

Legislative Council
Government Administration
Committee A

An inquiry into the
Public Health Amendment (Tobacco Free
Generation) Bill 2014

TASMANIAN GOVERNMENT SUBMISSION

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Overview

The Tasmanian Liberal Party has long supported preventive health measures including smoke-free areas legislation, advertising restrictions for tobacco products, anti-smoking campaigns, stopping tobacco political donations and increases in tobacco prices at a Federal level.

The Tasmanian Government supports realistic measures to make it easier for people to quit, easier to stay smoke-free, and measures to make it harder to take up smoking in the first place. The Tasmanian Government has a track record of leading and supporting preventative measures, including smoke-free areas legislation, anti-smoking campaigns and increases in tobacco prices at a federal level.

Indeed, it was a Liberal government that raised the legal age for sale of tobacco products in Tasmania from 16 years old to 18 years old in 1997. Any initiative aimed at reducing the prevalence of smoking is to be applauded and the aim of the Member for Windermere, the Hon. Ivan Dean MLC, in introducing this Bill is to be commended.

The Tasmanian Government holds concerns with selective prohibition and maintains doubts about the efficacy of this particular proposal. Nevertheless, the Government has been open to discussing the proposal. The Minister for Health, the Hon Michael Ferguson MP, has personally met with key proponents, including the honourable Member for Windermere and members of SmokeFree Tasmania, on multiple occasions.

While this aspiration is highly commendable, the question remains whether the Bill is workable in practice. There are a number of issues that raise concerns around its practicality, enforceability and likely effectiveness. These things need to be seriously considered by the Committee examining this Bill.

Issues

Tasmania would be the first jurisdiction in the world to enact legislation to prevent the sale of tobacco products to a specific cohort (other than to people under the age of 18). The effort and support to do this is significant and a number of legal, social, policy and implementation matters remain outstanding.

'Rite of Passage' at 18 years old

Advocates for a "tobacco-free generation" argue that this measure is an attempt to address the 'rite-of-passage' aspect of legally smoking when a person reaches 18 years of age.

However, conferring other rights and privileges, such as voting and drinking, upon reaching 18 years of age means the 'rite of passage' aspect of this age, and the emergence into adulthood, will remain.

The Tasmanian Population Health Survey 2013¹ indicated a large decline in smoking rates by Tasmanian adults from 19.8 per cent in 2009 to 15 per cent in 2013.

This change has largely been attributed to increases in tobacco excise and increased investment in media campaigns that, since mid-2013, have been at the level research shows will reduce smoking rates. In this time television advertising has increased from 19 to 32 weeks a year.

This survey also showed reduced smoking rates between 2009 and 2013 for all age groups, as follows:

Age group	2009 (%)	2013 (%)
18 – 24	23.0	19.7
25 – 34	27.1	22.5
35 – 44	25.7	16.9
45 – 54	22.9	16..2
55 – 64	13.6	12.2
65+	8.8	7.0

While the Government fully acknowledges that these statistics demonstrate that there is more work to be done, these figures demonstrate that existing measures are working to reduce smoking rates.

The Australian Secondary Schools Drug Information Survey shows that for 12-17 year olds, 6.7 per cent were current smokers. This ranged from 1.3 per cent for 12 year olds to 14.5 per cent for 17 year olds.² While this clearly shows that there is more to be done on discouraging and preventing underage people taking up smoking, it suggests³ that preventing young people from legally purchasing tobacco upon reaching 18 years of age will not necessarily significantly impact smoking rates among this demographic. Evidently, young people are currently able to obtain tobacco products through a range of other means while not legally able to do so and would continue to be under this proposal.

This proposal was canvassed during 2012, at which time then Minister for Health Michelle O'Byrne expressed interest in the concept⁴ and referred the matter to the Commissioner for Children to further investigate young people's opinions of it and possible alternatives.⁵ Evidently, however, this did not result in any subsequent legislative amendment or regulation.

¹ http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0006/159288/TPHS2013_Report3.pdf

² [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/\\$File/National%20Report_FINAL_ASSAD_7.12.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/BCBF6B2C638E1202CA257ACD0020E35C/$File/National%20Report_FINAL_ASSAD_7.12.pdf)

³ It is acknowledged that this data is not specific to Tasmania and has been collected using different methodologies to the Tasmanian Population Health Survey. Although it is the most recent and comprehensive information available on underage smoking rates, it must therefore be interpreted with a degree of caution.

⁴ At that time, the then Liberal Opposition and the Tasmanian Greens both expressed doubts regarding the practicality and likely efficacy of the proposal.

⁵ <http://www.parliament.tas.gov.au/ParliamentSearch/isysquery/8505878b-1295-4f90-894f-aa401718831c/1/doc/hestatues1.htm>

Responses from young people to the Commissioner for Children's subsequent publication show a broad and consistent understanding of the risks and health implications of smoking (as well as a broad concern with the complexities of the implementation of this concept)⁶. Although proponents of this proposal argue that setting the legal smoking age at 18 implies that it is 'safe' to smoke at that age, those responses suggest that at if a young person takes up smoking, they do so knowing it is not safe.

Difficulty of enforcement

The current rate of compliance with laws regarding advertising and display, and sale to minors is very high. With underage smoking illegal, and the age difference between minors and adults more apparent, current enforcement efforts are proving effective in reducing smoking rates.

The "tobacco-free generation" concept does not propose to outlaw smoking for those born after the year 2000, but rather only ban their ability to locally purchase tobacco legally. It also does not preclude or outlaw older family members or friends supplying tobacco products to those subject to the proposed legislation.

