the mandatory sign (maximum 20 penalty units).</p>
<p><b>Certain business names allowed</b></p>	<p>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.</p> <p>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.</p>	<p>Clarify that the exemption from advertising restrictions, which allows certain business names, applies to the primary smoking product business located at the premises.</p> <p>No other business names containing smoking products at the premises will be exempt from breach of advertising provisions.</p>	<p>Retailers expected to comply with the requirements and ensure that the retail premises uses only one business name that makes reference to smoking products.</p> <p>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</p>

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'.		de-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>	Use of terms closely associated with e-cigarettes in advertising and promotion at the retail business either at the premises or online. Terms observed in field include: <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.	Retailers expected to comply with the requirements and ensure that descriptors closely linked to smoking products are not displayed. Penalties are in place under for non-compliance (maximum 140 penalty units).

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.	Retailers expected to comply with the requirements and ensure that smoking product give-aways are not used to promote smoking products. Penalties are in place under for non-compliance (maximum 140 penalty units).

Promotion	Observed issue	Clarification	Impact
<b>Display of a moving image</b>	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 28 - Section 2.2, option 2, costs and benefits**

Stakeholder	Benefits	Costs
<b>Retailers</b>	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.
<b>Manufacturer/wholesaler</b>	Nil	Potential for reduced sales.
<b>Community</b>	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
<b>Queensland Government</b>	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.

## Community feedback on the CRIS (May – June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Questions in the online survey were not mandatory and were all free text providing respondents the option to respond to topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 130 provided responses to at least one of the five questions asked on this topic. Responses were received from members of the public, public health academics and organisations, non-government organisations, government agencies, health service providers, retail stores, liquor licensed venues and industry associations.

### The online survey asked stakeholders to respond to the following free text questions:

2.1

The recommended option is to modernise provisions in the *Tobacco and Other Smoking Products Act 1998* 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)

## Summary of stakeholder feedback

The vast majority of respondents were supportive of the preferred option to modernise provisions for advertising, display and promotion to improve clarity and consistency.

Other respondents agreed with modernising advertising, display and promotion provisions and went further urging the government to adopt the more restrictive approach such as banning all forms of advertising, or a 2030 timeframe to implement a smoking ban.

Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action to reduce demand for smoking products (including e-cigarettes) including:



- reducing the visibility of tobacco products to reduce smoking rates and reduce the uptake of smoking
- prevents in-store promotion of smoking products which prompts people to buy cigarettes, and triggers relapse by ex-smokers
- improves retailer understanding and compliance.

A small number of respondents disagreed with the preferred option and did not support modernising the advertising, display and promotion provisions. A very small number (2) were unsure about the option noting that it wasn't an area they knew about or of concern for them.

Reasons provided for disagreeing with the recommended option included:

- the current restrictions are adequate and there is no need for changes
- potential impacts on small businesses.

**Table 29 - Section 2.2, summary of consultation responses for topic 2**

Advertising restrictions					
Stakeholder cohort		Agree	Disagree	Unsure	More restrictive
 Academic/research institution		4	1	0	1
 Liquor licensed venue		2	2	0	2
 Member of public		51	14	0	6
 Non-government agency		5	0	0	1
 Public health organisation		7	0	0	0
 Retail/hospitality association		0	0	0	2
 State/territory/local government agency		1	0	1	0
 Tobacco or e-cigarette retailer		8	7	1	0
 Tobacco industry		0	0	0	0
<b>Total</b>		<b>78</b>	<b>24</b>	<b>2</b>	<b>12</b>

## Consideration of feedback

**The majority of stakeholders agreed there was a need for an improved and consistent approach to the advertising, display and promotion of smoking products, including e-cigarettes, at retail premises.**

Public health organisations, academics, some retailers and members of the public were the strongest supporters of the proposed regulatory measure. These stakeholders agreed there was a need for an improved and consistent approach to advertising, display, and promotion of smoking products at retail premises, with some suggesting the same approach be taken for online stores (#157, #154, #161, #163).

These groups were of the view that the recommended option would allow for enhanced compliance and enforcement activities to be undertaken to reduce the availability and advertising of smoking products, including e-cigarettes.

One NGO stakeholder acknowledged the importance of:

“

*...ensuring understanding of, and compliance with, the existing restrictions is essential to prevent smoking uptake, particularly by young people who are susceptible to product advertising and promotion, and who are being actively targeted by the proliferation of marketing tactics being deployed to promote e-cigarette products.”*

**- (#157)**

Another NGO added:

“

*Option 2 will meet community expectations around a tougher stance on e-cigarette advertising (and demand/access), with a 2022 survey [conducted by the stakeholder] found 83% of Queenslanders wanting the Government to take greater action to protect youth from e-cigarettes. Additionally, it will support better alignment of Queensland’s regulatory landscape to the FCTC Article 5.3 and 13 to which Australia is a signatory.”*

**- (#161)**

The same stakeholder suggested that any modernisation of the Act:

“

*...must respond to trends by addressing, wherever possible, the full range of marketing tactics being used by the tobacco industry (including the e-cigarette industry), particularly to increase demand for smoking products by young people. This includes business-to-business advertising and promotion, and any other tactics used to increase sale and then ultimately use of smoking products.”*

**- (#161)**

**Some liquor licensed venue stakeholders did not support the proposed option, arguing that vending machines in licensed premises did not constitute advertising of smoking products.**

Liquor licensed venue respondents argued that the presence of vending machines should not be considered as constituting advertising or promotion, as they are “anonymous units which are without promotional signage, non-branded and without display of smoking product decals” (#156, #166).

The same stakeholders argued that the operation of vending machines in licensed venues occurs “in highly regulated and supervised environments with a number of existing regulatory requirements...the sale of smoking products from vending machines in licensed venues represents 0.1% of sales” (#156, 166).

**Stakeholders from some liquor licensed venues argued the focus should be restricting illicit tobacco retailers.**

Stakeholders from liquor licensed venues and retail/hotels associations argued that there should be a stronger focus on unlicensed retailers (#155, \$#156, #166), and stated that “the supply of the 99.7% of smoking products by the unlicensed retail market in supermarkets, tobacconists, small and mid-size grocers, convenience stores, newsagents and petrol stations... represent around 7,400 Queensland retail stores” (#156, #166).

**Proposed modifications**

Three themes for modification to the recommendation in the CRIS were identified based on the stakeholder consultation findings. These options are listed and discussed below:

1. Maintain the status quo.
2. Exempt vending machines from the preferred option.
3. Include online retailers and social media.

**Maintain status quo**

Some members of the public and tobacco/e-cigarette retailers argued that the current legislation requirements were sufficient, and as such, no further regulatory changes were required. These stakeholders were unsure how additional regulatory changes would make any significant impact on the community (#21, #72, #88, #95, #134, #142).

**Table 30 - No action (option 1 – status quo)**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Disputes there is a problem requiring government intervention.
<b>Evidence provided to support proposal</b>	No, alternative evidence was not provided to support the proposal.
<b>Proposal is proportionate to the risk the issue present</b>	No, noting the stated health and economic costs associated in the CRIS with smoking.
<b>Support efficient compliance and enforcement practices</b>	Not applicable since no new regulatory obligation.

<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. Did not provide sufficient evidence to demonstrate additional benefits to the community, compared to the CRIS.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	To some extent, no. For example, it does not promote alignment with the WHO FCTC.

### Exempting of vending machines

Liquor licensed venues contended that tobacco vending machines do not constitute advertisement and promotion and as such, should be exempt from the amended provisions of the TOSP Act. They stated that vending machines in licensed premises do not constitute advertising and promotion, and they noted that the sale of smoking products in licensed venues represents 0.1% of total tobacco sales (#156, #166). These respondents submitted that intervention efforts would be better focussed on illicit trade. This submission received significant support from the liquor licensed industry.

**Table 31 - Exempt vending machines from the preferred option**

<b>Criteria</b>	<b>Assessment</b>
<b>Addresses the regulatory problem</b>	Disputes there is a problem requiring government intervention.
<b>Evidence provided to support proposal</b>	To a small degree. Provides evidence to suggest presence and usage of tobacco vending machines is low.
<b>Proposal is proportionate to the risk the issue present</b>	No, noting the stated health and economic costs associated in the CRIS with smoking.
<b>Support efficient compliance and enforcement practices</b>	Not applicable since there is no new regulatory obligation.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. Did not provide sufficient evidence to demonstrate additional benefits to the community, compared to the CRIS.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	No, it does not promote alignment with the WHO FCTC.

### Modify option to include online retailers and social media

Some public health organisations suggested that consideration should be given to include on-line businesses where smoking products are sold, as well as social media and television (#1, #36, #171). One stakeholder suggested *“the television advertising of e-cigarettes and vape products require significant review. These products are advertised in a specific format to entice minors to investigate in the products. These products should be included in revised advertising restrictions”* (#108). An NGO stated *“retailers and manufacturers have utilised several methods to entice minors and young adults. This includes the use of digital platforms such as social media”* (#161).

One public health organisation acknowledged that the preferred option only applied to bricks and mortar businesses with an on-line presence. This stakeholder questioned if this would encourage bricks and mortar businesses to become solely on-line to by-pass the amendment (#136).

**Table 32 - Amend provisions in the TOSP Act to include online retailers and social media**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	To some extent, will assist in reducing demand.
<b>Evidence provided to support proposal</b>	To some degree. Provides evidence as to why reducing demand is important.
<b>Proposal is proportionate to the risk the issue present</b>	No, noting the stated health and economic costs associated in the CRIS with smoking.
<b>Support efficient compliance and enforcement practices</b>	Not applicable since no new regulatory obligation.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. Did not provide sufficient evidence to demonstrate additional benefits to the community, compared to the CRIS.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	No, it does not promote alignment with the WHO FCTC.

## Final recommendation

The CRIS proposed option 2 as the preferred option, recommending that the Act is amended to modernise advertising and display and promotion provisions for clarity and consistency. This remains unchanged following analysis of stakeholder views, information, and evidence. The cost-effectiveness of the option 2 is presented at table 34.

The government objective in progressing this option is to protect health by reducing the demand for smoking products including e-cigarettes and ensure retailers and enforcement officers have clarity on how regulatory controls on smoking products apply to the supply of e-cigarette products.

A majority of respondents support the proposal or would like to see government action go further in modernising controls on advertising and display and promotion of smoking products, particularly in the context of e-cigarette popularity and concerns regarding youth use of these products.

### Proposed modification - Maintain status quo

A small number of retailers, community members and liquor licensed venues suggested that the preferred option should be modified to maintain the status quo (option 1). Assessment of this proposal is summarised at table 30 option 1 is not expected to be effective in reducing 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.

### **Exempting of vending machines**

A modification of the preferred option to exempt vending machines from further restrictions on advertising and promotion was suggested by liquor licensed venues. Assessment of this proposal is summarised at table 31. While vending machines are advertising in line with the WHO FCTC assessment, the amendments being suggested under the preferred option predominantly do not apply to tobacco vending machines. Excluding vending machines is therefore unnecessary, however to the extent that the amendments would apply, an exemption for vending machines is not considered consistent with the other options put forward throughout the CRIS, all of which work together to reduce demand for smoking products.

### **Modify option to include online retailers and social media**

A further modification was suggested by stakeholders to extend the preferred option beyond retail stores to apply to online business and social media. Assessment of this modification is provided at table 32. While an extension of advertising and promotion controls beyond stores is likely to yield benefits in reducing smoking and preventing smoking uptake the Act does not address these matters as the Commonwealth regulates advertising and promotion related to the online sale of tobacco, this is yet to be extended to e-cigarettes.

There are limitations related to applying State law to social media as a considerable amount originates or is hosted beyond Queensland jurisdiction. However, this is an area that warrants further consideration for how this can be addressed. Ongoing consultation, collaboration with Australian jurisdictions and research will be progressed to consider, evidence, effective options and cost implications and progress any recommendations in a future tranche of regulatory action.

### **The preferred option remains that the Act is amended to modernise advertising and display and promotion provisions for clarity and consistency.**

After consideration of evidence and stakeholder feedback the CRIS recommendation continues to be preferred over other options as it delivers greater achievement of the objective.

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.

The amendments under option 2 are predominantly clarifications and modernising of current provisions and definitions and will impose very little cost on business, as for the most part they are already expected to be complying.

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.

Likewise, enforcement teams are already familiar with and enforce the controls that are being modernised. Training to update awareness will be minimal and can be progressed through existing processes.

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.

Collectively the amendments are expected to address grey areas that have emerged with the changes in product and advertising products helping retailers comply with legislative controls and assisting to reduce demand for smoking products. Option 2 is therefore considered to balance maximum effectiveness most appropriately with minimal regulatory burdens, and therefore is likely to achieve the greatest net benefit to the Queensland community.

**Table 33 - Section 2.2, costs and benefits of recommended option**

Stakeholder	Benefits	Costs
<b>Retailers</b>	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.
<b>Manufacturer/wholesaler</b>	Nil	Potential for reduced sales.
<b>Community</b>	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
<b>Queensland Government</b>	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.

**Table 34 - cost effectiveness to modernise provisions for advertising, display and promotion**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <p>Government</p> <ul style="list-style-type: none"> <li>• Most government costs already captured under analyses provided in Section 2.1.</li> <li>• Potential for some specific resource development associated with clarifications = \$36,237.</li> </ul> <p>Total - \$36,237 X 0.142 = <b>\$5,145</b> annualised</p> <p>Business</p> <ul style="list-style-type: none"> <li>• Time costs per retailer to learn about compliance obligations 1 hour (n=7400) @\$60 = \$444,000</li> <li>• Time costs per retailer to rectify non-compliance 1 hour @\$60 =\$66,600</li> <li>• Costs of removal or change of signage @ \$200 = \$111,000</li> </ul> <p>Total - \$621,600 X 0.142 = <b>\$88,267</b> annualised</p> <p><b>Annual costs</b></p> <ul style="list-style-type: none"> <li>• Potential for reduced sales \$506,438.</li> </ul> <p>Total - \$506,438.</p> <p>TOTAL ANNUAL COST: \$93,412 + \$506,438 = <b>\$599,850.</b></p>	<p>The total annual intervention cost is <b>\$599,850.</b></p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 9 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 4 persons to quit or 3 persons to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p> <p><i>NB. If cost effective at this rate, there would be far less loss of profit than assumed in the business cost calculations (which assumed 555 quitters no longer purchasing cigarettes), in turn increasing the dominance of this intervention.</i></p>	<p>Assists smokers attempting to quit to avoid relapse.</p> <p>Prevents occasional smokers from transitioning to daily smoking</p> <p>Compliance with advertising and promotional laws is already required. Modernising will increase compliance advertising and promotional controls.</p> <p>This intervention can reduce the number of smokers by 4 persons or prevent 3 persons from becoming a smoker annually, based on evidence that:</p> <ul style="list-style-type: none"> <li>• Comprehensive advertising and display bans are highly effective in reducing smoking across society.</li> <li>• Good compliance with advertising and promotional laws prevents youth smoking product uptake.</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

## 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.

Queensland 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.

Implementation and evaluation of this proposal would be simplified if the proposed recommended introduction of a licensing 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.

## 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.

## 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 35). 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>44</sup>.

**Table 35 - Section 2.3, jurisdiction comparison of supply of smoking products at liquor licensed venues**

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
Service area, including vending behind bar	Y	Y	Y	Y	Y	Y	Y	Y
Patron operated tobacco vending machines	Y	Y	N	Y	Y	N	N	N
Staff operated tobacco vending machines	N	N	Y	N	N	Y	N	N

<sup>44</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)

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
Tobacco vending machines not permitted in public areas	N	N	N	N	N	N	Y	N
Ban on all tobacco vending machines	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 36).

**Table 36 - Section 2.3, volume of the Australia tobacco cigarette market, by retail channel, millions of sticks** <sup>45</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

<sup>45</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>

Retail channel	2016	2017
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.

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>46</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>47</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

<sup>46</sup> McLaren, R., & Haszard D. (2018). *Understanding Designated outdoor smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research for Queensland Health.

<sup>47</sup> Queensland Hotels Association and Clubs Queensland, informal stakeholder consultation, May 24, 2021.

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>48</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>49</sup>.

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>50</sup>.

---

<sup>48</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>49</sup> Franchise Direct. *Cost of operating a vending machine*. Retrieved 27 October 2021 from <https://www.franchisedirect.com/vendingfranchiseopportunities/costofoperatingavendingmachine/121/301>

<sup>50</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>

**Figure 6 - 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>51</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 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>52</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

<sup>51</sup> Queensland Health. (2020). *The health of Queenslanders 2020. Report of the Chief Health Officer Queensland*. Queensland Government. Brisbane.

<sup>52</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/>

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>53</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>54</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>55</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>56</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>57</sup>, and increased impulsivity brought on from alcohol consumption<sup>58</sup>.

