



NSW Legislative Council Hansard

Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 21 June 2005.

Second Reading

Reverend the Hon. FRED NILE [2.46 p.m.]: I move:

That this bill be now read a second time.

The Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill, an important bill that will amend the Smoke-free Environment Act 2000, will prohibit smoking in motor vehicles and provide for a fine of \$550 or a maximum penalty of five penalty units.

The Hon. Don Harwin: Point of order: A copy of the bill is not available to honourable members.

Reverend the Hon. FRED NILE: I have a copy.

The Hon. Don Harwin: I request that the bill be circulated.

The PRESIDENT: Order! The bill will be circulated.

Reverend the Hon. FRED NILE: This bill deals with an important health issue regarding the harmful effects of passive smoke. It deals also with road safety issues resulting from many reports that drivers smoking cigarettes cause accidents when they drop ash onto their dresses or trousers. This bill aims to eliminate or reduce the danger of fires during the bushfire season when drivers or passengers throw cigarette butts out of a car window and onto a country road. The first issue relates to the harmful effects of passive smoking in a car not only on drivers but also on passengers.

Since giving notice of my intention to introduce this bill I have received a number of encouraging phone calls relating to the harmful effects of passive smoke. One lady who called me said that her husband, who was a non-smoker, had an arrangement with a friend, who was a heavy smoker and lived in the same area, to be collected each morning, taken to work and returned in the evening. She said her husband complained to her that the car was full of smoke for the duration of both journeys but that he did not want to complain to the driver in case he withdrew his offer of transport to and from work.

Her husband, she said, had died recently of a serious case of lung cancer, caused by passive smoking. He had not smoked, but his friend, who was a heavy smoker, had caused his death. Perhaps that was unknown to the driver, but it is nevertheless the fact. Some honourable members may think this is unusual legislation. But, when I checked what is happening in other jurisdictions, I found that in California a bill was introduced to outlaw smoking in cars or trucks in which children are travelling. The bill being considered in the State's Assembly would allow police to stop vehicles if a child appears to be exposed to smoke from a pipe, cigar, cigarette or "any other plant". The Californian bill has the support of the American Lung Association, which points to research showing second-hand smoke can cause cancer, respiratory infections and asthma.

Assemblyman Marko Firebaugh, a Democrat and author of the bill, referred to a survey by State health officials that found 29 per cent of young people in the State had been exposed to second-hand smoke in the preceding week. I was encouraged to learn of that report. I have had telephone calls from a number of other persons. One woman rang to say her husband was in a car when the driver dropped hot ash onto his lap and vigorously tried to brush it away. He lost control of the vehicle, the car crashed and her husband was killed. Therefore smoking in vehicles is a road safety issue. Though a vehicle may be equipped with a cigarette lighter, the driver must remove the lighter from the socket to light a cigarette. This is yet another distraction for the person driving and it can lead to an accident. Obviously, smokers must get rid of cigarette ash as they drive, either into the ashtray in the vehicle or by flicking the ash from the cigarette out the window—again, a distraction from concentration on the road driving priority.

All honourable members are aware of current debate about drivers using mobile phones and sending SMS messages whilst driving. That has now been proved to be a major factor in a number of car accidents. Cigarette smoking must be just as distracting while driving. I have mentioned already the potential risk of bushfires resulting from cigarette smoking by motor vehicle drivers. In bushfire seasons in particular many of our country roads have to their sides very dry material, whether grass or other growth. I know many councils endeavour to keep the areas close to roads clear of vegetation and rubbish, but there will always be grass growing beside country roads. If the grass becomes dry, as it is currently in many drought-affected areas, a cigarette butt thrown from a window can start a serious bushfire that will cause a great deal of damage, destruction and harm to those

living in country regions, as well as to the State and nation's economy.

Many honourable members would know the impact of passive smoking on those who do not smoke. The *British Medical Journal* recently reported on the risks of passive smoking. Researchers from London's St George's and Royal Free hospitals found passive smoking increased the risk of coronary heart disease by 50 to 60 per cent. The team, which studied 4,792 men over 20 years of age, said earlier studies, which had found a 25 to 30 per cent increased risk, focused on people living with smokers. It said those studies did not take account of exposure at work and other places. Doctors at the British Medical Association conference in June 2004 called for a workplace smoking ban. Previous research had linked passive smoking to increased risk of heart disease and stroke.

Professor Peter Whincup of St George's Hospital and colleagues examined the links between a blood marker of smoke exposure, called cotinine, and the risk of heart disease and stroke in more than 4,500 men. The men were aged between 40 and 59 years and came from 18 different towns across the United Kingdom. They were monitored for 20 years. Professor Whincup's team found the men with the highest levels of cotinine in their blood, and therefore the highest exposure to passive smoke, had the highest risk of heart disease. Higher cotinine levels were linked with a 50 to 60 per cent greater risk of heart disease. Previous studies that looked at the risk posed by living with a smoker estimated a 25 to 30 per cent increased risk of heart disease.

