

TOBACCO LEGISLATION AMENDMENT BILL 2012

31 MAY 2012 PROOF

Bill introduced on motion by Ms Jillian Skinner, read a first time and printed.

Second Reading

Mrs JILLIAN SKINNER (North Shore—Minister for Health, and Minister for Medical Research) [4.08 p.m.]: I move:

That this bill be now read a second time.

I am very pleased to bring before the House the Tobacco Legislation Amendment Bill 2012. Around the world today governments and communities are celebrating the success of existing tobacco control initiatives. In New South Wales the latest Adult Health Survey has confirmed that the percentage of adults who currently smoke has dropped to 14.8 per cent—down from 15.8 per cent in 2010. These results show that smoking rates in New South Wales have reached an all-time low. This laudable achievement demonstrates the effectiveness of our tobacco control efforts.

I remind the House that the Greiner and Fahey governments were the first in Australia—perhaps the first in the world—to ban smoking in public offices. I well remember those days when people were aghast that a government would do such a thing. We have certainly come a long way. New South Wales was also the first State in Australia to introduce a tobacco display ban in retail outlets so that tobacco products cannot now be visible to community members or displayed in specialist tobacconist shops by 2013.

I supported that legislation, and as I visit communities across New South Wales I am pleased to see the positive results. New South Wales has a history of leading the way in tobacco control in Australia in respect of the selling of tobacco and the prevention of smoking in enclosed spaces.

The next stage of tobacco control is now before us—the regulation of smoking in outdoor public places. The Tobacco Legislation Amendment Bill 2012 seeks to prohibit smoking in a range of outdoor public places in order to better protect public health and to de-normalise smoking in the community. Before turning to the specifics of the bill, I want to talk about the need to decrease the incidence of smoking in the community and exposure to second-hand smoke. The facts about the impact of smoking on our community are clear. Smoking is the leading cause of premature death and disability in New South Wales. The social cost of smoking in New South Wales is over \$8 billion annually, including costs to government, to individuals and to business. Smoking accounts for around 5,200 deaths and 44,000 hospitalisations in New South Wales every year.

All those deaths and hospital admissions are preventable with a strong tobacco control program. We know that smoking causes significant harm to smokers. One in two lifetime

smokers will die from their habit and a third of those deaths will occur in middle age. Smokers are 20 times more likely to develop lung cancer and smoking increases the risk of heart attack by up to six times. There are plenty of shocking smoking statistics. I often think of the personal stories I have heard as I move around the health system and people share with me their experiences of the disease and premature death that comes from smoking.

While the impacts on smokers are horrible, real, and persistent, non-smokers can also be affected by other people's smoking. In adults, breathing second-hand tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases. It can exacerbate the effects of other illnesses such as asthma and bronchitis. The evidence shows that exposing ex-smokers to other people's tobacco smoke increases the chance of them relapsing. For children, inhaling second-hand tobacco smoke is even more dangerous. This is because children's airways are smaller and their immune systems are less developed. Children are more likely to suffer negative health consequences from second-hand tobacco smoke, such as bronchitis, pneumonia and asthma.

The evidence is also clear that opening a window or turning away from a smoker does not prevent the risk of second-hand smoke-related illnesses in children. More than 90 per cent of people hospitalised due to second-hand tobacco smoke exposure are children. This is a shocking statistic. No child in New South Wales should be hospitalised because of the impact of another person's tobacco smoke. For this reason, in 2009 a ban was placed on smoking in a car with a passenger under 16 years of age. However, with children participating in our community in many different settings, further protection is needed.

