



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Economic Policy Scrutiny Committee**

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# **Inquiry into the Tobacco Control Legislation Amendment Bill 2018**

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**November 2018**



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## Chair's Preface

This report details the Committee's findings regarding its examination of the Tobacco Control Legislation Amendment Bill 2018. The Bill builds on the successful tobacco reforms introduced in 2010-11 by proposing a range of measures to further reduce the impact of smoking in the Northern Territory. In addition to expanding the size and locations of smoke-free buffer zones it also prohibits employees under the age of 18 from selling tobacco products, requires licensees to locate cigarette vending machines in child free areas, and regulates e-cigarettes and related products in the same way as conventional tobacco products.

The inquiry has generated significant interest from the community. The majority of submissions supported the Bill, indeed, a number of submissions identified further opportunities for strengthening tobacco control legislation. Several submissions did not support the Bill, particularly the proposal to regulate e-cigarettes and vaping in the same way as conventional tobacco products and smoking. There was a substantial divergence of views regarding the risks and benefits of e-cigarettes, with this reflecting the conflicting evidence present in the literature. Although some research suggests that e-cigarettes are much less harmful than conventional tobacco products and can play a useful role in harm reduction and smoking cessation, there is also research to suggest that e-cigarettes re-normalise smoking and encourage smoking initiation, particularly among young people.

Submitters who perceived e-cigarettes to be a viable harm reduction and smoking cessation tool considered the Bill to infringe on the individual's right to choose what they perceive to be a less harmful alternative to tobacco. The Committee acknowledges these concerns, however, as it has a duty to ensure the Bill has regard for the rights and liberties of all individuals it considers a precautionary approach is justified, particularly given the conflicting evidence regarding the health effects of vaping.

On behalf of the Committee, I thank all those who made submissions to the inquiry, and the Minister for Health for providing the Committee with advice on issues raised in submissions. I would also like to thank the Department of the Legislative Assembly for the support provided to the Committee and my fellow Committee members for their bipartisan commitment to the legislative review process.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

**Mr Tony Sievers MLA**

**Chair**

## Committee Members

	<b>Tony Sievers MLA</b> Member for Brennan	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	<b>Jeff Collins MLA</b> Member for Fong Lim	
	<b>Party:</b>	Territory Labor
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	Sessional:	Economic Policy Scrutiny
	Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
Chair:	Northern Territory Harm Reduction Strategy for Addictive Behaviours	
	<b>Gary Higgins MLA</b> Member for Daly	
	<b>Party:</b>	Country Liberals
	Parliamentary Position:	Leader of the Opposition
	<b>Committee Membership</b>	
	Standing:	House, Standing Orders, Members' Interests
	Sessional:	Economic Policy Scrutiny
Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours	
	<b>Lawrence Costa MLA</b> Member for Arafura	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Sessional:	Economic Policy Scrutiny
	<b>Yingiya Mark Guyula MLA</b> Member for Nhulunbuy	
	<b>Party:</b>	Independent
	<b>Committee Membership</b>	
	Sessional:	Economic Policy Scrutiny
On 28 August 2018, Member for Nelson, Mr Gerry Wood MLA was discharged from the Committee and replaced by the Member for Nhulunbuy, Mr Yingiya Mark Guyula MLA.		

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## **Acknowledgments**

The Committee acknowledges the organisations that have made written submissions to this inquiry and the Minister for Health, the Hon Natasha Fyles MLA, for providing comments on concerns raised in submissions.

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## Terms of Reference

### Sessional Order 13

#### *Establishment of Scrutiny Committees*

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
  - (a) The Social Policy Scrutiny Committee
  - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
  - (a) any matter within its subject area referred to it:
    - (i) by the Assembly;
    - (ii) by a Minister; or
    - (iii) on its own motion.
  - (b) any bill referred to it by the Assembly;
  - (c) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
  - (I) provides for the compulsory acquisition of property only with fair compensation; and
  - (J) has sufficient regard to Aboriginal tradition; and
  - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

## **Recommendations**

### **Recommendation 1**

The Committee recommends that the Legislative Assembly pass the Tobacco Control Legislation Amendment Bill 2018.

# 1 Introduction

## Introduction of the Bill

1.1 The Tobacco Control Legislation Amendment Bill (the Bill) was introduced into the Legislative Assembly by the Minister for Health, the Hon Natasha Fyles MLA, on 23 August 2018. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 27 November 2018.<sup>1</sup>

## Conduct of the Inquiry

1.2 On 24 August 2018 the Committee called for submissions by 19 September 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service.

