

15 October 2025

Our ref: [SS:MC]

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Committee Secretary
Health, Environment and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025

Thank you for the opportunity to provide feedback on the Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025 (the **Bill**), which amends the *Tobacco and Other Smoking Products Act 1998* (Qld) (the **Act**).

Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals and increase community understanding of the law. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points

- QLS supports evidence-based measures to eliminate the supply of illicit tobacco and illicit nicotine products.
- QLS welcomes amendments made to the Bill in response to QLS feedback during the previous public consultation.
- This submission focuses on the impact of the amended closure order provisions and the relevant lessor provisions. We also highlight the legal and financial impacts of implementing these measures, including increased legal and compliance costs, which may eventually be passed on to consumers.
- The consequences for innocent business owners affected by the illegal acts of rogue managers or employees are not clear.
- As the Bill contains several novel proposals and provisions inconsistent with fundamental legislative principles, we recommend an independent review of the amendments within two years after commencement to determine if the amendments have achieved their policy

objectives and any unintended consequences for lessors and lessees unfairly affected by closure orders.

General comments

QLS commends the government for taking action to eliminate the supply of illicit tobacco and illicit nicotine products and reduce the risks to public health and safety caused by this illegal trade. We support implementing solutions based on rigorous evidence.

QLS appreciated the opportunity to provide feedback during the public consultation phase for development of the Bill. At that time, QLS raised several important concerns, particularly regarding potential unintended consequences and inconsistencies with fundamental legislative principles. We are pleased to see changes to the Bill have addressed some of these concerns.

Although we still have concerns with some aspects of the Bill as introduced, this submission focuses on the provisions regarding closure orders and relevant lessors, and the legal and financial impacts of implementing these provisions.

Closure orders

QLS agrees extending the power to issue a short-term closure order for more than 72 hours should require the chief executive to satisfy a higher threshold than the current threshold for an interim closure order under section 209A of the Act. QLS supports requiring the chief executive to be “satisfied” rather than “reasonably suspects” illicit tobacco or illicit nicotine products are being supplied at the premises before they can issue a closure order.

Further, QLS welcomes requiring the chief executive or magistrate to consider whether a closure order will impact the ability of the community to access essential goods and services. This change recognises that closing stores such as grocery stores and service stations could unfairly impact regional and remote communities.

However, QLS remains concerned with the proposal to extend a short-term closure order made by the chief executive from 72 hours to three months without oversight by the courts. As an interim power, the closure order should only be required as a temporary step to halt trading until the chief executive can apply to a magistrate for a long-term closure order. The decision to close the business for any period longer than this should only be taken after a magistrate has considered the evidence and is satisfied a long-term closure order is required to stop the supply of illicit products from the premises.

In this respect, short-term closure under the South Australian legislation takes effect for a period of 28 days.¹ In our view, 28 days should be enough time for the chief executive to obtain a closure order from a magistrate. If this is not currently possible, we suggest additional resourcing be provided to Magistrates Courts to ensure they can hear these matters and issue closure orders on an urgent basis.

¹ *Tobacco and E-Cigarette Products Act 1997 (SA)*, s69CBA.

Relevant lessors

Termination of leases

QLS agrees with the policy intent, expressed in the Explanatory Notes, that if a lessee's business is shut down for a long period of time due to a closure order, the lessor should not be out-of-pocket or left with premises they cannot re-lease. However, QLS is concerned with potential unintended consequences of the proposed lessor's wide-ranging right to terminate a lease of premises subject to a short-term closure order.

QLS is concerned about giving a lessor the right to terminate a lease before a long-term closure order has been issued by a magistrate or the lessee is found to have committed an offence. In our view, granting the right to terminate a lease based on an administrative order by the chief executive, which has not withstood the rigour of court scrutiny, cannot be legally justified. We recommend the right to terminate a lease only be exercisable after a magistrate has issued a long-term closure order. This change should not unfairly impact lessors because a magistrate should be able to quickly issue a long-term closure order (i.e., within the 28-day period suggested above).

This recommendation is consistent with the South Australian legislation, which grants a lessor the right to terminate a lease if a long-term closure order has been issued by the Magistrates Court.²

Post-termination rights

QLS supports the introduction of sub-section 209CC(7)(a) to clarify the lessor can enter and take possession of the premises and will not be liable for any damages or compensation on any ground if they terminate the lease under section 209CC.

Further, we support the proposed lessee's right to claim compensation from the State if their lease is terminated under section 209CC and the closure order is revoked, found to have been wrongfully made, or found to be invalid.