The Smoke-free Environment Act 2000 has prohibited smoking in enclosed public places for over 10 years. The Government knows it is time to take the next steps in reducing the harm caused by tobacco smoking. The New South Wales Government has already demonstrated its commitment to reducing smoking and its impact in our community. The Government has established ambitious targets to continue to reduce smoking through the NSW 2021 Plan. The plan states that the New South Wales Government will aim to: reduce smoking rates by 3 per cent by 2015 for non-Aboriginal people and by 4 per cent for Aboriginal people; and reduce the rate of smoking by non-Aboriginal pregnant women by 0.5 per cent per year and by 2 per cent per year for pregnant Aboriginal women by 2015. These NSW 2021 Plan targets are reflected in the NSW Tobacco Strategy 2012-2017, which I launched earlier this year. The strategy was developed by considering the evidence base in tobacco control and Aboriginal health and by consulting with key stakeholders, including the Cancer Institute NSW, the Cancer Council NSW, the Heart Foundation NSW and the Aboriginal Health and Medical Research Council.

The strategy commits the Government to activities which together comprise a comprehensive, evidence-based and responsible smoking reduction program in New South Wales. One of the key pieces of the strategy is the introduction of a range of important law reforms supporting smoking cessation and the de-normalisation of tobacco in our community. These include introducing both public outdoor smoking bans and expressly prohibiting the

sale of tobacco over the internet. The issue of internet sales of tobacco is an important but complex issue and while the bill before the House does not incorporate internet sales bans, the New South Wales Ministry of Health is pursuing legal advice to ensure that when legislation is introduced it will be comprehensive and legally effective.

Based on the need to decrease smoking in our community and the health risks associated with second-hand smoke in outdoor areas, the Government's focus will now be on creating smoke-free environments across a range of outdoor public places that are frequented by members of the community, particularly children and families. It is these outdoor areas that this bill focuses on. There are some who argue against smoking bans in outdoor areas, thinking that the health risk of passive smoking in outdoor areas must always be lower than passive smoking indoors. However, the research shows that the level of risk depends on the factors influencing the removal of tobacco smoke such as wind and ventilation and the position of physical barriers such as walls.

Emerging evidence on the effect of smoking on air quality in outdoor locations, such as alfresco cafes, outside buildings and in parks, has found that under some circumstances tobacco smoke affects air quality in outdoor locations just as much as indoor locations. The truth is there is no safe level of exposure to second-hand tobacco smoke. In addition to the health benefits to non-smokers, smoke-free areas are also expected to reduce tobacco consumption by current smokers and will mean there are fewer environments in which smokers can act as role models to children. Broadening smoking bans to popular public outdoor areas will act to reinforce the broad social unacceptability of smoking and ensure that our children do not grow up to think that tobacco is a normal product and smoking is a normal activity. Tobacco should not be thought of as an everyday item like milk or a newspaper.

Smoke-free areas also help ex-smokers from relapsing and support current smokers in cutting down and quitting successfully. The Government wants to continue to reduce the number of people who smoke and to avoid young people taking up the habit. The bill is an important element of this intention and will ban smoking in a range of public outdoor areas. There is strong support from the New South Wales community for the provisions in this bill. A comprehensive public consultation process was undertaken in respect of the Strategic Directions for Tobacco Control in New South Wales 2011-2016 Discussion Paper, which was issued in late 2010, the results of which have informed the development of this bill.

The public outdoor areas in which smoking will be banned under the bill have been chosen because they are key public outdoor settings. They are areas that are often frequented by children and families, areas that can be crowded or areas that people have limited opportunity to avoid. The bill proposes to amend the Smoke-free Environment Act 2000 to prohibit smoking within 10 metres of children's play equipment in public outdoor areas. Included in the bill will be areas such as children's play equipment in local government parks and gardens, State-owned facilities and privately managed places such as fast food outlets, eateries and sporting venues. Going to the playground at the local public park is a popular

outing for families with young children.

Playgrounds provide vital physical and social development for children and opportunities for parents to socialise with other parents. Playgrounds are not an appropriate place for smokers to light up. I understand that some local governments have banned smoking within entire parks and reserves under the Local Government Act 1993 and notices are in place where the local ban extends beyond the playground. The provisions in the bill before the House will not affect additional prohibitions against smoking put in place by local councils.