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>59</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

---

<sup>53</sup> Shiffman, S., and Balabanis, M. (1996). *Do Drinking and Smoking Go Together?* Alcohol Health and Research World, 20(2), 107-110.

<sup>54</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>55</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>56</sup> Australian Institute of Health and Welfare. (2019) *National Drug Strategy Household Survey 2019.* Australian Institute of Health and Welfare.

<sup>57</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>58</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>

<sup>59</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>

adults<sup>60</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>61</sup>.

The tobacco industry continues to pay to have retail outlets in licensed venues despite their relative unimportance as a source of sales<sup>62</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.

### Options considered in the CRIS

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

<sup>60</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>61</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>62</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>

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 37 - 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>63</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 36). Estimated costs range between basic cabinetry at \$250 a square metre up to \$2,000 for high end cabinetry<sup>64</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 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>65</sup> this would provide the licensee revenue (at 10% commission) of between \$1.65 - \$2.20 a week or

---

<sup>63</sup> Direct communication with vending industry representative (phone conversation, October 2021).

<sup>64</sup> Service Seeking. *Cost of shop fitouts*. Retrieved October, 2021 from : <https://www.serviceseeking.com.au/blog/cost-of-shop-fitouts/>

<sup>65</sup> Based on calculations attributing a proportion of 2016 volume data to Queensland's estimated 800 machines.

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>66</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 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.

---

<sup>66</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>

**Table 38 - 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>	Nil	<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>
<b>Queensland Government</b>	<p>Contributes to increasing smoking cessation rates.</p>	<p>One off requirement to train compliance officers in new requirements. Estimated to take 10 minutes through online meeting with state-wide enforcement team.</p>

## 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>67</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 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>68,69</sup>.

---

<sup>67</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>

<sup>68</sup> Vending Machines Australia. *Cigarette vending machines for sale*. Retrieved October, 2021 from <https://www.vendingmachinesaustralia.com.au/cigarette-vending-machines-for-sale>

<sup>69</sup> Alibaba. *Bar cigarette vending machine*. Retrieved October, 2021 from <https://www.alibaba.com/showroom/bar-cigarette-vending-machine.html>

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>70</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.

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 36). 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>71</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%

---

<sup>70</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>

<sup>71</sup> Reference the estimate from Table one and proportional calculation (total volume divided by 5 largest States and averaged across the year)

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 6) 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>72</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>73</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.

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)

---

<sup>72</sup> Canstar. *Removalist costs*. Retrieved October, 2021 from <https://www.canstar.com.au/home-loans/removalist-cost/>

<sup>73</sup> Service Seeking. *Cost of a handyman*. Retrieved October, 2021 from <https://www.serviceseeking.com.au/blog/cost-of-a-handyman/>

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 39 - Section 2.3, option 3, costs and benefits**

Stakeholders	Benefits	Costs
<p><b>Liquor licenced venues operators</b></p>	<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> <p>Installation of new cabinets to store tobacco (as required) between \$500-\$4,000 based on 2 square metres.</p>
<p><b>Vending machine owner (licensee or external operator)</b></p>	<p>Location of vending machine in service staff-only areas may reduce the wear and tear on machines and extend the life of machine.</p>	<p>Costs associated with relocation of machine by removalists where this is required range \$75-\$300.</p> <p>Potential increase in the number of venues electing to no longer provide</p>

Stakeholders	Benefits	Costs
		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>	<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>• 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 purchase 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.

## Community feedback on the CRIS (30 May – 26 June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described, confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Questions in the online survey were not mandatory and were all free text providing respondents the flexibility to respond to the topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 113 provided responses to at least one of the six questions asked on this topic. Responses were received from members of the public, public health academics and organisations, non-government organisations, government agencies, health service providers, retail stores, liquor licensed venues, and industry associations.

### The online survey asked stakeholders to respond to the following free text 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.

## Summary of stakeholder feedback

The majority of respondents were supportive of the preferred option that smoking products can be supplied only from a service area agreeing it is needed to reduce access to smoking products by minors and occasional smokers.

There was also support for a more restrictive approach to be adopted with several respondents advocating that tobacco vending machines be completely banned or the supply of tobacco in liquor licensed venues completely prevented.

The government objective of this proposal is to support successful quit smoking attempts and reduce smoking initiation at liquor licensed venues. Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action including:

- that removing direct access will reduce impulse purchases by intoxicated patrons
- light or occasional smokers would benefit from not having direct access to tobacco.








A minority of respondents disagreed with the preferred option, and some did not support restricting smoking product supply to a service area.



Reasons provided for disagreeing with the recommended option included:

- that there is very limited supply occurring from the machines
- concern over costs to relocate storage of the products in non-public areas.

A very small number were unsure about the option noting that they were uncertain how this approach would change availability or use of smoking products.

**Table 40 - Section 2.3, summary of consultation responses for topic 3**

		Restrict to service area			
Stakeholder cohort		✓ Agree	✗ Disagree	? Unsure	✓✓ More restrictive
	Academic/research institution	3	1	0	1
	Liquor licensed venue	3	4	0	0
	Member of public	34	20	2	14
	Non-government agency	4	0	0	2
	Public health organisation	4	2	0	3
	Retail/hospitality association	0	3	0	0
	State/territory/local government agency	2	0	0	0

 Tobacco or e-cigarette retailer	7	3	0	1
 Tobacco industry	0	0	0	0
<b>Total</b>	<b>57</b>	<b>33</b>	<b>2</b>	<b>21</b>

## Consideration of feedback

### **Public health organisations, academics, members of the public and government agencies were supportive of restricting the supply of smoking products from service areas.**

Most were supportive of the proposal to restrict the supply of smoking products to service areas. Most of these respondents agreed the recommended option is needed to minimise the accessibility of smoking products to children, and occasional smokers. They considered that limiting the sale of smoking products to service areas is likely to reduce illegal purchases by children and impulse purchases by occasional (and potentially intoxicated) smokers. One non-government organisation noted that:

“

*...prohibiting direct access to vending machines will help to further de-normalise smoking, remove the risk of children accessing machines, and reduce the visual cue of the machine itself which can trigger smoking relapse or impulse purchases.” - (#157)*

They also stated that there is evidence to suggest that tobacco vending machines can prompt unplanned purchases of tobacco and undermine attempts to quit smoking.

Public health organisations also noted the recommended option promoted alignment with liquor regulation. A public health organisation stated that *“this will bring liquor licensed premises in line with retailers who are only permitted a single point of sale”* (#66).

An NGO submitted the recommended option provides additional indirect benefits, including:

“

*...reducing second-hand smoke in the community, reducing the economic burden associated with healthcare and welfare costs of supporting people with chronic smoking-related illness, reducing smoking-attributable fires, reducing environmental disruption and rubbish, reducing social and emotional impact of smoking-related mortality and morbidity.”- (#154)*

### **Liquor licensed venues considered it unnecessary to regulate access to vending machines.**

Stakeholders from liquor licensed venues disagreed there is a need to further regulate access to smoking products in their venues. This is because they consider tobacco product

vending machines are not widely used in liquor licensed venues, and children are already required to be supervised by adults at all times in these venues.

Liquor licensed venues indicated that the presence and usage of tobacco vending machines is low. An industry association noted that “*vending machines represent 0.1% of total tobacco sales*” (#156).

The same industry association (#156) also challenged that further government action is required to stop children accessing smoking products, noting that young people under the age of 18 on licensed premises must be in direct company and supervision of a responsible adult at all times. They also asserted that there is no evidence of negative compliance history or complaints regarding minors accessing smoking products from vending machines in licensed premises. A liquor licensed venue suggested that:

“

*...there is no evidence that vending machines contribute to the failure to quit, or promote uptake by youth, any over counter product must be stored out of view and vending machines are in restricted areas where minors are not allowed.” - (#135)*

## Proposed modification

Two themes for modification to the recommendation in the CRIS were identified based on the stakeholder consultation findings. The two options are listed and discussed below:

1. Banning vending machines
2. Maintain status quo.

### **Ban vending machines**

Public health organisations, members of public, and academic/policy institutions agree that government action is required and want the proposed regulatory intervention to go further to include banning tobacco product vending machines.

Prohibiting or further restricting access to tobacco vending machines is considered effective by public health organisations and academic/research institution in reducing smoking rates, particularly among young people. An academic/research institution noted in their submission that a study conducted in 29 European countries showed that a restrictive policy on tobacco vending machines results in significantly lower tobacco use rates among adolescents (#171).

One academic/research institution and two NGOs also noted the banning of tobacco vending machines has other benefits. These include promoting alignment with domestic regulations and global health policy, and reflecting community support (#171, #157, #151). For example, the banning of vending machines would align with policy in the ACT, where tobacco vending machines are prohibited, and would foster alignment with the WHO FCTC (#171, #151). The submissions also noted WHO guidance, provided in the CRIS, that “vending machines should

be banned because they constitute by their very presence a means of advertising or promotion under the terms of the Convention” (World Health Organization, 2013).

An NGO suggested that banning tobacco vending machines will have widespread community support (#157). In a survey conducted by the NGO in 2017, they found 82 per cent of 736 respondents supported banning tobacco vending machines. They also contended this measure is “likely to have limited economic impact on hospitality venues, as research indicates tobacco sales are of limited importance for alcohol licensed premises” (#157).

**Table 41 – Section 2.3, assessment of proposed modification, ban tobacco vending machines**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Yes, since the proposal would further reduce access to smoking products.
<b>Evidence provided to support proposal</b>	Partly, cites evidence from a European study.
<b>Proposal is proportionate to the risk the issue present</b>	Unclear. Sufficient evidence was not provided to form the view.
<b>Support efficient compliance and enforcement practices</b>	Yes. A prohibition on tobacco vending machines promotes clarity on compliance expectations.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	Unclear, since the cost implications of tobacco vending machine ban have not been quantified.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	To some extent, yes. Promotes alignment with WHO FCTC and ACT regulation.

### Maintain status quo

A liquor licensed venue industry association contended that prohibition of tobacco vending machines was not necessary. They stated that tobacco vending machines in licensed premises do not constitute advertising and promotion, and they noted that the sale of smoking products in licensed venues represents 0.1% of total tobacco sales (#156). This respondent submitted that intervention efforts would be better focussed on illicit trade. This submission received significant support from the liquor licensed industry.

**Table 42 – Section 2.3, assessment of proposed modification, maintain the status quo**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Disputes the described problem requiring government intervention.
<b>Evidence provided to support proposal</b>	To some degree. Provides evidence to suggest presence and usage of tobacco vending machines is low. However, acknowledges that the vending machines are maintained for customer convenience.

<b>Proposal is proportionate to the risk the issue present</b>	No, noting the stated health and economic costs associated in the CRIS with smoking.
<b>Support efficient compliance and enforcement practices</b>	Not applicable since no new regulatory obligation.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. Did not provide sufficient evidence to demonstrate additional benefits to the community, compared to the CRIS.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	Not all domestic policies. Does not promote alignment with the WHO FCTC.

## Final recommendation

The CRIS proposed option 3 as the preferred option, recommending that smoking products should only be supplied from a service area, this remains unchanged following analysis of stakeholder views, information, and evidence. The cost-effectiveness of the option 3 is presented at table 44.

The government objective in progressing this option is to support successful quit smoking attempts and reduce smoking initiation at liquor licensed venues. A majority of respondents support the proposal or would like to see government action go further in reducing access to smoking products at liquor licensed venues.

Public health organisations, academics, members of the public and government agencies support the proposed regulatory measure, agreeing it is needed to reduce access to smoking products by minors and occasional smokers. Liquor licensed venues did not support the proposal.

After consideration of evidence and stakeholder feedback the CRIS recommendation continues to be 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. There was no support for this approach noted in consultation feedback.

### **Proposed modification - maintain the status quo**

Continuation of the status quo under option 1 is not preferred as it will not contribute to the achieving the Governments objective of increasing the success of quit smoking attempts and reducing smoking initiation at liquor licensed venues. 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.

Consideration was given to the proposal from the liquor licenced industry to modify the preferred option and maintain the status quo (option 1) as summarised at table 42. The assessment determined that there is limited evidence to support the proposal, and no material information to demonstrate it provides a net benefit to the community when compared to the other options. The liquor licensed industry disputed that there is a case for government intervention on the basis that they are not aware of children accessing the machines and the supply level is low. However other stakeholders including community

members, NGOs, academics and public health organisations agreed with the CRIS assessment that there is evidence that less access to tobacco vending machines can achieve the objectives sought by government of reducing uptake and assisting smokers to quit.

A community member provided an example of how access to tobacco vending machines influenced their smoking *“I recall that I would sneak off to purchase from a vending machine so I wouldn’t be held accountable to quitting. I think if I had to buy at the bar I wouldn’t have done so – the vending machine was too easy”* (#125).

### **Proposed modification – banning tobacco vending machines**

While liquor licensed venues dispute government action is required and advocate for no change, public health organisations, members of public, and academic/policy institutions agree that government action is required and want the proposed regulatory intervention to go further. Consideration was given to the proposal to ban tobacco vending machines, and in some responses the call for the total removal of smoking product supply from these venues, as summarised in table 41.

The assessment determined that there is some evidence to support the proposal, however the net benefit to the community is unclear as the costs of completely banning vending machines have not been quantified. The approach would support efficient compliance and is likely to contribute to the objective of reducing access to smoking products. It is assumed that a likely outcome of a ban on tobacco vending machines would be similar to the preferred option, that is the supply of tobacco products could continue from concealed cabinets at a serviced bar area as already permitted under the Act. Imposing a complete ban on all supply of smoking products is the only way to completely reduce access to tobacco products at liquor licensed venues.

The CRIS noted that a total ban was considered but ruled as anti-competitive and that the objective could be achieved with a less restrictive option. As discussed in the evaluation section Queensland Health will continue to evaluate the supply at liquor licensed venues and consider a ban on smoking vending machines if supply is evaluated to continue to be a concern for uptake or an impediment to quitting.

### **The preferred option remains that the Act is amended to ensure that smoking products are only supplied from a service area.**

The preferred 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.

Limiting supply of tobacco products to a service area at liquor licensed venues 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>74</sup>.

While tobacco products will remain available at the venue, they will be required to be located like 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>75</sup>. This is also evident in the apparent low volume of sales reported by Euromonitor in table 36. 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 to a venue. 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 to 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.

Two liquor licensed venue associations disagreed with the costs presented in the CRIS, suggesting that these would be greater than estimated, but no clear alternate advice was provided. It is noted that these associations made it clear that the supply of smoking products is extremely minimal and to regular customers generally. In the absence of detail, it is assumed that the very limited amount of tobacco supplied would not require a large area in which to be stored. It is likely that a large refit for a very small quantum would not be required, instead storage could entail areas already available, for example within a locked drawer or existing cupboard.

The same respondents suggested that the CRIS underestimates the impact on staff to serve tobacco at the bar during a time of unprecedented staff shortages. The CRIS estimated on average the amount of increased time to serve tobacco as a range of two to fifteen minutes. Based on the estimated vending sales of three to four packets a week, serving four packets a

---

<sup>74</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>75</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>

week would take staff a total of one hour each week at the upper range of estimated time. This is offset by the removal of the legislated requirement to continually monitor tobacco vending machines, so they are not accessed by children.

Tobacco vending machines are only permitted at liquor licensed venues, it is undisputed that the machines supply very little tobacco, and they are provided for the convenience of smoking patrons. The implementation of option 3 is a balanced approach that reduces direct access and advertising whilst allowing liquor licensed venues the opportunity to meet the needs of the customer group they identified in consultation – the regulars that occasionally buy tobacco at their venue.

It is expected as per the CRIS assumption that most of the cost impact will be borne by the owners of multiple tobacco vending machines at a range of venues. Vending machine owner/operators, outside of liquor licensed venues, did not provide a response to the consultation to express a view or inform of the number of machines that may be impacted or alert Queensland Health to a different assessment of the associated costs.

The one-year phase-in period provides time for stakeholders to adjust to the change. It is expected given the low level of supply and small storage requirements there will be minimal initial outlay for most venue owners that elect to no longer host or provide a machine. Providing the option to allow the continuation of a vending machine gives venues that have the space the option to continue to use the machine in a service area away from direct public access.

Option 3 is considered the option which most appropriately balances maximum effectiveness with minimal regulatory burden, and therefore is likely to achieve the greatest net benefit for the Queensland community. This is based on stakeholder feedback largely in support of the approach, that reasons provided for not supporting can be mitigated through an implementation approach which includes a phase-in period, assessment of the evidence provided for the positive effect that reducing access to vending machines can have on reducing smoking uptake and assisting with quit attempts, and review of similar models in other Australian jurisdictions.

