

FACT SHEET

PUBLIC HEALTH AMENDMENT (TOBACCO-FREE GENERATION) BILL 2014

On Tuesday 21 August 2012 the Legislative Council resolved in the affirmative a motion supporting, inter alia, the creation of a tobacco-free generation (TFG) of children born this century in Tasmania, as well as progressively reducing the availability of tobacco products in Tasmania.

At that time no Bill was before the Parliament to progress this proposition, nor has a government since introduced such a Bill. The matter was referred to the Commissioner for Children for consultation with the generation of young people who would be affected by the proposal. A report was prepared in 2013, and is expected to be available soon. Similarly, the Cancer Council of Tasmania carried out a survey of public opinion on smoking matters including questions on TFG in 2013.

The **Public Health Amendment (Tobacco-Free Generation) Bill 2014** is a Private Members Bill devised and developed to implement the motion passed by the Legislative Council in 2012. Tobacco products and anti-smoking legislation are defined and contained within the *Public Health Act 1997*, thereby ensuring that oversight and enforcement is provided for in one Act under the auspices of the Director of Public Health, who has a wide range of powers.

This Bill is just one of many measures undertaken to reduce smoking rates in Tasmania, which are outlined in the Tobacco Action Plan 2011-2015 and the Year 4 Report, available from the Department of Health and Human Services (DHHS) on their website. The Tobacco-Free Generation proposal is incorporated in the Tobacco Action Plan Year 4 Report.

The Bill **WILL**:

- Prevent the sale of tobacco products to persons born since the year 2000, that is, members of the tobacco-free generation.
- Prevent the supply of tobacco products by licensed tobacco sellers, or their agents, to members of the tobacco-free generation.
- Provide that members of the tobacco-free generation must not give false identification to tobacco sellers and there would be a penalty for doing so.

- **NOT** prevent members of the tobacco-free generation from smoking, or attempting to purchase tobacco products. Members of the tobacco-free generation would not incur any penalties for smoking.
- **NOT** prevent friends and family from giving tobacco products, such as cigarettes, to members of the tobacco-free generation, however, they must not SELL tobacco products to the tobacco-free generation.
- **NOT** prevent “botting” of cigarettes by members of the tobacco-free generation. They would be able to acquire cigarettes from another person other than a retailer or agent and would not incur any penalties for doing so.

This Bill does not create an overnight ban on sales of tobacco products to a large group of hundreds of persons, as occurred in 1997 when the smoking age was suddenly raised from 16 to 18 years. At that point 16 and 17 year olds who had been able to buy cigarettes on one day, were not able to do so the next day. There were in fact no problems reported at that time; no smuggling and no increased incidence of crime.

In effect the **Public Health Amendment (Tobacco-Free Generation) Bill 2014** gradually raises the age for tobacco products to be sold to a person, from 18 years to 21 years, then again to 25 years. The age of 25 years has been chosen as that is the age at which, according to currently available research, the young person’s brain and ability to make decisions, reaches maturity. Further research by 2025, ten years from now, into smoking and the implementation of hitherto emergent federal government initiatives, such as reductions in nicotine levels or other changes to tobacco product engineering, may also alleviate smoking prevalence. It gives an opportunity for the government of the day and the Parliament, to see how well the legislation is operating and then to make changes if any problems emerge. The Legislative Council has a built in opportunity to look at this legislation again, make certain that it is operating effectively, and that any potentially unforeseen consequences be appropriately moderated or amended.

The Bill:

- **Provides for a review of the legislation, which must then be tabled in Parliament, when the tobacco-free generation reach the age of 21 years, in 2021;**
- **Provides for another review of the legislation when the tobacco-free generation reach the age of 25 years, in 2025 ; and**

- **Provides that the reviews of the legislation be conducted by the Director of Public Health, who can recommend amendments to improve the legislation so that it is more effective and efficient.**

The Director of Public Health is the statutory office holder under the *Public Health Act 1997* and must be a medical practitioner with public health qualifications. The Director is required to provide reports on the State of Public Health on a five yearly basis. The reviews of this proposed legislation are not intended to be onerous, time and resource consuming, or as extensive as the State of Public Health reports.

The *Public Health Act 1997* provides for guidelines to be issued on any matter and there are guidelines available which describe elements of this Bill, such as “proof of age”, as defined in the Act as a being a driver’s licence or a passport. Additional forms of proof of age are outlined in the [Guidelines for the Sale of Tobacco, March 2012](#). All public health guidelines are available to members of the public from the DHHS and its website. A proof of age identification for this purpose can also be obtained from Service Tasmania.

There are no exemptions for tourists who may be members of the tobacco-free generation, however, there is nothing in this Bill to prevent tourists from bringing with them sufficient personal supplies of their own tobacco products for the duration of their stay. Tourists are generally accustomed to visiting countries with different laws. Tourism advisories provide information about local customs and laws, such as alcohol not being permitted in many Islamic jurisdictions.

Those concerned about potential age discrimination should examine Section 5 of the Principal Act, which says that any provision of the *Public Health Act 1997* which is inconsistent with a provision of any other Act, prevails over the latter provision to the extent of that inconsistency.

Those concerned about the Constitution relating to trade between states should be reassured that tobacco sales are not banned altogether and that tobacco may continue to be sold to any person born prior to the year 2000.