Another area that is frequented by children and families is the local swimming pool. Public swimming pools often attract large numbers of people, particularly families with children and can become very crowded on hot days. These areas are for exercise and recreation, not for smoking. It is very difficult for parents with their young children to avoid other people's tobacco smoke when they are in a crowded setting like a local swimming pool complex. For this reason, the bill proposes to amend the Smoke-free Environment Act to ban smoking in open areas of all public swimming pools in New South Wales. This means there will be no smoking within the perimeter of the public swimming pool complex. Patrons will need to exit the pool complex if they wish to smoke.

The bill also proposes to amend the Smoke-free Environment Act to ban smoking in the spectator area of public sports grounds, major sporting facilities and other recreational areas when sport is being played. When organised sporting events are held, patrons who wish to smoke will need to leave the spectator area. For the more than 85 per cent of New South Wales adults who do not smoke and are exposed to second-hand tobacco smoke in public places it is the right thing to do. Public sporting fields and other recreational areas where children play sport are environments in which adult smoking sends a message that is directly inconsistent with the promotion of exercise and healthy lifestyles.

Another public outdoor area where people gather and which at peak times become crowded is public transport stops and stations. Non-smoking commuters often cannot move away from a smoker at a bus stop without losing their place in the queue. Many complaints have been made to me about this aspect of smoking. For people with illnesses such as asthma, inhaling other people's tobacco smoke in the bus queue can directly impact their health. Smoking is already banned in enclosed areas of public places in New South Wales, including some areas of public transport stops and stations. The bill takes this one step further by amending the Smoke-free Environment Act to extend the smoking ban to cover the public outdoor areas of bus stops, railway and light rail platforms, ferry wharves, taxi ranks, and light rail stops regardless of whether the area is covered, and this will include the area where people queue or gather. This will be welcome news to the users of the New South Wales public transport system who now will be able to enjoy a smoke-free journey.

As smoking is already prohibited in all enclosed public places and buildings, it is common for smokers to congregate immediately outside the entrances to those places and buildings. Overseas visitors frequently comment to me that they are puzzled by the congregations of

people, particularly outside offices. People smoking in these areas has the effect of forcing people entering and leaving those buildings to run the gauntlet through groups of smokers clustered around doorways, thereby exposing them to second-hand tobacco smoke and the stench of that smoke. The bill addresses this issue by proposing to amend the Smoke-free Environment Act to ban smoking within four metres of a pedestrian access point to a public building, which will provide protection from tobacco smoke to those entering or exiting a building. The prohibition on smoking within four metres of a pedestrian access point to a building will apply to a range of public buildings, such as professional, trade, commercial and other business premises, local and government premises, shopping centres, malls, and plazas, and, from 2015, licensed premises and restaurants.

The prohibitions on smoking at transport stops and within four metres of a pedestrian access point to a public building are aimed at protecting non-smokers from inhaling second-hand smoke in areas they cannot easily move away from and preventing smokers congregating in areas where other individuals are required to pass through. It is not aimed at prohibiting smoking entirely in public areas. Therefore, appropriate defences are included in the bill in respect of smokers who are not congregating at light rail stops, taxi ranks, bus stops or within four metres of a pedestrian access point to a public building but are passing through the area.

I know that the issue of smoking in common outdoor areas is an issue of concern to people attending health services and medical clinics, where consumers' health can be expected to be more vulnerable and the potential impacts of smoking possibly greater. Smoking on hospital grounds is an all too common sight when I attend meetings at these venues. I see the shadow Minister nodding in agreement. Patients, staff and visitors should not be exposed to second-hand tobacco smoke at health facilities. Smoking is currently banned by law in enclosed public places such as hospital buildings. Smoking is also banned on most parts of hospital grounds under the NSW Health smoke-free workplace policy. However, in practice, many health consumers, visitors and staff do smoke outside on NSW Health grounds and enforcement has been difficult for the local health districts to manage, given the complex and sensitive environment of hospital campuses and the transient nature of the visiting population.

