

DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

Public Health Amendment (Healthy Tasmania) Bill 2017

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Madam Speaker

I am pleased to bring this Bill before the House which delivers some of the most important actions identified in *Healthy Tasmania*, our strategic preventive health plan to help Tasmanians become the healthiest population by 2025.

Unfortunately our state experiences high rates of preventative chronic disease. Health risk factors like smoking, poor nutrition and low physical activity levels are still harming individuals and their families, as well as our society and the Tasmanian economy.

The actions we are taking under *Healthy Tasmania* are central to achieving our vision for Tasmanians to enjoy better health - living happier, longer lives.

Healthy Tasmania outlines a fresh, bold approach to promoting good health and preventing chronic disease, backed up with \$6.4 million of new investment to give people the information and tools they need to make positive and healthy changes in their own lives.

Tasmanians from all walks of life will be supported to become more interested, engaged, and in greater control of their own health and wellbeing. Importantly, *Healthy Tasmania* complements other major health reforms and includes 24 actions across four priority areas, being:

- smoking;
- healthy eating and physical activity;
- community connections; and
- chronic conditions screening and management.

It is estimated that tobacco smoking continues to kill more than 500 Tasmanians each year. Our response to this includes a range of specific actions to address different aspects of this issue, including investment in social marketing and targeted quit campaigns, and a collaborative approach to reaching pregnant women to support those who smoke to quit. Regulatory action, however, is one of the most important components of our action to reduce smoking.

Madam Speaker, the Bill amends the *Public Health Act 1997* to deliver three specific smoking-related actions identified in the *Healthy Tasmania Five Year Strategic Plan*, released in July 2016.

- increasing penalties for selling or supplying smoking products to a child;
- introducing laws to regulate electronic cigarettes, but not to ban, which are referred to as “personal vaporiser products” in the Bill; and
- targeted education through quit smoking information at the point-of-sale.

Increasing penalties

Preventing the uptake of smoking by young people is critical to limiting its damaging impact on the current and future health of the Tasmanian population. This is because evidence suggests that if a person is not smoking by their early twenties, then they are unlikely to start.

To this end, the Bill significantly increases the penalty for those who sell or supply smoking products – that is, tobacco or personal vaporiser products – to a person under 18 years of age.

The Government acknowledges that our compliance activities suggest that most tobacco retailers carefully follow this law, however there remain some who do not. Moreover, retailers are not the only source of supply, as many underage smokers in Tasmania are given smoking products by friends and family.

The penalty for selling or supplying a smoking product to a child will increase from 50 and 100 penalty units for a first and subsequent offence, to a new three-tiered approach of:

- 120 penalty units for a first offence;
- 240 penalty units for a second offence; and
- 360 penalty units for a third and subsequent offence.

These penalties are amongst the highest in Australia that can be imposed on an individual by a court and sends a strong message that providing such a harmful, addictive and dangerous product to a young person is simply not acceptable.

To support and further strengthen this approach, this Government will also increase the amount of the infringement notice (or on-the-spot-fine) for offences relating to sales to minors.

New laws for personal vaporiser products

The use, promotion and sale of personal vaporiser products – often called “e cigarettes” – is currently unregulated in Tasmania. They can therefore legally be sold to a child, and advertised widely. They can even be used in areas where smoking tobacco is prohibited, which is exceedingly difficult for venue operators to confidently enforce smoke free areas. Equally concerning for patrons who may breathe second hand vaporised chemical of unknown composition.

It is important to note that the evidence is not settled as to the extent that a personal vaporiser products may damage a person's health, or whether using personal vaporiser products is effective than other measures already available to aid smoking cessation.

More time is needed for comprehensive research regarding their safety, quality and efficacy, but while this research is being undertaken in Australia and internationally, we – along with other jurisdictions across Australia – are following the recommendations of the World Health Organisation and the Australian National Health and Medical Research Council to introduce a regulatory framework.

There is significant concern among public health experts that widespread adoption of personal vaporiser products could put at risk the considerable gains that have been made over decades aimed at denormalising smoking behaviour. Therefore, the important goals in regulating personal vaporiser products are to:

- prevent uptake by young people, adult non-smokers and ex-smokers;
- prevent smoking behaviour being re-normalised; and
- prevent exposure to possible harms from second hand vapour.

This is why the Bill is important – because it introduces new requirements for personal vaporiser products which substantially mirror those for tobacco products, while not preventing to use them, including as a possible cessation aid

Under the framework:

- The products cannot be sold or supplied to a child under-18. The same increased penalty applies if that law is breached.
- A person under 18 cannot use or possess them, unless that possession is part of their employment. Failure to comply can result in the products being seized and warnings.
- A person cannot sell the products without a licence.
- The products cannot be advertised, displayed, or included in shopper loyalty programs. The requirements for holding the products in stores – such as the design and location of sales units – is the same as for tobacco products.
- And it will be an offence for a manufacturer or supplier (including a retailer) to provide false information about legislation relating to personal vaporiser products.