**Table 43 - Section 2.3, costs and benefits of recommended option**

Stakeholders	Benefits	Costs
<p><b>Liquor licenced venues operators</b></p>	<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 per session required.</p> <p>One-off 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>

Stakeholders	Benefits	Costs
		<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 hosting a tobacco vending machine at the venue.</p> <p>Modification of service area cabinets to store tobacco (if required) between \$20-\$200.</p> <p>Installation of new cabinets to store tobacco (if required) estimated between \$500-\$4,000 based on 2 square metres.</p>
<b>Vending machine owner (licensee or external operator)</b>	<p>Location of vending machine in service staff-only areas may reduce the wear and tear on machines and extend the life of machine.</p>	<p>Costs associated with relocation of machine by removalists where this is required range \$75-\$300.</p> <p>Potential increase in the number of venues electing to no longer provide a vending machine. Loss of profits estimated between \$390 and \$520 per machine per year. Cost of decommissioned machines estimated to be \$4m state-wide or \$10,00 per machine.</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>• removed potential access by minors</li> <li>• limiting youth exposure to smoking products in licensed settings.</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>
<b>Queensland Government</b>	<p>Contributes to increasing smoking cessation rates.</p>	<p>One-off requirement to train compliance officers in new requirements. Estimated to take 10 minutes through online meeting with state-wide enforcement team.</p>

**Table 44 - Cost effectiveness supply of smoking products from service area at liquor licensed venues**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <ul style="list-style-type: none"> <li>Reconfigure the machine location after removal/relocation - \$500 X 800 = \$400,000</li> <li>Average price for new cabinets 2 square metres \$2,250 X 800 = \$1,800,000</li> <li>Average price to relocate machine \$225 X 800 = \$180,000</li> <li>Decommissioned machines* \$10,000 x 400 = \$4,000,000.</li> </ul> <p>Total - \$6,380,000 X 0.142 = <b>\$905,960</b> annualised</p> <p><b>Annual costs</b></p> <ul style="list-style-type: none"> <li>Loss of commission \$50</li> <li>Average loss of profits* \$455 x 400 = \$182,000</li> </ul> <p>TOTAL ANNUAL COST: \$905,960 + \$182,050 = <b>\$1,088,010</b></p>	<p>The total annual intervention cost is <b>\$1,088,010</b>.</p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 17 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 7 persons to quit or 5 persons to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p>	<p>Assists smokers attempting to quit to avoid relapse. Prevents occasional smokers from transitioning to daily smoking.</p> <p>This intervention can achieve quit smoking rates of more than 7 persons or prevent 5 persons from becoming a smoker annually, based on evidence that:</p> <ul style="list-style-type: none"> <li>7 in 10 smokers wish to quit smoking (AIHW 2020).</li> <li>Smoking and alcohol are paired behaviours.</li> <li>Smokers report finding it difficult to stay quit in environments where smoking and drinking can occur in unison and products are easily available.</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Assumptions – \*50% machines decommissioned or removed

## 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.

Queensland 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 liquor licensed venues and tobacco vending machines owners 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.

## **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.

## 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 appeal (plain packaging), inform about harms (mandatory health warnings), and reduce exposure to products (advertising, display, promotion bans). National controls do not apply to e-cigarette products.

Demand for tobacco products from minors has declined following the introduction of State and National measures over the previous two decades<sup>76</sup>, however 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

---

<sup>76</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>77</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

---

<sup>77</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 45 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 45 - Section 2.4, estimate of smoking product retailers employing minors**

Type of supplier	Estimated number of outlets <sup>78</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

In response to the CRIS, a government agency noted that further detail on number of employers and employees impacted could assist in understanding the impacts for small business. The census collects information on employment and can be accessed by age and State. The latest available data shows that in 2016 there were around 10,000 persons aged 15-17 years employed by businesses that could feasibly supply smoking products (see table 46).

<sup>78</sup> Queensland Health (2018). *Data gathered from Tobacco Wholesalers – retailers supplied in the previous 12 months* [unpublished data]

This figure is considered an overestimation but provides an indication of the scale of employment of minors by retailers that could be assumed to supply smoking products. A large proportion of minors were employed by supermarkets where supply by minors does not usually occur. A further 1,000 young people were employed by hotels and clubs where smoking product supply is extremely low and involvement by minors is not likely to be common.

Smaller supermarkets are concerned about the impact on their staffing arrangements, however retailers or associations did not provide data on the number of minors they employ who are engaged to supply smoking products.

**Table 46 - ABS census 2016 employment persons aged 15-17 by business type**

Business type	15 years	16 years	17 years	Total
Retail Trade, nfd*	54	107	110	271
Fuel Retailing	49	98	119	266
Food Retailing, nfd*	34	47	59	140
Supermarket and Grocery Stores***	1318	2453	3035	6806
Liquor Retailing	0	3	8	11
Other Specialised Food Retailing	192	258	218	668
Other Store-Based Retailing, nfd*	8	5	9	22
Newspaper and Book Retailing	175	227	253	655
Other Store-Based Retailing nec**	133	235	248	616
Accommodation and Food Services, nfd*	10	12	11	33
Pubs, Taverns and Bars***	87	158	255	500
Clubs (Hospitality)***	92	147	252	491
<b>Total</b>	<b>2,152</b>	<b>3,750</b>	<b>4,577</b>	<b>10,479</b>

\*nfd - not further defined

\*\*nec - not elsewhere classified

## 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.

The Act refers to advertise as causing, permitting or authorising a thing to be advertised. The commonwealth *Tobacco Advertising Prohibition Act 1992* (TAP Act) takes a broad definition of advertising, including a registered trademark or design, packet design, words or designs or combination of words or designs that are closely linked with a product. Products or images of products, brand names and logos may not be broadcast under the TAP Act and may not be displayed, advertised or promoted under Queensland law.

Protection provided under the Act to prevent advertising and display 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. Regular handling and exposure to products is akin to exposure to advertising.

Minors employed to supply smoking products 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>79,80,81</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>82</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>83,84</sup>.

---

<sup>79</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>80</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>81</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>82</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>83</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>84</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>85,86</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>87</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>88</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>89</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>90</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>91</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

---

<sup>85</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>86</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>87</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>88</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>89</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>90</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>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)

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>92</sup>.

There is considerable concern within the Queensland community about the increasing interest in and use of smoking products by young Queenslanders. Primary school children have been reported as obtaining smoking products and many schools in the State are addressing incidence of use of smoking products such as e-cigarettes on campus. As noted in the CRIS Queensland-specific data on youth e-cigarettes and tobacco use is lagging due to collection delays from Covid-19.

There is evidence however from similar jurisdictions and community reports that e-cigarettes are driving considerable interest amongst minors in obtaining and using smoking products. In June 2022, during the public consultation period of the CRIS, NSW Health released updated Population Health Survey data on e-cigarette use. In 2021, there were significant increases from 2020 estimates of e-cigarette use:

- 16.2% of adults in NSW had used an e-cigarette at least once, up from 9.7% in the previous year
- 5.5% were current (daily or occasional) users of electronic cigarettes, up from 2.1% in the previous year.

Use was highest among young people aged 16-24 years. Over 2020 and 2021, 32.7% of this age group were estimated to have used an e-cigarette at least once, and 11.1% reported current use. These estimates are translatable to Queensland, and cause of public health concern in light of the revised NHMRC statement on e-cigarette harms discussed in Section 1.4.

The harms associated with tobacco use are well-established and are outlined at Section 1.4 of this document. Since the publication of the CRIS, the NHMRC has updated its advice on e-cigarettes. The updated [CEO Statement on Electronic Cigarettes](#) notes increasing use of e-cigarettes since 2016, and reaffirms a precautionary approach to e-cigarettes, citing evidence from updated global systematic reviews, that:

- E-cigarettes can be harmful. All e-cigarette users are exposed to chemicals and toxins that can harm health
- E-cigarette poisonings have significantly increased over the past five years
- People who have never smoked may be more likely to take up tobacco smoking if they use e-cigarettes.

---

<sup>92</sup> Western Australia Department of Health. (2011) *Review of the WA Tobacco Products Control Act 2006*. Government of Western Australia.

- Teenagers exposed to e-cigarette advertising and promotion are more likely to try e-cigarettes.
- E-cigarettes are not proven safe and effective smoking cessation aids.

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. Consultation with the SDAQ following release of the CRIS confirms that there is no indication of adverse effects of the approach when implemented in Western Australia or the Northern Territory.

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>93</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>94</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>95</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>96</sup>.

---

<sup>93</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>94</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>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>

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>97</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.

### Options considered in the CRIS

Options	Description
Option 1	Status quo. Minors continue to sell and handle smoking products.
Option 2	Retailers adopt self-regulation to prevent the sale and handling of smoking products by minors.
Option 3	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 47 - Section 2.4, option 1, costs and benefits**

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

<sup>97</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 48 - 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 46)
- 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 voluntary 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 recommends that minors should be provided with access to supervision<sup>98</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 additional costs would be in the low end of the suggested 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 of smoking products 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

---

<sup>98</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 49 - Section 2.4, option 3, costs and benefits**

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

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 46)
- 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.

## Community feedback on the CRIS (30 May – 26 June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Questions in the online survey were not mandatory and all free text providing respondents the option to respond to topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 148 provided responses to at least one of the questions asked on this topic. Responses were received from members of the public, public health academics and organisations, non-government organisations, government agencies, health service providers, retail stores, liquor licensed venues and associations.

### The online survey asked stakeholders to respond to the following free text questions:

<b>4.1</b>	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.
<b>4.2</b>	Have potential impacts been fully and accurately captured? Please provide any additional information that should be considered in the costs and benefits.
<b>4.3</b>	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.

## Summary of stakeholder feedback

The majority of respondents were supportive of amending the Act to prohibit the sale and handling of smoking products by minors including representatives from some retailers (option 3). There was also a small amount of support for a more restrictive approach to be adopted.

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. Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action including:

- allowing minors to sell smoking products creates a mindset that the products are socially sanctioned for use
- will reduce youth exposure and access to smoking products thereby reducing uptake.





A minority of respondents disagreed with the preferred option and did not support a ban on the supply of smoking products by minors.

Reasons provided for disagreeing with the recommended option included:





- wage costs could increase, if minors need to be replaced with adults
- disproportionate impact on small business if reliant on minors for the supply of smoking products
- potential for reduced staffing options if minors need to be replaced with older staff.

A very small number of respondents were unsure about the options presented.

**Table 50 - Section 2.4, summary of consultation responses for topic 4**

Prohibit sales by minors		✓	✗	?	✓✓
Stakeholder cohort		Agree	Disagree	Unsure	More restrictive
 Academic/research institution		4	1	0	1
 Liquor licensed venue		5	1	0	0
 Member of public		55	12	2	2
 Non-government agency		6	0	0	0



	Public health organisation	8	0	0	0
	Retail/hospitality association	1	5	1	0
	State/territory/local government agency	2	0	0	0
	Tobacco or e-cigarette retailer	8	7	0	0
	Tobacco industry	0	0	0	0
	<b>Total</b>	<b>89</b>	<b>26</b>	<b>3</b>	<b>3</b>

## Consideration of feedback

The majority of stakeholders supported the prohibition of sale and handling of smoking products by minors including members of the public, public health organisations, NGO's, retailers, academics and government agencies. Option 3 was seen as an effective approach to limit exposure and access to tobacco products by youth.

One retailer noted that allowing minors to sell smoking products “creates a mindset that this is a socially acceptable product to use” (#107) and another retailer noted that “[minors] are less confident in asking for identification or ensuring that intimidating customers follow all the rules” (#80).

One Government agency noted that the preferred option (Option 3) is appropriate, adding:

“

*...the potential impacts to employment of young people has been considered [in the RIS, which is] estimated to limit employment at no greater than 30% of retailers that supply smoking products). This is outweighed by the benefit to long-term health of young people, including reduced regulatory responsibility, reduced risk of smoking uptake through removal of exposure to smoking products as part of employment, and reduced risk of employees supplying smoking products to underage peers.” - (#179)*

In the feedback one community member (#125) shared their experience of supplying smoking products as a teenager and how this impacted their decision to use the products:

*“I sold cigarettes in a newsagency when I was 16/17. I learned all the product names, prices, etc. – I was quite fascinated with them and the smell of them etc. I became familiar with it all. I gave myself a staff discount when I took a packet at the end of my shift! (yes that was wrong but it happened)”*

**Liquor licensed venue stakeholders partly supported the proposed option, noting minors should be able to sell tobacco products in licensed venues only.**

A liquor licensed venue agreed that minors should not be involved in selling smoking products in non-liquor licensed retail environments where 99.7% of sales occur. However, they thought that minors should be able to sell smoking products in liquor licensed venues

where “only 0.3% of sales occur in an already licensed, highly regulated and restricted trading environment” (#131, #156). This was framed as minors working in liquor licensed premises should be distinguished from minors working in other non-liquor licensed retail trading environments as “minors working in licensed premise are trained and aware of their compliance obligations and have demonstrated experience in selling and handling ‘restricted’ products such as alcohol and gambling products” (#156).

### **Retailers and liquor licensed venues were concerned about the costs for small businesses.**

There was concern that banning minors from selling smoking products would increase costs for small businesses, however these costs were not quantified in the submissions. A retailer thought that “wage costs would increase substantially, especially over weekends and public holidays. Small business is already facing increases to wage/super costs with legislated increased and this change would only compound the impact” (#63).

One government agency also noted that the RIS did not specify the number of minors working in retailer stores that supply smoking products, suggesting that the full workforce impacts were unclear (#158).

A retail association group thought that businesses would need to replace employees with those aged over 18 which can be difficult for smaller and regional stores where finding suitable staff will be an issue (#160). A government agency also reiterated its concerns about the employment impacts of this option, specifically on smaller retailers (newsagents, independent supermarkets etc) in regard to staffing challenges, particularly in regional areas where workforce shortages exist (#158).

However, an academic institution in liaison with Aboriginal and Torres Strait Islander community owned stores in remote and regional areas across Queensland advised that “local evidence suggests that whilst this [sale by minors] is currently permitted by the legislation, it does not routinely occur in small businesses/community stores”, they go on to advise “we have been told that the policy change would be welcomed by small business who already have relevant mechanisms in place” (#169).

Some stakeholders suggested that a “government subsidy can be considered to reduce the financial stress for the eligible impacted businesses” (#118, #158).

## **Proposed modifications**

Two modifications were proposed in the stakeholder consultation feedback. The two options are listed and discussed below:

1. Varied implementation based on business type.
2. Provide enhanced training and supervision.

### **Varied implementation based on business type**

Some industry and public health organisations recommended that the sale and handling of smoking products by minors should be adjusted on the basis of business type. While they were in support of banning the sale and handling of smoking products, they suggested small businesses should be considered differently. Many of these retailers suggested that a “government subsidy can be considered to reduce the financial stress for eligible impacted businesses.” (#118).

However, a public health organisation was of the view that the ban should be drafted to ensure that it also applies to family operated businesses where children assist in unpaid roles, including the handling and sale of smoking products (#136). *“This option should clearly state that a minor is inclusive of any family members under the age of 18 assisting with the operation of the business.”* The same stakeholder also suggested a phased ‘sliding in’ period for small family-run retail businesses that may require a longer period to comply with the option. Larger businesses were considered to have policies preventing minors supplying or the ability to adjust rosters to accommodate immediate changes to the law.

Another option provided by a stakeholder from the retail/hospital association group suggests that a revised option 2 would be more appropriate –

“

*Larger businesses above a full-time equivalent threshold should have adults serve these products and smaller businesses with less flexibility should have a self-regulatory approach while limiting minors serving whenever possible.” - (#155)*

It was also suggested that minors working in liquor licensed premises should be distinguished from minors working in other non-liquor licensed retail trading environments.

A liquor licensed venue stakeholder noted:

“

*...minors should not be involved in selling smoking products in unlicensed retail environments where 99.7% of sales occur, but [we] disagree that minors should not be able to sell smoking products in licensed venues where only 0.3% of sales occur in an already licensed, highly regulated and restricted trading environment.”- (#156)*

The same stakeholder thought that there is no evidence of issues related to minors selling smoking or alcoholic products from liquor licensed premises directly to customers. They also suggested there is no evidence that selling smoking products in liquor licensed premises where 0.3% of total sales occurs will induce minors to take up smoking.

**Table 51 - Section 2.4, amend option 3 varied implementation based on business type**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	No, because it does not uniformly establish barriers to smoking products for minors.
<b>Evidence provided to support proposal</b>	There is insufficient evidence to demonstrate a 'variable approach' will address the regulatory problem.
<b>Proposal is proportionate to the risk the issue present</b>	The proposal may enable for tailored interventions, which has the capacity to promote better alignment to risk. However, a variable approach which provides for access to smoking products by minors does not represent a proportionate risk.
<b>Support efficient compliance and enforcement practices</b>	No. A variable approach will require a complex and resource-intensive compliance and enforcement strategy to be employed by the regulator.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. The proposal does not provide quantifiable costs and benefits to assess whether there is a net benefit to the community.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	To some extent, no, as it does not promote alignment with WHO FCTC (Article 16 – ban sales to and by minors).