QLS also supports preserving the lessor's rights and powers in relation to the lessee's repudiation of the lease under proposed subsection 209CC(6)(b), including the right to claim damages or retain a rental bond. If the lessor terminates the lease, it could incur significant costs or losses, such as the cost of reinstating the premises, loss of rent and outgoings, and the cost of finding another lessee. However, if the lessee has ceased trading due to a closure order or gone into liquidation, and the rental bond is not enough to cover the lessor's losses, the lessor will be left out-of-pocket due to no fault of their own.

To remedy this, we recommend modifying section 219 of the Act to permit the lessor to claim from the State all losses or expenses the lessor has been unable to recover from the lessee, regardless of whether the closure order is valid or invalid. Without this assurance that lessors will not be left out-of-pocket, lessors will likely seek much higher bond amounts from lessees to cover their potential losses. This will negatively impact lessees who operate lawful businesses.

Another significant issue not addressed in the Explanatory Notes is the safety of a lessor who terminates a lease due to a closure order. If the lessee is part of an organised crime group or

² *Retail and Commercial Leases Act 1995 (SA)*, s 47.

involved in criminal activities, the lessor may be reluctant to terminate a lease due to fear of repercussions from the lessee. This apprehension may undermine the effectiveness of the proposed reforms.

Lessor offence

QLS supports changes to the proposed lessor offence to apply only where the lessor knowingly permits their premises to be used for the supply or possession of illicit tobacco or illicit nicotine products as part of a business activity.

However, the introduction of a lessor offence is an extraordinary step for the legislature to take and represents a substantial shift in responsibility and risk allocation between lessors and lessees.

We are particularly concerned that a lessor who has been made aware of a lessee's illegal activities may not have the power to stop those activities until after a closure order has been issued and the statutory right to terminate the lease has arisen. Although we welcome the proposed reasonable excuse defence in section 209CE, it is not clear what scenarios would or would not constitute a reasonable excuse. The Explanatory Notes suggest the defence would apply if there are extenuating circumstances beyond the lessor's control, which QLS supports. However, would a lessor have a reasonable excuse for inaction if they relied on a lessee's assurance it would stop selling illicit products or if the lessor feared repercussions from an organised crime group? Some guidance about what will constitute a reasonable excuse would be welcomed.

Additionally, QLS is concerned lessors of retail premises in regional or remote areas are likely to be disproportionately affected by the lessor offence provision. These lessors may not be able to find another lessee willing to lease premises in an area with a low population. Similarly, 'mum and dad' investors or self-managed superannuation fund owners of single stand-alone shops may find it harder to secure another lessee than a large, commercial shopping centre lessor would. This could be a factor in their decision whether to take action against a lessee. In these situations, would a lessee have a reasonable excuse if they could not afford to take the commercial risk of having a vacant store?

Conversely, the lessor offence may make some lessors reluctant to lease to businesses that legally sell tobacco and nicotine products or have been implicated in the illicit tobacco and nicotine product trade, such as convenience stores and gift shops. The lessor offence could also impact a lessor's ability to obtain insurance if they do lease to these types of businesses. Lessors will likely pass additional risk management costs onto lessees through higher rents and rental bonds. This will disproportionately affect lawful business operators, who may be unable to find suitable premises to lease at a reasonable rent or who may have to pass these costs onto consumers.

Civil penalty

QLS has concerns with lessors being penalised for the actions of their lessees. The introduction of a civil penalty for lessors is an unprecedented step, particularly when a lessor may have little power to take action against a lessee until a closure order is issued.

The Explanatory Notes state the civil penalty would apply in situations where a lessor ignores warning signs or turns a blind eye to suspected illegal activity, for example because they do not want to lose their rental income. In these circumstances, a lessor in a regional or remote location who may not be able to quickly re-lease their premises is likely to be penalised regardless of what action they take. They will risk incurring a civil penalty if they do not terminate the lease, but they may be left with vacant premises for a long period of time if they do terminate the lease. As mentioned above in relation to the criminal offence, this could have several flow-on effects such as lessors charging lessees increased rent and rental bonds, which is likely to be passed on to consumers.

To mitigate this, QLS supports including a list of factors the court may have regard to when deciding whether a lessor has contravened section 209CE(1). We also support including a reasonable excuse defence. However, we have the same concerns regarding the reasonable excuse defence made above with respect to the criminal offence. Further, the Explanatory Notes do not provide any examples of reasonable excuses for the civil penalty provision. As there may be a grey area between ignoring or not noticing warning signs, we recommend clarifying what would constitute a reasonable excuse in these circumstances.