1.3 The Bill and associated explanatory materials were forwarded to Sally M. Gearin for review of fundamental legislative principles under Sessional Order 13(4)(c).

## Outcome of Committee's Consideration

1.4 Sessional Order 13(4)(c) requires that the Committee, after examining the Bill, determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with no amendments.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Tobacco Control Legislation Amendment Bill 2018.**

## Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.7 Chapter 3 considers the main issues raised in evidence received.

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<sup>1</sup>Hon Natasha Fyles MLA, Minister for Health, Tobacco Control Legislation Amendment Bill 2018 (Serial 56), Hansard Debates, *Explanatory Speech*, Northern Territory Legislative Assembly, 23 August 2018, pp. 4400-4403, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>

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## 2 Provisions of the Bill

### Background to the Bill

2.1 The Northern Territory has the highest rate of smoking in Australia, with 17.2 percent of Territorians smoking daily in 2016 compared to 12.2 percent in Australia overall.<sup>2</sup> Smoking is directly related to one in 20 hospitalisations in the Territory and one in five deaths.<sup>3</sup> Despite the significant impact that smoking has on the health of Territorians, tobacco regulation is weaker than in any other Australian jurisdiction.<sup>4</sup> The Bill aims to strengthen tobacco regulation by building on earlier reforms that were introduced in 2010-11.<sup>5</sup>

### Purpose and Overview of the Bill

2.2 As noted in the Explanatory Statement, the Bill:

- Regulates the sale, supply, promotion and use of e-cigarettes and e-cigarette accessories, heat not burn and heat not burn accessories and treats these as conventional tobacco products;
- Implements a 10 metre smoke-free buffer from the boundary and entry area of community events and community facilities;
- Prohibits employees under the age of 18 from selling tobacco products in retail outlets; and
- Prohibits cigarette vending machines (currently restricted for use in licensed premises only) from outlets that allow under 18 year olds on premises.<sup>6</sup>

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<sup>2</sup> Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016, Supplementary data tables*, Chapter 7 State and Territory, September 2017, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/2016-ndshs-detailed/data>

<sup>3</sup> Hon Natasha Fyles MLA, Minister for Health, Hansard Debates, *Explanatory Speech*, p. 4400.

<sup>4</sup> Hon Natasha Fyles MLA, Minister for Health, Hansard Debates, *Explanatory Speech*, p. 4400.

<sup>5</sup> Hon Natasha Fyles MLA, Minister for Health, Hansard Debates, *Explanatory Speech*, p. 4400.

<sup>6</sup> *Explanatory Statement*, Tobacco Control Legislation Amendment Bill 2018 (Serial 56-18), p. 1, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

## 3 Examination of the Bill

### Introduction

3.1 The majority of submissions supported the Bill, however, a number of these identified further opportunities to tighten tobacco controls and recommended that additional amendments be made before the Bill is passed. Four submissions did not support the Bill, particularly in relation to proposed amendments that will result in e-cigarettes being treated in the same way as burnt tobacco cigarettes.

### Treating e-cigarettes and vaping the same as burnt cigarettes

3.2 Proposed section 4A enables e-cigarettes and related devices or accessories to be regulated as if they were tobacco products. Similarly, it proposes that any reference in the Act that relates to smoke or smoking of tobacco products should be read as including a reference to vaping and the other use of e-cigarettes or any other device or accessory prescribed by the Regulations.

3.3 This amendment was strongly supported by eight submissions,<sup>7</sup> of these, two considered that the amendments should be stronger. Cancer Council NT and the Australian Council on Smoking and Health (ACOSH) were of the view that e-cigarettes and similar products should be prohibited unless approved by the Therapeutic Goods Administration while ACOSH also commented that the Bill should be amended to include the banning of e-cigarettes in vehicles.<sup>8</sup>

3.4 The Association of Alcohol and other Drug Agencies NT (AADANT) and the Aboriginal and Medical Services Alliance NT (AMSANT) agreed with the proposed amendment in principle but considered the Government should be open to further amendments if future research shows that e-cigarettes are significantly less risky than burnt cigarettes and provide benefits in terms of harm reduction and smoking cessation.<sup>9</sup>

3.5 The Australian Tobacco Harm Reduction Association, Australian Taxpayers' Alliance, New Nicotine Alliance of Australia and Vapourholics objected to the inclusion of proposed section 4A and noted that there is an extensive literature supporting the view that e-cigarettes are substantially less harmful than conventional cigarettes and are a valid harm reduction tool. The Australian Taxpayers' Alliance further commented that the Bill effectively perpetuates smoking and its harms by discouraging vaping and reducing access to e-cigarettes.<sup>10</sup>

