

Mr Rob Johnson; Mr John Kobelke; Speaker; Dr Kim Hames; Dr Janet Woollard; Mr John McGrath; Mr Peter Watson; Mr Roger Cook; Mr John Hyde; Ms Alannah MacTiernan; Mr Martin Whitely; Mr Chris Tallentire; Mr Fran Logan

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**TOBACCO PRODUCTS CONTROL AMENDMENT BILL 2008**

*Standing Orders Suspension — Motion*

**MR R.F. JOHNSON (Hillarys — Leader of the House)** [4.02 pm] — without notice: I move —

That so much of standing orders be suspended in relation to the Tobacco Products Control Amendment Bill 2008 as is necessary to enable —

- (a) the bill to be called on when government business has precedence;
- (b) during consideration in detail, the amendments appearing on the notice paper in the name of the Minister for Health to be proposed as one question;
- (c) during consideration in detail, the clauses, as amended, and the title of the bill to be proposed as one question; and
- (d) the third reading to be moved forthwith after the consideration in detail stage has concluded.

**MR J.C. KOBELKE (Balcatta)** [4.03 pm]: The opposition will support this motion and not delay it. We have brought our people into the house to provide the numbers.

Question put and passed with an absolute majority.

*Consideration in Detail*

**The SPEAKER:** I will provide members with information about this consideration in detail stage. In accordance with the suspension of standing orders, there will be two parts to this consideration in detail. In the first part, the amendments appearing on the notice paper in the name of the Minister for Health will be proposed as one question. In the second part of the consideration in detail, the clauses, as amended, and the title of the bill will be proposed as one question. I finally add that the third reading will be moved forthwith after the consideration in detail stage has concluded.

**Clauses 1 to 12 —**

**Dr K.D. HAMES:** I move —

Clause 5.

Page 2, line 25 — To delete the line and substitute:

- (1) In section 23(1) delete the definition of **50% retailer**.
- (2) Delete section 23(2) and (3).
- (3) In section 23(4):
  - (a) delete “22(2)” and insert:

22(1)
  - (b) in paragraph (b) delete “at the time for the purposes of section 22(2); and” and insert:

by the regulations; and

Clause 7.

Page 3, lines 17 to 23 — To delete the lines.

Page 3, line 24 — To insert after “area”:

unless the place in which the person is smoking is a smoking zone

Page 4, after line 21 — To insert:

- (4) For the purposes of *The Criminal Code* section 338A(d) and any other written law, a person is lawfully entitled to abstain from working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public.

Page 4, lines 22 and 23 — To delete “**children in open playgrounds or sportsgrounds**” and substitute:

**playground equipment**

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Page 4, lines 24 to 32 and page 5, lines 1 to 7 — To delete the lines and substitute:

A person must not smoke within 10 metres of children’s playground equipment that —

- (a) is in a public place or a part of a public place; and
- (b) is not in an enclosed public place.

Page 6, lines 1 to 6 — To delete the lines and substitute:

**107E. Local government legislative power not affected**

Nothing in section 107A, 107B or 107C is intended to limit the power conferred on a local government by the *Local Government Act 1995* or any other Act to make local laws about matters mentioned in those sections.

**107F. Dismissal or detriment because of refusal to work in smoking zone and employee’s remedy for breach**

(1) In this section —

*employee and employer* have the respective meanings given in the *Industrial Relations Act 1979* section 7(1).

(2) An employer must not —

- (a) dismiss an employee; or
- (b) alter an employee’s position to the employee’s disadvantage; or
- (c) refuse to promote or transfer an employee; or
- (d) otherwise injure an employee in relation to the employee’s employment; or
- (e) threaten to do any of those things,

for the reason, or for reasons that include the reason, that the employee does not consent to working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public (*the consent*).

Penalty: see section 115.

(3) In proceedings for a contravention of subsection (2), if it is proved that an employer took any course of action mentioned in that subsection against or in relation to an employee after the employee refused to give the consent, it is for the employer to prove that the course of action was taken for some reason other than because the employee refused to give the consent.

