

Thursday 24th August 2017

PUBLIC HEALTH AMENDMENT (HEALTHY TASMANIA) BILL 2017 (No. 35)

[12.25 p.m.]

Mr DEAN (Windermere) - Mr Deputy President, this bill should interest all members in the greatest way possible - health, to deal with the health of future generations. It is incumbent on us to put proper legislation in place to ensure we do everything we can, not only for the current people in this state, but for the generations after.

This important bill creates laws to regulate the use of electronic cigarettes in public places. The bill tidies up some loopholes relating to the use of e-cigarettes in public places, their sale and display. It makes no outstanding innovation or evidenced-based regulation in tobacco control.

The Government has said it will help to improve the health of Tasmanians. This bill does little to improve the health of Tasmanians and is unlikely to have any affect on the smoking rates of adults or children.

Those of us who have taken an interest in tobacco control know the foremost effective actions to reduce smoking at a whole-of-population level are higher taxes controlled by the federal government, smoke-free areas, targeted mass media campaigns and support for people wanting to quit. They are considered to be four very vital points in controlling tobacco or cigarette smoking.

This Government cut funds to mass media campaigns for anti-tobacco campaigns when the Commonwealth money ran out about June 2016. For a whole year the Government dropped the ball - it failed to act and it failed to allocate resources to evidence-based mass media campaigns. It is no wonder our hospitals are bursting at the seams in relation to patients and people seeking support to quit their cigarette/tobacco smoking.

In fact, 70 per cent of acute admissions to the Royal Hobart Hospital are smokers, who are nine times as likely to be admitted as nonsmokers. When a minister starts talking about congestion in our hospitals, here is an obvious way for the minister to do something about it. That is, get on top of tobacco smoking.

I wholeheartedly support many aspects of this bill. I would like to make some amendments which will improve the bill and provide an opportunity to protect children and the current generation of young people, particularly by creating smoke-free areas around schools, hospitals and surrounding footpaths. My proposed amendments were circulated to members electronically yesterday.

It is important to improve the transparency of the operation of the tobacco and the e-cigarette industries so the public and the Parliament know what is in these products, how they work and what the effects might be.

The tobacco industry continues to operate in secrecy and to engage in unconscionable conduct around the world. There is a lot of evidence to support this. I will be moving an amendment that adds to the process of transparency around these products.

Recent Australian research confirms most regular smokers will be killed by their tobacco addiction. We only know this now, 60 or more years after the harms of cigarettes were first made public. What will happen in 60 years' time with e-cigarettes? Will they find terrible diseases caused by these products? Will they find they are killing people? The honest answer is that we do not know but we would be reckless to take the risk. History tells us we have to be very careful with what we do in this area.

Already a lot of research is emerging on the harms of these products. I fear they are harmful, as do many in the public health community. Why are we unleashing a potentially deadly addictive product on the Tasmanian community at the behest of commercial interests?

We do not allow organised crime to unleash new and deadly products for the sake of profit. Why are we letting British American Tobacco, Philip Morris and Imperial Brands and their e-cigarette companies do this? There are a number of e-cigarette companies, and you have to look at who is involved and who they are connected with, and then you find most of these companies are connected to the Big Tobacco companies.

Why are we legalising this product? It makes no sense unless we realise and accept that governments is friends with the people in this business.

I had some research done on this matter. I will make the report available to all members. It is a great report by an intern, Mr Jake Farnworth, on e-cigarettes. I think the Government would already have copies of that and some members might have it now. He did a wonderful job. That report earned Jake Farnworth the biggest and best award in the University of Tasmania. It was an excellent report.

I will not oppose the use of e-cigarettes in relation to this bill because the federal regulator has banned nicotine e-cigarettes, so there is no need to do that. However, I am not happy about their use and abuse in Tasmania. There is a long history in Tasmania of issues with corruption and how some of those matters have been handled. I am not going to go into it, but it goes back to governments falling because of corruption issues involving tobacco many years ago.

Mr Valentine - Did you mention a couple of laws that cover e-cigarettes?

Mr DEAN - Yes. I said, in relation to this bill, the federal regulator has banned nicotine e-cigarettes.

Mr Valentine - Not e-cigarettes, but nicotine capsules.

Mr DEAN - Nicotine e-cigarettes. I ask members to look at a 1969 case to see what happened on that occasion. It involved a land grant being made to a tobacco company and how it all fell apart; it brought a government down in this state.

Australia has ratified the World Health Organisation's Framework Convention on Tobacco Control - FCTC. Article 5.3 of the FCTC is very clear that government officials, politicians and decision-makers should never take advice from the tobacco industry, and any meetings or correspondence should be totally transparent to the public and open to scrutiny. It is a very clear policy position, which this country is a signatory to.

