

PUBLIC HEALTH (TOBACCO) BILL 2008

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Bill introduced on motion by Mr Tony Stewart.**Agreement in Principle****Mr TONY STEWART** (Bankstown—Minister for Small Business, Minister for Science and Medical Research, and Minister Assisting the Minister for Health (Cancer)) [10.28 a.m.]: I move:

That this bill be now agreed to in principle.

As the Minister Assisting the Minister for Health (Cancer), I am pleased to introduce in the House today the Public Health (Tobacco) Bill 2008. This bill has been introduced to enact a range of new provisions relating to the important issue of tobacco control. The new provisions have been designed specifically to prevent the exposure of children to environmental tobacco smoke and to prevent the uptake of smoking by young people. The New South Wales Government is committed to reducing smoking in our community. Priority S3 of the State Plan prioritises improving health through reduced obesity, smoking, illicit drug use and risk drinking. The Government target is to reduce smoking rates by 1 per cent per annum to 2010 and then by 0.5 per cent per annum to 2016. I am pleased to advise that we are on target. It is important at the outset to explain why the Government has introduced this bill.

The facts about the impact of smoking on our community are clear. One in two lifetime smokers will die from their smoking habit. A third of those deaths will occur in middle age, at the prime of people's lives. It is estimated that more than 6,500 people die of smoking-related illness in New South Wales each year. Tobacco is responsible for one in five cancer deaths in New South Wales. NSW Health spends more than \$250 million a year treating tobacco-related illness. That amount is equivalent to employing 3,000 full-time nurses. The indirect cost to the New South Wales community is conservatively estimated at more than \$6.6 billion every year. We have all seen the social marketing campaigns that educate us about tobacco and its effects. We see the warnings on cigarette packs—tobacco causes cancer, heart disease, gangrene, stroke and other ailments.

Because the use of tobacco products leads to addiction, disease and premature death the sale, advertising and display of those products needs to be carefully regulated, as provided in this bill. It is also clear that we need to target our tobacco control efforts to prevent the uptake of smoking by young people. The overwhelming majority of smokers start smoking before the age of 20. By about age 20, 8 out of 10 smokers regret that they ever started smoking, having underestimated the horrible addictive nature of nicotine. Smoking by young people is of great concern because the earlier a person starts smoking the earlier the risk of smoking-related diseases arises. We know also that the age at which a person starts smoking is an indicator of his or her success in quitting smoking. Statistics show that the younger people are when they start to smoke the less likely it is that they will ever cease.

No parent wants to see his or her child take up smoking and live a shortened life with a high risk of serious and chronic illness. And no child should need to seek medical care because of exposure to other people's smoke. Children's exposure to other people's smoke is involuntary, and they are particularly susceptible to health damage caused by inhaling environmental tobacco smoke. Children's bronchial tubes are smaller and their immune systems are less developed, which makes them more likely than adults to suffer negative health consequences of environmental tobacco smoke. In fact, 90 per cent of the costs to the health care system of hospitalisation of people for environmental tobacco smoke relate to children's exposure to other people's smoke.

The provisions of this bill provide a strong and sensible approach to tobacco advertising. The bill represents a decisive shift in the way we allow tobacco to be presented in our community, and in particular to children. These new laws will make New South Wales the Australian leader in tobacco control measures in the retail setting. It is a distinction that we will be proud to hold and it will demonstrate to other States the steps New South Wales has taken against the horrible scourge of smoking. The bill provides for tough and responsible new measures including prohibiting the display of tobacco products, non-tobacco products and smoking accessories in shops; requiring tobacco products and non-tobacco smoking products to be sold from only one point of sale on premises; limiting the number of tobacco vending machines permitted on premises to one vending machine and making vending machines subject to display bans; making it an offence to smoke in a motor vehicle while a child under the age of 16 years is present. The changes will also make the driver liable if a passenger smokes in those circumstances.

Further provisions of the bill include prohibiting a person from engaging in tobacco retailing for specified periods when they have been guilty of repeat offences; requiring retailers to notify the Director General of Health before they commence selling tobacco products; and, importantly, substantially increasing penalties for most existing tobacco offences. The Public Health (Tobacco) Bill 2008 also incorporates and enhances the provisions of part 6 of the Public Health Act 1991 which relate to the sale, advertising and packaging of tobacco products and non-smoking tobacco products. The changes mean that key tobacco control provisions will now be contained in one piece of legislation. It also means that legislation will provide for even tougher penalties for people who do the wrong thing by our community—and there is strong community support for these proposals.

A comprehensive community consultation process has led to the development of this bill. In April 2008 the New South Wales Government released a paper entitled "Protecting Children from Tobacco—The Next Steps to Reduce Tobacco-Related Harm". The paper presented a range of reform options, and the community was invited to comment on the proposals. Almost 12,000 submissions were received from across the State—from retailers, manufacturers, public health experts and advocates, small businesses, parents and community members. The submissions made by children and young people were particularly important, referring to the smoking-related illnesses and even deaths of their parents, and how children feel when they are in a car when an adult is smoking.