### **Provide enhanced training and supervision**

Some retailers and liquor licensed venues were in favour of allowing minors to participate in selling and handling of smoking products. They suggest modifying the preferred option to allow minors to sell, subject to them undergoing more training. A retail/hospitality association supported this idea and said it would implement comprehensive training with a requirement to ensure minors are handling and selling products with an adult present (#160). Their submission noted that *“coupled with this training, a regulation could be implemented to require minors to have a supervisor present when minors are working as operators whose job may involve the sale of tobacco”* (#160). Another retail/hospitality association stakeholder suggested that training for service of alcohol or gaming products could assist with compliance obligations:



*“...minors who work in clubs already work in a strict regulatory environment and in almost all circumstances have training in the Responsible Service of Alcohol and Responsible Service of Gaming, so are acutely aware and trained in compliance obligations as they relate to the provision of products such as liquor and gaming.” - (#178)*

**Table 52 - Section 2.4, no action (option 1) - further training**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	No. Additional training will still enable minors to access smoking products.
<b>Evidence provided to support proposal</b>	No. Limited evidence to support the proposal.
<b>Proposal is proportionate to the risk the issue present</b>	No. The proposal does not address the harms and potential harms caused by minors engaging with smoking products.
<b>Support efficient compliance and enforcement practices</b>	No, further training will not reduce exposure to smoking products for minors.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. While the proposal may promote compliance with existing regulations, it will still enable minors to access smoking products.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	To some extent, no. For example, does not promote alignment with WHO FCTC (Article 16 – ban sales to and by minors).

## Final recommendation

The CRIS recommended that the Act is amended to prohibit the sale and handling of smoking products by minors under option 3. This continues to be the preferred option with one modification based on stakeholder feedback:

- the 12-month phase in period is extended for small business to 24 months.

The government objective in progressing this option is to prevent smoking initiation by reducing the exposure of minors to the supply, promotion and advertising of smoking products. There was considerable agreement in consultation with this objective and support for government action through progression of the preferred option. Cost effectiveness of option 3 is summarised at table 54.

## Consideration of options

The status quo (option 1) is not preferred. While some retailers no longer employ minors for the supply of smoking products, others continue to employ minors in this role. The status quo only provides protection from regular exposure to supply, advertising and promotion of smoking products 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. It is not considered likely that voluntary adoption of this approach would achieve sufficient coverage to make it an effective option, even with an extended phase-in period.

Option 3 offers protection that meets the objectives of government action while allowing businesses the opportunity to adjust and plan for the change so that costs can be considered and met in the most effective way. It implements a straightforward approach that is clear for the community, business and enforcement teams and if implemented in a

planned way (e.g. systems that allow supervisor to supply) is not expected to lead to significant costs for the vast majority of businesses.

### **Proposed modification - Varied implementation based on business type**

Retail stakeholders were concerned about the potential for a disproportionate impact on small and regional business due to costs or workforce shortages. This view was not ubiquitous with some retailers providing support for the approach and other stakeholders providing examples of small businesses in remote/regional areas with a readiness to operate in this manner.

Stakeholders suggested variations to option 3 based on business type. Suggestions included exempting family businesses and liquor licensed venues, offering an extended phase-in time to assist small business to comply and drafting to ensure that unpaid family members were also prevented from supplying.

Table 51 summarises assessment of the proposal. Aspects of the proposed modification align with the objective of government action, however there is not sufficient evidence to substantiate exempting some businesses from the requirement. It is noted that there may be a disproportionate impact for family businesses and those in remote areas if there are shortages of staff. In response to feedback a modification to the preferred option is recommended that varies the phase-in period by business type and provides an extension for small business of an additional twelve months. This extension is provided to assist with implementation and allow businesses the opportunity to plan for the change.

### **Proposed modification – enhanced training and supervision**

Consideration was given to the proposal to modify the preferred option to take a non-regulatory approach of enhanced training and supervision.

The proposal is assessed at table 52. The premise of the proposal is misaligned with the objective of government action which is to disassociate minors from supply and handling of smoking products. While there could be benefit of ensuring smoking products were not provided to other minors it does not achieve the objective of limiting familiarity and normalisation that employment to supply products imparts. As training is already in place to prevent sale to minors there is no expected benefit compared to the CRIS preferred option.

Some stakeholders suggesting this modification thought that option 3 meant that all junior staff would need to be replaced. While option 3 prevents minors from being involved in the supply of smoking products (refill stock cupboards, order stock, or sell smoking products) an employer could continue to station minors at customer service areas and ensure that an adult supervisor is available to attend for smoking product sales. This approach is aligned with the suggestion by stakeholders for supervisors to be involved by achieves the objective. It is also consistent with legislative requirements under the *Child Employment Act 2006* which requires school-aged children (up to 16 years, or the end of year 10 whichever is achieved first) to have supervision for work involving the exchange of money. Supervision obligations are fulfilled if there is an adult in the near vicinity and in regular contact with the child.

No changes based on this modification are proposed.

### **The preferred option is to prohibit the supply of smoking products by minors – allowing and extended phase-in time for small business.**

Option 3 with a modification for longer phase in time for small business is considered the most effective option to achieve the objectives of Government action. Legislating to prevent supply of smoking products by minors is expected to reduce familiarisation with smoking products and lower the risk of smoking initiation. It also reduces the risk of minors succumbing to social pressure to supply other minors with smoking products.

There is currently considerable interest and demand for e-cigarettes from young people coupled with widespread sale of the products. The preferred option aims to prevent youth smoking product use by reducing access and exposure to advertising and promotion of products as a part of employment.

Stakeholders will be assisted to transition over time to the legislated ban in order to reduce impacts for both businesses and employees. Consultation with the SDAQ indicates that there have been no concerns regarding this approach in Western Australia or Northern Territory, and further that the vast majority of businesses can accommodate the approach.

Increased compliance activity in response to retail supply of nicotine e-cigarettes and illicit tobacco products is progressing. Preventing minors from supplying these products also reduces the risk that young workers will become enmeshed in this enforcement activity.

**Table 53 - Section 2.4, costs and benefits of recommended option**

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.

**Table 54 - Cost effectiveness supply of preventing children from supplying smoking products.**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <ul style="list-style-type: none"> <li>Resource development \$36,237.</li> </ul> <p>Total - \$36,237 X 0.142 = <b>\$5,145</b> annualised</p> <p><b>Annual costs</b></p> <ul style="list-style-type: none"> <li>Cost difference to employ adult, range of \$6,104,592 – \$7,462,560</li> </ul> <p>TOTAL ANNUAL COST (average): <b>\$6,788,721.</b></p>	<p>The total annual intervention cost is <b>\$6,788,721.</b></p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 106 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 44 persons to quit or 30 persons to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for full lifetime.</p>	<ul style="list-style-type: none"> <li>Prevents youth smoking uptake by delaying exposure to products thereby reducing familiarity and normalcy of smoking product use.</li> <li>Reduces youth access to products in high demand from this group (e-cigarettes).</li> <li>Reduces the risk of smoking product supply by minors to their peers.</li> </ul> <p>This intervention can reduce the number of smokers by 44 persons or prevent 30 persons from becoming a smoker annually, based on evidence that:</p> <ul style="list-style-type: none"> <li>There is strong interest from 12–17-year old’s in accessing and using e-cigarettes.</li> <li>Handling smoking products is akin to advertising. For e-cigarettes this includes coloured packages, logos, brand names, and flavours.</li> <li>There is clear evidence that e-cigarette use is a gateway to future tobacco use.</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Assumptions/basis for costing:

- 1,692 small business employ minors in roles where smoking products may be supplied. Transactions are undertaken by a single operator at the one point of sale.
- It is assumed that rostering arrangements can be undertaken to satisfy requirements at the vast majority of retailers and only a very small number of employees or shifts will need to be replaced with an adult.
- Assumption that an adult is available to transact at the vast majority of stores as supervisors are required by law to be available for school aged children where exchange of money is undertaken.
- Costings for hourly rate is a conservative estimate of the impacts based on difference between minor and adult wages based for permitted hours a minor may work.
- Assumed that minors will not be disadvantaged by job losses due to extended phase-in period and stakeholder advice that there are staff shortages.
- Assumption that all minors currently supplying smoking products are reimbursed award rates, including family members.

## 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.

A 12-month phase-in period for large retailers and 24-month phase in is proposed for small and medium retailers. This period is provided to enable large retailers time to adjust their practices and staffing allocation to ensure they are able to comply with the proposal when it comes into effect.

Queensland 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.

### 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.

## 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.

## 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>99</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

---

<sup>99</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 years 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>100</sup>. There is increasing evidence that second-hand smoke exposure is associated with psychological distress<sup>101</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>102</sup>. The majority of patrons (79%) at these venues are not smokers (52% never smokers and 27% ex-smokers)<sup>103</sup>.

In 2017, close to a million Queenslanders (946,000) reported spending time in a DOSA and more than half were non-smokers<sup>104</sup>. Time spent by non-smokers in DOSAs most often occurs

---

<sup>100</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>101</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>102</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

<sup>103</sup> Queensland Health. (2017). *Queensland preventive health survey*. [Unpublished].

<sup>104</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>105</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>106</sup>. Investigations have found that:

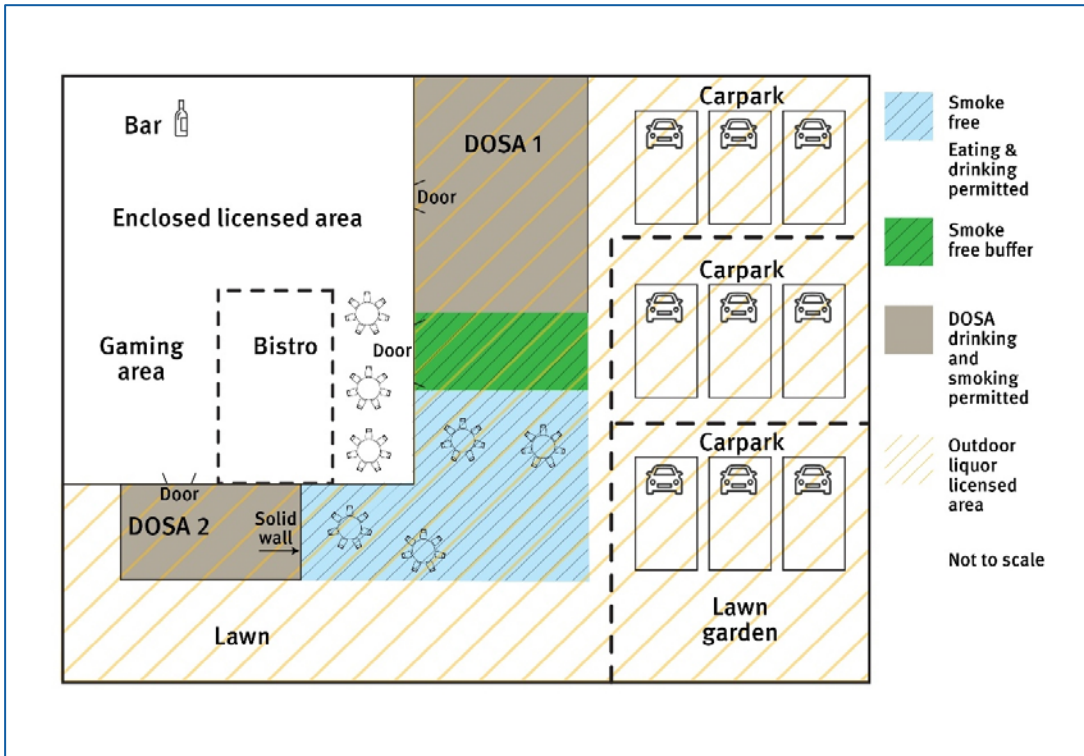
- larger DOSAs (relative to usual functional licensed area) can be established at venues where the licensed area also includes the carparks, gardens and grounds (by law a DOSA should not occupy more than half of the total outdoor licensed area), see example at figure 7
- there are insufficient controls 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 8
  - 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.

---

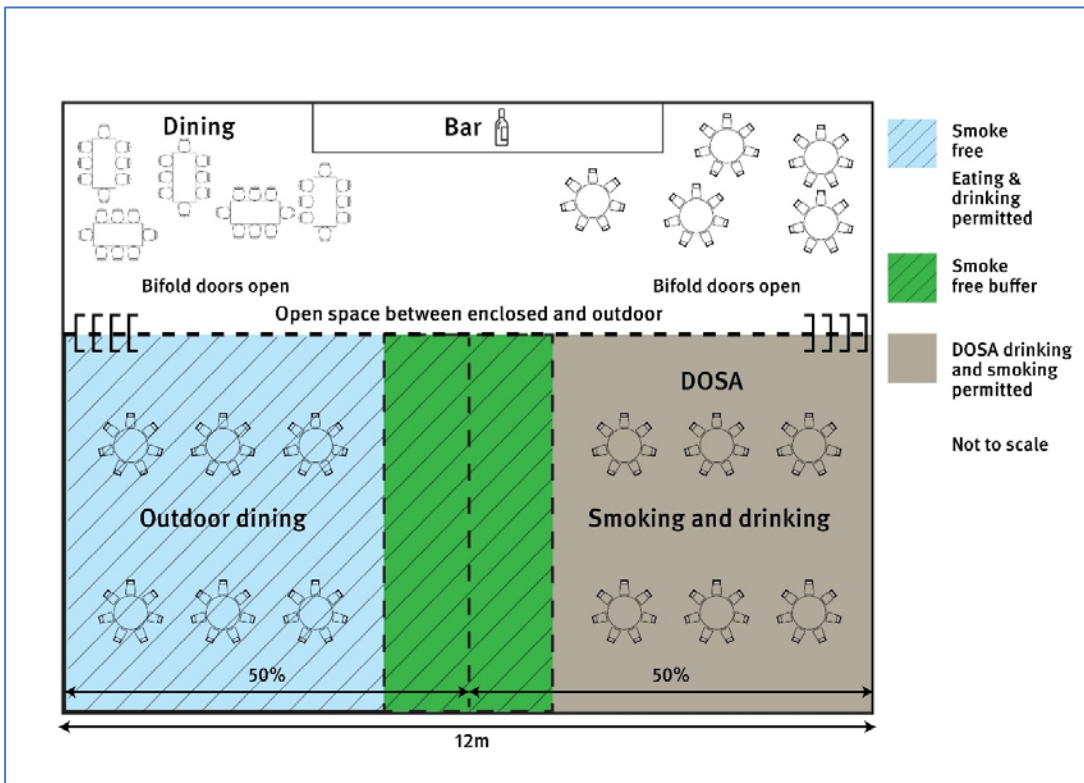
<sup>105</sup> McLaren R. and Haszard D. (2018). *Understanding Designated outdoor Smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

<sup>106</sup> Queensland Health. (2018) *Liquor Licensed Venue Inspection*. [Unpublished report]. Queensland Health.

**Figure 7 - Section 2.5, example of venue layout showing DOSA size relative to outdoor licensed area**



**Figure 8 - 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>107</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>108</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>109</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>110</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.

---

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

<sup>108</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>109</sup> Queensland Health. (2017) *Queensland preventive health survey*. [Unpublished].

<sup>110</sup> Queensland Health. (2020) *The health of Queenslanders 2020*. Report of the Chief Health Officer Queensland. Queensland Government. Brisbane.

## Options considered in the CRIS

Options	Description
Option 1	Status quo
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>111</sup>. Only a small number of venues provide more than four DOSAs<sup>112</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

<sup>111</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>112</sup> McLaren R. and Haszard D. (2018). *Understanding designated outdoor smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

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.

### 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 55 - 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>113</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>114</sup>, plus the cost of materials ranging up to \$320 per square metre for laminated glass<sup>115</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

---

<sup>113</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>114</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>115</sup> Hipages. *Glass and glazing costs*. Retrieved at November, 2021 from

<https://hipages.com.au/article/how-much-does-glass-and-glazing-cost>

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 56 - 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>116</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

---

<sup>116</sup> McLaren R. and Haszard D. (2018). *Understanding Designated outdoor Smoking area use: Queensland licensed premises survey*. [Unpublished report] Proof Research, for Queensland Health.