(4) Subsection (2) is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

(5) The *Industrial Relations Act 1979* section 97YG applies as if the reference in that section to a contravention of section 97YF of that Act includes a reference to a contravention of the *Tobacco Products Control Act 2006* section 107F(2).

Clause 8.

Page 6, after line 12 — To insert:

- (2) In section 115(1)(b) in the Table at the end of column 2 insert:  
s. 107F(2)

Clause 10.

Page 7, line 3 — To delete “delete paragraph (b) and” and substitute:  
after paragraph (b)

Clause 11.

Page 7, lines 16 to 30 and page 8, lines 1 to 6 — To delete the lines.

Clause 12.

Page 8, after line 17 — To insert:

**outdoor eating area** means a public place or part of a public place —

- (a) that is provided, on a commercial basis, as an area where food or drink may be consumed by people sitting at tables; and
- (b) that is not an enclosed public place;

**restaurant licence**, in relation to a place, means —

- (a) a restaurant licence granted under the *Liquor Control Act 1988* in relation to that place; or
- (b) a condition of any other kind of licence, order or permit under the *Liquor Control Act 1988* —
  - (i) to the effect that a provision of that Act relating to restaurant licences applies to that place; or
  - (ii) that otherwise has an effect in relation to that place that is similar to a provision of that Act relating to restaurant licences;

**smoking zone** means a place that —

- (a) is in licensed premises but not in a place to which a restaurant licence applies; and
- (b) is in an outdoor eating area at the licensed premises; and
- (c) has a total area that is not more than 50% of the whole of the area of that outdoor eating area;

In a moment I will provide to the house a brief explanation of these amendments and the reasoning behind them. I think this is a unique experience in the history of this Parliament. A bill introduced by an Independent member has now been agreed to by all the parties in this house. A suspension of standing orders, placing grave restrictions on debate, has been agreed to by every member of this chamber. I am not sure that these things would ever have happened before. The reason for this is that there is very strong support in this Parliament and in the community for increased restrictions on smoking in the community. A number of points of view were expressed by members on both sides of the house about the details of the amendments contained in the member for Alfred Cove's presentation to the Parliament. I will go through the things that have been broadly agreed with, and those that have been disagreed with, and then in general terms say how the amendments relate to that.

I firstly refer to the ban on product displays in tobacco retail premises. The broad thrust of the amendment proposed by the member for Alfred Cove has been agreed to by all members of this house. The one area in which a change has been proposed by my amendment is that, while in the original amendment proposed by the member for Alfred Cove the exemptions in section 23 of the Tobacco Products Control Act remain, they were deleted in a subsequent amendment. The end result of that was that the one operator of the two cigar stores in Western Australia would be forced to close. That has not been supported. Therefore the first of my amendments to the bill states that if an exemption exists for a specialist tobacco retailer—someone for whom more than eight per cent of his product is for that specific purpose—it would be able to continue.

The second of my amendments relates to the alfresco areas. There has been support for banning smoking in alfresco areas of restaurants, cafes and similar areas of licensed premises—there will be a full ban on smoking in those areas. However, there has been agreement that if a specific licensed premises relates to a hotel, up to 50 per cent of such an area would be allowed for smoking. This means that if a hotel owner wants to expand a non-smoking area, he is perfectly entitled to do that in up to 100 per cent of the outdoor area. If a person wants to expand the smoking area of a hotel, he will not be able to do that because 50 per cent is the maximum alfresco area that can be allocated for smoking. I say again that there will be no smoking in alfresco areas of restaurants and cafes but that hotels will be allowed to allocate up to 50 per cent of their outdoor area for smoking.