The Commonwealth government made all submissions to its inquiry into e-cigarettes open and transparent. Submissions from all tobacco companies and health organisations to the Commonwealth are available on the internet. To me, this is the correct and proper approach to dealing with the tobacco industry and those who sell its related products.

Sadly, the Tasmanian Government has chosen to keep secret six submissions to its regulatory impact assessment on the basis that the writers wanted them to be confidential. Of course they wanted them to be confidential. We do not know who they are or what they said. They might be the sellers of cigarettes, e-cigarettes or other smoking products to children. They do not want us or the community to find out. This is clearly contrary to article 5.3 of the FCTC.

Tobacco is a defining issue. It defines whether governments are prepared to act in the interests of public health or the interest of business. As such, it is imperative the public has access to information influencing government and that no government should promise confidentiality on matters pertaining to public health and tobacco. I have tried to get these documents. I appealed the decision of the right to information - RTI - officer. That appeal was not backed so I have now taken the last course and appealed to the Ombudsman Tasmania to get those documents. I identified to the ombudsman that it was an important matter and I needed those documents quickly, if they were going to be released. The ombudsman advised me that his office is looking at and considering this matter, but unfortunately his office could not get the result back to me in time for this debate.

We know that tobacco industry threats and misbehaviour have been fairly prevalent. I have previously raised in this place a threat by one of the Big Tobacco companies against me, which I indicated to them was like pouring water off a duck's back. I did not take too much notice of it. There is a lot of evidence associated with the Big Tobacco companies' standover tactics against people, organisations and governments.

On 1 August 2017 the *Guardian* reported allegations that British American Tobacco was involved in bribery and corruption in Africa, and that BAT is being investigated by the Serious Fraud Office in the United Kingdom. BAT is now the largest tobacco company in the world after its recent merger with Reynolds. BAT is now marketing e-cigarettes through its company Nico Ventures. It made a submission to the Government on this bill recommending, of course, that no regulation is necessary - surprise, surprise.

Furthermore, we need some clarification and certainty from the Government that the new heat-not-burn products such as IQOS produced by Philip Morris will be covered by this legislation. I am not sure if they are; the Acting Leader might be able to advise me of that. We would prefer that answer to be on the public record in case any of the tobacco companies try to wriggle through a loophole at some later time. Philip Morris has announced it is getting out of combustible tobacco products and will in future concentrate its efforts on e-cigarettes and heat-not-burn products, which are totally different products to the ones now generally used.

In Australia the tobacco industry was found by the Australian Competition and Consumer Commission to have engaged in misleading and deceptive conduct in relation to so-called light cigarettes. The ACCC has a history of calling the Big Tobacco companies to answer findings of having provided misleading information and evidence. Only recently three e-cigarette companies were found to have lied about the content of their products. We need to know what is in these products, and this is what the ACCC said -

'Consumers were led to believe by this conduct that when using these e-cigarette products, they would not be exposed to the harmful chemicals found in ordinary cigarettes,' ACCC Acting Chair Delia Rickard said.

'In fact, they were exposed to the same chemicals, including a known carcinogen that has no safe level of exposure.'

There is a lot more in relation to that, but I do not intend to go through it here. One of those poisons, acetone, is a chemical used in nail polish remover. It is recognised on the federal government's Quitnow website as a toxic chemical found in tobacco smoke.

I will be moving an amendment to ensure we know about the contents and engineering of these products. I hope I can get members' support for that amendment.

We do not want a weak and useless self-reporting agreement such as currently exists federally with the cigarette companies. We want a law that says that these companies must tell the government what is in their products and how they are made. Transparency is essential to public health. If people are going to use one of these products, they should know what is in it. That information should not be hidden. There is a need for openness and transparency.

As part of this bill, the Government is proposing they provide information at point of sale. There is no evidence base globally to support this action. The Government has no idea what that will produce. It has not been trialled or researched. In fact, it might have the opposite effect. It might make people more likely to smoke. That has happened on numerous occasions when governments have allowed tobacco companies to influence or even sponsor such initiatives. To use one of the tobacco industry's favourite phrases, 'It might have unintended consequences'. You hear tobacco companies use that phrase all the time.

The tobacco industry uses the phrase 'unintended consequences' wherever it opposes any tobacco control measure. Members should look at what happened with plain packaging, and how many times that was raised and the changes seen to it.

The Government is espousing this as a major breakthrough that will reduce smoking rates when we really have no idea if it will do that. It could make things worse. However, I oppose this idea. It will provide anti-smoking or Quit material to people at the point of sale, provided that material is designed by public health experts rather than designed or influenced by tobacco companies.

