



# Legislative Council

## Public Health Amendment (Juvenile Smoking) Bill Hansard - Extract

21/03/2002

### Second Reading

**The Hon. DAVID OLDFIELD** [11.16 a.m.]: I move:

That this bill be now read a second time.

The success of this amendment to the Public Health Act 1991 will address what I believe to be the substantial inadequacy of existing legislation regarding access to tobacco products by minors. When it comes to the use of tobacco by young people under 18 years of age, the current law places all onus and responsibility on tobacco retailers and fails to call upon any adherence to the law by minors. This, of course, means that the only legal manner by which children, regardless of how young they might be, are precluded from access to tobacco products is, in theory, through the inability of retailers to legally sell such products to persons under 18 years.

Expectations that legislation will prevent children from smoking are seriously undermined by a number of factors that would be extremely difficult, if not virtually impossible, to deal with through legislation. For example, glorification of smoking—as often appears to be the case in films and through other means that have an unreasonable influence, especially on the young—is a particular fact of life not easily overcome. Aspects, however, that can be addressed by legislation are the actual legality attached to a child being allowed to smoke and the ability of adults to purchase tobacco products for consumption by children; that is, a person should reach a certain age before they are legally able to smoke, and this bill would make that age 18 years. This bill will also make it illegal for an adult to purchase cigarettes for the use of persons under the age of 18 years.

Under the circumstances of how the law treats tobacco, it is strange that in the case of alcohol, the law already accommodates those issues, but for no apparent reason when it comes to tobacco products, the concept of required responsibility on behalf of participants, or those who purchase on behalf of participants, is non-existent—just as the decency of good behaviour in this House when a person speaks is also non-existent. Madam President, I see that you are engaged in your own conversation, but I ask you to call the House to order. There are at least seven very loud conversations taking place, which is quite disgraceful.

**The PRESIDENT:** Order! The Hon. David Oldfield is perfectly right. Members must cease engaging in conversation immediately.

**The Hon. DAVID OLDFIELD:** Society has legislated for all manner of age restrictions on many things, but not on the use of tobacco products. People must be aged 18 to vote, 17 to drive a car, 16 or 18—depending on their orientation—to give sexual consent, 18 to own a firearm and 17 to join the defence forces. All of these age restrictions are intended to ensure that people reach an acceptable level of physical and mental maturity that will largely enable them to deal responsibly with the requirements of the activity.

I return to the question of alcohol consumption. Like the other activities I have mentioned, we readily accept that a certain age must be reached before the law allows access to alcohol. It is widely accepted that small amounts of alcohol do not have any great consequences from a health perspective. Indeed, it is well understood, and medically accepted, that the consumption of a couple of glasses of red wine each day is beneficial to one's health. In fact, my father has had a couple of daily glasses of red wine prescribed to him by his specialist because the antioxidants in the wine are considered helpful in the treatment of an eye condition from which he suffers.

Let us consider both alcohol and tobacco. We make it clear that it is reasonable to drink in moderation and we accept that, under some circumstances, alcohol is actually beneficial to health. However, we say even more clearly, "Every cigarette is doing you damage." There is no doubt that a drink can be a good thing, just as there is absolutely no doubt that there is no such thing as a good cigarette. Yet while people must be aged 18 to drink alcohol, they can smoke legally at any age. I point out that my proposal is not intended to impact in any way on smokers at large, any more than the existing liquor laws impact on drinkers in the community. Smoking is an individual's choice and an individual's right. Even taking account of the health issues, smokers who are aged 18 years or more are better placed to determine whether their actions are right or wrong. I respect the right of a person to smoke in the same way as I respect a person's right to drink, drive a car, vote, join the army, own a firearm and so on. However, we must acknowledge that society has, with good reason, put a starting age on all of those activities but not on smoking.

Any reasonable person will recognise that this is a clear and serious anomaly: consider all the things that we legally preclude children from doing on the basis of age only, yet there is no such impediment to smoking tobacco. Of the many things we wish to protect children from, surely drugs is one of the most obvious—and, make no mistake, tobacco is a seriously addictive and damaging drug. While I do not intend to explain to honourable members the devastation caused by tobacco use—I expect most would be aware of the dangers involved—it is a fact that smoking

is a major killer of people in Australia. Therefore, it is appropriate for me to put the figures on the record.

Smoking kills about 19,000 Australians, including several thousand of whom come from New South Wales, every year. Smoking is responsible for more than 80 per cent of all drug-related deaths. In fact, smoking kills more people than are killed by accidents, homicides, HIV, illicit drugs, alcohol and diabetes combined. It is estimated that smoking causes 21 per cent of all cancer deaths, yet tobacco use is the biggest single preventable cause of both cancer and heart disease. In 1998 more than 140,000 Australians were hospitalised for illnesses caused by smoking. More than 940,000 hospital patient days are swallowed up each year by tobacco-related illnesses. It is estimated that New South Wales business loses \$2 million each working day to tobacco-related sickness, absenteeism and medical retirement.

It should be abundantly clear to everyone that tobacco use costs New South Wales billions of dollars each year. Indeed, it is statistically proven that most regular smokers were introduced to smoking while juveniles. The vast majority of adult smokers started smoking very early in life, yet we allow minors to smoke legally. We must respect the rights of adults who choose to smoke, but we must also do everything we possibly can to discourage people from taking up smoking in the first place. The most successful way to reduce the number of smokers is to stop young people taking up the habit. However, the current law is not effective in discouraging young people from becoming smokers.