The bill proposes to address this issue by amending the Health Services Act to allow local health districts and statutory health corporations to enact by-laws to ban smoking at public hospitals, health institutions and health services. If, as part of local decision-making by local health districts and statutory health corporations, the by-laws are enacted, under the bill it will become an offence to smoke on NSW Health grounds. I am pleased that NSW Health campuses will be able to lead the way with the implementation of outdoor smoking bans to protect those in our community whose health is vulnerable as well as the staff, volunteers, carers and visitors who are working to promote the good health of the community.

I now turn to a concern often raised to me by members of the New South Wales community: smoking in outdoor dining areas. Smoking is currently prohibited in enclosed public areas of cafes, restaurants, hotels and clubs but is still permitted in outdoor dining areas. Smoking in

these settings exposes staff, customers and pedestrians to second-hand tobacco smoke. The fact that smoking is currently permitted in outdoor dining areas can make it difficult for non-smokers to enjoy a meal in an alfresco environment. This is particularly the case for families with children. The ability of people to smoke in these situations also makes it difficult for recent quitters to maintain their resolve.

This issue is important for the amenity of public outdoor settings, but the main concern is for people's health and wellbeing. Therefore, the bill seeks to amend the Smoke-free Environment Act to prohibit smoking in commercial outdoor dining areas. The definition of "commercial outdoor dining area" will capture: a seated dining area being an area in which seating is provided and in which food that has been purchased and served on plates or packaged for immediate consumption is consumed; with respect to restaurants and licensed premises such as pubs and clubs, within four metres from the seated dining area; and within 10 metres of a place where food is sold or supplied for consumption at a food fair, such as the Hyde Park Noodle Markets.

The bill has been carefully drafted to balance the protection of public health and the legitimate interests of venue owners and operators. Therefore, the bill prohibits smoking in commercial outdoor dining areas, but only while food is being consumed or available for consumption at seated areas, or in the case of a food fair only while the food fair is being held. For example, if a pub has a kitchen that provides food for patrons' consumption in an outdoor seating area between the hours of 5.00 p.m. and 9.00 p.m., after the kitchen is closed and patrons have stopped eating the outdoor area will not be considered a food consumption area and, provided the other requirements of the Smoke-free Environment Act are complied with, smoking will be allowed.

The SPEAKER: Order! It being 4.30 p.m., with the indulgence of the House I intend to allow the Minister to finish her speech.

Mrs JILLIAN SKINNER: It is important to note that the new provisions in the bill prohibiting smoking in outdoor commercial dining areas will not commence until July 2015. I acknowledge that there has been some criticism of the staging of this provision. However, as the ban on smoking in commercial outdoor dining areas is likely to have the greatest effect on the community and business, it is appropriate to give businesses and the community sufficient time to adjust to the changes to ensure a high level of awareness and compliance. This sort of time frame was used by the former Government when such matters were introduced. For example, under the previous Government licensed premises had three years to fully implement the ban on smoking in enclosed areas of pubs, clubs and nightclubs under the Smoke-free Environment Act 2000.

New South Wales Health considers that this staged approach contributed to the high level of compliance with smoke-free environment laws achieved across licensed premises after the commencement date. Rushing the introduction of such a significant piece of public policy would be detrimental to its effectiveness. The Government is keen to ensure that the

community is aware and complies with the proposed requirements. As such, a comprehensive community education campaign will be conducted to ensure a high level of awareness and compliance. The campaign will tell people which locations are covered by the smoking bans, when the bans will start and the consequences of disregarding the laws. The Government knows from past experience that sometimes it takes time for people to accept new laws.

As such, the Government will focus primarily on an educative approach to enforcement during the early stages of implementation in order to ensure understanding and ongoing compliance with the laws. We need to remember that tobacco kills 50 per cent of its long-term users, causes heart disease, cancer, gangrene, strokes and a myriad of other health problems. There is no such thing as a safe level of exposure to second-hand tobacco smoke. In conclusion, I acknowledge the work of local councils, the Heart Foundation and the Cancer Council in implementing smoke-free outdoor areas policies across New South Wales. This bill will build on the significant progress already achieved and the readiness of the New South Wales community for additional protections from tobacco smoke. I commend this bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.