The former Minister Assisting the Minister for Health (Cancer), Verity Firth, MP, hosted a public forum at Parliament House where more than 60 people attended and gave their views. I commend her for her great work and acknowledge that she provided the backbone for this legislation. Special consultations were also held with young people. After considering the almost 12,000 submissions received the Government has now developed a legislative package which is strong, sensible and practical.

I will now turn to each of the important new proposals in the bill. Part 2 division 2 of the bill expands the range of existing offences relating to the display of tobacco products, non-tobacco smoking products and tobacco accessories. For many years there has been strict regulation of cigarette and tobacco product advertising and promotion, and to good avail. As a result smoking has been reduced. However, the visual presence of cigarette products in shops has become the major focus of tobacco company marketing activities.

When children visit a retailer that sells tobacco products the tobacco product display is a highly visible feature of the store. The display is generally at the service area, for instance in Coles and Woolworths supermarkets where children can see them as they pass through, and hundreds of tobacco product packets may be displayed. The display of these products indicates to children that tobacco consumption is an ordinary part of our community life. It is not; tobacco kills. One in two smokers will die of cancer as a result of this insidious product. Displays normalise tobacco products for children, but they are not normal. In order to counteract this marketing approach clause 9 of the bill makes it an offence for the occupier of premises on which tobacco products or non-tobacco smoking products are sold to fail to ensure that members of the public cannot see any of those products, or smoking accessories, from inside or outside the premises. The offence is punishable with a fine of up to \$11,000 for individuals and up to \$55,000 for corporations.

That type of display ban has been effectively implemented in other jurisdictions including Thailand, Iceland and Canada. The results in those jurisdictions have been excellent. The Government has talked with many retailers about this provision. It is an important one for advancing public health, and will make New South Wales a leader in tobacco control activities at the point of retail sale. The Government is also conscious that retailers will need time to plan for these changes and it has agreed to phased implementation. Large retailers—those with more than 50 employees—will have six months from the commencement of the provision to comply. Smaller retailers—those with fewer than 50 employees—will have 12 months from the commencement of the provision to comply.

Specialist tobacconists will have a further three years to comply but in that period will be subject to more stringent display restrictions. The Government has agreed to these concessions for specialist tobacconists because it recognises that to not do so would be likely to drive many of them out of business. While the Government is prepared to offer this short-term concession to allow specialist tobacconists to modify their businesses, I place them on notice that after 12 months they will be subject to tighter display controls. Those controls are that their product displays may include no more than one packet facing per product line with a total tobacco display area of not more than three square metres. The display of cigarette cartons will be prohibited. After that three-year period, in other words four years after commencement of the relevant provisions in the bill, specialist tobacconists will need to comply with the total ban on tobacco product displays.

Only those persons approved by the Director-General of Health as specialist tobacconists will have this concession. In order to be so approved, a retailer must be in existence on the day on which this bill was introduced to Parliament and generate at least 80 percent of their turnover from tobacco products, non-tobacco smoking products and smoking accessories. New operators, whether they be specialist tobacconists or not, will need to comply immediately with the prohibition on display. This type of display ban has substantial public support, and is roundly supported by public health experts, who acknowledge the importance of the ban. Eighty-nine percent of people surveyed in the NSW Cancer Institute's 2007 Smoking and Health Survey supported

regulation to ensure that cigarettes in shops are stored out of sight of children, and that is what we are doing. Many thousands of submissions were received in support of this proposal in the recent community consultation process. As I said, 12,000 people responded to Government surveys in relation to young children and tobacco.

Another important aspect of the bill is clause 10, which makes it an offence to sell tobacco products from more than one point of sale in each retail premises. The maximum penalty for an offence against the single point of sale will be \$11,000 for individuals or \$55,000 in any other case. Restricting the number of points at which tobacco products can be purchased to one per premises will reduce the scope for children to purchase those products in high turnover locations, such as supermarkets, which I have mentioned, by ensuring that highly trained and experienced staff can be placed at the cash register that is used for tobacco sales and can regulate properly and effectively the sale of those products to adults only. It will also reduce the exposure of recent quitters to inducements and opportunities to purchase tobacco products at a time when they will be particularly vulnerable. We all know that people trying to quit the habit are vulnerable to advertising displays that may entice them to start smoking again.

Moving tobacco products to a single point of sale will further de-normalise the purchase and consumption of tobacco products and contribute to reduced use in the community, which is what we are trying to achieve. Further restrictions on tobacco vending machines are dealt with in part 2, division 3, of the bill. Clause 12 of the bill provides that tobacco vending machines are only allowed in certain premises in New South Wales: a bar area of a hotel, a club or a casino; or a gaming machine area. Such a venue may only have a single tobacco vending machine. The bill removes the provision that allows vending machines to be located in staff amenities areas so that no staff amenities area can have tobacco products for sale to staff after six months from the commencement of the provision.

