

**PUBLIC HEALTH (TOBACCO) BILL 2008**

Page: 11213

**Second Reading**

**The Hon. JOHN DELLA BOSCA** (Minister for Health, Minister for the Central Coast, and Vice-President of the Executive Council) [8.44 p.m.]: I move:

That this bill be now read a second time.

As the speech is lengthy and it has been delivered in the other place I seek leave to have it incorporated in *Hansard*.

**Leave granted.**

I am pleased to introduce the Public Health (Tobacco) Bill 2008 to this House today.

The bill has been prepared to enact a range of new provisions relating to tobacco control.

The new provisions have been specifically designed to prevent children's exposure 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 in terms of smoking is to reduce smoking rates by 1 percent per annum to 2010 and then by half a percent per annum to 2016.

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 habit. A third of those deaths will occur in middle age.

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.

New South Wales Health spends more than \$250 million a year treating tobacco-related illness. That is equivalent to 3,000 full time nurses.

The indirect cost to the New South Wales community is estimated at more than \$6.6 billion every year.

We have all seen the social marketing campaigns which educate us about tobacco and its effects. We see the warnings on cigarette packs. Tobacco causes cancer, heart disease, gangrene and stroke.

Because the use of tobacco products leads to addiction, disease and premature death, the sale, advertising and display of these products needs to be carefully regulated.

It is also clear that we need to target our efforts in tobacco control to preventing the uptake of smoking by young people.

The overwhelming majority of smokers start smoking before the age of 20. By about age 20, eight out of ten smokers regret that they ever started smoking, having underestimated the 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.

We also know that the age a person starts smoking is an indicator of their success in quitting smoking. The younger a person is when they start to smoke, the less likely is it that they will ever cease.

No parent wants to see their 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 to suffer negative health consequences of environmental tobacco smoke than adults.

In fact, 90% 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.

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 which we will be proud to hold.

The bill provides for tough and responsible new measures.

These are:

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;

Prohibiting a person from engaging in tobacco retailing for specified periods where they have been guilty of repeat offences;

Requiring retailers to notify the Director-General of Health before they commence selling tobacco products; and

Substantially increased 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 key tobacco control provisions will now be contained in the one piece of legislation. It also means that legislation will provide for even tougher penalties for those people who do the wrong thing by our community.

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 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 where an adult is smoking.

The former Minister Assisting the Minister for Health (Cancer), Verity Firth MP, hosted a public forum at Parliament House and more than 60 people attended to give their views.

Special consultations were also held with young people.

After considering the almost 12,000 submissions made the New South Wales Government has now developed a legislative package which is strong, and sensible.

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.

There has for many years been strict regulation of cigarette and tobacco product advertising and promotion. As a result the visual presence of the cigarette product in shops has become the major focus of tobacco company marketing activities.

When children visit a retailer selling tobacco products, the tobacco product display is a highly visible feature of the store. The display is generally at the service area, and hundreds of tobacco product packets may be displayed.

The display of these products says to children that tobacco consumption is an ordinary part of our community life. Displays normalise tobacco products for children.

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.

This kind of display ban has been effectively implemented in other jurisdictions including Thailand, Iceland and Canada.

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 has agreed to introduce a phased approach to 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 less 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 as 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 twelve 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.

Eighty-nine percent of people surveyed in the New South Wales Cancer Institute's 2007 Smoking and Health Survey supported regulation to ensure cigarettes in shops are stored out of sight of children.

Many thousands of submissions were received in support of this proposal in the recent community consultation process.

Another important aspect of the bill is clause 10 of the bill, 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 scope for children to purchase those products in high turnover locations, such as supermarkets, by ensuring that highly trained and experienced staff can be placed on the cash register that is used for tobacco sales.

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.

Removing 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.

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, that is a bar area of a hotel or club or 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 amenity area can have tobacco products for sale to staff after six months from the commencement of the provision.

To provide further protection from the sale of tobacco products to minors 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 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 contraventions 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 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.

Part 5 of the bill creates a new regime that requires persons to notify the Department of Health before commencing the retailing of tobacco products. Clause 33 of the bill 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 as severe. I make no apologies for that. Let us remember that tobacco kills 50 per cent of its long term users, causes heart disease, cancer, gangrene, strokes and myriad other health problems. There is no such thing as a safe cigarette.

In order that the notification and prohibition systems are effective significant maximum penalties will apply for noncompliance. 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 also been substantially increased, 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 members' 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 it. I put those who deal in these products on notice that their activities will be the subject of additional scrutiny from this point on.

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 for announcing these reforms, including by the Cancer Council, Heart Foundation, Parents and Citizens Federation, and 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.

Smoking increases the risk of many cancers and is a major cause of heart disease.

More than 55,000 hospital visits each year are attributable to tobacco smoking.

We need to work together with industry, retail and parents to help the next generation avoid a lifetime habit which causes illness and premature death.

While we have made significant progress over the last decade, with the percentage of people who smoke daily or occasionally dropping from 24 percent to 18.6 percent, there is no room for complacency when we consider the health of children and young people.

In closing I wish to acknowledge that a number of health advocacy groups including the Cancer Council and the Heart Foundation have expressed concern about clause 20(5) of the bill and the perception that this will allow tobacco corporations to sponsor racing events in New South Wales. I place on the record that the Government is opposed to any such sponsorship and that the bill does not allow for it. However, the Government does acknowledge the significant concern and confusion that has been caused and I will move to amend the bill by deleting clause 20(5) when the bill is considered in Committee.

I commend this bill, which represents a strong and workable addition to tobacco control measures in New South Wales, to the House.