

Second Reading

The Hon. MELINDA PAVEY (Parliamentary Secretary) [3.53 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

I am pleased to bring before the House the Tobacco Legislation Amendment Bill 2012. I note the presence in the gallery of Mr David Currow, head of the Cancer Institute of New South Wales. 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. What a fantastic achievement, which demonstrates the effectiveness of our tobacco control efforts.

Indeed, since the Greiner-Murray Government, New South Wales has been at the forefront of tobacco control in Australia, and around the world. The Greiner-Murray and Fahey-Armstrong governments were the first in Australia, perhaps the first in the world, to ban smoking in public offices. 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 and will be banned in specialist tobacconist shops. So there is a history of New South Wales leading the way in Australia in tobacco control in respect of the selling of tobacco and smoking in enclosed spaces. The next stage of tobacco control is now before us; that is, regulating smoking in outdoor public places. Other States have already placed restrictions on smoking in outdoor public places, and it is now time for New South Wales to do the same. The bill before the House seeks to do just that. It will prohibit smoking in a range of outdoor public places so as to better protect public health and de-normalise smoking in the community.

Before turning to the specifics of the bill, I want to talk about the need to decrease exposure to second-hand smoke and the incidence of smoking in the community. 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 costs of smoking in New South Wales are more than \$8 billion annually, including costs to government, to individuals and to business. Smoking accounts for around 5,200 deaths and 44,000 hospitalisations a year, all of which are preventable admissions with a strong tobacco control program.

We all know that smoking causes significant harm to smokers. One in two lifetime smokers will die from their habit. 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 more shocking statistics, and I think often of the personal stories of those affected by the disease and premature death that come with smoking, stories that people share with me as I move around the health system.

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 relapsing to smoking. For children, inhaling second-hand tobacco smoke is even more dangerous. This is because children's airways are smaller and their immune systems less developed, which makes them more likely to suffer negative health consequences of 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 illness in children. More than 90 per cent of those 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; but 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 more than 10 years. This Government knows it is time to take the next steps in reducing the harm caused by tobacco smoking. For these reasons, the New South Wales Government has already demonstrated its commitment to reducing smoking and its impact in our community, by establishing 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.

I am proud that the O'Farrell-Stoner Government, through the Minister for Health, Jillian Skinner, has introduced the first ever statewide target in New South Wales to reduce smoking in pregnancy, which has health impacts not only for pregnant women or mothers, but also for the unborn child. It is also appropriate to have strong and ambitious targets relating to Aboriginal smoking, as smoking accounts for a larger percentage of the gap in life expectancy between Aboriginal and non-Aboriginal people in New South Wales.

These 2021 plan targets are reflected in the NSW Tobacco Strategy 2012-2017 launched earlier this year by the Minister for Health. 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 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.

Based on the need to decrease smoking in our community and the health risks associated with second-hand smoke in outdoor areas, our focus now needs to be on creating smoke-free environments across a range of outdoor public places which are frequented by members of the community, particularly children and families. The bill focuses on those outdoor areas. These amendments will once again position New South Wales as a leader in tobacco control. Some people argue against smoking bans in outdoor areas, believing that the health risk of passive smoking in outdoor areas must always be lower than passive smoking indoors. However, research has found that the level of risk depends on factors influencing the removal

of tobacco smoke, such as wind, 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 at outdoor locations just as much as at indoor locations. The truth is there is no safe level of exposure to second-hand tobacco smoke.

In addition to the health benefits for non-smokers, smoke-free areas are expected to reduce tobacco consumption by current smokers. It also will mean that there will be fewer environments in which smoking is role-modelled to children. Broadening smoking bans to popular public outdoor areas will act to reinforce the broad social unacceptability of smoking and ensure our children do not grow up thinking that tobacco is a normal product and smoking is a normal activity. After all, tobacco is not an everyday item like milk or a newspaper. Smoke-free areas also help ex-smokers to not relapse and they support current smokers in cutting down and quitting successfully. We want to continue to reduce the number of people who smoke and help young people to avoid taking up the habit. This bill is an important element of that intention.

