

# **SMOKE-FREE ENVIRONMENT AMENDMENT (REMOVAL OF EXEMPTIONS) BILL**

## **Second Reading**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.19 p.m.]: I move:

That this bill be now read a second time.

An article by Richard Doll, in the *British Medical Journal* of November 1950, entitled "The Aetiology of Carcinoma of the Lung", clearly linked tobacco smoking with lung cancer. Following that, a series and then a deluge of articles linked smoking with various diseases, basically utilising the new statistical techniques that Doll and his colleagues were using. That was 56 years ago. In 1961 the Royal College of Physicians expressed concern that for 10 years successive governments had failed to legislate against smoking and that there was plenty of evidence on which to take action. That resulted in the report of the Royal College of Physicians On Smoking in 1962. Across the Atlantic the American Surgeon General had similar concerns and asked the tobacco industry to vet all scientists examining the effects of smoking. His 1964 report was as damning as the British report. Even scientists approved by the tobacco industry found that tobacco was the cause of myriad diseases.

Since that time the tobacco industry has played politics despite the known harmful effects of tobacco being sufficient to warrant action. For 40 years governments all round the world have done as little as possible while the industry has continued to lobby and fund governments and political parties, and health forces have undertaken further research although sufficient conclusions for action had been reached in the 1960s. The Collins and Lapsley paper "Counting the cost: Estimates of the social costs of Drug Abuse in Australia 1998-99" from the Commonwealth Department of Health estimated that the cost to the Australian economy of smoking was \$21 billion, of which \$5.1 billion was lost productivity.

The total social costs of smoking in New South Wales in 1998-99 were about \$6.6 billion. Of those costs, 27.1 per cent were tangible costs and 72.9 per cent intangible costs. New South Wales bore 31.2 per cent of the total Australian social costs of smoking in that year. Of the total New South Wales costs, about 45 per cent was avoidable—that is, they were costs that were potentially susceptible to reduction as a result of the implementation of appropriate public policies. Individuals bore about 58 per cent of the total tangible costs, business about 29 per cent and governments about 13 per cent. Of course, individuals bear 100 per cent of the intangible costs—the costs of pain, suffering and dying. As a result of smoking in 1998-99 the federal budget deteriorated by almost \$200 million, that is, federal smoking-attributable expenditures exceeded smoking-attributable revenues by that amount.

New South Wales tax revenues from tobacco abuse in 1998-99 exceeded smoking-attributable expenditures by almost \$950 million. However, the goods and services tax arrangements introduced in 2000 mean that New South Wales no longer has the power to tax tobacco, and in fact will not make a profit from this death-causing product. These figures do not take into account the costs associated with bushfires caused by discarded cigarette butts. I encourage honourable members to visit the Medline web site where they will find 102,000 articles on the effects of smoking on health. The research done in the 1950s was certainly sufficient to justify political action, yet as late as 1985 John Dollison from the Tobacco Institute continued to argue that the suggestion that smoking causes disease was merely a

hypothesis.

There is no end to the lies of the tobacco industry and, quite frankly, the behaviour of the clubs and pubs industry in this and every other country has been a disgrace. In my view there is prima facie evidence to charge members of tobacco companies with murder. Their irresponsibility is akin to that displayed by principals in the asbestos industry. The Australian Hotels Association [AHA] has always steadfastly resisted anything that might damage its patronage. It has always been funded by the tobacco industry and is, from a political point of view, virtually indistinguishable from it.

An international survey conducted by Stollznow Research for Pfizer Australia in June 2005 showed that 65 per cent of those surveyed considered the timetable for smoking bans was too slow, with 43 per cent of New South Wales respondents saying it was much too slow. Additionally, 64 per cent said it was unacceptable for up to 75 per cent of enclosed rooms to be referred to as "outdoor" to allow smoking in enclosed public places. On top of public opinion, more than 50 years of scientific research shows that smoking maims and kills people. Why should bar staff, gaming room attendants and other hospitality workers in pubs and clubs be exempt from the occupational health and safety standards of other workplaces in Australia?

The tobacco industry has been in bed with the AHA, subsidising it and effectively being a front for the small clique that runs the AHA, which does not give a fig for public health or the welfare of hotel patrons. It cares only about a potential loss of patronage. It is so set in these matters that people like me, who do not go to pubs because of the smoke and have got into the habit over 40 years of not going because we do not like the smoke, do not even figure as possible customers. It is nothing but a disgrace, as has been the lack of action by members on both sides of this House over the past 40 years. I have attended many breakfast functions at which some film or football star has launched a minimal no-smoking campaign about which the relevant Ministers have congratulated themselves—as if these pathetic gestures were something of substance.

The Opposition is kowtowing to the AHA and is as bad as the Government, as we know. The Government will be opposed by the hotels lobby over its gambling revenue, and no matter how much the Government throws the "pubs smoking forever" regulation at the hotels industry, it still will not get that industry's support. Now that the Government will not get that support, it might just as well not hand over the little "pubs smoking forever" token.