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<sup>7</sup> Menzies School of Health Research, Submission No. 1, 2018; Northern Territory Primary Health Network, Submission No. 2, 2018; Central Australian Aboriginal Congress, Submission No. 4, 2018; Australian Council on Smoking and Health, Submission No. 5, 2018; Heart Foundation NT, Submission No. 8, 2018; Cancer Council NT, Submission No. 12, 2018; NT Department of Health, Submission No. 13, 2018; Public Health Association of Australia, Submission No. 14, 2018.

<sup>8</sup> Cancer Council NT, Submission No. 12, 2018, p. 3; Australian Council on Smoking and Health, Submission No. 5, 2018, pp. 3, 6.

<sup>9</sup> Association of Alcohol and other Drug Agencies NT, Submission No. 3, 2018, pp. 1-2; Aboriginal and Medical Services Alliance NT, Submission No. 11, 2018, p. 2.

<sup>10</sup> Australian Taxpayers' Alliance, Submission No. 6, 2018, p. 7.

- 3.6 The Australian Tobacco Harm Reduction Association and the Australian Taxpayers' Alliance both considered that e-cigarettes and associated products should be regulated separately from tobacco. These submissions proposed the following options for achieving this: the introduction of a separate vaping Bill;<sup>11</sup> modification of the *Tobacco Control Act* to include a separate section on e-cigarettes and vaping; and regulation through part of an existing consumer Bill.<sup>12</sup> Both submissions argued that this approach would enable e-cigarettes to be regulated appropriately and according to their level of risk.

### **Committee's Comments**

- 3.7 The Committee notes that the proposed amendment to treat e-cigarettes and related products in the same way as tobacco products reflects a precautionary approach to their regulation. In Australia, e-cigarettes containing nicotine are illegal under Commonwealth, state and territory legislation while e-cigarettes that do not contain nicotine are legal.<sup>13</sup> In general, Australian jurisdictions have adopted a cautious approach to regulating e-cigarettes, and the majority have implemented equivalent legislation to that proposed in this Bill.<sup>14</sup> This approach is in line with the policy position and recommendations set out by the Royal Australasian College of Physicians (RACP):

The RACP is concerned there remains a lack of clear and robust evidence to inform policy makers, clinicians and the public about e-cigarettes. While there is some evidence that e-cigarettes may reduce the number of tobacco cigarettes smokers consume and that they are likely to be less harmful than tobacco cigarettes (due to lower level of potentially toxic substances in e-cigarettes compared with tobacco cigarettes), the evidence on their efficacy as aids in smoking cessation and their long-term health effects is either mixed or limited. There is also evidence indicating that their use affects the likelihood of youth initiating use of tobacco cigarettes. Based on the current evidence, at this point in time the net public health effect of e-cigarettes cannot be clarified with any degree of confidence.<sup>15</sup>

- 3.8 The Committee acknowledges the divergent views on the benefits and risks associated with e-cigarettes and notes that in some countries, including the United Kingdom, e-cigarettes and other non-tobacco nicotine products are promoted as a harm reduction tool and a means of facilitating smoking cessation.<sup>16</sup> However, the Committee considers that the possible benefits of e-cigarettes are outweighed by evidence suggesting that they may re-normalise smoking and increase the likelihood of tobacco smoking initiation, particularly among adolescents.<sup>17</sup>

<sup>11</sup> Australian Tobacco Harm Reduction Association, Submission No. 7, 2018, p. 6; Australian Taxpayers' Alliance, Submission No. 6, 2018, p. 10.

<sup>12</sup> Australian Tobacco Harm Reduction Association, Submission 7, 2018, p. 6.

<sup>13</sup> Royal Australasian College of Physicians, *Policy on Electronic Cigarettes*, p. 17, <https://www.racp.edu.au/docs/default-source/advocacy-library/policy-on-electronic-cigarettes.pdf>

<sup>14</sup> Royal Australasian College of Physicians, pp. 18-19.

<sup>15</sup> Royal Australasian College of Physicians, p. 5.

<sup>16</sup> Royal College of Physicians, United Kingdom, *RCP Position Statement on Tobacco*, 2016, <https://www.rcplondon.ac.uk/projects/outputs/what-rcp-thinks-about-tobacco>

<sup>17</sup> Royal Australasian College of Physicians, p. 16.

