

Statement of Public Interest
Legislative Council: Standing Order 143
Public Health (Tobacco) Amendment Bill 2024



Statement 1: Need: Why is the policy needed based on factual evidence and stakeholder input?

The Public Health (Tobacco) Amendment Bill 2024 (**Bill**) amends the Poisons and Therapeutic Goods Act 1966 (**Poisons Act**), the Medicines, Poisons and Therapeutic Goods Act 2022 (**Medicines Act**), the Criminal Procedure Act 1986 and the Public Health (Tobacco) Act 2008 to introduce supply and possession offences for vaping goods that have been modelled on the Commonwealth's recent national vaping reforms. The Australian Government recently passed legislation that bans the sale of vaping goods, whether containing nicotine or not, unless an exemption applies, generally relating to the therapeutic supply of vaping goods.

The policy need for this Bill is based on the need to streamline and strengthen the enforcement powers of NSW officers to ensure they have the best tools available to them to do their jobs efficiently and effectively.

Introducing specific supply and possession offences that are modelled on the Commonwealth vaping reforms will allow NSW officers to avoid any potential delays and inconsistencies that may be created by officers exercising functions under both Commonwealth and NSW laws.

Statement 2: Objectives: What is the policy's objective couched in terms of the public interest?

The objectives of the amendments to the Poisons Act are to introduce NSW specific supply and possession offences that are modelled on the Commonwealth vaping reforms. These amendments will ensure enforcement can be carried out efficiently and effectively across the State. The exceptions to these offences, and the monetary value of the penalties for the offences in the Bill, are generally consistent with the Commonwealth laws, with the penalty units adjusted for the difference in their value between NSW and the Commonwealth. With respect to imprisonment, the Bill mirrors the years of imprisonment under the Commonwealth offences.

The objectives of the amendments to the Medicines Act are the same as the proposed amendments to the Poisons Act. The Medicines Act passed Parliament in 2022 and, once commenced, will replace the Poisons Act. The Medicines Act is currently expected to commence in 2025 following the development of regulation to support the Act. The amendments to the Medicines Act will commence when the Medicines Act commences and are identical to the offences in the Poisons Act. This will ensure that when the Medicines Act commences there is no gap in regulation.

The objectives of the amendments to the Criminal Procedure Act are to ensure that the new supply and possession offences relating to vaping goods in the Poisons Act and Medicines Act can be dealt with summarily, unless the prosecutor elects otherwise. This will ensure that matters can be heard summarily or proceed on indictment, as appropriate in the circumstances.

The objectives of the amendments to the Public Health (Tobacco) Act are to ensure that the Public Health (Tobacco) Act properly reflects the new restrictions on the sale of vaping goods. Currently, the Public Health (Tobacco) Act regulates e-cigarettes (vapes) in generally the same way as tobacco products. For example, neither product can be sold to minors and they must be hidden from public view. As vaping goods (e-cigarettes) can no longer be sold in retail settings outside of pharmacies, the Bill amends the Public Health (Tobacco) Act to remove references to e-cigarettes.

The objectives of the amendments to the Smoke-free Environment Act are to ensure that the Smoke-free Environment Act properly reflects the new restrictions on the sale of vaping goods. Currently, under the Smoke-free Environment Act 2000 the Health Secretary can exempt an e-cigarette only retailer from the offences relating to smoking or vaping in smoke-free areas. However, with the Commonwealth vaping reforms now in place, vaping goods cannot be sold in retail premises (other than pharmacies) and therefore the exemption is no longer required.

Statement 3: Options: What alternative policies and mechanisms were considered in advance of the bill?

Consideration was given to not modelling the Commonwealth changes in NSW legislation.

Statement 4: Analysis: What were the pros/cons and benefits/costs of each option considered?

If NSW does not model the Commonwealth changes in NSW legislation, vaping goods (whether containing nicotine or not) would still be banned in NSW outside of a therapeutic pathway. While it is possible for NSW officers to become authorised officers under the Commonwealth Therapeutic Goods Act 1989, if NSW officers were to exercise Commonwealth powers in undertaking enforcement action this could lead to delays and inconsistencies.

The Bill will ensure NSW officers have the best tools available to them to do their jobs efficiently and effectively, and will avoid any potential delays and inconsistencies that may be created by officers exercising functions under both the Commonwealth Therapeutic Goods Act and NSW laws.

Statement 5: Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

All of the provisions of the Bill will commence on assent (however the provisions in the Medicines Act will not become law until that Act commences). NSW Health will generally be responsible for administering the changes.

Statement 6: Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The national vaping reforms were introduced by the Australian Government. The NSW Government was consulted on the proposed changes and supports these reforms. The Australian Government undertook extensive consultation on the national vaping reforms. This included undertaking targeted consultation with key stakeholder groups, and consultation open to other stakeholders and the public.