

## TOBACCO PRODUCTS REGULATION (OUTDOOR EATING AREAS)

### AMENDMENT BILL

Wednesday, 6 June 2007

**The Hon. D.G.E. HOOD:** This is a very simple bill which, in essence, seeks to expand the current legislation which prohibits smoking inside venues where food is served: for instance, cafés and the like. This bill merely seeks to expand that provision to include outside the same venues.

It is not a radical law, and it already exists in two states of Australia. Queensland and Tasmania already have legislation which is almost identical to what I am proposing. Of course, it also mirrors legislation in many states across the United States and other countries, including Canada. This bill seeks to insert new section 46A into the Tobacco Products Regulation Act to outlaw smoking in outdoor eating areas. Thursday 31 May 2007 was World No Tobacco Day, a World Health Organisation sanctioned day, which this year has the slogan 'Tobacco: deadly in any form or disguise'. Among other goals, the WHO says that World No Tobacco Day is 'to encourage countries and governments to work toward strict regulation of tobacco products'.

On 1 November this year, a ban on smoking indoors in many South Australian entertainment venues will come into force. We are the last state—only in front of the Northern Territory (which, of course, is not a state) which has no indoor smoking ban—to implement the indoor smoking ban. In 2006, *The Australian and New Zealand Journal of Public Health* found that the new smoke-free workplace laws, including in pubs and clubs, saw no change in patronage in bars and gaming venues; and these same patrons, when surveyed, expected not to change their level of patronage once tougher smoking laws came into effect across Australia that year.

The report also found that the community understood the smoke-free bar and gaming venue laws and were able to anticipate or articulate their impact. South Australia is lagging behind. Other states' anti-tobacco regimes have resulted in the Australian Medical Association awarding the Northern Territory the so-

called dirty ashtray award. South Australia was the lowest ranking state, in the AMA's perception, in respect of the awarding of that particular award. This poor ranking for South Australia's anti-tobacco measures matches ratings given by other anti-tobacco lobby groups. I look to Queensland as an example, which finished second to Western Australia in the AMA's dirty ashtray awards.

I might note that it is understandable that Western Australia is leading the charge after it saw the economic cost of a permissive attitude to smoking. A report called 'Counting the Cost of Tobacco' released in July 2004 identified that smoking had cost Western Australia \$1.6 billion per annum, which is equal to half the yearly cost of running that state's entire health system. We are up to about one-fifth of the cost; let us not let it get as bad as Western Australia. Last Wednesday during Matters of Interest, I spoke about the UN's International Day of Families. I am concerned that economics is taking precedence over the family. It saddens Family First that it takes economic arguments such as the impact on our state budget for governments to take action. It should not have to come to that.

Queensland has some comprehensive bans on smoking outdoors, as I alluded to at the beginning of my remarks. The ban Family First is attracted to is banning smoking specifically in outdoor eating areas, that is, wherever food is served. The bill I introduce today is based on the Queensland model, as I said, although it does not go as far as the Queenslanders have regarding fenced areas and some aspects of private residences. In essence, under this bill you will not be allowed to smoke in any outdoor eating area, including partially enclosed and alfresco eating areas and outdoor food courts.

I will cite some important statistics concerning tobacco smoking to add weight to the importance of the bill. ASH Australia reports that smoking causes 20 per cent of all cancers and 21 per cent of all heart disease in Australia. Based on other ASH data, smoking costs Australian taxpayers \$865 million per annum, which equates to 7 per cent of state revenue or one-fifth (that is, 20 per cent) of the entire health budget of the state. When you consider that it causes 20 per cent of all cancers and 21 per cent of all heart disease, it stands to reason that

20 per cent of the health budget is taken up with treating the consequences of allowing this practice.

ASH also reports that smoking kills more Australians than the combined effects of falls, drownings, car accidents, suicides, homicides, poisonings, diseases, cancers and other causes, AIDS, and other drug dependence—more than all these combined. If honourable members looked at the amount of time given in this place to the discussion of those subjects, they would recognise that we are really not getting serious about the topic. Given the number of South Australians whom smoking kills and the significant burden placed on our health system, it is time to take some action.

Nonsmokers who suffer from long-term passive smoking—for instance, workers in the hospitality industry—have a 20 to 30 per cent higher risk of developing lung cancer, and the risk increases with the extent of exposure. Evidence also exists that passive smoking can increase the risk of nose and sinus cancers. People who do not smoke but who have worked where so-called second-hand tobacco smoke is prevalent have the risk of contracting lung cancer increased by somewhere between 12 and 19 per cent. Research released late last year by the Hokkaido University shows that young smokers who quit smoking early can experience a remarkable recovery from the arterial damage that has been caused.

In November 2006, the journal *Human Reproduction* published Spanish and Portuguese research which had discovered that heavy smoking in women contributed significantly to infertility. On 16 April 2007, *The Advertiser* reported *Medical Journal of Australia* claims that an increasing number of women are dying from a smoking-related breathing condition called chronic obstructive pulmonary disease—some 2 300 deaths nationally in 2003. Smoking is identified as responsible for more than a 60 per cent increase in the risk of contracting this disease.