Publications of the New South Wales Cancer Council, which are supported by the Heart Foundation, make it clear that smoking rates amongst children in New South Wales are high. It is estimated that some 85,000 secondary school students smoke—and smoke regularly. It is only the tobacco industry that stands to lose as a consequence of my proposed amendments. If this bill plays a role in reducing the number of smokers, even the loss of tax revenue to the New South Wales Government will be more than offset by drastically reduced health costs. Millions of dollars—and, if the number of smokers was seriously reduced, billions of dollars—would be available for redirection within the overall health budget.

If our objective is to reduce the number of New South Wales children who smoke, and if we consider that if we achieve our aim thousands of lives and billions of dollars will be saved over time as the number of smokers in society is reduced because people simply do not become smokers in the first place, there is really only one argument to overcome. There is a body of opinion that supports the notion that, if smoking is made illegal for children, more of them will be further encouraged to smoke. I believe that argument is not logically sustainable—certainly not in the context of existing legislation or similar legislation regarding children that may be passed in the future.

If smoking were made illegal tomorrow I do not believe thousands of children who did not smoke previously would suddenly start smoking simply because the activity was illegal. If that proposition carried any weight, the fact that cigarettes cannot be sold legally to children at present would encourage children to get their hands on them. If that proposition were true we could reduce the number of children who drink alcohol by removing the laws that currently prohibit it. Is anyone suggesting that we should make it legal for children aged under 18 to drink? People who advocate that making smoking illegal will create more smokers must also believe that making alcohol consumption legal will reduce the number of underage drinkers. Some children will undoubtedly think breaking the law is somehow exciting and perhaps might feel encouraged to smoke. However, they will be a small minority and are perhaps already deriving excitement from purchasing their cigarettes illegally under the current laws.

If we truly believe that children will be encouraged to undertake an activity if it is illegal, we could suggest that any law aimed at people aged under 18 years of age is not only a waste of time but a red rag to a bull. Are more heterosexual children under 16 having sex because the law states they have not reached the age of consent? Are more homosexual children under 18 having sex because the law states they have not yet reached the age of consent? Somewhere down the line someone has put forward the view that kids will be more likely to smoke if it is illegal. To a large degree that view has been accepted because not very many people have really thought it through. Many of us, perhaps including me, have just thought, "Yes, that's right, because young people are rebellious." Perhaps we have been too willing and too quick to acknowledge that as children we were little scoundrels and left it at that without questioning whether we had really been more inclined to do something because it was illegal.

Not all young people are rebellious and even for those who are, does that mean they deliberately set out to break laws just for the sake of doing so? Do we seriously believe that many children, if any, actually set out to do things they should not, including things that are bad for them, just to break the law? Unless as a child you were an absolute goody-two-shoes, you were probably spurred on to try something from time to time because of the perceived excitement attached to it being considered naughty. But, of course, in the vast majority of cases what may have been considered naughty probably was not anything illegal.

Certainly, young people are not on their own when it comes to being pressured by their peers or on the basis of something being considered cool or trendy—perhaps fashionable if you prefer describing it that way. One way of discouraging smoking would be to make it unfashionable. Let us make the point that smoking is so bad for you, and that the danger of becoming addicted and remaining a smoker for the rest of your life, however short that life might be, is so real that we are going to make it illegal for children to smoke. Let us ask: How cool is it to smoke? How fashionable is it to smoke? And let us answer those questions in part by asking also: How cool is it to get sick? How fashionable is it to die?

The notion that making cigarette smoking illegal will make it more attractive seems to have been accepted without having really been explored or even considered beyond its initial acceptance. I believe that this view falls into the category of urban myth. It has taken its place as some kind of accepted wisdom, but it has all the

appearances of not being well thought through; and even holders of this view admit that there is no actual evidence to uphold such beliefs. We can ponder and debate why children will be pushed into activities that are so demonstrably dangerous to their health, but no doubt the current laws that place the onus on retailers have failed to have a desirable impact on underage smoking.

The Cancer Council and other concerned bodies such as ASH make it clear that 25 per cent of children smoke, yet only 20 per cent of the adult population smokes. The size of the adult smoking population is and will be determined by the size of the population of child smokers. Most people who are going to be lifelong smokers start somewhere between 12 and 16 or 17 years of age. If we can reduce the number of children who start smoking, that will automatically flow on and reduce the overall adult smoking population. The bill provides for penalties just as underage drinking provides penalties, but my expectation is that when enforcing the law, police will act in the same manner as they generally do with underage drinking.

Police tend to use their discretionary powers regarding underage drinking to caution young offenders and destroy or confiscate the alcoholic substances. This action would be appropriate also in enforcing underage smoking laws. However, the bill provides also for good behaviour bonds and attendance at quit-smoking courses. Indeed, it is likely that in the normal course of their duty while enforcing underage drinking laws, police at the same time will also enforce underage smoking laws. It is not my intention under any circumstances to make children criminals because they smoke, but whilst penalties must be put in place for breaches of law, we should seek sensible enforcement of the law.

In New South Wales it is illegal to sell toys or confectionery that resemble cigarettes. Because we cannot outlaw cigarettes, children can and still do consistently get their hands on tobacco products. The irony is that the law has made it impossible for children to play with toy cigarettes or eat chocolate cigarettes but has failed miserably in its attempts to keep real cigarettes out of children's mouths. The number of smokers in society will be reduced by only two ways: a decrease in the number of young people who become smokers or an increase in the number of smokers who die. Clearly we must approach positively, and examine, any initiative that has a chance to stop children from becoming young smokers. I look forward to this important debate just as I look forward to any positive and productive amendments that may be introduced by other members of the House