That can already be done under section 74C(1)(a) of the principal act as a condition of gaining a licence to sell tobacco. That section says the director may 'grant an application for a tobacco seller's licence subject to any conditions'. Why does the minister want another special section to cover that when it is there and can already be done?

If it cannot, maybe the Acting Leader might explain. I do not propose to talk a lot about the effects on health of e-cigarettes, because plenty of evidence and information is available online. There is reams and reams of it. Members can come to my office and I can give them a stack of information that high.

Mr Valentine - It is a wonder you can get into your office.

Mr DEAN - The member for Hobart is right. I work outside because all the fox details and that -

Mr Valentine - That is why you visit everybody else.

Mr DEAN - The member is right. There is heaps of it available and huge number of questions. A lot of e-cigarettes are found to have nicotine and the same poisons as tobacco. It just goes on and on. The evidence is unclear at this present time.

Uptake by adolescents: my most important concern is children and the next generation of Tasmanians. That should not be news to anybody in this place. All my amendments are aimed at protecting children, adolescents and the next generation. An American report was released - I am trying to confirm exactly who put the report out - only this month. It is a very comprehensive report titled *Association between initial use of e-cigarettes and subsequent cigarette smoking among adolescents and young adults, a systematic review and meta analysis*. That report concludes -

e-Cigarette use was associated with greater risk for subsequent cigarette smoking initiation and past 30-day cigarette smoking. Strong e-cigarette regulation could potentially curb use among youth and possibly limit the future population-level burden of cigarette smoking.

Clearly this product can increase smoking in young people. The report further said -

To minimise the potential public health harm from e-cigarette use, the US Food and Drug Administration, as well as state and local agencies, will need to engage in effective regulatory action to discourage youths use of e-cigarettes and prevent the transition from e-cigarettes to other combustible tobacco products.

This is from the United States of America, where e-cigarettes are legal. Clearly it would be much simpler never to allow them to be legal.

Punishing children: as members are all aware, the Government has copied some suggestions made by Imperial Brands into its Healthy Tasmania policy. These suggestions include increased fines for children who fail to follow the instructions of a nominated officer. We know the Government copied Imperial Brands' submission because it even copied one of the mistakes from the Imperial Brands submission into the Government's own Healthy Tasmania policy. Almost a giveaway. It could have been coincidence, but to transcribe an error they probably followed that direction and position. It is a dead giveaway.

The minister admitted his staff met with the Imperial Brands contrary to Article 5.3 of the FCTC. This bill is named after that policy. The tobacco industry loves punishing children and so it seems does the Government. I do not support that. A reason why they punish children is to deflect attention from their own culpability in manufacturing and selling products that harm and kill most of their regular users. When those users or their bereaved families sue for damages, the tobacco industry tries to shift the blame onto those who became addicted to smoking as children.

Every day we hear complaints from our constituents about waiting lists and access to public hospital emergency departments. We all know about ambulance ramping and waiting times. We read about that in the paper every other day and we have all heard the horror stories. So why would the Health department and minister want to spend Health budget money on chasing illicit tobacco and chop-chop on behalf of Scott Morrison and Imperial Brands? Why has the minister fallen for this furphy? We should not be chasing that; we should be putting the money into tobacco controls.

Sound public health reform, including the Public Health Act 1997, is aimed at the perpetrators of offences, not the victims. It is aimed at curbing the pushers and dealers of tobacco products, not children or tobacco addicts. The Tasmanian Government and this Parliament should not be acting as ciphers for Big Tobacco or making laws and policies that suit Big Tobacco or allow Big Tobacco to divert them from their health responsibilities by wasting time, effort and scarce resources chasing down pointless distractions.

I will briefly talk about smoking in schools and hospitals. I will say more about that during the Committee stage. I have discussed this with school principals. One principal was concerned about smoking at his college. He said the mess and complaints about second-hand smoke were causing problems and he could take little or no action. I will bring forward an amendment on that later today.

Mr DEPUTY PRESIDENT - It is a wonder they can afford it.

Mr DEAN - I will also bring forward an amendment relating to the 3-metre rule outside public buildings. Three metres from the doorway of a public building is nonsense. Walk into Henty House at any hour and you have to walk through a cesspit. Hospitals are the same. Since this matter was raised in the *Mercury* there have been calls to expand the ban to include supermarkets and bus stops. People who shop at the Coles supermarket at Newstead will know what I am talking about.