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
- 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 57 - 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.	<p>Revise Smoking Management Plan for the premises. Estimated time cost of up to two hours.</p> <p>Time to install free signage, estimated to be 10 to 15 minutes (one-off).</p>

Stakeholders	Benefits	Costs
Staff	Nil	Monitor DOSA area to ensure children are not present.
Community	Provision of greater smoke-free areas resulting in children's reduced exposure to second-hand smoke while at the venue.	Parents and adults responsible for minors will not be permitted to bring them into the DOSA and will need to ensure they are safely supervised by another member of the group.
Queensland Government	Contributes to reducing the negative health effects associated with exposure to second-hand smoke. Patrons that have recently quit smoking or are attempting to quit will have greater smoke-free area available to assist their quit smoking attempt.	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>117</sup>, plus the cost of materials ranging up to \$320 per square metre for laminated glass<sup>118</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

---

<sup>117</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>118</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/)

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 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>119</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>120</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>121</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.

---

<sup>119</sup> Queensland Hotels Association and Clubs Queensland, informal stakeholder consultation, May 24, 2021.

<sup>120</sup> Matthew Reeves. (2019, June). *Pubs, bars and nightclubs in Australia* (Australia Industry (ANZSIC) Report H4520). Ibisworld.

<sup>121</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 58 - 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>122</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

---

<sup>122</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>123</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 59 - 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>123</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 60 - 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 to 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 non-compliance 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 61 - Section 2.5, option 6, costs and benefits**

Stakeholders	Benefits	Costs
<b>Licensee</b>	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>
<b>Staff</b>	Nil	<p>Monitor DOSAs to prevent drinking and children entering and staying in the DOSA.</p>
<b>Community</b>	<p>Reduced negative health effects from exposure to second-hand smoke.</p>	<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.

## Community feedback on the CRIS (30 May – 26 June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Questions in the online survey were not mandatory and all free text providing respondents the option to respond to topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 124 provided responses to at least one of the five questions asked on this topic. Responses were received from members of the public, public health academics and organisations, non-government organisations, government agencies, health service providers, retail stores, liquor licensed venues and associations.

### The online survey asked stakeholders to respond to the following free text 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.

## Summary of stakeholder feedback

Table 62 shows the breakdown of overall support for the proposal. There was no uniform response from stakeholders regarding the recommended option to introduce further restrictions on DOSAs including smoke-free buffers with enclosed venue areas (option 2), limiting DOSA access to adults (option 3) and prohibiting drinking in a DOSA (option 5).

Members of the public, public health organisations and government agencies overall supported the implementation of further regulatory restrictions for DOSAs. Several public health organisations, health service stakeholders, members of public, and academic/policy institutions agreed that government action is required and supported the proposed combination of options. Nine stakeholders agreed with the proposal but suggested the government adopt a more restrictive approach such as the complete removal of DOSA at liquor licensed venues.

The primary objective in progressing regulatory action is to reduce the negative health effects of exposure to second-hand smoke at liquor licensed venues, and to support smokers at venues to succeed in their attempts to quit smoking. Respondents agreeing with the preferred option indicated reasons aligned with the objectives of government action including:










- it is important to break the link between smoking and drinking...studies show that smoking is correlated with alcohol consumption
- DOSA's should be accessible by adults only to limit exposure of second-hand smoke to minors.

Stakeholders from liquor-licensed venues and industry associations did not support the proposal and advocated for the status-quo.

Reasons provided for disagreeing with the recommended option included:

- costs to business of infrastructure change could be impacts on return patronage if requirements to move away from the venue
- costs could be higher than suggested in the CRIS
- a current reliance on sale of smoking products, assistance to transition if the cost of a licence is too much.

**Table 62 – Section 2.5, summary of consultation responses for topic 5**

DOSA restrictions		✓	✗	?	✓✓ More restrictive
Stakeholder cohort		Agree	Disagree	Unsure	
	Academic/research institution	2	0	0	2
	Liquor licensed venue	2	8	0	0
	Member of public	40	32	0	3
	Non-government agency	2	2	0	3
	Public health organisation	6	2	0	1
	Retail/hospitality association	0	2	0	0
	State/territory/local government agency	1	0	0	0
	Tobacco or e-cigarette retailer	4	6	0	0
	Tobacco industry	0	0	0	0
<b>Total</b>		<b>57</b>	<b>52</b>	<b>0</b>	<b>9</b>

## Consideration of feedback

### **A majority of stakeholders supported the implementation of further regulatory restrictions for DOSAs.**

Several public health organisations, health service stakeholders, members of public, and academic/policy institutions agreed that government action is required and supported the proposed combination of options.

Stakeholders from liquor licensed venues and industry associations overall did not support the proposal and advocated for the status-quo. A retail/hospitality association stakeholder were of the view that the current regulatory rules for DOSAs are sufficient and as such, further regulatory changes are not required. This stakeholder argued that:

“

*... the prevalence of smoking has almost halved since 2006 when DOSAs were introduced...to suggest a smoker, in between smoking their cigarettes would be exposed to second-hand smoke in the outdoor area as the justification is flawed.” - (#166)*

However, a liquor licensed venue provided information about the positive impact of reducing supported the approach noting that:

“

*“During Covid we removed our DOSA and it has had no impact on our trade, but it means there is no second hand smoking coming into the venue from smokers sitting in the DOSA while drinking & smoking” - (#114)*

The same respondent went on to support the intention of the proposal and provide information on the benefits:

“

*“...we have experienced it firsthand when we removed our DOSA during Covid and didn't reinstate it afterwards. Our outdoor dining area is no longer exposed to smoke from the DOSA. Customers who do smoke actually tend to move a long distance away from the venue before the light up. Generally being considerate of the people in the outdoor area”- (#114)*

Another stakeholder representing liquor licensed venues suggested implementing further restrictions will see smokers smoking in unsupervised public areas:

“

*Patrons will leave what is a controlled and supervised purpose-built environment to smoke in unsupervised public areas, increasing the interaction with the general public and revellers from other premises, thus increasing the risk of conflict and altercations.”*

*“there have been no issues identified around noncompliance with smoking legislation and the operation of DOSAs in licensed premises.”*

*“there have been no complaints by the public regarding the operation and existence of DOSAs.” - (#156)*

However, a public health organisation noted in their submission that two complaints were received in the last 12 months *“about smoke-drift at licensed premises across buffers or into an enclosed place”* (#172).

A few stakeholders suggested that there are potential environmental impacts of cigarette butts becoming litter if people smoke in public areas. It is assumed that this is referring to patrons leaving a venue to smoke if the venue elects not to continue to provide a DOSA.

### **Industry peak bodies were not unanimous in their views on the option to limit DOSAs to adults.**

Public health organisations, members of public, and academic/policy institutions supported the proposal to prevent children from spending time in a DOSA to limit/lower the risk of children being exposed to second-hand smoke.

A stakeholder from the retail or hospitality association argued limiting access to DOSAs to only adults exposed minors to the risk of being left unattended (#166). Another stakeholder from the same group suggested that most venues have *“house policies in place which ban minors from DOSAs [and] this form of self-regulation by the majority of industry has, over time, resulted in this being broadly accepted by patrons”* (#178).

Public health organisations and academic or research institutions suggested smoke-free buffers need to be of considerable size to be beneficial.

An academic or research institution noted the CRIS lacked clear detail on the size and location of smoke-free buffers. They suggested that all buffers need to be of considerable size to be beneficial considering that cigarette smoke travels freely through air (#171).

A public health organisation stakeholder suggested care needs to be taken when drafting provisions requiring a buffer around the outdoor eating and drinking place so that the perimeter is clear for all stakeholders (#172). DOSAs are often built under the roof line of buildings adjoining indoor areas and often with open doors, creating substantial smoke drift into the indoor non-smoking part of the building. DOSAs are not permitted to be enclosed, yet they often have three partial or whole walls and a ceiling under the building line. Buffers between DOSAs and other areas will reduce second-hand smoking.

Industry disagreed with requiring smoke-free buffers between DOSAs and enclosed areas. A retail/hospitality association argued that liquor licenses venues currently have purpose-built and fit-for-purpose approved buffers which minimise second-hand smoking and are a substantial cost to venues (#166).

A liquor licensed venue stakeholder noted that current requirements for DOSAs have been established based on strict legislative standards (#156).

Public health organisations and academic/policy institutions supported the option to prohibit drinking in DOSAs, however industry peak bodies rejected the proposal.

Stakeholders from liquor licensed venue and retail/hospitality associations rejected the option of prohibiting drinking in DOSAs. Stakeholders from this group expressed views that there is:

“

*...no evidence that prohibiting drinking in the DOSA is expected to reduce the time patrons spend in the DOSA, thereby reducing their exposure to second-hand smoke to suggest that a smoker, in between smoking their cigarettes would be exposed to secondhand smoke in the outdoor area as the justification is flawed.” - (#166, #156)*

Stakeholders from the retail/hospitality associations claimed the proposed option will see an increase in drink spiking when patrons leave their drinks to smoke in a DOSA, however no evidence or research was provided to support this claim. The stakeholder also noted this option will potentially lead to an increase in alcohol consumption as patrons will most likely finish their drinks more quickly to go to the DOSA to smoke (#178).

**Some supporters of the proposed option called for more restrictive measures, including reducing the size of the DOSA.**

Several public health organisations, members of the public, and academic/policy institutions proposed more restrictive regulatory interventions, including reducing the size of the DOSA.

Public health organisations and NGOs suggested incorporating option 4 into the proposed changes reduce the percentage of outdoor space for a DOSA to no more than 25% of the outdoor liquor licensed area (#157, #172 and #164). Stakeholders also suggested consideration should be given to *“include a prohibition on furniture in the DOSA to reduce the desirability of the area and minimise time spent within the area”* (#172).

An academic institution noted that requiring smokers to go to a separate area where food or alcohol is not permitted will mean that fewer people will frequent that area, and as such, less space would be required for a DOSA. Additionally, people who are attempting to quit will be less likely to be tempted to smoke (#127).

A stakeholder from retail/hospitality associations was not supportive of the option to ban drinking in the DOSAs and argued that the assumption that this will lead to venues reducing their DOSA size is flawed, particularly *“as floor space is expensive and valuable”* (#166). The

stakeholder also thought that if DOSAs were made smaller it will condense smokers or force them 'into public uncontrolled areas'.

**Government agencies and licensed venue stakeholders noted the potential cost-implications to businesses.**

A government agency stakeholder noted the potential infrastructure and operational costs to business if the proposed options were implemented. A government agency noted the proposed option:



*...will impose costs on businesses to achieve compliance, which for some venues may be significant where they are required to erect a smoke buffer or screen.” - (#179)*

Additionally, there may be potential loss to “revenue for small business venues if patrons are prohibited from drinking within DOSAs” (#179). As such, the stakeholder suggested extending the phase of implementation to 18 to 24 months (rather than 12 months) to provide businesses with sufficient time to plan for and meet the costs of required alterations to their venues to meet compliance requirements.

**Proposed modification**

Two modifications to the preferred option were identified based in the stakeholder consultation findings. The two modifications are listed and discussed below:

1. Amend the preferred option (option 6) to include a reduction in DOSA size (option 4).
2. Maintain the status quo.

**Amend option 6 to include option 4**

Public health organisations, members of public, and academic/policy institutions wanted the preferred option to be more restrictive and include a mandate for a smaller DOSA size, and for appropriate consideration to be given to smoke-free buffers.

**Table 63 – Section 2.5, amend option 6 to include option 4**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Yes, since the proposal is expected to contribute to reducing exposure to second-hand smoke.
<b>Evidence provided to support proposal</b>	Evidence for option 4 provided in the CRIS was referenced by stakeholders. However further information is required on the cost implications.
<b>Proposal is proportionate to the risk the issue presents</b>	Unclear. Further evidence/consideration should be given to the costs associated with reducing the DOSA area, particularly for small business venues.

Criteria	Assessment
<b>Support efficient compliance and enforcement practices</b>	Yes. Licensees have existing obligations under the legislation to ensure that DOSAs comply with legislated requirements - noncompliance would result in provision of education about requirements, a request to take action to resolve noncompliance or a penalty.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	Yes, repurposed area can be available for a greater range of functions including dining and entertainment, rather than smoking and drinking only.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	To some extent, yes. Promotes alignment with WHO FCTC (Article 8 - Protection from exposure to tobacco smoke).

### Maintain status quo

Industry associations argued for no action, suggesting the current tobacco control laws are sufficient (option 1).

**Table 64 – Section 2.4, maintain status quo (option 1)**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Disputes there is a problem requiring government intervention.
<b>Evidence provided to support proposal</b>	No evidence provided – claims from Peak Industry Bodies that most venues have a policy of no children in DOSAs, however there is no clear indication of how many venues have this policy. Additionally, no evidence provided to suggest drink spiking or alcohol consumption will increase as a result of alcohol-free DOSAs.
<b>Proposal is proportionate to the risk the issue presents</b>	No, noting the stated health and economic costs associated in the CRIS with smoking.
<b>Support efficient compliance and enforcement practices</b>	Not applicable since no new regulatory obligation.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. Did not provide sufficient evidence to demonstrate additional benefits to the community, compared to the CRIS.
<b>Promotes consistency with domestic and WHO smoking policies and regulations</b>	To some extent, no. For example, it does not promote alignment with the WHO FCTC (Article 8 - Protection from exposure to tobacco smoke).

### Final recommendation

The CRIS proposed option 6 as the preferred option, recommending smoke-free buffers between DOSAs and enclosed venue areas, restricting DOSA access to adults, and prohibiting drinking in DOSAs. After consideration of evidence and stakeholder feedback the CRIS recommendation of option 6 continues to be preferred over other options as it delivers

greater achievement of the objective. The cost effectiveness of option 6 is summarised at table 66.

The government objective in progressing this option is to reduce the negative health effects of exposure to second-hand smoke at liquor licensed venues, and support smokers at liquor licensed venues to succeed in their attempts to quit smoking.

There was no uniform response from stakeholders regarding the recommended option. Most stakeholders that supported the recommended option were members of the public and public health organisations, who also provided suggestions on further regulatory restrictions. Liquor licensed venue holders disagreed with the need for additional regulatory requirements.

**Proposed modification - Amend the preferred option (option 6) to include a reduction in DOSA size (option 4).**

Stakeholders suggested a modification to the preferred option to include option 4, arguing that reduced DOSA size is important to achieve reduced second-hand smoke exposure. Consideration was given to the proposal and is summarised at Table 57. Assessment indicates that there would be benefit in reducing the size of the DOSA, but notes that further implications of costs are warranted. The likely impact of the preferred option will be an associated reduction in DOSA size as no drinking will be permitted in these areas. Consideration will be given in evaluation of the outcomes regarding how DOSAs are provided under the preferred option to assess if there is a future need for this approach.

**Proposed modification – maintain the status quo**

While the CRIS did not recommend maintaining the status quo liquor licensed industry associations argued that no regulatory action was required and that current laws are sufficient. Consideration was given to the suggestion to maintain the status quo (option 1) as summarised in Table 58. Other stakeholders provided clear published evidence, or personal testimony that spoke to the importance and benefit of taking action to reduce second-hand smoke exposure and disrupt the habit of drinking and smoking in a public environment.

There was no evidence provided that status quo is most beneficial approach for the Queensland community. Suggestions regarding potential negative effects such as an increase in drink spiking and alcohol consumption have been further considered. Advice and evidence that these negative effects are unlikely to occur. Smokers are well versed in managing activities around their smoking, at other venues without smoking areas, consumers already moderate their eating and drinking behaviours to leave the venue to be able to smoke. This is not expected to vary greatly through the introduction of the preferred option, however, messaging about safe practices will be included in the implementation of the preferred option as a precaution.

Option 1 is not considered viable. There is not sufficient evidence presented to demonstrate additional benefits to the community compared to the preferred option.

**The preferred option is to amend the Act to require smoke-free buffers between DOSAs and enclosed venue areas, restrict DOSA access to adults, and prohibit drinking in DOSAs.**

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.

Limited actual costings from stakeholders were provided in consultation. Associations noted that the costs could be greater than accounted for in the CRIS but did not provide clear advice as to what these could amount to. DOSAs are variable, some are purpose built, however many are areas at the venue utilised for this purpose such as a footpath, part of a deck or a courtyard, often they serve more than a single purpose as an eating area in the day and DOSA at night. Flexibility for business to implement DOSAs that protect the community but suit their venue is continued in this approach and will assist with reducing costs of changing the areas.

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.