## Definition of e-cigarettes and vaping

3.9 The Committee considered that the definitions for 'e-cigarette' and 'vaping' in proposed section 5 (1) (set out below) could be clearer:

**e-cigarette** means:

(b) Another device of a kind prescribed by the Regulations that is designed to be used in a way that replicates, or produces an experience similar to, the use of a tobacco product.

**Vaping**, in relation to an e-cigarette, means using the e-cigarette to generate or release an aerosol or vapour by electronic means for inhalation by the user in a manner that replicates, or produces an experience similar to, smoking.<sup>18</sup>

3.10 The Committee was concerned that the above definitions could be interpreted as only applying to devices and vapours that contain nicotine. The Committee also noted that the definition used in NSW legislation includes the words 'whether or not containing nicotine' to avoid this ambiguity. Similarly, NSW legislation defines 'tobacco, smoking or vaping product' as meaning both tobacco products and non-tobacco products.<sup>19</sup>

3.11 The Committee sought clarification from the Minister regarding the proposed definitions and was advised that:

The legislation is quite prescriptive to define e-cigarettes **as if they were** tobacco products. Therefore, any reference to tobacco products is an automatic reference to include e-cigarettes. Nicotine juice is a Schedule 7 Poison as listed in the Poisons Standard and the supply and use of Nicotine Juice in the Northern Territory is restricted under the *Medicines, Poisons and Therapeutic Goods Act*. An e-cigarette available for sale by retail in the Northern Territory is not permitted to contain Nicotine Juice.<sup>20</sup>

### **Committee's Comments**

3.12 The Committee accepts the Minister's assurance that the definition of e-cigarettes is sufficiently clear to avoid the interpretation that the definition only applies to nicotine based e-cigarettes.

## 10 metre smoke-free buffer

3.13 Several of the proposed sections in the Bill introduce amendments to the Act and the Regulations to provide for a smoke-free buffer from the boundary and entry area of community events and facilities. Existing smoke-free areas are defined in section 7(1) of the Act. The amendment extends the smoke-free area to include the entry and boundary area of an educational facility (proposed section 7(1)(h)) and the entry and boundary area of community events and community facilities as prescribed by the Regulations (proposed section 7(1)(m)).

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<sup>18</sup> Tobacco Control Legislation Amendment Bill 2018 (Serial 56-18), pp. 2-3, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

<sup>19</sup> *Public Health (Tobacco) Act 2008 No 94* (NSW), section 4.

<sup>20</sup> Hon Natasha Fyles, MLA, Minister for Health, Tobacco Control Legislation Amendment Bill 2018 (Serial 56), *Written responses to questions from the Economic Policy Scrutiny Committee*, p.1, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

- 3.14 The majority of submissions supported the introduction of a 10 metre smoke-free buffer in these locations, however, several submissions expressed the view that the scope of the areas covered by the smoke-free buffer should be expanded and that smoke-free areas should be increased. The Cancer Council NT and the Australian Council on Smoking and Health recommended that the buffer zones should be extended to include the entrances, exits and ventilation ducts of public buildings.<sup>21</sup> These submissions, together with those received from the Heart Foundation NT and AMSANT, recommended that the number and size of smoke-free areas across the NT be increased by removing existing exemptions from a range of outdoor smoking areas including those attached to liquor licensed premises.<sup>22</sup>
- 3.15 Although beyond the scope of the Bill, a large number of submissions expressed concern at the lack of adequate enforcement of smoke-free areas.<sup>23</sup> Poor enforcement of smoke-free areas was identified by AMSANT and the Central Australian Aboriginal Congress as a particular problem in Aboriginal communities, with AMSANT noting the following:

There are a number of shortcomings ensuring compliance of tobacco legislation within the NT, in particular;

- Police are not primarily concerned with enforcement of smoke-free zones as other matters of law enforcement and community safety are prioritised,
- In many remote communities, police are not present, so no enforcement of the legislation is possible,
- Enforcement by way of fines is neither desirable nor effective in low socio-economic populations as is the case of many Aboriginal people in the NT who lack the financial means to pay a fine.