I believe the Smoke-free Environment Act is a misnomer. It should be called the "Smoky Environment Act". Because governments have been so gutless, any progress to achieve no-smoking bans in most countries has been by tort. People sue their employer under workers compensation legislation or sue the tobacco industry or others for exposing them to tobacco smoke. That meant that pubs, clubs and restaurants were at some risk of being sued. The main driver of a smoke-free environment has not been governments courageously or even sensibly looking at what is best public health policy; it has been fear of litigation by smokers and non-smokers alike whose health has been injured as a result of these appalling public policies.

Did the Smoke-free Environment Act deliver smoke-free environments? No, of course it did not! It delivered an exemption for pubs and clubs from its introduction until 2007, and gave the Minister the power to grant exemptions and make regulations to define "indoor" and "outdoor" areas. What has the Minister done with this regulation? He has said that if 25 per cent of the total ceiling and wall area is open, that space is defined as "outdoor". Yes, it has a

roof but it is outdoors! And yes, it has walls as well, but it is still outdoors, so far as smoking is concerned! It is like saying that burning leaves are fresh—which is one of the tobacco industry's famous misnomers—or that it is sexy to make yourself sick and old, which is the approach the industry takes. In the tobacco debate everything is turned upside down and oxymorons are absolutely normal.

My bill is simple: it says that the Smoke-Free Environment Act will be about smoke-free environments. It will not be about creating exemptions for pubs and clubs. It will not be about allowing Ministers to define indoors as "outdoors" because it is politically convenient to do so. I call the smoking regulation the "pub smoking forever" regulation because it specifies no date upon which its provisions will lapse. In effect, it says, "If you put a lean-to over the beer garden, mate, you can have smoking in your pub forever"—and a flurry of development applications for lean-tos are being granted even as we debate the bill this afternoon. The pubs and clubs will then say, "We've invested a lot of money in the lean-to over our beer garden; you can't take smoking away from us now". Pub patrons will simply move from one room to another and keep smoking forever. The Government congratulates itself on the progress it is making while 150 people are admitted to hospital every day with tobacco-related diseases and 6,600 people die every year from illnesses caused by tobacco smoking. The kids of New South Wales—including the 15-year-olds who look 18—will continue to go to the pub. The strategy of the tobacco industry has been revealed.

#### **Debate resumed from 9 March 2006.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.12 a.m.]: The strategy of the tobacco industry was revealed in the Roper report of 1978. The report related to a study of 2,500 people aged 17 years and over. Its recommendations in regard to the marketing of cigarettes were to subtly suggest that smoking was part of the initiation into adult life and to link the habit with adult customs, such as drinking and sexual activity. Pubs and their discos are, of course, a vital part of this, as is marketing using models and film product placements that target kids and give tobacco a rebellious image. Kids need to rebel in order to assert themselves. It is part of the transition from doing what they are told to making their own decisions. It is part of growing up and so the tobacco industry targets peer group leaders.

Peer pressure has some magic force that cannot be resisted. Kids will always do what their peer group leaders do. They are following their own age group, which they trust to lead them into adulthood against the existing hierarchy, that is, parental and societal authority figures. What the health forces have to realise—and I am still not sure that all of them do—is that the battleground is the minds of the peer group leaders. The tobacco industry wants to make smoking cool and rebellious; the health forces must make it dumb and only for the gullible. Peer group leaders will lead kids' behaviour as they have always done. Kids will not reject their peer group leaders in regard to tobacco when they follow that peer group in every other aspect of their adolescent decisions.

The key to what kids do is what adults do—not what adults say to do, what adults actually do. Governments and oppositions who say they are opposed to smoking but make regulations to allow smoking forever, and spend less than 0.01 per cent of the health budget on smoking prevention strategies, are seen as phonies by kids, and the kids are right. The Government is sending the message that it says one thing but does another. Smoking is linked to drinking because pubs are adult by definition. You have to be 18 years old to get in and that is where you can smoke. I recall a nine-year-old girl from a family that might have been considered as being from the wrong side of the tracks asking, "When can I smoke? All the other kids do it." "Not yet," was the parental reply, but no time was specified. Of course, it would not have

mattered if it had been specified. Here was a kid who would smoke as soon as she was able, whatever her parents said.

The position of pubs and clubs, and their smoking meccas, are very important. These are the areas that keep smoking "normal". It is not normal to roll up dead leaves in paper, put the paper in your mouth and, after lighting it, suck in the smelly smoke. Every sense that one has tells us that this is not good. It stings the mouth and eyes, it smells foul, burns the tongue and causes coughing fits. Why do we have senses? Do we eat food that tastes "off", or use chemicals that make our eyes stream? Smoking is even less normal now that we know that 55 years ago it was shown by the scientific community to cause cancer—the scientific community on whom we rely for a sensible approach to our society and the planet. But it is still normal in a statistical sense to go into a pub and light up with a group of other addicted people.