Alternately, members of the "tobacco free generation" could therefore also legally purchase tobacco products interstate, either for themselves or on behalf of another, and import to Tasmania for personal use, or for sharing with other members of the "tobacco-free generation". Indeed, this could present growth opportunities for interstate and online sellers.

The Member for Windermere has made clear that there would be no exemptions for visitors or tourists from interstate or overseas who are members of the "tobacco-free generation" seeking to purchase tobacco products in Tasmania. However, this does not preclude visitors and tourists bringing their own tobacco products for use while in Tasmania.

Since the early 1980s much progress has been made in harmonising cigarette laws and taxes across Australia to prevent cross-state trade. History has shown that differing penalties and excises across state borders can facilitate unregulated trade, where tobacco products are 'smuggled' from the state with lower taxes and/or regulation into the state with higher taxes and/or regulation. The "tobacco-free generation" proposal could encourage similar unregulated trade of tobacco products from other states and territories into Tasmania.

Further, there is the issue of unrestricted access to tobacco products over the internet. An internet search will produce a multitude of online cigarette stores offering a huge range of tobacco products. These usually only have a simplistic means of 'checking' a person's age.

In the absence of similar legislative provisions in other interstate or overseas jurisdictions, including for online sales, it is difficult to envisage how tobacco purchases by members of the "tobacco free generation" through this readily accessible means could be effectively monitored or enforced.

⁶ <http://www.childcomm.tas.gov.au/wp-content/uploads/2015/02/Smoke-Free-Report-.pdf>

Under the proposed legislation, members of the “tobacco free generation” will be still able to obtain tobacco products locally from family or friends who remain legally able to do so and will be able to do so themselves over the internet or in any other jurisdiction where tobacco remains a legal product for all adults aged 18 and over. In that context, with an increasingly interconnected and mobile population, it is questionable whether this regulation will go far towards achieving its laudable stated purpose.

Government action on smoking rates

The Hodgman Liberal Government has set the challenging target of making Tasmania the healthiest state in Australia by 2025.

The Government takes the challenge of Tasmania’s smoking rates very seriously.

Current anti-smoking efforts, here and in other jurisdictions, show that education is the best tool in making the health risks of smoking well understood. Education and current legislative measures are proving to be most effective at making smoking less convenient and less socially acceptable.

The Government also invests more broadly in a wide range of anti-smoking measures, including social marketing. For example, Public Health Services (PHS) funds the Cancer Council Tasmania to implement anti-tobacco campaigns through the Quit Social Marketing Program. Its current base funding enables television advertising for 19 weeks per year.

Public Health Services has provided significant additional funding over two years (2013-2014 and 2014-2015) which, in conjunction with funds from the former Tasmania Medicare Local (now the Primary Health Network), has enabled advertising to increase to 32 weeks a year.

The additional funds have also enabled increased capacity to utilise other supporting media (such as radio, digital, outdoor, social media); purchase rights; focus testing and campaign support materials and activities (such as posters, sponsorship, direct mail, targeted promotions).

The Tasmanian Government also invests in a range of anti-smoking measures targeted at community education, social marketing and advertising. This includes funding having been progressively allocated to some social marketing elements of the Smoke Free Young People Strategy 2013-2017, including:

- Promotions at youth sporting events in 2014;
- Supporting the development of a website with tools and resources to encourage and assist young people to quit smoking;
- *Smoking, But It’s the Least of Their Problems* guide for youth workers; and
- Promotional resources such as fact sheets, stickers and temporary tattoos.

The Government also recently passed amendments to the *Public Health Act 1997*. These amendments give Councils the ability to declare areas they occupy smoke-free and give the Director of Public Health the ability to permit designated smoking areas at approved public events, which will aid the transition to entirely smoke-free public events.

The Government also recently released a discussion paper on e-cigarettes, *Options for a public health response to e-cigarettes in Tasmania*. Electronic Nicotine Delivery Systems (ENDS), or nicotine containing e-cigarettes, are already illegal in all Australian jurisdictions. The intent of this paper is to consider whether and how the Tasmanian Government should act to regulate other e-cigarettes to manage potential risks to the community in the absence of them being evaluated and approved by the Therapeutic Goods Administration as a safe and effective smoking cessation aid.

Importantly, the Government is also delivering on its Healthy Tasmania election commitment to deliver a serious and comprehensive approach to preventative health through overhauling its governance of, and investment in, preventative health as a whole. The centrepiece of this commitment is developing a comprehensive, evidence-based five-year preventative health strategy for Tasmania. Evidence-based initiatives to reduce the rate of smoking will of course be a key part of this.

This is being led by the Healthy Tasmania Committee, which is part of the Health Council of Tasmania. The Committee is comprised of expert stakeholders from across state and local government and the university and community sectors. A committee of the Health Council of Tasmania led by Dr Tim Greenaway is progressing the development of this strategy.

This work is taking place in tandem with the Government's broader health reform process to ensure all streams of the health system better align to deliver improved outcomes for Tasmania. There will be more to say on this as it progresses.

Conclusion

We all know that smoking is a deadly activity which kills tens of thousands of people around the world every year. As a society we all have the responsibility to spread the non-smoking message and this Government is fully committed to continuing to take action on Tasmania's unacceptably high smoking rates through practical, evidence-based means.

However, new regulations are not something that should be taken lightly and in each case, we must seriously consider whether they are realistically likely to be practical and effective. Regulation for its own sake, without strong evidence to support expected outcomes, is not something this Government considers to be desirable. In that context, and again while we commend the aspiration of this Bill, we must acknowledge the difficulties with this proposal and continue to question its likely efficacy.