AMSANT supports measures to strengthen smoke-free areas. Across all localities in the NT, but most especially in remote communities these measures will require community consultation and support for effective and appropriate enforcement strategies.<sup>24</sup>

- 3.16 Similarly, a large number of submissions expressed concern that while the Bill proposes an amendment to treat the entry and boundary area of an educational facility as smoke-free, such facilities are still permitted to designate a smoking area within their grounds (Tobacco Control Regulations (NT), r. 10).<sup>25</sup>

<sup>21</sup> Cancer Council NT, Submission No. 12, 2018, p. 4; Australian Council on Smoking and Health, Submission No. 5, 2018, p. 4

<sup>22</sup> Australian Council on Smoking and Health, Submission No. 5, 2018, p. 4; Cancer Council NT, Submission No. 12, 2018, p. 4; Heart Foundation NT, Submission No. 8, 2018, p. 1; Aboriginal Medical Services Alliance NT (AMSANT), Submission No. 11, 2018, p. 10 of AMSANT's submission to the National Tobacco Strategy which forms part of their submission to this inquiry.

<sup>23</sup> Central Australian Aboriginal Congress, Submission No. 4, 2018, p. 1-2; Australian Council on Smoking and Health, Submission No. 5, 2018, p. 2; Heart Foundation NT, Submission No. 8, 2018, p. 2; Aboriginal Medical Services Alliance NT, Submission No. 11, 2018, p. 2; Cancer Council NT, Submission No. 12, 2018, p. 4.

<sup>24</sup> Aboriginal Medical Services Alliance NT, Submission No. 11, 2018, p. 7 of AMSANT's submission to the National Tobacco Strategy

<sup>25</sup> Menzies School of Health Research, Submission No. 1, 2018, p. 2; Central Australian Aboriginal Congress, Submission No. 4, 2018, p. 2; Australian Council on Smoking and Health, Submission No. 5, 2018, p. 2; Heart Foundation NT, Submission No. 8, 2018, p. 2; Aboriginal Medical Services Alliance NT, Submission No. 11, 2018, p. 2; Cancer Council NT, Submission No. 12, 2018, p. 2; Public Health Association of Australia, Submission No. 14, 2018, p. 5.

3.17 In response to these concerns, the Minister for Health advised:

The strong intention of this Bill is to protect children from exposure to smoking behaviours and to also protect members of the community from smoke drift. The extension of smoke free buffer zones is designed to achieve this. Currently, 37 per cent of NT Government schools have voted to maintain designated smoking areas. Continuing to reinforce the importance of children not being exposed to smoking, and managing change in these environments over time, is the proposed strategy. To this end, Government has tasked the Department of Education with investigating tobacco policy for schools regarding how schools will prevent children from seeing teachers smoking.<sup>26</sup>

**Committee's Comments**

3.18 The Committee acknowledges the concerns expressed regarding enforcement of smoke-free areas, and permitted exemptions for smoking areas within educational facilities, and refers these to the Government for consideration.

**Restriction of location of cigarette vending machines**

3.19 Proposed section 26 restricts the location of cigarette vending machines in liquor licensed premises to child free areas. The majority of submissions supported this amendment, however, three of these recommended that the amendment be extended to encompass the complete prohibition of cigarette vending machines.<sup>27</sup>

3.20 The Director-General of Licensing raised concerns regarding the effect of this amendment on NT licensed venues, as it does not take into account existing arrangements under which licensees may have an exemption that permits children to be on the premises during certain hours but prohibited at other times. From a licensee's perspective, this would mean that the only practical place to locate the vending machine would be in the gaming area, from which children are prohibited at all times. The Director-General identified several issues with this option:

not all licensed premises, which may have a vending machine, will also have a gaming area and, further, and more importantly, there is an existing link between gambling and smoking and this is why all Australian jurisdictions have enacted legislation that prevents smoking in gaming areas in pubs, clubs and most casinos.

To move a cigarette vending machine into the gaming area may tempt a smoker, who has just gone in to purchase cigarettes, to play the gaming machines when, under normal circumstances, they may not. Allowing the relocation of cigarette vending machines into declared gaming areas appears to be a retrograde step if this is what is being considered under the proposed amendments.<sup>28</sup>

3.21 In response to this concern, the Minister for Health advised that the 'licensee is empowered to declare any area within his licensed premises as a child free area, not

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<sup>26</sup> Hon Natasha Fyles, MLA, Minister for Health, Tobacco Control Legislation Amendment Bill 2018 (Serial 56), *Written responses to questions from the Economic Policy Scrutiny Committee*, p. 2, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

<sup>27</sup> Australian Council on Smoking and Health, Submission No. 5, 2018, p. 3; Cancer Council NT, Submission No. 12, 2018, p. 2; Public Health Association of Australia, Submission No. 14, 2018, p. 5.

