

TOBACCO PRODUCTS CONTROL AMENDMENT BILL 2017

Introduction and First Reading

Bill introduced, on motion by **Hon Alanna Clohesy (Parliamentary Secretary)**, and read a first time.

Second Reading

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [3.55 pm]: I move —

That the bill be now read a second time.

This bill fulfils an election commitment made to the people of Western Australia in February this year. The bill proposes amendments to the Tobacco Products Control Act 2006. It forms part of the government's commitment to undertake tobacco law reform to tighten the policing of tobacco laws. The Tobacco Products Control Amendment Bill 2016 was tabled in Parliament in November 2016 by the former Minister for Health, Hon John Day, MLA, as a draft bill for public information and discussion. During its tabling the amendments proposed in the 2016 bill were outlined. The bill did not progress prior to the 2017 state election. The government is now introducing and progressing a similar bill to amend the Tobacco Products Control Act 2006. Accordingly, the government takes the opportunity to outline the amendments again.

The Tobacco Products Control Act controls the sale and supply of tobacco products. The amendments flow from a statutory review of the act undertaken pursuant to section 127 of the act. In progressing the review, a discussion paper was developed by the Department of Health to provide the basis for consultation with key stakeholders and the community. The discussion paper provided an overview of the impact of tobacco use in Western Australia, highlighted issues relevant to the current operation of the act and regulations, and examined legislative initiatives in other states. The review considered various legislative changes, some of which require amendments to the act and others to the regulations. This bill sets out the changes to the act that flow from the review.

Australia and Western Australia have a proud history of introducing strong and effective tobacco control measures. These measures have helped decrease our smoking prevalence to among the lowest in the world. In Western Australia in 2016, just under nine per cent of people aged 16 years and over were daily smokers, down from 16 per cent in 2004. These reforms will build upon the state's existing tobacco legislation, which is ranked among the toughest in the country.

The new proposals will tighten restrictions on the sale of tobacco, especially with regard to protecting children, making Western Australia the first state in Australia to make it illegal for children under 18 years to sell tobacco products in retail outlets. There are also provisions about the retail environment for selling tobacco, and a number of provisions are intended to simplify and streamline administrative arrangements for tobacco licence holders and the Department of Health. Most of these proposals will continue to strengthen longstanding legislation. In some cases, they bring WA legislation into line with other states or restore Western Australia to the forefront of tobacco control in Australia.

As with all other states and territories, Western Australia has endorsed the National Tobacco Strategy. The proposals in the bill are in line with accepted good public health practice. The key changes being proposed are as follows. The bill provides various measures to protect children from exposure to tobacco products. Proposed new sections 21A and 21B, inserted by clause 5, ban the sale of split-pack cigarettes, which can be made into packets containing fewer than 20 cigarettes, and fruit and confectionery-flavoured cigarettes. These products are known to be particularly appealing to children.

Another proposal aimed at reducing the uptake of smoking by young people is clause 4, which inserts new section 18A into the act. This provides that the holder of a retailer's licence for the sale of tobacco products must not authorise or allow a person who has not reached 18 years to sell a tobacco product. As it is against the law to sell tobacco products to children, it is reasonable that children should not be put in the position of selling tobacco products or having to ask people in their own age group for proof of age. In fact, we know from Department of Health compliance activities that younger sales staff are more likely to sell tobacco products to people aged less than 18 years. Tobacco retailers will be given two years from the commencement of these changes to make necessary adjustments.

Certain improvements are to be made in relation to the retail sale of tobacco products. Tobacco purchases are to be excluded from customer loyalty reward programs. A new section 33A will be inserted in the act by clause 8 that will mean that when a customer is a member of a loyalty reward program, the purchase of tobacco products cannot be used in obtaining a gift or other reward. The reason for the exclusion of the purchase of tobacco products from such programs is to reduce the purchase of tobacco products on the basis of loyalty program incentives. Programs in which a gift or benefit may be obtained by a purchaser of goods on the basis of method of payment used, such as the use of a particular credit card, will not be affected.