All this recent research indicates that the dangers of passive smoking may have been underestimated. I believe that is a fact. The risks were particularly high when the team looked over a short timescale, which suggests the link between cotinine levels and heart disease declines with time. This means previous studies that looked at years of data could have further underestimated the risk. Professor Whincup went on to say in his report:

The true effects of passive smoke may have been underestimated by concentrating on partner exposure.

What we have here is a measure of overall passive smoking exposure.

The effects of passive smoking are likely to be bigger and more widespread. This adds weight to the argument that we should do everything we can to minimise passive smoking exposure.

Dr Tim Bowker, Associate Medical Director of the British Heart Foundation, said:

The need for a ban on smoking in public places in the UK has never been better illustrated than by this potentially pivotal study.

The evidence is now compelling. The government should not delay any further in introducing legislation to protect non-smokers from this unnecessary risk.

The object of the bill is to protect motor vehicle passengers, but especially children. It is quite normal for mothers and fathers who are heavy smokers to have their children in the back seats of their cars, and thus exposed to passive smoking. Studies have been conducted of the effect of passive smoke on both children and unborn babies. Where a pregnant woman who is not a smoker inhales second-hand smoke in a vehicle driven by her husband, who is a smoker, this can cause serious harm to the unborn child. A new research study in the United States of America, conducted by the Columbia Center for Children's Environmental Health, reported by the National Institute of Environmental Health Sciences, found that children of mothers exposed to second-hand smoke during pregnancy have lower scores on tests for cognitive development at age two, when compared to children from smoke-free homes. The impact on poorest families is hardest, says the study. Children exposed to smoke whose mothers lived in substandard housing or had inadequate food and clothing had still lower results, and were less likely to compensate for their cognitive harm during the first few years of their life. Anne Jones, Chief Executive of Action on Smoking and Health [ASH] Australia, said:

These findings show the compound harm suffered by children exposed to both secondhand smoke and poorer living conditions. They suffer avoidable harm that can persist into early childhood and beyond.

The study is especially disturbing for women working in very smoky workplaces such as pubs and clubs—as well as in family homes where smoking still persists indoors.

I would add: and where smoking occurs in a car in which children or pregnant women are passengers. Anne Jones also said:

Pregnant women and their unborn children are the most vulnerable—with work safety authorities turning a blind eye to their legal rights to a safe, smoke-free workplace under OHS and discrimination law.

I am very encouraged by correspondence I have received from a number of organisations in support of the bill. They include the Non Smokers Movement of Australia, which wrote to me on 10 May and said:

Dear Rev. Nile

I understand that you have called on the NSW Government to protect children from secondhand tobacco smoke in private vehicles.

I wrote to two Government Ministers earlier this year regarding smoking in vehicles. I enclose copies of the correspondence to date. I have only received acknowledgment so far and no answers to my questions. I will copy the replies to you as soon as I receive them.

I understand that the Western Australian branch of the Australian Medical Association is also calling for smoking bans in private vehicles, for the protection of children from the well-known hazards of secondhand (environmental) tobacco smoke. I will also send copies of my correspondence to them.

Mrs Margaret Hogge, President of the Non-Smokers Movement of Australia, concludes:

Smoking in vehicles is a serious health and safety matter on many levels, as my letter and newsletter point out in detail. We call for urgent legislation to ban smoking in cars altogether to ensure safer conditions for passengers and for safer driving standards.

I was encouraged by their support. Their bulletin, the "Non-Smokers' Update", in issue No 51 of April 2005, lists a number of points in support of my bill:

If children or disabled people are in the vehicle they will then no longer be subjected, in confined spaces, to secondhand tobacco smoke. Unfortunately, the Cancer Council message, "Car and Home Smoke-free Zone" still hasn't reached some diehard smokers who continue to subject their young passengers to physical child-abuse similar to dropping poison in their milk-bottles.

The bulletin goes on to say:

Other road users will be safer, as drivers who smoke won't have the distractions of the smoking process. We have asked the NSW Government, "*Would a driver be considered to be in full control of a vehicle while carrying out the following actions:—*

- A. Removing a cigarette from a packet, or rolling a cigarette, or filling a pipe?**
- B. Lighting a cigarette, either with an inbuilt lighter, a match or a regular lighter?**
- C. Holding a cigarette, smoking it and disposing of the ash?**
- D. Extinguishing and disposing of the cigarette, cigar, or putting the pipe away?"**

In addition, we have asked if the driver would be in full control of the vehicle if he or she were carrying out any normal smoking actions during an emergency. Similarly, how would a new, inexperienced driver cope?

The bulletin concludes:

Smoking is a complex operation, and the potential for disaster in the case of a smoking driver is enormous. If you drop your mobile phone in your lap, it's a nuisance—think of what can happen if you drop a lit cigarette into your lap!!

