



TASMANIAN HOSPITALITY ASSOCIATION

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THA submission to Tobacco Free Generation Inquiry

The Tasmanian Hospitality Association is strongly opposed to the legislation currently before the committee.

While the THA acknowledges the impacts of smoking on the community, it submits that this Bill would place an additional regulatory burden on cigarette retailers, which includes liquor outlets, and that enforcing the intent of the proposed legislation would be difficult for licensees and staff.

The liquor industry is already one that is heavily regulated. Generally, the regulation exists for good reason as liquor can be a harmful product if used inappropriately, particularly in relation to children. It is therefore a requirement of working in a licensed venue that a person serving or selling alcohol must have undergone certified training in Responsible Service of Alcohol. Part of this ensures a person requesting to be supplied with alcohol is 18 years old.

There is also a general requirement that any person entering a licensed premises must be at least 18 years of age (unless under direct supervision of a parent or guardian). It is therefore the case that, notwithstanding the need for staff to verify a person's age if it is unclear, people who come into licensed premises as adults and are therefore able to not only purchase alcohol, but participate in other activities restricted by law to adults, such as gaming. Under the existing laws, adults are able to purchase cigarettes.

The Bill would set in motion a situation where not every adult in a licensed venue would be able to legally participate in the same transactions. So while they could purchase alcohol, participate in gaming, they could not purchase cigarettes. The burden for enforcing this falls to the licensee and their staff, who would be confronted with a situation of needing to verify the age of many more customers requesting to purchase cigarettes.

This would undoubtedly have time and cost impacts on licensed businesses.

In most cases, when it comes to enforcing the over-18 laws, it obviously becomes easier to assess a person as being 'legal' the older they become beyond 18 due to a generalised understanding and inherent knowledge of how a person appears as they age. The Bill would mean that every year, licensees and staff would need apply separate rules to customers who are otherwise legally able to be on the premises, having to determine whether a person was born prior to the tobacco free generation period in order to provide them with cigarettes. Staff would - in time - need to effectively have to judge the age of a 35 year-old, as opposed to a 34 year-old, or risk breaking the law. This would mean that all customers who 'look' as though they could be 34 would need to be asked to verify their identification, and every year, as the generation progresses by a further year, more and more people potentially fit into a category that they 'look' as though they may be underage. Generally, it is more difficult to accurately determine a person's age as they become older, meaning more customers need to produce identification.

When it comes to policing existing under-18 laws, licensed premises' staff are alert for people who 'look' young. With a generation of people subject to laws that extend a year every year, that simple first-pass alert is totally lost, demanding that every customer who asks to purchase a product who could be under the legal age, would need to be verified.

It has been suggested that concerns over this inherent complexity in policing the legislation at the coal face are unwarranted as people who grow up unable to purchase cigarettes are not likely to suddenly attempt to buy them well into their adulthood, so the presented difficulty of a 51 year-old legal customer and a 50 year-old illegal customer should not pose a problem. Regardless of whether such a suggestion is correct, the Bill places the responsibility for determining a legal sale and an illegal sale on the shoulders of the tobacco seller, meaning that even if in the extremely unlikely outcome that no member of the tobacco free generation ever attempted to buy a tobacco product, a tobacco retailer would still need to conduct due diligence to be completely certain they were not breaking the law - and that is the inherent problem with this legislation as proposed. The Bill itself states that it is a defence that a proof of age was provided to the seller - demonstrating that requiring formal age verification is a fundamental principle of the proposed legislation.

This suggestion also fails to take into account interstate and international visitors. Currently, more than 30 per cent of hospitality turnover in Tasmania is due to visitors. It is highly likely that a person born in 2000 who had legally taken up smoking interstate or overseas, visiting Tasmania as a 19 year-old, 26 year-old, 44 year-old, 68 year-old, would attempt to purchase tobacco products, particularly given the onus for obtaining proof of age rests entirely with the retailer. The need for vigilance on behalf of the retailer is enormous to avoid breaking the law.

The logistics for a licensed premises that retails tobacco products under this Bill are massive. Staff either have to be expert in determining a person's exact age, or take the time to ask for and assess a person's identification to ensure legal compliance - regardless of whether or not a member of the tobacco free generation is attempting to buy tobacco. Theoretically, any person within five years of the age specified would likely need to be asked to prove their age - and this age cohort would only expand as the generation progressed.

The THA contends this Bill would be difficult, impractical and costly to enforce for small businesses which make up the bulk of the hospitality sector. Staff would need to come to terms with identifying an entirely new legal age differential which would continue for a complete generation of customers. Given the burden of responsibility for this proposed legislation falls entirely onto the retailer, they would have no option but to spend time and money to ensure they did not break the law.

However admirable the intent to cut smoking rates - notwithstanding the lack of success prohibition in any form achieves - this Bill does little but set tobacco retailers and licensed venues on a generation-long exercise of coping with more regulation, and regulation that is difficult, time consuming and therefore expensive to enforce.

Submitted on behalf of the THA and its members.



Steve Old
General Manager

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