<sup>28</sup> Director-General of Licensing, Submission No. 9, 2018 p. 2.

limited to the Gaming Machine Area'.<sup>29</sup> The Minister further commented that, in the past, vending machines have often been located in the Front Bar or Sports Bar which, traditionally, have been child free areas.<sup>30</sup>

## Rights and Liberties of Individuals

3.22 Several submissions considered the Bill to infringe on the rights and liberties of individuals.<sup>31</sup> The Australian Tobacco Harm Reduction Association commented that the 'Bill infringes the fundamental right of citizens to optimal health' by reducing access to 'a much less harmful alternative which is likely to lead to substantial health improvements'.<sup>32</sup> From a different perspective, the Australian Taxpayers' Alliance commented that:

Product regulations are premised on the notion of supporting the informed choice of adult consumers, even where these activities are considered more harmful than not engaging in these activities.<sup>33</sup>

This submission drew attention to the importance of regulating products that do not meet a sufficient threshold for prohibition, but are not 'harm-free', in a way that is proportionate to their relative risk. The submission considers that the relative risk of e-cigarettes and vaping is small and that restricting the use of these products by treating them the same as tobacco products infringes on the individual's right to choose a safer alternative to tobacco.

3.23 Vapourholics also considered the Bill to infringe on the rights and liberties of individuals and further commented that vapers are non-smokers and that treating vaping the same as smoking, infringed on their right to vape in a safe manner by requiring them to do so in a smoking area and hence be subjected to second hand cigarette smoke.<sup>34</sup>

### **Committee Comments**

3.24 The Committee acknowledges these concerns but given the conflicting evidence regarding the health effects of vaping, and the potential for e-cigarettes to re-normalise smoking, considers that the risks associated with e-cigarettes are sufficient to justify the adoption of a precautionary approach in which these products are treated the same as tobacco products. The Committee further notes that the Bill does not ban e-cigarettes but regulates their consumption in order to safeguard public health.

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<sup>29</sup>Hon. Natasha Fyles, *Written responses to questions from the Economic Policy Scrutiny Committee*, p. 2, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

<sup>30</sup>Hon. Natasha Fyles, *Written responses to questions from the Economic Policy Scrutiny Committee*, p. 2, <https://parliament.nt.gov.au/committees/EPSC/56-2018>

<sup>31</sup> Australian Taxpayers' Alliance, Submission No. 6, 2018, p. 12; Australian Tobacco Harm Reduction Association, Submission No. 7, 2018, p. 8; Director-General of Licensing, Submission No. 9, 2018, p. 3; Vapourholics, Submission No. 15, 2018, p. 3.

<sup>32</sup> Australian Tobacco Harm Reduction Association, Submission No. 7, 2018, p. 8.

<sup>33</sup> Australian Taxpayers' Alliance, Submission No. 6, 2018, p. 12.

<sup>34</sup> Vapourholics, Submission No. 15, 2018, p. 3.

## **Matters outside the scope of the Bill**

3.25 A number of submissions raised additional issues that are outside the scope of the Bill but which relate to tobacco regulation. The Heart Foundation NT considered there was a need for stronger licensing measures on tobacco licenses and recommended that 'no new licenses be granted to premises within 500 metres of a school, child care centre or health service' and that 'no new licenses be granted if there is an existing retailer within 200 metres'.<sup>35</sup> Cancer Council NT outlined a number of opportunities for further strengthening tobacco control legislation in the NT including: strengthening compliance and enforcement of all existing and new smoke-free regulations; removing the public areas currently exempt from being smoke-free; and placing further restrictions on tobacco sales and marketing.<sup>36</sup>

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<sup>35</sup> Heart Foundation NT, Submission No. 8, 2018, p. 2.

<sup>36</sup> Cancer Council NT, Submission No. 12, 2018, pp. 3-5.

## Appendix A: Submissions Received

### Submissions Received

1. Menzies School of Health Research
2. Northern Territory Primary Health Network
3. Association of Alcohol and other Drug Agencies NT (AADANT)
4. Central Australian Aboriginal Congress
5. Australian Council on Smoking and Health (ACOSH)
6. Australian Taxpayers' Alliance
7. Australian Tobacco Harm Reduction Association
8. Heart Foundation NT
9. Director-General of Licensing
10. New Nicotine Alliance Australia
11. Aboriginal Medical Services Alliance NT (AMSANT)
12. Cancer Council NT
13. NT Department of Health
14. Public Health Association of Australia
15. Vapourholics

**Note:** Copies of submissions are available at:

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