**Table 65 - Section 2.5, costs and benefits of recommended option**

Stakeholders	Benefits	Costs
<b>Licensee</b>	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>
<b>Staff</b>	Nil	<p>Monitor DOSAs to prevent drinking and children entering and staying in the DOSA.</p>
<b>Community</b>	<p>Reduced negative health effects from exposure to second-hand smoke.</p>	<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>
<b>Queensland Government</b>	<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>

**Table 66 - Cost effectiveness of amending smoking areas at liquor licensed venues**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <ul style="list-style-type: none"> <li>Smoking management plan and signage = \$ 13,384</li> <li>Horizontal buffer = \$130,400</li> <li>Buffer walls = \$4,690,560</li> <li>Training and communication materials = \$4,500</li> <li>Changes to removes a DOSA - \$1,143,680</li> </ul> <p>Total = \$5,982,524 x 0.142 = \$801,681 annualised</p> <p>Total = <b>\$849,518</b></p>	<p>The total annual intervention cost is <b>\$849,518</b>.</p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 13 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 6 persons to quit or 4 persons remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p>	<p>Reducing smoking at or near busy public areas assists to:</p> <ul style="list-style-type: none"> <li>Prevent exposure to second-hand smoke</li> <li>Help smokers to quit</li> <li>Prevent smoking uptake</li> </ul> <p>This intervention can reduce the number of smokers by 6 persons or prevent 4 persons from becoming a smoker annually, based on evidence that smoke-free legislation:</p> <ul style="list-style-type: none"> <li>reduces exposure to toxins</li> <li>reduces consumption among continuing smokers</li> <li>encourage smokers to quit and to remain abstinent</li> <li>reduce mortality rates from smoking-related illnesses</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Assumptions:

- Of the 2000 liquor licensed venues with DOSAs -
  - 20% (n=400) no longer offer a DOSA – costs to adjust assumed to be 50% of costs to install an impervious screen
  - 40% (n= 800) undertake modification for impervious buffer screen
  - 40% (n= 800) relocate furniture to make a horizontal buffer.

## 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.

These legislative changes would be supplemented by guidance material communication and appropriate notice to support liquor licensed venues and the community to comply with the legislative provisions. A phase in period up to 12 months would be adopted to allow venues time to make adjustment to the DOSA and update the smoking management plan to indicate how the venue manages smoking in their premises. From that point in time all liquor licensed venues would be required to ensure that children do not enter the DOSA, smoke-free buffers are in place between enclosed and external areas and drinking does not take place in the areas.

Queensland 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. This will include web-based,

hard copy and correspondence methods. Messages encouraging awareness of safe drinking practices will be included as a precautionary measure to protect and promote wellbeing.

The Tobacco Laws phone service (13QGOV) is available to assist stakeholders with information about legislative requirements. This service will be updated with information on smoking product licensing to ensure a rapid response to supplier requests for guidance on licensing or signage orders. This service also refers requests for further information to the policy team, and allegations of non-compliance are provided to enforcement teams for investigation. This service will be boosted during the phase in of implementation however increased queries is likely to be temporary and manageable within existing human and financial resources dedicated to advisory functions.

## **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 and will be used to understand if further measures to limit the negative health effects of smoking and support quit attempts are required.

## 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.

## 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 67 - Section 2.6, jurisdiction comparison of smoke-free outdoor eating and drinking places**

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
Smoking banned in outdoor dining areas	Y	Y	Y signage required	Y	Y signage required	Y signage required	Y signage required	Y signage required
Smoke free buffer around dining/drinking areas	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

	QLD	NT	NSW	WA	VIC	SA	TAS	ACT
<b>Specific or additional smoking bans that apply to outdoor food fairs/festivals</b>	<b>N</b>	<b>Y</b>	<b>Y</b> 10 metre buffer from food fair stall	<b>N</b>	<b>Y</b> smoke free food fairs and 10 metre buffer for food stall or vendor	<b>N</b>	<b>Y</b> 20 metre buffer designated areas or events	<b>N</b>

## 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>124</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 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

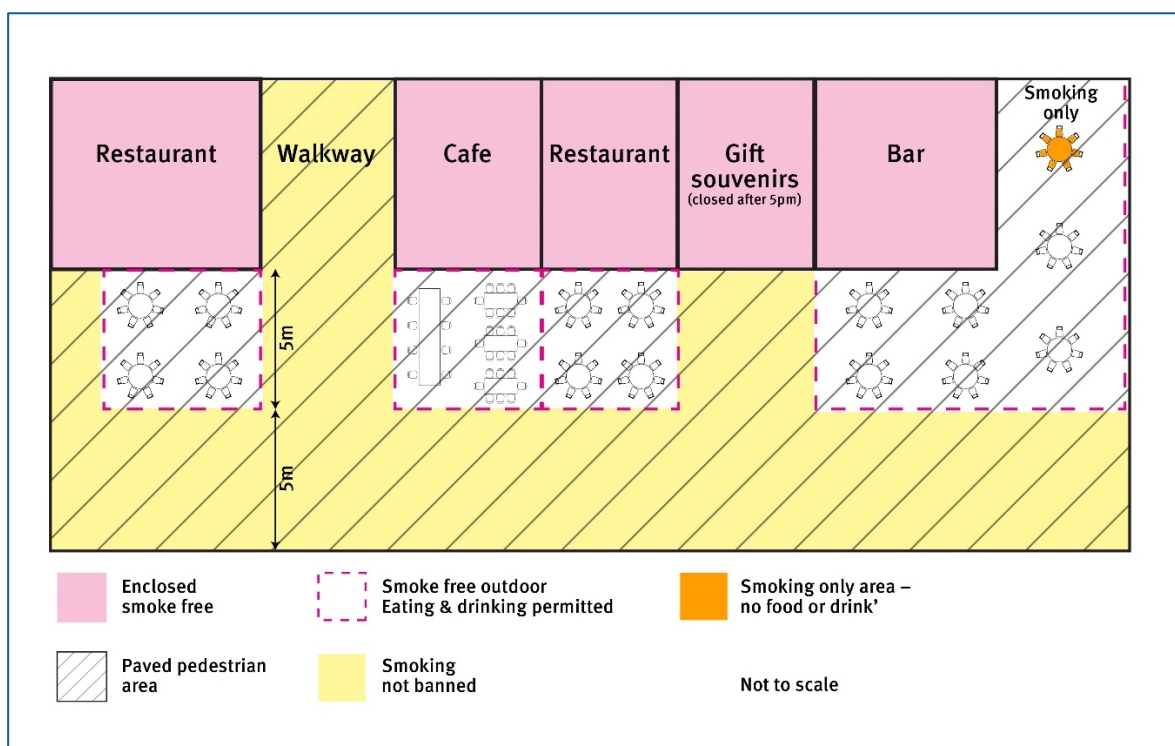
<sup>124</sup> Health and Ambulance Services Committee (2015) Report No. 6, 55<sup>th</sup> Parliament Tobacco and Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015, Brisbane, Queensland.

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 9.

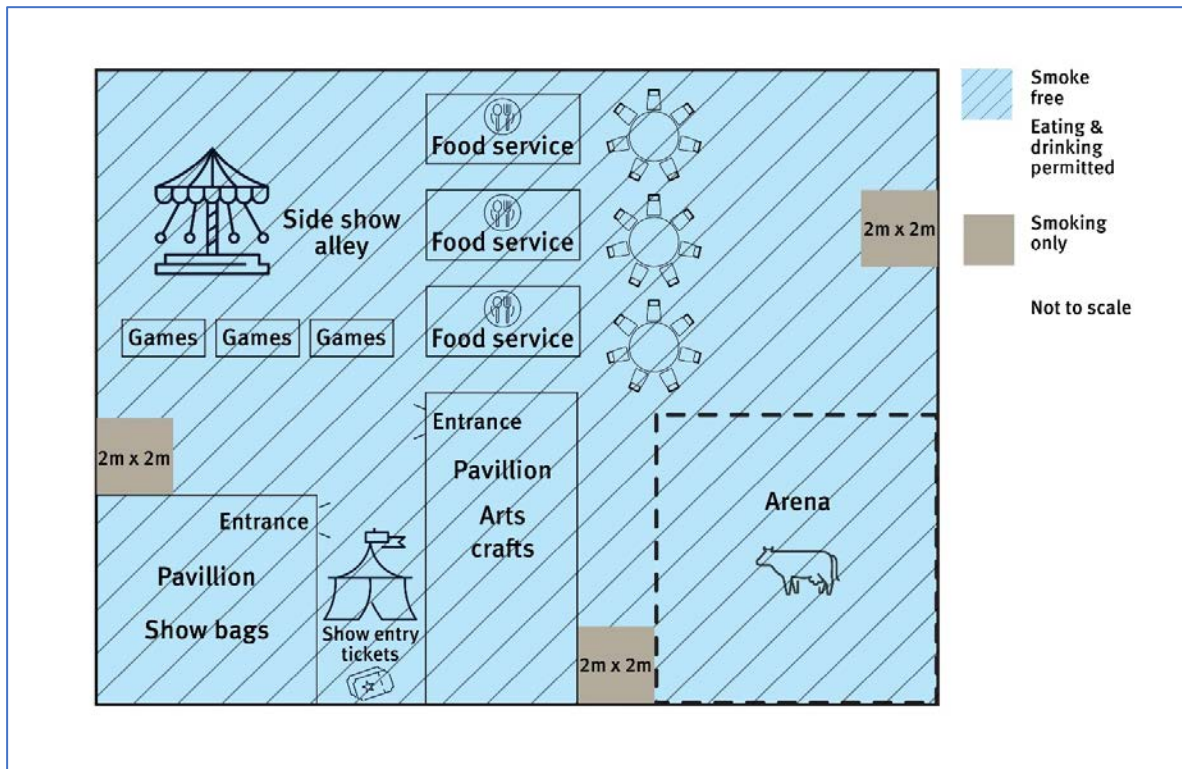
For businesses located in areas where smokers gather, (e.g. within five metres of a café at the end of a strip of eating places) this may result in diners electing to not return if exposed to unwanted second-hand smoke during their dining experience. There is no current provision available to patrons 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 10.

**Figure 9 - 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 10 - 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.

### Options considered in the CRIS

	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 68 - Section 2.6, option 1, costs and benefits**

Stakeholder	Impact
Food or drink businesses/providers and their staff	Nil – status quo
Community	Nil – status quo
Local Government	Nil – status quo
Queensland Government	Nil – status quo

**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 69 - 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>

Stakeholders	Benefits	Costs
Community	Potential to enhance the appeal of outdoor dining places where smoke-drift from neighbouring areas is currently an issue.	Smokers will be required to walk further away from where food and/or drink is supplied to smoke.
Local Government	Nil	Nil
Queensland Government	Reduction in burden of disease and associated health system costs from reduced exposure to second-hand smoke.	<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 based on 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 70 - Section 2.6, option 3, costs and benefits**

Stakeholders	Benefits	Costs
<p><b>Food or drink businesses/providers and their staff</b></p>	<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>
<p><b>Community</b></p>	<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>
<p><b>Local Government</b></p>	<p>Nil</p>	<p>Nil</p>
<p><b>Queensland Government</b></p>	<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 71 - Section 2.6, option 4, 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>
<b>Community</b>	<p>Introduction of 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>	<p>Nil</p>	<p>Nil</p>
<b>Queensland Government</b>	<p>Reduction in exposure to second-hand smoke at outdoor eating or drinking areas in Queensland.</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 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 options 3 and 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 72 - 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>	<p>Nil</p>	<p>Nil</p>

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 and 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.

## Community feedback on the CRIS (May – June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence regarding the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Questions in the online survey were not mandatory and were all free-text providing respondents the option to respond to topics of interest and questions where they held views and could provide information and evidence. Of the 180 respondents to the CRIS, 111 provided responses to at least one of the five questions asked on this topic. Responses were received from academic/research institutions, government agencies, health service provider/practitioner, liquor licensed venues, members of the public, NGO's, public health organisation, tobacco or e-cigarette retailers and retailer/hospitality associations.

### The online survey asked stakeholders to respond to the following free text 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.

## Summary of feedback

The majority of respondents were supportive of the preferred option 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 places.

Other respondents agreed to these combined actions, and went further urging the government for a more restrictive approach, including total bans on smoking in all public areas.

Respondents agreeing with the preferred option gave reasons aligned with the objective of government action, including that the option:

- is likely to reduce exposure to second-hand smoke in areas that are smoke free including non-smoking patrons and employees

- will reduce smoking cues for smokers
- will improve employee health and productivity
- promotes consistency with other domestic regulations
- improves community outcomes by reducing the economic burden associated with the health and social costs associated with smoking.










A minority of respondents disagreed with the preferred option and did not support restrictions on areas used as smoking-only areas at outdoor eating or drinking places.

Reasons provided for disagreeing with the recommended option included:

- concern about pushing smokers further into public space and outside of control of licensees and businesses
- a contention that most businesses do not provide smoking only areas.

One respondent was unsure about the recommended option.

**Table 73 – Section 2.6, summary of consultation responses for topic 6**

Smoke-free outdoor eating and drinking areas		✓	✗	?	✓✓ More restrictive
Stakeholder cohort		Agree	Disagree	Unsure	
	Academic/research institution	4	0	0	0
	Liquor licensed venue	3	2	2	0
	Member of public	37	20	0	10
	Non-government agency	5	0	0	1
	Public health organisation	8	0	0	1
	Retail/hospitality association	1	1	0	0
	State/territory/local government agency	2	0	0	0
	Tobacco or e-cigarette retailer	6	2	0	0
	Tobacco industry	0	0	0	0
<b>Total</b>		<b>66</b>	<b>25</b>	<b>2</b>	<b>12</b>

## Consideration of feedback

Members of the public and public health organisations supported the implementation of further regulatory restrictions for smoke-free outdoor eating and drinking areas.

The majority of respondents agreed with the proposal to implement smoke free buffers and restrictions on areas used as smoking-only areas, agreeing it would reduce exposure to second-hand smoke. One NGO contended that “*co-location of smoking only-areas at outdoor eating and drinking places also leads to smoke drift, which exposes patrons and staff at the venue to second-hand smoke, of which there is no safe level of exposure*” (#154).

Another NGO identified that without smoke-free buffers between smoking and eating areas, there can be *“harmful exposure to second-hand smoke in areas that are meant to be smoke-free, and areas where non-smoking patrons, children and employees are present”* (#157).

Stakeholders also suggested the recommended option would seek to minimise smoking ‘cues.’ For example, buffers would also reduce the grouping effect and subsequent increase in second-hand smoke that occurs when smokers move to areas where they see others smoking (#161). One academic or research institution also suggested that this option *“may act as a disincentive to discourage tobacco smoking by forcing people who smoke to exit the perimeter of outdoor eating or drinking places in order to smoke”* (#171).

Finally, some respondents who agreed with option 5 suggested it would promote regulatory alignment with other domestic jurisdictions. They suggested that implementing this option would make Queensland consistent with other states such as NSW, VIC, SA and TAS that have smoke-free buffers around drinking and dining areas.

### **NGOs suggested the proposed option provides benefits beyond those identified in the CRIS.**

Three NGOs submitted the proposed option provides additional benefits beyond those identified in the CRIS (#157, #153, #154). They suggested these benefits included:

- benefits to businesses including reducing cleaning costs, reducing insurance costs, increasing worker productivity, reducing health impact of workers, and increasing patronage who will not be exposed to second-hand smoke
- indirect benefits such as reducing the spread of contagious viruses, reducing second-hand smoke in the community, reducing economic burden of smoking related illnesses, reducing smoking attributable fires, reducing environmental pollution and reducing the negative emotional impact of smoking related mortality and morbidity.

### **Members of the public suggested that the proposed option could be strengthened.**

Twelve respondents (10 of whom were members of the public) also called for option 5 to be strengthened. In particular, they advocated for smoking to be banned in all public areas and on all premises. No further evidence was provided to support these positions.

Some liquor licensed venues disagree outdoor eating and drinking places should be further regulated.

Respondents who disagreed with the proposed option did not consider further intervention was required to achieve smoke-free outdoor places.

### **Monitoring and enforcement**

Two NGOs and one academic or research institution identified that it would be challenging to monitor and enforce option 5. An academic or research institution suggested that additional funds be dedicated to researching how compliance could be improved (#171), and two NGOs submitted that additional funds should be allocated to support enforcement (#154, #157). One state/territory/local government agency also suggested that *“an appropriate transition period that includes communication and clarification support will be important to achieving the public health outcomes”* (#158).

## Proposed modification

One proposed modification was identified based on the stakeholder consultation findings:

1. Amend the preferred option to maintain the status quo.

### Maintain the status quo

Representatives from industry, including an industry association, advocated for status quo (option 1) as the recommended option. They considered current restrictions already address concerns about smoking in eating and drinking places, and that other potential DOSA restrictions would continue to address smoking in venues.

**Table 74 - Section 2.6, modification to maintain the status quo**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	No, maintaining status quo does not achieve the objective, to reduce exposure to second-hand smoke at outdoor eating or drinking places in Queensland. This is because smoking could still occur in close proximity to outdoor eating and drinking places
<b>Evidence provided to support proposal</b>	No, sufficient evidence supporting status quo was not provided. For example, it is unclear about the robustness of compliance intelligence referred to in their submission.
<b>Proposal is proportionate to the risk the issue present</b>	No, the significant risks presented from second-hand smoke exposure would remain.
<b>Support efficient compliance and enforcement practices</b>	Not applicable.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	No. The proposed change does not articulate tangible costs and benefits which can be considered in assessing net benefits.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	No, NSW, VIC, SA, TAS all require a smoke free buffer around food and drink areas. Does not promote consistency with WHO policies and regulations which support measures relating to the reduction of tobacco exposure and use.