All of us have received complaints about people smoking on footpaths outside hospitals. Royal Hobart Hospital is particularly bad for this. Mothers bringing babies into those environments have to walk through the smoking areas. It is not acceptable.

The fit and proper person provisions are covered in the bill and I will support them.

I will touch briefly on the Tobacco Free Generation because I have an amendment relating to it. For the honourable members new to this place, I covered why we need a bill of that type in this state - or this country or indeed in the world - expansively during the debate of my private member's bill on the TFG.

Suffice it to say, if members look at the heading of the current bill, it has in brackets 'Healthy Tasmania'. It is all about exactly that - making Tasmania a healthier state. That is what the TFG is about. It is being considered worldwide. I believe New Zealand is going to be smoke-free or semi-smoke free by the year 2025.

There is world interest in it. I have had contact from a whole raft of countries, including many Third World countries as well, that are seriously considering this legislation and going down a similar path. There is very strong interest in it from the World Health Organisation, which strongly supports that position as well.

We cannot pussyfoot around. Future generations will question what we have done and why we did not take strong and firm action on this when we had the opportunity to do so. They will challenge us, and they will have every right to challenge us. There should not be any tinkering at the edges of legislation, huffing and puffing, but real achievements - saving lives and health, and the Tasmanian budget and health system, which will be a bonus to all.

In winding up, the Tobacco Free Generation proposal is supported by 75 per cent of the Tasmanian community. A number of surveys have been done that have shown very strong support for it. In one of those surveys, support from the younger generation for the TFG position was around the 90 per cent mark.

Ms Armitage - I wonder about your bill on the Notice Paper. If the report was in 2016, why haven't you brought it forward? My concern is that your amendment may kill off the current bill.

Mr DEAN - That is a good question. The answer is that I have been trying to ensure I had the numbers to get the bill through this place. I did not want to lose it. It is too important a bill not to get it through this place. The dynamics of this place have changed quite a bit since then as well. We have not let it drop at all; we have been doing a huge amount of work on it with all those people who support me on this matter. Our intention was not to bring it on until we believed I had the support of the members in this place, knowing that if it got through this place and went to the other place, the Liberal Government said it would not support it.

It will never get through the other place. Rather than have the bill defeated, it is best to leave it on the Notice Paper at this time. When we realised this bill was coming forward, we looked at it closely and worked out fairly quickly that this would be a much easier way to get a TFG position in place in this state because this is a Government bill so I do not have to influence those in the other place.

Ms Armitage - With respect, you do because you have just stated that the Government would not support it. Do you have concerns that by adding it to this bill, that this bill, which is a good bill, which deals with electronic cigarettes, will then not get through the lower House and the whole bill will be thrown out?

Mr DEAN - I think the Government will probably reconsider its position.

Ms Armitage - If it does not, the bill will go.

Mr DEAN - I hope the Government will reconsider its position. With all the new evidence available in this area, looking at what the World Health Organisation is doing and all the things that have changed since the Government made those statements, a heck of a lot of water has gone under the bridge since then. There have been tremendous changes throughout the world.

I hope that if members in this place support the amendment, it will be supported in the other place.

Ms Armitage - You could simply bring your own bill forward in a couple of weeks' time if you feel that is the situation.

Mr DEAN - I have identified why I have not taken my private member's bill further at this stage. I was concerned about the numbers of getting it through. The dynamics are changing -

Ms Armitage - That is no reason not to bring it forward; it is very important you bring it forward.

Mr DEAN - It is very important. I do not like the comment that it is not important.

Ms Armitage - No, I did not say it is not important. I said, 'It is very important you bring it forward.'

Mr DEAN - It is, but this is probably a quicker, easier and better way of doing it.

Ms Armitage - Not if it kills this bill. That is my concern.

Mr DEAN - I hope it will not kill the bill at all. This bill is too important for it not to get through. It has some very good points in it. The changes are necessary with some control over electronic cigarettes. We need the bill. I hope it would not destroy the bill, if that were the case.

With 75 per cent support right across the board, it has to send a strong message to any government. When we were talking about water and sewerage, a survey or something was done that identified there was 52 per cent support. It may have been a bit more and I might have that wrong, but certainly it was nowhere near 75 per cent. The Government is saying that is a good reason it should continue to support the change of water and sewerage control from local government and TasWater to the state Government. One would think this would be sending a very strong message as well.

There is strong support from many organisations throughout the country in relation to that proposal, and I will refer to those when I move that amendment.

I want to remind all honourable members that tobacco is killing about 10 Tasmanians every week. That is a lot of people when we look at it across the whole year. Many of the amendments are good amendments. I will be supporting the bill, but I think I can make it better in some respects. I foreshadow I will move some amendments to it.