

Chapter 1

Introduction

Purpose of the Bill

1.1 The Vaporised Nicotine Products Bill 2017 (Bill) is a private senators' bill introduced by Senators Leyonhjelm and Roberts. The Bill seeks to exclude e-cigarettes from regulation by the Therapeutic Goods Administration (TGA) in order to legalise e-cigarettes in Australia.¹

1.2 **Schedule 1** amends three Acts to permit the importation, use and advertisement of e-cigarettes. The Bill amends:

- the *Therapeutic Goods Act 1989* (TG Act), to ensure that nicotine delivered via an electronic nicotine delivery system (ENDS) is subject to the same regulations as other nicotine products under the *Standard for the Uniform Scheduling of Medicines and Poisons*;
- the *Airports Act 1996* (Airports Act), is amended to permit e-cigarettes to be used in airports; and
- the *Tobacco Advertising Prohibition Act 1992* (TAP Act), is amended to permit ENDS products to be advertised by modifying the definition of 'smoking'.²

Background

1.3 The Senate Select Committee on Red Tape, chaired by Senator Leyonhjelm, has previously considered e-cigarettes in the context of its interim report into the effect of red tape on tobacco retail. The majority report noted the inability of some Australians to legally purchase nicotine products and recommended that Commonwealth, state and territory governments develop and implement an appropriate framework for alternative nicotine delivery systems.³

1.4 On 25 May 2017, the Minister for Health, Aged Care and Sport, The Hon Greg Hunt MP, referred an inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia to the House of Representatives Standing Committee on Health, Aged Care and Sport (Health Committee).

1.5 The Health Committee's inquiry will consider the use and marketing of e-cigarettes to assist people to quit smoking, in addition to the health impacts,

1 Explanatory Memorandum, p. 1.

2 Explanatory Memorandum, pp. 2-3.

3 Senate Select Committee on Red Tape, *Interim report into the effect of red tape on tobacco retail*, June 2017, pp. 23-24.

international approaches and appropriate regulatory framework for e-cigarettes and personal vaporisers.⁴

Legislative scrutiny

Scrutiny of Bills Committee

1.6 The Senate Scrutiny of Bills Committee considered the Bill in its *Scrutiny Digest 8 of 2017* and made no comment on the Bill.⁵

Parliamentary Joint Committee on Human Rights

1.7 The Parliamentary Joint Committee on Human Rights (PJCHR) considered that the Bill appeared to give rise to human rights concerns.

1.8 The PJCHR noted that the right to health, protected by article 12(1) of the International Covenant on Economic, Social and Cultural Rights, imposes obligations on Australia with respect to tobacco and other harmful substances. Regarding the risks posed by e-cigarettes, the committee stated that:

it is noted that it is unclear at this stage exactly what the health impacts of nicotine e-cigarettes are. However, it is well established that nicotine is a highly addictive drug, including one that may appeal to and be marketed to children.⁶

1.9 The PJCHR further noted that the Bill's statement of compatibility 'does not acknowledge that the right to health is engaged', and subsequently does not provide details regarding the compatibility of the measures with the right to health.⁷

1.10 The committee recommended that the human rights implications of the Bill be drawn to the attention of the legislation's proponents and the Parliament. It further noted that, subject to the Bill proceeding to further stages of debate, that the PJCHR may request further information from the proponents of the legislation.⁸

Conduct of the inquiry

1.11 The Bill was introduced to the Senate on 19 June 2017. The Senate Selection of Bills Committee referred the Bill to the committee for inquiry and report by 13 September 2017.⁹

4 Terms of Reference, Inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia, Standing Committee on Health, Aged Care and Sport, http://www.aph.gov.au/Parliamentary_Business/Committees/House/Health_Aged_Care_and_Sport/ElectronicCigarettes/Terms_of_Reference, (accessed 24 August 2017).

5 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2017*, 9 August 2017, p. 42.

6 Parliamentary Joint Committee on Human Rights, *Report 7 of 2017*, 8 August 2017, pp. 34-35.

7 Parliamentary Joint Committee on Human Rights, *Report 7 of 2017*, 8 August 2017, p. 35.

8 Parliamentary Joint Committee on Human Rights, *Report 7 of 2017*, 8 August 2017, p. 35.

9 Senate Selection of Bills Committee, *Selection of Bills Report No 7 of 2017*, 22 June 2017, [p. 3]; *Journals of the Senate*, No. 48, 22 June 2017, pp. 1540–1542.

1.12 The committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 4 August 2017. A list of submissions to the inquiry is available at Appendix 1. The committee decided not to hold a hearing as part of this inquiry.

1.13 The committee received a number of submissions expressing general support for the deregulation of e-cigarettes, including many accounts of personal experiences using e-cigarettes. The committee also received 2023 form letters similarly expressing general support for deregulation of e-cigarettes. An example of these letters is available on the committee website. These expressions of general support have been noted in the committee's consideration of the Bill.

1.14 The committee thanks those submitters who submitted to the inquiry.