## Final recommendation

The CRIS recommended introduction of a smoke-free buffer around the perimeter of all outdoor eating or drinking places and restrictions on areas used as smoking-only areas at outdoor eating or drinking place (option 5). The cost effectiveness of option 5 is summarised at table 76.

The government objective in progressing this option is to reduce the negative health effects of exposure to second-hand smoke at outdoor eating or drinking places in Queensland.

After consideration of evidence and stakeholder feedback the CRIS recommendation of option 5 continues to be preferred over other options as it delivers greater achievement of the objective.

A majority of respondents agreed with introducing restrictions around eating and drinking places. Representing parts of industry, public health organisations, NGOs, government and the public, these stakeholders considered option 5 would minimise the impact of second-hand smoke and promote consistency with domestic regulations.

### **Proposed modification - maintain the status quo**

Some members of public, and industry disagreed with proposed regulatory measures arguing there was no regulatory problem to be solved and the potential for unintended consequences. There was not sufficient evidence to demonstrate maintaining the status quo will effectively promote smoke-free outdoor eating or drinking areas.

Stakeholders provided reasons for maintaining the status quo that suggest a misunderstanding in how the proposed smoke-free buffers will apply to venues eligible to provide a DOSA. Under the Act venues that have a DOSA may not also provide a smoking-only area.

Stakeholders further suggested that option 3 would push patrons outside of the control of venues. However, the implementation of a five-metre buffer around the perimeter under option 3 is addressing smoking that is already occurring outside the control of the business.

The CRIS presented evidence that the vast majority of outdoor eating and drinking areas do not provide smoking-only and these are typically in place at very large venues. At these venues an additional buffer will be required around the smoking-only area. This imposes a greater area requirement to provide a smoking-only area but allows the venue to manage smoking without moving people outside the venue.

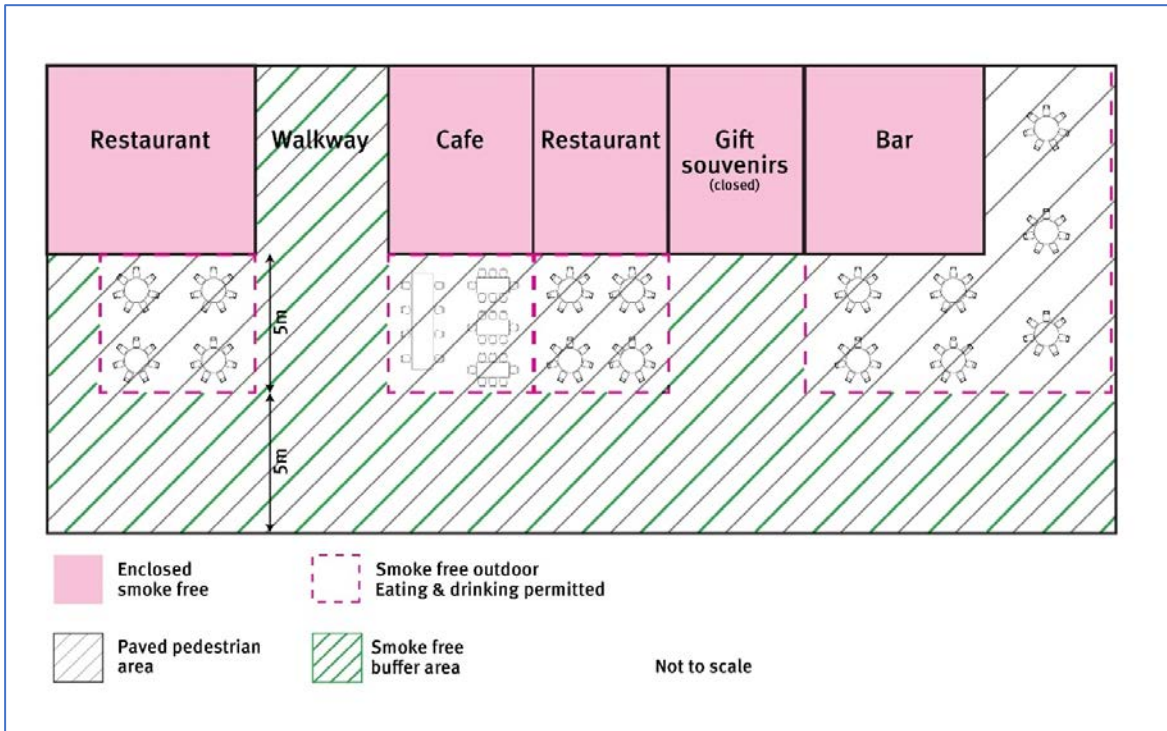
### **The preferred option is to introduce a smoke-free buffer around the perimeter of all outdoor eating or drinking places and restrictions on areas used as smoking-only areas.**

Option 5 is likely to confer the most smoke-free protection of all the options considered. The approach 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 small and medium businesses positioned adjacent to areas 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 act on smoking adjacent to their venue but provides the option to contact enforcement teams if there is a regular non-compliance observed.

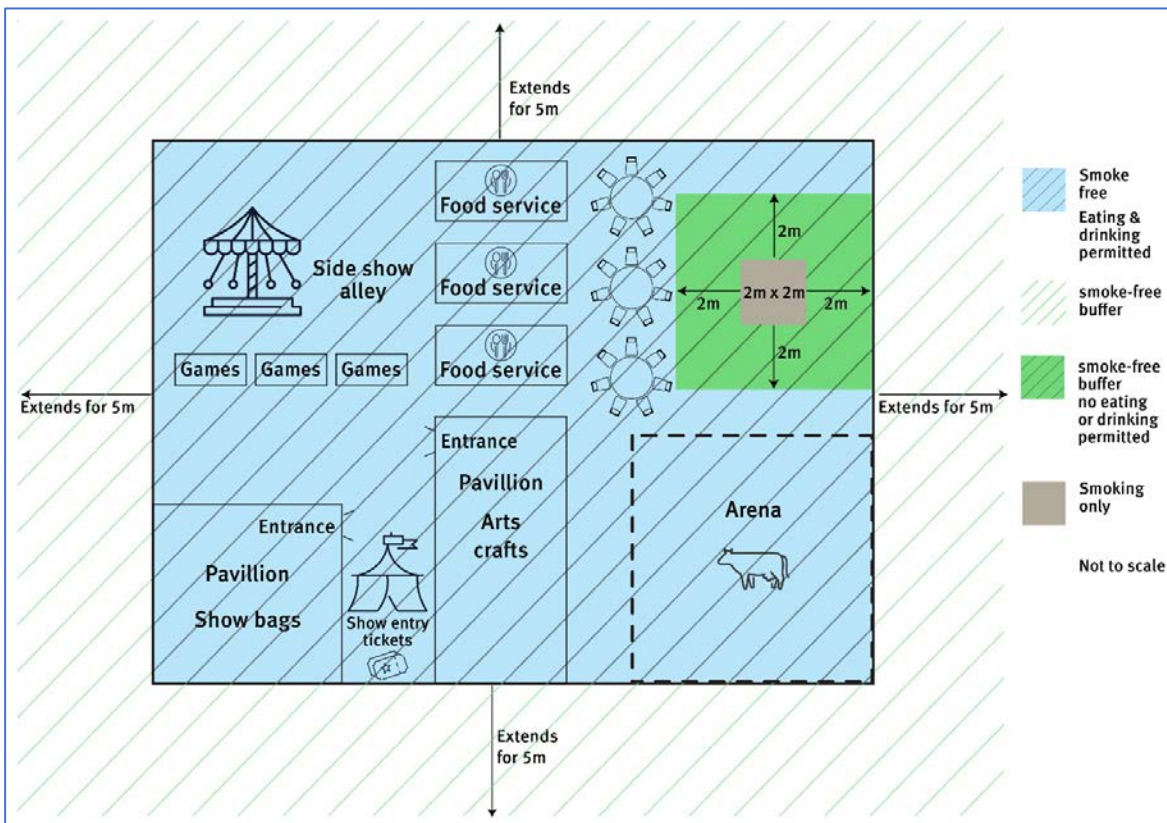
The additional requirements for smoking-only areas under this option will provide enhanced protection from second-hand smoke within the venue and provide a clear separation of smoking with other activities including eating, drinking and entertainment. Examples of the impact of option 5 are provided below at figure 11 and 12.

The recommended option will require adjustment by business and community however the advanced protection provided for health justifies the requirements for business which are low and can be 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 11 - Section 2.6, indication of the impact of option 5 on dining precinct of small and medium outdoor eating and drinking venues**



**Figure 12 - Section 2.6, indication of impact of option 5 on a large outdoor eating and drinking venue**



**Table 75 - Section 2.6, costs and benefits of recommended option**

Stakeholders	Benefits	Costs
<p><b>Food or drink businesses/providers and their staff</b></p>	<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>
<p><b>Community</b></p>	<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>
<p><b>Local Government</b></p>	<p>Nil</p>	<p>Nil</p>
<p><b>Queensland Government</b></p>	<p>Reduction of exposure to second-hand smoke at outdoor eating or drinking areas in Queensland.</p>	<p>One-off increase in administrative burden to develop communication materials and provision of enforcement training and education at an estimated cost of \$4,500.</p>

**Table 76 - Cost effectiveness of smoke-free buffers at outdoor eating and drinking areas**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <ul style="list-style-type: none"> <li>Identify buffer areas - \$3,851,499.</li> <li>Training and communication materials - \$ 4,500.</li> <li>Potential loss of business space estimated 32m<sup>2</sup> to include a 2-metre buffer for smoking-only areas. \$2,800,000</li> </ul> <p>Total - \$6,655,999 x 0.142 = <b>\$945,151 annualised</b></p>	<p>The total annual intervention cost is <b>\$945,151</b>.</p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 15 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 6 persons to quit or 4 persons to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p>	<p>Reducing smoking at or near busy public areas assists to:</p> <ul style="list-style-type: none"> <li>prevent exposure to second-hand smoke</li> <li>help smokers to quit</li> <li>prevent smoking uptake.</li> </ul> <p>This intervention can reduce the number of smokers by 6 persons or prevent 4 persons from becoming a smoker annually, based on evidence that smoke-free legislation:</p> <ul style="list-style-type: none"> <li>reduces exposure to toxins</li> <li>reduces consumption among continuing smokers</li> <li>encourage smokers to quit and to remain abstinent</li> <li>reduce mortality rates from smoking-related illnesses</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Assumptions:

- estimated 35,465 places are outdoor eating and drinking areas – hold a food licence, supply drinks, including agricultural shows, festivals or events, theme parks, zoos and attractions
- less than 2% of outdoor eating and drinking areas are expected to offer a smoking only areas = 709.

## 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.

## 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.

## 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>125,126</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

---

<sup>125</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>126</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 gazetted 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>127</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 a few governments 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>128</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.

---

<sup>127</sup> Local Government Association of Queensland (2014) Communication with Department of Health unpublished.

<sup>128</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 77 - 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**

Queensland has the second-highest smoking rate in the country. Within Queensland smoking rates are higher in rural, regional, and remote areas and where populations experiencing disadvantage are more prevalent. While the trend for tobacco use has been gradually downward in recent decades there remains a risk of rebound, influenced by an increasing trend in e-cigarette use by younger populations 12-25 years and increase supply of illicit tobacco products that circumvent price and packaging controls.

Queensland Health receives complaints about exposure to second-hand smoke at public areas where smoking bans are not in place, including at outdoor markets which are typically high-density settings frequented by a wide cross section of the community including families with children and older Queenslanders. Markets are held very frequently at all parts of the State.

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>129</sup>. In addition to negative effects on health, an absence of controls on smoking at busy public areas increases the visibility of smoking,

<sup>129</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)

making it more difficult for persons trying to quit smoking to succeed and normalising the act of smoking including the use of e-cigarettes within the community. More detailed information about the negative effects of second-hand smoke on health is available in Part 2, Section 1.

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).

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. A small proportion of markets have complete protection due to their location at smoke-free facilities such as schools or hospitals or if held at a gazetted pedestrian mall. The vast majority of markets only have smoke-free coverage at parts of the market, for example where a food service is operating or near a playground if provided.

There is a clear case for government action to implement smoke-free controls at markets to prevent exposure to second-hand smoke, reduce negative health effects and prevent smoking uptake through normalisation of smoking product use. State government action is warranted as there is neither evidence of systemic smoke-free policy adoption by markets or introduction of smoke-free local laws by local government.

While self-regulatory smoke-free policy options are available to market organisers to implement and manage, this is not occurring and where this is in place it is understood to be the exception. There is no centralised information on smoke-free markets or reliable list of markets across the State. It is understood based on conversation with enforcement officers' and consultation with a market association that the majority of market organisers defer to State Health Departments for management of smoking under State law.

Local government have a legislated authority under the Act to make a local law banning smoking at areas not covered by the State, this power was initially sought by local government however it is rarely implemented. Queensland Health supports local governments to consider implementing local laws and has published guidance materials and promoted these to assist with adoption of localised smoke-free responses<sup>130</sup>. Local government use of this authority is minimal. Queensland Health will continue to offer support to local governments where there is interest to implement local laws for areas of local significance that are not duplicated across the State.

State action to reduce exposure to second-hand smoke at local government areas and infrastructure has proven beneficial for other settings and is useful to achieve rapid

---

<sup>130</sup> Queensland Health (2020). *Creating smoke-free places: A guide for Queensland local governments*.

[https://www.health.qld.gov.au/\\_data/assets/pdf\\_file/0028/1008568/create-smokefree-places-localgov.pdf](https://www.health.qld.gov.au/_data/assets/pdf_file/0028/1008568/create-smokefree-places-localgov.pdf)

community awareness and compliance where these areas are replicated across the State, for example at public transport waiting points, children’s playgrounds, or swimming facilities.

At the vast majority of markets smoking is uncontrolled and patrons can 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.

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>131</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.

### 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.

### Options considered in the CRIS

	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.

<sup>131</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)

## 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 78 - 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 79 - 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 by 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 generally sufficient to encourage compliance.

**Table 80 - Section 2.7, option 3, costs and benefits**

Stakeholders	Benefits	Costs
<p><b>Market organisers</b></p>	<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
<b>Market vendors</b>	<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>
<b>Community</b>	<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>
<b>Local Government</b>	Nil	Nil
<b>Queensland Government</b>	<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>132,133</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.

---

<sup>132</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>133</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 81 - Section 2.7, option 4, 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>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>
<b>Market vendors</b>	<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.

### Community feedback on the CRIS (30 May – 26 June 2022)

The objective of the public consultation was to further understand the expected impacts of proposed and recommended options. Stakeholders were provided the opportunity to comment on the costs and benefits described to confirm or suggest changes and give additional evidence about the impacts described in the CRIS.

Consultation process included feedback on options in the CRIS through an online survey, in addition an email address was provided for respondents to seek or include additional information. Of the 180 respondents to the CRIS, 111 provided responses to at least one of the questions asked on this topic. Responses were received from members of the public,

public health academics, non-government organisations, government agencies, health service providers, retail stores and liquor licensed venues.

The online survey asked stakeholders to respond to the following free text 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.

## Summary of stakeholder feedback

The majority of respondents were supportive of the preferred option to prohibit smoking at outdoor markets with provision for discrete smoking areas.

Other respondents agreed with a ban on smoking at markets and went further urging the government to adopt the more restrictive approach described in option 4 where smoking is prohibited at outdoor markets, but no discrete smoking areas are permitted.

Respondents agreeing with the preferred option gave reasons aligned with the objectives of government action including:










- protection from second-hand smoke for children and families
- assists to improve health outcomes and reduce the health and social costs of smoking.

A minority of respondents disagreed with the preferred option and did not support a smoking ban being implemented. They cited reasons including:

- potential for costs to markets if adjustments required
- additional smoking controls are unnecessary, smokers already move away to smoke.

A very small number of respondents were unsure about the option.

**Table 82 – Section 2.7, summary of consultation responses for topic 7**

Smoking at outdoor market restrictions		✓	✗	?	✓✓
Stakeholder cohort		Agree	Disagree	Unsure	More restrictive
 Academic/research institution		4	0	1	0
 Liquor licensed venue		7	0	0	0
 Member of public		46	13	1	11
 Non-government agency		3	0	0	3
 Public health organisation		7	0	0	1
 Retail/hospitality association		0	1	0	0
 State/territory/local government agency		2	0	0	0
 Tobacco or e-cigarette retailer		7	1	0	0
 Tobacco industry		0	0	0	0
<b>Total</b>		<b>76</b>	<b>15</b>	<b>2</b>	<b>15</b>

### Consideration of feedback

**There was majority support for option 3 as it was seen to protect the community from exposure to second-hand smoke.**

Most respondents supported the recommended option regarding smoking at outdoor markets. Three NGOs, seven retailers, seven liquor licensed venues, seven public health organisations, and 46 members of the public considered the proposed regulatory measure was needed because it was seen to protect people, particularly children, from second-hand smoke.