Section 23 of the act will be amended, phasing out the display of tobacco products in specialist retailer stores over two years. Currently, all other tobacco retailers in the state are required to place their tobacco products and smoking implements out of sight, whereas a specialist tobacconist is permitted to publicly display tobacco products. The amendment will provide consistency across all retailers. The definition of “specialist retailer” is to be amended so that to qualify as a specialist tobacco retailer, in addition to the other specified criteria, the licensee will need to demonstrate that they derived 80 per cent of their average gross turnover from the sale of tobacco products for the immediate past financial year.

Clause 7 provides for an amendment to section 25 of the act in relation to health warning signs. If a retailer chooses to display a price board or price tickets, then a graphic health warning sign must be displayed adjacent to price information. Health warnings are an important part of the government’s efforts to educate smokers about the effects of smoking. Displaying a graphic health warning where price tickets or a price board is displayed provides smokers, recent quitters and children with a strong visual reminder of the health risks associated with smoking.

A further change to the retail sale of tobacco products is in relation to the sale of tobacco products at an event. Pursuant to clause 10, it is proposed to amend section 39 to prohibit the issuing of a retailer’s licence for the purpose of authorising the sale or supply of tobacco products at an event, such as music festivals, fashion shows or other transient forms of entertainment. As many of these kinds of events are of particular appeal to younger audiences, sale of tobacco at events is not consistent with the objectives of the act, which is intended to prohibit supply of and discourage the use of tobacco products by young people.

A number of changes are proposed to improve the administration of the act. These include the following proposed amendments. It is intended to replace section 77 of the act in order to expand and streamline the process for appointing restricted investigators, based on models provided by section 122 of the Food Act 2008 and section 24 of the Public Health Act 2016. In addition to the existing powers of the chief executive officer, local governments will also be authorised to appoint restricted investigators for the purposes of this act, in accordance with guidelines issued by the CEO. With 138 local government authorities across Western Australia, the current appointment process provided by section 77 is inefficient and time-consuming.

Another administrative change will be to amend section 119. This section currently provides that upon the conviction of a person for an offence under the act, the court may order the forfeiture of items used in the commission of an offence. Potential problems in court proceedings have been identified where an omission to request forfeiture at the time of the conviction could lead to the Department of Health having to return property which has been used in the commission of an offence. It is proposed to amend section 119 so that it will be possible to apply for a forfeiture order within three months of a conviction for an offence under the act.

There are about 3 700 tobacco licences in effect in Western Australia. Each licence is valid for 12 months and the act provides for a process of renewal of a current licence. From time to time, applications for renewal are completed incorrectly or additional information is required. This can delay the process for consideration of an application and in the interim the licence may expire. It is proposed to amend the act so that an applicant’s licence may be extended up to a further 21 days after the licence is due to expire to ensure that any administrative problems with the application can be dealt with, while ensuring that the licence remains in force. This matter is addressed under clause 10. A consequential amendment has been made to section 40 of the act. Under the current provisions, the CEO is required to provide notice of a decision to refuse an application for the renewal of a licence 14 days before the day on which the licence expires. As the effect of the new grace period is to extend the period of the licence for up to 21 days past the date of expiry, the notice will now be required to be given within 14 days of the decision and the licence will continue to have effect during that period. These arrangements ensure that the applicant has time to apply to the State Administrative Tribunal for a review of the decision prior to the expiry of the licence.

The government is committed to strengthening Western Australia’s tough stance on tobacco control. The important amendments the bill proposes will tighten laws and policing relating to the sale, supply and marketing of tobacco products and exposure to second-hand smoke. The new provisions will contribute to the state’s comprehensive action on tobacco control and do more to protect children from exposure to tobacco products.

Pursuant to Legislative Council standing order 126(1), I advise that clause 5 of the bill ratifies or gives effect to a multilateral agreement to which the government of the state is a party—namely, an agreement made through the Ministerial Council on Drug Strategy. As such, this bill is a uniform legislation bill.

I commend the bill to the house and table the explanatory memorandum.

[See paper 466.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.