This offence already exists for tobacco products, and by simply extending it to personal vaporiser products we hope to deter misinformation and incorrect statements about the laws for these products.

This is based on feedback to consultation on both the Discussion Paper for Regulatory Options and the recent Regulatory Impact Statement in relation to the Bill that suggested some confusion exists.

For example, some people thought the proposed framework would (or should) permit the legal sale of personal vaporiser products that contain nicotine as an aid to quit smoking.

This will not be the case.

It is also important to note that nothing in the Bill changes the law for personal vaporiser products that contain nicotine – these will remain illegal in Tasmania as they do in all other states.

Across Australia nicotine remains a schedule 7 dangerous poison, which means it is a substance with a high potential for causing harm at low exposure.

It is both unsafe and highly addictive.

In February 2017 the Australian Government's Therapeutic Goods Administration announced that the current scheduling of nicotine was appropriate and did not approve an application to exempt nicotine from the dangerous poisons list for use in personal vaporiser products.

However, the Tasmanian Government is monitoring and will continue to monitor the situation and we are mindful about the use of personal vaporiser products as a potential smoking cessation aid. If evidence-based changes were to be made in this regard, then the framework for personal vaporiser products in Tasmania would need to be reviewed and the government makes that commitment.

I emphasise that by not banning e-cigarettes the Bill is not an endorsement of the use of personal vaporiser products. Rather, I encourage any tobacco users wanting to quit smoking to consult with the health practitioner or call the Quitline.

However, this Bill does set up an appropriate regulatory framework for these products that can be subject to future review and amendment as the evidence base grows.

Point of sale education

The Government recognises that the retail environment is an unexploited opportunity to promote health and prevention messages around the dangers of smoking and a place to distribute information on quitting.

While currently retailers selling tobacco products are only required to display notices in the service area, the Government has identified the opportunity to strengthen this approach even further through targeted educational materials - specifically, through the provision of additional quit smoking information at point of sale.

The Bill supports this aim by requiring retailers to give certain information to a customer buying a smoking product if specified in guidelines issued under the Act. Guidelines would set out the information and how the retailer is to provide it.

The Bill applies this framework to smoking products, which includes both tobacco and personal vaporiser products, although our immediate focus is quit smoking messages to be provided with tobacco products.

Further work is underway to determine the most appropriate approach and timeframe in which to start the guidelines.

Options will be explored fully and, as already required by the Act, the guidelines will be tabled for Parliament's consideration.

Other changes

The Bill contains other changes to complement the *Healthy Tasmania* actions and strengthen the *Public Health Act*.

The Bill makes it clear that all smoking – regardless of the product being burned or vaporised, the device is banned in smoke-free areas. This includes personal vaporiser products and other non-tobacco products, such as herbal cigarettes.

Existing smoke-free areas include workplaces, in cars with children or work colleagues, outdoor dining areas, playgrounds, sporting events, bus shelters, and malls.

In addition, personal vaporiser products cannot be sold in specialist tobacconists, as these stores are dedicated to the sale of tobacco products and ancillary tobacco products only. Specialist tobacconists have a specific framework established to permit them to sell tobacco products and to display ancillary tobacco products. This distinction aims to ensure that exposure to the promotion of tobacco products is limited to people who enter a specialist tobacconist with the established intent to purchase tobacco products.

To strengthen the licensing framework, the Bill introduces provision for the Director of Public Health to apply a fit and proper test to licence applicants and retailers of tobacco and personal vaporiser products. The framework is similar to other such tests that empower the Director to enquire and request reports from police and regulators in other jurisdictions.

The test has essentially the same purpose as the existing requirement in the Act in which the Director is to be satisfied a licence applicant is likely to comply with the Act. However, as drafted, that provision lacks transparency and certainty which the new fit and proper provisions in the Bill will fix.

The Bill also requires retailers to report to the Director of Public Health information that must be collected under licence conditions.

It will be a standard condition on every licence to sell tobacco or personal vaporiser products that information on sales volumes be collected. This information is to be reported as part of the yearly renewal of a licence.

This information will complement existing population health surveys and assist with preventive health planning, targeted interventions, and evaluating the effectiveness of local and statewide initiatives.

Finally, Madam Speaker, I would like to take the opportunity to thank the many people and organisations who made a submission to the development of *Healthy Tasmania*, the discussion paper for regulatory options for personal vaporiser products, and the regulatory impact statement.

It has been very pleasing to see the level of interest and engagement on this important issue.

Only with the involvement of us all – governments, businesses, communities, and individuals – can we move forward in improving and protecting the health of all Tasmanians.

I commend the Bill to the House.