To provide further protection to minors from the sale of tobacco products through vending machines the operation of tobacco vending machines must be controlled by staff. It will be a serious offence for a person to operate a vending machine for a child or to provide a child with the means to operate it. The maximum fine for such an offence will be \$11,000 for an individual. Tobacco vending machines are also subject to the display ban, which is required of other sales channels, so that tobacco products sold in the machine must not be in view of members of the public. To ensure maximum accountability for tobacco product vending machines, under the bill an occupier of a premises in which a vending machine is located may also be held accountable for any contravention of the provisions taking place in his or her premises.

For some time people have been able to accrue reward points in shopper loyalty programs for tobacco product purchases and to claim tobacco products with their reward points. Clause 18 of the bill prohibits shopper loyalty programs which allow people to accrue points on the basis of sales of tobacco products or non-tobacco smoking products and to receive gifts of tobacco products or non-tobacco smoking products through that program. Clause 30 of the bill provides that a person who smokes in a motor vehicle in which there is a person under the age of 16 years commits an offence, and the driver of the motor vehicle commits the same offence. The maximum penalty for this offence is \$1,100. Police officers will be empowered to enforce this provision on the spot and to deal with any offence by way of a penalty notice.

In the community consultation process more than 80 per cent of respondents supported prohibiting smoking in a car where a child is present, and the Government is now acting to introduce such a prohibition. Part 5 creates a new regime that requires persons to notify the Department of Health before commencing the retailing of tobacco products. Clause 33 provides that a person who has committed two or more offences against the same section in a three-year period is automatically prohibited from selling tobacco products for three months. If a third offence is committed within the three-year period a further 12-month ban is imposed. The Government recognises that some people may regard this penalty as severe. I make no apologies for that. Let us remember that tobacco kills 50 per cent of its long-term users and causes heart disease, cancer, gangrene, strokes and myriad other health problems. There is no such thing as a safe cigarette. Cigarettes kill, and that is the problem we face.

In order that the notification and prohibition systems are effective, significant maximum penalties will apply for non-compliance. A maximum penalty of \$11,000 will apply to any retailer who does not comply with notification requirements before selling tobacco, while those retailers who persist in selling tobacco despite being banned will face maximum penalties of up to \$110,000 for individuals and \$220,000 for corporations. As I have already noted, the bill also establishes substantially higher penalties for offences. In particular, advertising offences by corporations will now attract maximum penalties of \$660,000 for a first offence and \$1.1 million for subsequent offences. Maximum penalties for a range of other offences have been substantially increased also, particularly for corporations, with most offences now attracting maximum fines of \$55,000. This is a measure of the significance that the Government places on protecting young people from tobacco.

In this respect I also draw attention to clause 21 of the bill, which, amongst other things, deals with the sale of any confectionary or toy that resembles or is packaged to resemble a tobacco product. The maximum penalty for selling such a product has been substantially increased. The current provision in the Public Health Act sets a maximum penalty of \$2,750, while clause 21 of the bill sets maximum penalties of up to \$110,000 for individuals and \$220,000 for corporations. The sale of confectionary or toys that resemble tobacco products is a particularly despicable ploy by the tobacco industry to hook children, and the Government will not stand by and allow this to

continue. I put those who deal in these products on notice that their activities will be the subject of intense additional scrutiny from this point on. We are watching.

The New South Wales Government is leading the way—in Australia and around the world—with this package of tobacco control measures. The Government has been congratulated on announcing these reforms by the Cancer Council, the Heart Foundation, the Parents and Citizens Federation, and many others. We are doing this because smoking is the single greatest cause of premature death in New South Wales. It is also the leading cause of preventable disease—disease that can be stopped in its tracks if people do not smoke. Smoking increases the risk of many cancers and, as we now know, is a major cause of heart disease. More than 55,000 hospital visits each year are directly attributable to tobacco smoking. We need to work with industry, retailers and parents to help the next generation avoid a lifetime habit that causes illness and premature death. I hear the sounds of children in the public gallery today. This quest is most important if we are to save our future generations.

While we have made significant progress over the past decade, with the percentage of people who smoke daily or occasionally dropping from 24 per cent to 18.6 per cent, there is no room for complacency when we consider the health of children and young people. They are the future of our community. We will work closely with industry in relation to the definitional aspects of the bill and the practicality of implementing the important reforms that it contains. We will provide clear guidance and direction on the bill's implementation, and ensure that key stakeholders understand what is and is not allowed in a realistic framework. I commend this most important bill to the House. It represents a strong and workable addition to tobacco control measures in this great State of New South Wales.