The provisions in this bill, which were first announced on 21 February under the NSW Tobacco Strategy 2012-2017, represent the most widespread smoke-free reforms in Australia. The bill proposes to amend the Smoke-free Environment Act to prohibit smoking in the following outdoor public settings: within 10 metres of children's play equipment in outdoor public spaces; at public swimming pools; in the spectator area of sportsgrounds, including major sports facilities; at public transport stops and platforms, including taxi ranks; within four metres of a pedestrian access point to a building; and, from 2015, in commercial outdoor dining areas. In addition, the bill proposes to amend the Health Services Act to enable a local health district or statutory health corporation to enact by-laws prohibiting smoking on Department of Health grounds. If such by-laws are enacted, the bill ensures that it will be an offence under the Smoke-free Environment Act to smoke on hospital grounds. Those provisions in the bill enable local health districts and statutory health corporations to exercise local decision-making to determine which part of their grounds should be smoke free.

There is strong support from the New South Wales community for these proposals and a comprehensive public consultation process has informed the development of this bill. The Strategic Directions for Tobacco Control in NSW 2011-2016 Discussion Paper was issued in late 2010 and a total of 802 submissions on the document were received from members of the public, non-government organisations, public health advocates, government agencies and industry. In December 2010 the Ministry of Health, together with the Cancer Institute NSW, hosted a stakeholder forum on the proposed actions in the discussion paper. More than 40 people representing industry, public health and government agencies attended to express their views.

The New South Wales Government has carefully considered the feedback from the public on the discussion paper, as well as levels of community support for additional smoke-free settings through surveys, available evidence on the health effects of outdoor smoking, and the tobacco control measures of other jurisdictions. This feedback has informed the content of the bill before the House, which I now turn to in detail. Under the bill, smoking will be banned in a number of key public outdoor settings that are often frequented by children and families, that can be crowded or that people have limited opportunity to avoid. The bill proposes to amend the Smoke-free Environment Act to prohibit smoking within 10 metres of children's play equipment in public outdoor areas. 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.

Prohibiting smoking in public playgrounds is also an important step in de-normalising tobacco consumption and it sends a positive message to children about not smoking. The provision in the bill will apply to children's play equipment in local government parks and gardens, State-owned facilities such as Sydney's Centennial Park, and privately managed places such as fast food outlets, eateries and sporting venues. The banning of smoking within 10 metres of playground equipment is a responsible initiative to protect and promote public health and de-normalise smoking in the community. Some local governments have already 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.

Smoking bans in children's playgrounds are strongly supported by the community. A NSW Health omnibus survey conducted in May 2010 reported that 87.2 per cent of respondents support smoking bans in children's public playgrounds. Another popular public outdoor setting is the local swimming pool. Public swimming pools often attract large numbers of people, particularly families with children, and they can become very crowded on hot days. These areas are for exercise and recreation, not for smoking. It is very difficult for people to avoid other people's tobacco smoke when they are with young children 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. That means no smoking within the perimeter of the public swimming pool complex. Patrons will need to exit the pool complex if they wish to smoke.

Another popular public outdoor setting used for exercise and recreation is public sportsgrounds. Under the bill, the spectator areas of public sportsgrounds, major sporting facilities and other recreational areas will become smoke free 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 but 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. A range of sports are played in these venues, from Little Athletics and Auskick for children to competition netball and club cricket or soccer for young people and recreational football and hockey for adults. Banning smoking in those environments represents a significant opportunity to reinforce in children and teenagers important messages about healthy lifestyles and, in particular, not smoking.

Sport and smoking just do not go together. Many of these outdoor venues are on council-owned land and we know from annual surveys conducted by the Heart Foundation that many councils have been progressively introducing their own smoking bans to meet community demand. The most recent survey conducted by the Heart Foundation found that 89 of the 152 New South Wales councils have adopted some form of smoke-free policy in their local area: 88 to 99 per cent of policies cover children's playgrounds; 51 to 57 per cent of policies cover swimming pools; and 69 to 78 per cent of policies cover sporting fields. This is a great result for local government, which has accepted the views of local communities about the need to

protect public health from tobacco smoke.