An academic or research institution said *“there is evidence that smoking in outdoor settings increases exposure to second-hand smoke. As such, the implementation of this option is likely to reduce exposure to second-hand smoke”* (#171). The same stakeholder also stated that *“without a dedicated area to smoke, some whole site bans can result in people congregating at entrances to smoke which can increase the visibility of smoking and also result in more exposure to bystanders”* (#171). An NGO further added that *“given the often family-friendly nature of outdoor markets, it is essential that other people especially children, are protected from second-hand smoke”* - (#146).

An NGO suggested the community wants smoke-free markets. They noted:

“

*“[We] found that three in four respondents tried to avoid smokers in public places. This is echoed in a community study undertaken in WA, that found 85% of people wanted markets to be smoke free. Results from the National Drug Strategy Household Survey in 2007 show that 85% of non-smokers either always or sometimes take measures to avoid exposure to SHS.” - (#157)*

A key issue is that retailer associations and some members of the public did not consider there was a problem to be addressed.

Some stakeholders felt that smoking at outdoor markets was not a genuine concern as people do not walk around markets smoking. One member of the public stated that this area did not require reform as outdoor markets already request smoke-free areas of attendees and there is generally compliance. A tobacco or e-cigarette retailer noted that “it is not a problem. I cannot see what the issue is” (#72). A member of the public suggested that “this area did not require reform as outdoor markets already request this of attendees and there is compliance” (#141).

#### **NGOs and public health organisation said the RIS did not consider all the costs of outdoor smoking**

Three NGOs noted that the CRIS did not consider the environmental and financial cost associated with waste disposal of cigarettes in public areas that would be likely to occur, should smoking areas be provided (#154 #151 #157).

An NGO further highlighted other costs such as reductions of exposure to second-hand smoke, improving community health outcomes and reducing the economic burden associated with healthcare, reducing environmental disruption and rubbish, and the social impact of smoking related mortality and morbidity (#154). The three NGOs suggested that:

“

*An additional impact for option 3, not outlined in the CRIS, is the environmental and financial cost associated with waste disposal of cigarettes in public areas should a smoking area be provided. To make markets smoke-free would avoid these costs and translate into a benefit. Cigarette butts are one of the most littered items in Queensland – and a significant problem worldwide. Litter from cigarettes has environmental and financial impacts for Queensland.”*

**- (#154, #151, #157)**

### Local government/council restrictions.

There was confusion among stakeholders as to whether local government were already regulating smoking in outdoor markets. However, local councils have not made any local laws in Queensland banning smoking at markets (#180). Further, it was suggested by one NGO that it may be too complicated to rely on local government to implement these requirements. They saw it as within the remit of state government, supporting consistency across the state (#154).

### Tighter restrictions and clarity of definitions

Three NGOs, one government agency, and 11 members of the public were supportive of option 3 but wanted it to be more restrictive.

A public health organisation (#136) was concerned that enforcing option 3 would be difficult. They suggested methods to assist with clarifying how the smoking ban would apply, including:

- sufficient detail and requirements for market organisers
- a comprehensive definition of an outdoor market
- greater clarity on who should bear responsibility when outdoor events make it unclear who the primary market organiser is.

An NGO suggested that option 4 offered greater consistency of messaging and would protect market vendors and attendees from second-hand smoke.

Another NGO noted that second-hand smoke can still drift past the buffer zone, leading to exposure to smoke to adults and children at outdoor markets:

“

*It should be noted that smoke drift may still occur as no ‘buffer zone’ has been discussed. As such, further restrictions, and a ban (option 4) will be the better option to reduce the negative effects of smoking in Queensland.”*

- (#154)

Several members of the public would like to ban tobacco use at outdoor markets, ban smoking products entirely, or would like DOSAs to be situated away from any food and drink areas. A member of the public suggested they “would like to see option 3 adopted as an interim measure, with the long-term goal for option 4 to be implemented” (#5).

### Proposed modifications

Two proposed modifications were identified based on the stakeholder consultation findings. The amendments are listed and discussed below:

1. amend option 3 to include surveillance of impacts and comprehensive guidelines
2. adopt option 4 as the recommended option.

### **Amend option 3 to include surveillance of impacts and comprehensive guidelines**

Public Health Organisations suggested that the preferred option was modified to strengthen enforcement. Specifically:

- require a suitably qualified market organiser to be available onsite to respond to directions from an authorised officer
- include a definition for 'outdoor market' in the legislation
- issue guidance about outdoor markets that are conducted as part of an event
- establish, collect, and report on process and outcome measures.

**Table 83 - Section 2.7, modify option 3 to include surveillance of impacts and comprehensive guidelines**

Criteria	Assessment
<b>Addresses the regulatory problem</b>	Yes, further surveillance and guidelines supports better regulation of smoking at public places.
<b>Evidence provided to support proposal</b>	Yes, to some extent there is evidence to support the adoption of option 3 and support for comprehensive guidelines aligns with best practice.
<b>Proposal is proportionate to the risk the issue present</b>	Unclear, further evidence of the impacts of smoke-free markets and compliance rates is required.
<b>Support efficient compliance and enforcement practices</b>	Yes, amending option 3 to include surveillance and guidelines can be a tool used to support efficient compliance and enforcement practices.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	To some extent, yes, as it would provide clearer guidance on requirements for local governments, market organisers, and members of the public.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	To some extent, yes. Promotes alignment with WHO FCTC and controls in other States and Territories.

### **Adopt option 4 as the recommended option**

Representatives of multiple NGO's advocated for the adoption of option 4 on the basis that there would be greater protection from second-hand smoke.

They also raised the management of litter and potential for costs to stakeholders as a rationale for adopting option 4. They suggested that making markets totally smoke-free and not allowing smoking areas would avoid costs associated with emptying cigarette butts waste bins, as well as reducing the impact of litter on the environment.

**Table 84 – Section 2.7, incorporate option 4, prohibit smoking at outdoor markets in their entirety, as opposed to option 3**

<b>Criteria</b>	<b>Assessment</b>
<b>Addresses the regulatory problem</b>	Yes, as a total ban would reduce exposure to second-hand smoke at outdoor markets.
<b>Evidence provided to support proposal</b>	There is limited evidence provided around smoke drifting but overall, there is insufficient evidence to support the proposal.
<b>Proposal is proportionate to the risk the issue present</b>	To some extent, no, the proposal does not consider the impact for other members of the Queensland community including outdoor markets and event organisers.
<b>Support efficient compliance and enforcement practices</b>	Yes, as a ban would require significant compliance and enforcement practices to be implemented.
<b>Represents net benefit to the community, compared to options in the CRIS</b>	To some extent, no, as this approach does not minimise the negative impacts for market organisers, vendors, and patrons.
<b>Promotes consistency with domestic and WHO smoking control policies and regulations</b>	To some extent, yes. Promotes alignment with WHO FCTC second-hand smoke measures.

## Final recommendation

The CRIS proposed option 3 as the preferred option, this remains unchanged following analysis of stakeholder views, information, and evidence. The cost effectiveness of option 3 is summarised at table 86.

The government objective in progressing this option is to reduce exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland and reduce the negative effects of second-hand smoke. There was widespread support with this objective and agreement for government action through progression of the preferred option.

### Comparison of options

Options 1 and 2 represent a less interventionist approach, but they are unlikely to achieve the objectives of reducing exposure to second-hand smoke of persons attending or working at outdoor markets in Queensland or improve consistency in smoke-free protection at markets across Queensland.

Option 1 (status quo) elicits no change and option 2 (self-regulation) is likely to elicit very little change despite a requirement for considerable inputs, it is not considered a cost-effective approach. Consultation feedback generally supports this assessment, however a small number of stakeholders felt the status quo was sufficient and there wasn't a need for government action. There was no view or evidence presented from stakeholders that a self-regulatory process as described under option 2 would be sufficient to achieve the objective of reducing second-hand smoke exposure and related harms. Further, opinions provided

Options 1 and 2 are not recommended.

Both options 3 and 4 implement a ban on smoking anywhere at a market and with five-metres of a clearly defined market entrance. Option 3 differs from option 4 in allowing market organisers to provide discrete smoking areas within the market area. Both options are assessed as being effective for achieving 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.

Option 3 is selected over option 4 as it confers the similar benefit while minimising the negative impacts for market organisers, vendors and patrons by providing discrete and manageable smoking areas. The provision of smoking areas is consistent with other smoke-free provisions for similar areas such as major events facilities and outdoor eating and drinking places.

#### **Proposed modification - include surveillance of impacts and comprehensive guidelines**

Stakeholders suggested a modification to the preferred option to surveillance along with comprehensive guidelines to assist implementation. Assessment of this option is provided at table 83. The proposal to modify the option is assessed as being beneficial as it would provide clear guidance on requirements for local councils, market organisers, and members of the public. Specific guidelines for stakeholders to assist with implementation will be developed including educational materials in hard copy, web-based information as well as training for enforcement officers to bolster assessment of compliance and evaluation of the impacts. The public will be supported with messaging at implementation as well as a tele-information service for queries about the reach and interaction of laws. Post implementation assessment of the approach will be undertaken as outlined in the evaluation section.

#### **Proposed modification - option 4 as the recommended option**

Non-government organisations suggested that the preferred option should a complete ban (option 4). This proposal is assessed at table 84. Complete removal of smoking from a market area will offer more certainty that second-hand smoke is eradicated. However, experience from the implementation of complete smoking bans at large outdoor areas shows that offering an option to control where smoking occurs can be beneficial in managing smoking in a way that also achieves the objective. This was noted in stakeholder feedback (#152) which supported the inclusion of a dedicated smoking area to avoid the congregation of smokers around entry and exit points, or in neighbourhood areas which increases the visibility of smoking and leads to more exposure to bystanders.

The same stakeholders also noted that adopting option 4 may reduce costs for market organisers and limit the impact of litter on the environment. Consideration was given to the impact of tobacco related waste within markets currently, and under the proposed options. The status quo is likely to have a degree of tobacco waste littered throughout the market area as smoking is not contained, option 2 would be similar to the status quo as most markets would remain largely unchanged. Option 3 would contain tobacco waste to bins provided in the smoking area, emptying of the rubbish bins provided in the proposed smoking areas is factored into the costs associated for market organisers with setting up smoking areas. Option 4 could lead to littering of tobacco waste in neighbouring areas as smokers move away from the market to smoke. Local governments are likely to be

supportive of an approach that manages tobacco related waste for appropriate disposal, ensuring market areas and neighbouring streets are free of tobacco waste litter.

The Implementation plan will include measures to assist market organisers to manage waste and communicate the controls to market patrons.

### **Local government bans on smoking**

The CRIS explicitly asked for information about the role of local government in creating smoke-free local laws at markets. The Local Government Association Queensland (LGAQ) noted that new smoke-free areas are supported and welcomed, however their members view is that Queensland Health is the appropriate agency to undertake this role for areas that require a consistent approach across the State, such as markets (#180).

LGAQ add that local governments remain open to working with Queensland Health to achieve smoke-free protection, however Queensland Health is viewed as the lead agency. Local governments welcome the authority provided in 2016 allowing the introduction of smoke-free local laws, noting that this provides flexibility in the adoption of smoke-free laws for areas that are unique to particular local government areas. They were not aware of any local government taking action under this authority, including for market areas, and note that it is not a priority for local councils to do so (#180).

### **The preferred option remains the introduction of a smoking ban at markets with provision for discrete smoking areas.**

Implementing option 3 is the most cost-effective approach to achieve the objective. The State government currently administers wide-ranging smoke-free laws, including on local government land, and has a workforce in place to facilitate this. Experience from previous implementation of smoke-free areas that are replicated across the State such as public transport waiting points indicate that a centralised community education campaign and targeted work with impacted stakeholders is a cost-effective method of informing the Queensland community about the requirements of a new law. Typically, new smoke-free areas are normalised by the community very quickly and the costs of education, enforcement and other resource demands are manageable within the context of an existing program. The inclusion of discrete smoke-free areas will provide market organisers with a method to manage smoking that is expected to reduce litter, encourage compliance, and reduce impacts on neighbouring areas.

Option 3 is therefore considered the option which most appropriately balances maximum effectiveness with minimal regulatory burden for stakeholders, and therefore best addresses the problem in the most cost-effective way and will achieve the greatest benefit to the Queensland community.

**Table 85 - Section 2.7, costs and benefits of recommended option**

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>
<b>Market vendors</b>	<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 have a new responsibility 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>

Stakeholders	Benefits	Costs
<b>Community</b>	<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>
<b>Local Government</b>	Nil	Nil
<b>Queensland Government</b>	<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>

**Table 86 - Cost effectiveness of smoke-free outdoor markets**

Preferred option costs	Cost effectiveness - QALYs	Evidence for effectiveness
<p><b>Once off costs</b> (annualised)</p> <ul style="list-style-type: none"> <li>Initial setup of administrative tasks - \$1,302,000.</li> <li>Training and communication - \$5000.</li> </ul> <p>Total - \$ 1,307,000 x 0.142 = <b>\$185,594 annualised</b></p> <p><b>Annual Costs:</b></p> <ul style="list-style-type: none"> <li>Smokers/vendors required to moving to a smoking area range: \$100-\$2650 = average \$1,375.</li> </ul> <p>TOTAL ANNUAL COST: average \$1,375 + \$185,594 = \$186,969</p>	<p>The total annual intervention cost is <b>\$186,969</b>.</p> <p>At a cost effectiveness threshold of \$64,000 this intervention would need to save 3 QALYs to recover costs.</p> <p><b>To be cost effective this intervention would need to assist 1 person to quit or 1 person to remain a non-smoker per annum.</b></p> <p>Based on a reduction of 2.4 QALYs per average smoker over the remainder of their working lifetime or 3.5 QALYs for younger persons over full lifetime.</p>	<p>Reducing smoking at or near busy public areas assists to:</p> <ul style="list-style-type: none"> <li>Prevent exposure to second-hand smoke</li> <li>Help smokers to quit</li> <li>Prevent smoking uptake</li> </ul> <p>This intervention can reduce the number of smokers by 1 person or prevent 1 person from becoming a smoker annually, based on evidence that smoke-free legislation:</p> <ul style="list-style-type: none"> <li>reduces exposure to toxins</li> <li>reduces consumption among continuing smokers</li> <li>encourage smokers to quit and to remain abstinent</li> <li>reduce mortality rates from smoking-related illnesses</li> </ul> <p>Further detail and supporting research provided in Part 2, Section 1.</p>

Assumptions:

- estimated 6000 outdoor markets in the Queensland
- community – individual smokers time while not in paid employment costed at \$32.00\*
- 10% market vendors or attendees on average are smokers.

## 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.

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.

Explicit education and communication efforts will be taken to ensure that market organisers and patrons understand how the requirements apply to their situation. In particular the interaction between this smoking ban and other smoking bans under the Act, including interaction with bans for gazetted pedestrian malls, outdoor eating and drinking places, school facilities, children's playgrounds and designated smoking areas within relevant licensed premises. Communication materials will be produced and disseminated to assist market organisers and patrons to consider the impacts of tobacco related waste and ensure that it is contained and disposed of appropriately for environmental protection.

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 a clearly defined 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
- failure of market organisers or market vendors to direct a person to stop smoking.  
Maximum penalty of 140 penalty units applies
  - Note: a defence will be provided for organisers and vendors if they can show that they were not aware, and could not have reasonably been expected to be aware, that smoking was happening, or the market organiser or vendor directed the person to stop smoking and informed them it was an offence not to comply with the direction.

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 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)
- 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 evaluation with a random selection of markets regarding stakeholders understanding of and compliance with requirements, as well as reports of adequacy of controls for effective management of smoking and vaping.

### **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.

## 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 were therefore out of scope for the purpose of the consultation RIS. Details of the proposals and recommended option were included to give the community a complete understanding of the issues that are intended to be addressed. Inclusion in consultation RIS provided the community opportunity to consider the cumulative impact of reforms and provide feedback about implementation. The online survey did not ask questions on these topics however some feedback supporting action on illicit tobacco was provided within responses to the proposed approach to smoking product supply licensing in Part 2, Section 2.1.

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 to align Queensland's laws with national laws.

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>134</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.

---

<sup>134</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</li> <li>• a part of a building or other structure</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 (defined in glossary)
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)