Against the background of this data, it would be negligent for us to allow South Australian families to continue to lose mothers, fathers, grandparents or

children unnecessarily. Research shows that the more we make smoking unpalatable in the public arena, smoking rates do go down. France, and Europe in general, was once a place where people seemed to smoke everywhere. In fact, I was in France last year and was quite surprised when, whilst having breakfast one morning, a dog came and sat on a stool next to me and joined us for breakfast. I can assure you that there was lots of smoking going on in the restaurant. However, I digress. Even France is cottoning on to this view, with new sweeping bans. The Russian state Duma voted recently 406 to zero to reintroduce a smoking ban in public places—particularly in workplaces, trains, public transport, schools, hospitals, and government buildings. These countries, some of which I have visited, have had appalling attitudes to smoking but are now becoming much more vigilant in terms of reducing the level of smoking in their communities.

I fear that South Australia may not be leading the fight against smoking if we hold back, as we have been for some time. I now turn to some specific aspects of the bill just to be clear about what it does and does not do. The bill does not ban smoking on a park bench in places such as national parks, truck stops, highways or local football parks. For the record, this is not a ban on smoking in outdoor drinking areas. Therefore, outdoor beer gardens, for example, are safe under this legislation, but I will explain specifically what I mean by that.

If you have, say, a counter meal in that area, it is an outdoor eating area but, if you have prepackaged food, such as beer nuts, potato chips and the like, it is not an outdoor eating area. I make that clear for the Australian Hotels Association and others in the hotel and hospitality industry. Family First is not targeting areas that have been established for outdoor drinking in preparation for the 1 November bans. It is quite simply anywhere that food is served. If it is a designated area, for example, a beer garden, where food is not served, that area would be exempt from this proposed legislation.

I have explained what outdoor eating areas are not, so that it is clear what areas I am talking about in relation to this bill. The primary target is table settings made available outside restaurants or food outlets, whether alfresco

dining, food court or whatever. Furthermore, any outdoor eating area made available for employees to eat their lunch must also be smoke free.

I state for the record that tablecloths are irrelevant to the legislation. Our reasoning for these decisions is two fold: first, to prevent passive smoking for the likely other patrons in close proximity and the service staff, who are either taking meals to tables or cleaning up people's tables in the outdoor eating area; and, secondly, to a lesser extent, to improve the outdoor dining experience for patrons by not having them put up with cigarette smoke, dirty ashtrays and so on in outdoor eating areas.

In simple terms this legislation will provide that, when people go to cafes, restaurants or whatever that happen to have outdoor dining areas, they will not be able to smoke at those tables. In legal terms, an outdoor eating area is an area that is not enclosed. The definition invokes the present definition in the act that defines an enclosed area as an area that is no more than 70 per cent of the area enclosed against the open air. One of the merits of Family First's proposal is that you do not need to go to the extent of a silly measuring exercise to work out whether an area is 75 per cent enclosed. It is a simple bill: if an area is outdoors and it is an eating area, then under this legislation you cannot smoke there—it is as simple as that. The difficulty at the moment is determining to what extent an area is covered or not covered, as the current legislation requires and is overly complex in my view.

It is worthwhile explaining how things would work in a foodcourt, because some have suggested it is a grey area under this legislation. I do not think that is true. There will be a strict liability offence for both the lessor of the food court area but also every food service outlet if a person is found smoking in that area. However, the defence in subsection (5) to that offence is that they did not provide ashtrays, matches, lighters or any other thing designed to facilitate smoking, and the person was not aware and could have reasonably been expected to be aware that the contravention was occurring, or they saw the person smoking and requested they stop and told them that they would be committing an offence if they did not stop smoking. Therefore, prudent food

outlet owners and lessors are safe if they take entirely appropriate and sensible steps to stop people smoking in those areas.

Under this legislation the minister can exempt any person or class of persons from the effect of this bill. I flag on behalf of Family First that it is certainly not our intention that this bill is cosmetic only and we hope that such exemptions would be rare and soundly justified when put in place. In our view the minister's discretion ought be exercised only when there is a strong and compelling case that there ought to be diversion from the general policy of making outdoor areas completely smoke free.

I have outlined the types of outdoor eating areas that are caught but, having considered debate in relation to this bill, if the minister believes an outdoor eating area has been unintentionally caught by the bill and there is a compelling case for leaving it out, the exemption can be granted. Family First thinks this exemption ought never be granted, but it is provided there so the minister has the flexibility to be able to provide for exemptions under certain conditions.

In conclusion, this bill is no more draconian and unreasonable than banning smoking inside passenger vehicles where children are present. I have given the data on passive smoking and the harm of smoking generally and outlined that South Australia is off the pace with respect to anti-smoking reforms. Very simply, this bill expands the no smoking law currently that applies indoors at cafes, restaurants and the like to take it outdoors as well.

I have had very positive feedback from many people—in fact, probably the most positive feedback on any bill I have presented since I have been in this place. I think it is time for us to take a serious approach to this issue. Why should people who are not smokers not be able to go to a café and enjoy lunch with family and friends? Given that only 18 per cent of the adult population are smokers, why should the 82 per cent not be able to enjoy eating outdoors? I commend the bill to members.