Pubs keep adults smoking. For some extraordinary reason the health forces tell us that Australia is doing very well compared with other countries, and praises a fall in the smoking rate of 1 per cent a year. If 20 per cent of the population did not wear seat belts and every time they were involved in a car accident they splattered their brains on the windscreen and smashed their chests on the steering wheel, as used to happen, no-one would say "Gee, 20 per cent of the population is not wearing seat belts, but do not worry, we are undertaking a bit of education and the rate is coming down by 1 per cent a year." Of course not! The Government would say, "This is an outrage. Let us do something about it," and would introduce penalties and create some "norms". It would run an education campaign and think it had done badly if the rate did not drop by 80 per cent or 90 per cent in a year.

I remember when we ran the campaigns against tobacco consumption in the early 1980s and the BUGA-UP people met in coffee shops to talk about trying to get people to stop smoking, we thought that, with a decent blitz of a campaign and the imposition of some bans on smoking in public places, the rate would drop by at least 40 per cent in the first year. We also believed that that 40 per cent per year could be sustained for several years. I think that is true. I believe if you make a serious attempt to change behaviours you can change them. The committee inquiring into smoking, of which I am a member, has heard evidence that with 1 per cent we are doing pretty well by world standards. It is simply not good enough and it basically shows how the paradigms can shift.

During the course of a debate in this House yesterday on a motion for disallowance of regulations relating to a smoke-free environment, members of this House continued to talk about smoking-related diseases. Here is a phrase from the 1960s, a tobacco industry phrase. The tobacco industry refused to admit the evidence that tobacco caused disease. They said "No. There has been some increase in disease, perhaps. It would seem that smoking is higher in those groups and there is a relationship, but we do not know what the relationship is. It certainly is not the cause."

Health practitioners still use phrases such as "smoking-related". That does not mean "smoking-caused". Sir Richard Doll, the late epidemiologist and the greatest scientist not to be awarded a Nobel Prize, in his paper on the 10 elements of causation said that the relationship between smoking and illness was so strong that the word "causation" should be used in common parlance. Once again, the paradigms have not caught up with reality.

Where is our Government leading us on this issue? Nowhere. It continues with its tobacco-sourced funds and supervises the frittering away of taxpayers' money and people's lives. It fiddles while cigarettes burn. My bill stops the farce. The Smoke-free Environment

Amendment (Removal of Exemptions) Bill means just that: a smoke-free environment. It will no longer be the smoky environment Act. It will no longer be the vehicle for the exemption of pubs and clubs from bans on smoking. It will no longer be the vehicle for Ministers to do shady deals with the Australian Hotels Association and Clubs New South Wales and to foist on the State misnamed smoke-free regulations, which allow indoor areas to be reclassified as outdoor areas.

Tobacco industry documents indicate that after the rise of the non-smokers rights movement in the 1960s and the Roper report in the late 1970s, the industry expected that smoke-free laws would be in place by the mid-1980s. A majority of people supported that measure because it was good for public health. What happened? The tobacco industry successfully delayed bans on smoking beyond its wildest dreams. Twenty years have elapsed since the mid-1980s, and we are still waiting. As a health activist, I confess that I thought the Government would act too. In 1983 BUGA-UP invited the media, the advertising industry and the tobacco companies to meet us at Moore Park Road, opposite the Sydney football stadium, at 10 o'clock on a Saturday morning to discuss the morality of tobacco advertising and observe the techniques of tobacco billboard painting. Five camera crews attended and three police cars drove past, observed what we were doing and kept going. We assumed the authorities were not willing to prosecute us. That was clearly the case because that would mean that governments would have to act. For the benefit of members who are interested in the history of that incident, it was aired on a BBC Panorama program by a man called Rose.

No-one realised how slow the Government would be to act. No-one believed that governments were so easily bought and so venal. No-one thought that democracy was so brittle that a small group could do so much against the public interest with so little money. The amount spent by the Australian Hotels Association and tobacco companies on the two major parties in New South Wales in 2004-05—which is the last year the figures are available under our slack disclosure regime—was \$450,000. The cost of smoking to the New South Wales economy—according to figures from Collins and Lapsley and accepted by the Department of Health—is \$6 billion. Yet the major parties continue in the sick Rum Corps tradition. The tragedy is that in our binary system the supposed Opposition is also bought. There are no lofty discussions about progress on this issue. There is only mudslinging between the two old major parties: "We're better than they are."

It is time for political reform in New South Wales. The single-member electorates, which deliver 100 per cent of the power from 40 per cent of the primary vote, are a major barrier to democracy. The lower House is a farce with its 93-person rubber stamp. I do not pretend that the Smoke-free Environment Amendment (Removal of Exemptions) Bill can fix that. It can only deliver smoke-free air, as the name of the original bill suggests. It can stop the endless procrastination on obtaining smoke-free air. It can give the people what the health advocates have sought for 55 years and the majority of people have wanted for 30 years. It can save a lot of lives and a lot of money. It can reset the norms to their proper place.

I could go through the bill clause by clause, but that is not necessary. What is important is the simple concept of the bill. The purpose of the bill is to remove exemptions and make "smoke-free" mean "smoke-free". That should have been done years ago. The purpose of the bill is to save lives and to make the Government and the Opposition agree on getting a smoke-free environment for the good of all. I commend the bill to the House.