I am encouraged by such strong support from that organisation. There has been a great deal of evidence of the effect of passive smoking, particularly on children. A study conducted by the National Health and Medical Research Council dealing with middle ear disease states:

The scientific literature does not show a clear relation between exposure to ETS and the occurrence of acute otitis media. However, the evidence is stronger for chronic disease (otitis media with effusion or glue ear). Positive signs have been reported by studies in different populations, using different measures of exposure and adjusting for a range of observed and plausible confounding factors. There is evidence that exposure to ETS is related to the development of glue ear, and not just its detection and surgical treatment. This finding is an important one in terms of public health, as surgical treatment of glue ear is one of the most common causes of admission to hospital in childhood. Moreover, children who suffer otitis media with effusion in early life may experience long-term impairment in speech and mental function.

A report from Action on Smoking and Health on passive or second-hand smoke states:

Whilst the relative health risks from passive smoking are small in comparison with those from active smoking,

because the diseases are common, the overall health impact is large. Professor Konrad Jamrozik, formerly of Imperial College London, has estimated that domestic exposure to secondhand smoke in the UK causes around 2,700 deaths in people aged 20-64 years and a further 8,000 a year among people aged 65 years or older. Exposure to secondhand smoke at work is estimated to cause the deaths of more than two employed persons per working day across the UK as a whole (617 deaths a year), including 54 deaths a year in the hospitality industry. This equates to about one-fifth of all deaths from secondhand smoke in the general population and up to half of such deaths among employees in hospitality trades.

Risk to young children

Almost half of all children in the UK are exposed to tobacco smoke at home. Passive smoking increases the risk of lower respiratory tract infections such as bronchitis, pneumonia and bronchiolitis in children. One study found that in households where both parents smoke, young children have a 72 per cent increased risk of respiratory illnesses.

One of the reasons I introduced the bill is my experience. When I was a child I suffered from asthma, and I continue to suffer from it, but not as seriously as I did when I was a boy. Both my parents smoked. My father was a very heavy smoker. The article continues:

Passive smoking causes a reduction in lung function and increased severity in the symptoms of asthma in children, and is a risk factor to new cases of asthma in children.

As I said, I suffer from asthma, as does my wife, because, we believe, we were brought up in an environment where there was a great deal of passive smoking. Until the laws were enforced, passive smoking occurred in Parliament House. The article continues:

Passive smoking is also associated with middle ear infection in children as well as possible cardiovascular impairment and behavioural problems.

Infants of parents who smoke are more likely to be admitted to hospital for bronchitis and pneumonia in the first year of life. More than 17,000 children under the age of five are admitted to hospital every year because of the effect of passive smoking.

We must include in that passive smoking in a vehicle. The article continues:

Passive smoking during childhood predisposes children to developing chronic obstructive airway disease and cancer as adults. Exposure to tobacco smoke may also impair olfactory function in children. A Canadian study found that passive smoking reduced children's ability to detect a wide variety of odours compared with children raised in non-smoking households. Passive smoking may also affect children's mental development. A US study found differences in reading and reasoning skills among children even at low levels of smoke exposure.

This scientific information has been made available only in recent years. We may have had suspicions about the effect of passive smoking. People who smoke probably believe there is no danger to those around them who do not smoke. Smokers take a risk when they smoke. As we now know, the effect of passive smoke on non-smokers is just as serious as the effect of smoke on smokers. I know some people may be concerned about the practicality of enforcing such a law. However, I do not envisage it being implemented in a draconian fashion. It is another measure I call the schoolteacher legislation, the education-type legislation: The Parliament expresses its view on a health issue, safety issue or road safety issue by passing legislation and then advising the community, through education programs, that this is now the policy of the Government of New South Wales. They will know it is against the law to smoke in a vehicle. I hope it will apply in every other State. The majority of people will obey the law. When we introduced the compulsory wearing of seatbelts many thought that people would break the law, but the observance rate of that law is nearly 99.9 per cent. If people are not wearing a seatbelt it is usually because they have forgotten to put it on because they are in a hurry. My knowledge and experience is that people take seriously the wearing of seatbelts. They belt up, which has saved many lives.

This legislation will have a similar educative effect on the community. When a cigarette is lit by a father while driving the family car perhaps his children will say to him, "Dad, you cannot smoke in the car. It is against the law", or perhaps a wife will say to her husband, "Dear, you know you are not allowed to smoke in the car." This measure may help to reduce household disputes or marital discord. One partner to a marriage may feel that something has to be said because smoking in the car is upsetting, but mentioning the matter to their spouse could cause an upset. With this legislation, car passengers will be able to draw attention to the driver who is smoking that there is a law against that practice. I believe that in those circumstances the majority of responsible parents will stop smoking in the car out of concern for the welfare of their children and other passengers.

I ask members to give serious consideration to this legislation so that it may be passed when it comes before the House later in the year, after the winter recess, and thereby enable New South Wales to remain at the

forefront with health and safety legislation that will serve as an example to other States and countries. I commend the bill to the attention of the House.