Safeguards

QLS welcomes the important safeguards in proposed sections 209CG to 209CI where civil and criminal proceedings could arise for the same conduct.

Increased legal complexity and costs

QLS is concerned the relevant lessor provisions will add more legal complexity to the leasing process and increase legal fees charged to lessors and lessees.

Legal practitioners will need to understand the changes to the Act and will need to adequately advise their clients of their obligations under the Act before leasing premises to a business that sells tobacco or nicotine products or associated businesses, such as grocery stores and gift shops. Lessors will not receive any compensation for the cost of obtaining this advice, which is likely to be passed on to lessees (including lawfully operating lessees) through increased rent and then passed onto consumers.

Ideally, the law should be drafted clearly enough for lessors to understand without having to engage a legal practitioner. However, the undefined and untested nature of the relevant lessor provisions, including the reasonable excuse defence, will make it hard for lessors to understand the law without legal advice. This lack of certainty may also make it hard for legal practitioners to give their lessor clients clear advice on the steps they need to take to avoid contravening proposed section 209CE(1).

As the proposed provisions of the Act do not contain any examples of what constitutes a reasonable excuse, we strongly recommend the government issues clear guidance to lessors and their advisors before the provisions commence. We also recommend the notice given to lessors with a closure order under proposed section 209CB(2)(b) contains clear guidance about the lessor's right to terminate the lease and how to prevent a contravention of section 209CE(1).

Compensation process

QLS supports the proposed amendments to section 219 of the Act to provide a right to compensation to a lessee when a closure order is revoked, wrongfully made or invalid. However, we are concerned the person seeking compensation will need to go through a court process before they are awarded compensation. This will increase legal costs and complexity and is likely to delay resolution of a compensation claim.

More particularly, the cost, complexity and length of a court process may disadvantage innocent business owners who may have already lost a substantial amount of money and suffered reputational damage due to the closure of their business, seizure of legal stock and termination of their lease. They may have already entered into liquidation or declared bankruptcy before the right to compensation arises, and they may not have the funds to commence court action.

To simplify the compensation process and reduce legal costs, we recommend implementing a mediation process for the parties to try to reach agreement on compensation before the party seeking compensation commences court action. Appropriate mediation models developed under other legislation could be adopted for this process, such as mediation under the *Small Business Commissioner Act 2022* (Qld).

Further, it is not clear whether an innocent business operator whose store is closed, goods seized and lease terminated due to the illegal acts of a rogue manager or employee will be entitled to compensation.

Implementation period

As many of the proposed amendments to the Act are novel and could lead to criminal liability, we recommend there be a substantial period of time before the amendments commence to give business owners, lessors and their advisors, including legal practitioners, enough time to understand the new requirements and make any necessary changes to their practices and systems.

We also recommend the government undertake a public education campaign for business owners, lessors and their advisors, and support representative bodies, such as QLS, to educate their members who advise businesses and lessors.

Two-year review

The Explanatory Notes state that, despite having some of the strongest powers in Australia, efforts to combat the trade of illicit tobacco and illicit smoking products have not been effective. Therefore, the stronger measures in the Bill are required, even if some of those measures are inconsistent with fundamental legislative principles. However, the Explanatory Notes do not provide evidence that the proposed amendments to the Act will be more effective than the current powers under the Act.

While the Explanatory Notes state South Australia has the most comparable enforcement powers to Queensland, it is not clear whether the approach taken in South Australia has effectively reduced the supply and possession of illicit tobacco and illicit nicotine products.

Due to the significant nature of the reforms and their inconsistencies with fundamental legislative principles, if the Bill is passed, we recommend an independent review be conducted within two

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years of commencement to assess the effectiveness of the amendments in achieving the stated objectives of the Bill. This should include comprehensive public consultation on the legislative scheme and policy and should address the effectiveness of the following amendments:

- increasing the length of short-term closure orders to three months
- the lessor criminal offence and civil penalty provisions
- the lessor's power to terminate a lease
- reversing the onus of proof in relation to executive officer liability
- allowing seizure and forfeiture of compromised goods without first obtaining a court order
- allowing Queensland Health staff to conduct controlled purchase operations
- entry to wholesale stores without a warrant or consent
- the impact of the amendments on the retail and commercial leasing sector.

If, after the review, any of the amendments are found to be ineffective in achieving the Bill's objectives, we suggest reversing those amendments. This is particularly recommended for the amendments inconsistent with fundamental legislative principles.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Genevieve Dee
President