However, there is a disparity between smoke-free policies in metropolitan and rural areas, with 86 per cent of New South Wales metropolitan councils having a smoke-free policy compared with 48 per cent of regional councils. The latest data from the New South Wales Adult Health Survey found that adult smoking rates are disproportionately higher in non-metropolitan areas of New South Wales, with adult smoking rates of 20.7 per cent in remote and very remote areas of New South Wales compared with a low of 14 per cent in major cities of New South Wales. The bill will ensure that all families and children will have access to smoke-free playgrounds, smoke-free swimming pools and smoke-free spectator areas of sporting grounds in their local area. The Ministry of Health will work closely with local government to assist them in displaying signs at entrances to the smoke-free areas and conducting other education activities so that the community is aware that it is not okay to smoke in outdoor recreational areas.

Other public outdoor areas where people gather and which at peak times become crowded are 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. For people with illnesses such as asthma, inhaling other people's tobacco smoke in the bus queue can directly impact on 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. 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 completely smoke-free journey. This will affect a huge number of passenger journeys each year, including more than 200 million bus trips in the Sydney metropolitan region and more than 300 million journeys on the CityRail network.

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. This 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. 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. This 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.

Smoking 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 or visit these venues. 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 also is 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 amend 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, the Smoke-free Environment Act will provide associated penalty and enforcement powers. 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 protect 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 with me by members of the New South Wales community: people smoking in outdoor dining areas. Smoking is currently prohibited in enclosed public areas of cafes, restaurants, hotels and clubs but is 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 or a drink 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. A number of councils in New South Wales have introduced by-laws to prohibit smoking on municipal land used for commercial outdoor dining. The 2011 Heart Foundation survey found that 20 per cent of councils had introduced a smoking ban in outdoor dining areas. Those councils are to be commended for their forward thinking and for listening to their communities. In November 2010 a survey conducted by the Cancer Council NSW found that eight out of 10 cafe and restaurant owners and managers believe that a statewide smoking ban in outdoor dining areas would be fairer than current arrangements and would create a better environment for customers.

There is a great deal of public interest in and support for banning smoking in outdoor dining areas. In response to the public consultation on the draft strategy undertaken by the New South Wales Ministry of Health, 701 of the 802 submissions received expressed support for the proposed measures on extending smoke-free outdoor areas generally, including 110 submissions that explicitly endorsed the action on outdoor dining areas. The 2008 New South Wales population health survey found that 39.5 per cent of adults would be more likely to frequent hotels and licensed premises if there was a total ban on smoking and only 4.3 per cent would be less likely to frequent hotels and licensed premises if there was a total ban on smoking. In 2011 a Newspoll survey conducted in New South Wales found that 83 per cent of respondents believe that smoking should be banned from public outdoor spaces where

food or drink is served.

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; 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 Night Noodle Markets.

The bill has been carefully drafted to balance the protection of public health and the legitimate interests of venue owners and operators in creating an enjoyable and attractive environment for all patrons, including smokers. Therefore, the bill prohibits smoking in commercial dining areas, but only while food is being consumed or is 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.

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. That is three years away. I acknowledge that there has been some criticism from public health advocates about 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 businesses, it is appropriate to give businesses and the community sufficient time to adjust to the changes to ensure a high level of awareness, understanding and compliance. It is important to note that 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 introduced by the previous Government. NSW Health considers that this staged approach contributed to the high level of compliance with smoke-free environment laws that was 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.

I am pleased that this bill enhances the smoking control legislation already in place in New South Wales in order to further protect public health. It is noted that a number of other Australian jurisdictions, including Queensland, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory, have successfully introduced smoke-free outdoor dining areas. It is time for New South Wales to do the same.

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 law. 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 law. We need to remember that tobacco kills 50 per cent of its long-term users and causes heart disease, cancer,

gangrene, strokes and myriad other health problems. There is no such thing as a safe level of exposure to second-hand tobacco smoke.

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. The bill will build on the significant progress already achieved and the readiness of the New South Wales community to accept additional protections from tobacco smoke. It is overwhelmingly clear that we need to increase the range of smoke-free areas to protect children, families and workers from the effects of second-hand tobacco smoke and to provide greater opportunity for smokers to quit the habit. The bill provides the protection necessary for the community. It will help to de-normalise smoking and prevent young people from taking up smoking. It also will help smokers to quit for good. I commend the bill to the House.