The member for Alfred Cove's proposed amendment to ban smoking in cars in the presence of children aged 17 or under has been supported by all members present in the chamber. The Liberal Party supports the

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original form of the member for Alfred Cove's proposed legislation to ban smoking at children's playgrounds, and there will be a ban on smoking within 10 metres of children's playground equipment. Liberal Party members have agreed not to support the broader restrictions, which were proposed in the subsequent amendments, that would have banned smoking at sporting venues and outdoor areas where children play. That largely stems from the concerns of a number of members, particularly National Party members. In country areas where people gather outdoors, for example at footy grounds, a whole range of age groups—up to under-17s and under-18s—play sport together.

**Mr J.E. McGRATH:** I would like to continue to hear what the Minister for Health is saying.

**Dr K.D. HAMES:** I do not have too much longer to go.

It would be too difficult to police such grounds. Members know what country sporting grounds look like. They are raised around the edges so that everyone can park their car around the ground to watch the footy. Are we going to draw a line and say that a person standing in front of the line cannot smoke but that a person behind it can? We thought it would be too difficult to enforce such a proposal, and so we have not supported it.

The standing committee proposed to ban smoking within five metres of a public place. We are not supporting it. We think it will be too difficult to police such a law. None of us likes people to stand in front of public buildings and smoke, but I think the managers of those buildings have a responsibility to work with their staff on this issue. I can just imagine people having to take a winding route down St Georges Terrace because of the five-metre circles outside the front of every public building.

**Mr P.B. Watson:** There is now. People are standing outside now and you have to walk past them.

**Dr K.D. HAMES:** It is not good to have to walk past people standing outside a building smoking. We know that, but we thought it impractical to police such an amendment.

The last recommendation was to ban smoking between the flags on patrolled beaches. The Liberal Party supports that recommendation. Places such as the City of Wanneroo have total smoking bans, and local government decisions about extending smoking bans in their jurisdictions will be left totally to local government. There will be no change in the ability of local government to make decisions about banning smoking.

I forgot to mention a minor point about smoking in the outdoor areas of pubs. The member for South Perth expressed serious concerns about hotel staff having to serve people in smoke-filled alfresco areas. Staff have no choice but to walk through those smoke-filled areas and be exposed to cigarette smoke. We had two options. One was to ban people going or to leave the law as it is. The problem with banning people from those areas was outlined by someone from Cable Beach Club Resort. He commented that international visitors come to the hotel. Hotel guests are served meals in outdoor alfresco areas near the swimming pool—as members who have been there will know—and for his staff not to go out and serve food and alcohol and to clear plates at the end of a meal would reflect badly on the hotel and on Western Australia. Other hoteliers have expressed similar sentiments. The Liberal Party has decided to accept a compromise suggested by the Minister for Police to insert proposed section 107F such that —

- (2) An employer must not —
  - (a) dismiss an employee; or
  - (b) alter an employee's position to the employee's disadvantage; or
  - (c) refuse to promote or transfer an employee; or
  - (d) otherwise injure an employee in relation to the employee's employment; or
  - (e) threaten to do any of those things.

Those things will become an offence. The proprietor will need to ask employees who smoke to, if they so wish, serve in those areas, ask staff who agree to work in those areas to do so or service the area himself. He cannot in any way punish someone who does not wish to work in a smoke-filled environment.

I have said before that this protection was not needed in this bill because current workers' compensation and occupational health and safety legislation ensure that an employer cannot send an employee into a situation in which he could potentially be affected by a poor health outcome. We have since discovered that, although that may be the case in theory, in practice it does not happen. An employee has never successfully prosecuted an employer for making the employee work in a smoke-filled area. Therefore, we included this amendment to resolve that.

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I think that covers those amendments about which a broad agreement has been reached. These issues have been discussed at length and compromises have been made by many members of the house who do not share the broader view—either to one extreme or the other—and in the end we have achieved what I think is a good resolution.

**Dr J.M. WOOLLARD:** I thank the Minister for Health for his support of the Tobacco Products Control Amendment Bill 2008. I thank those Liberal Party members who I know batted hard to help get this legislation through party meetings. I thank the opposition spokesperson on health and other members of the Labor Party who have also worked very hard to see this legislation go through. Finally, I would like to thank members of the National Party. This bill has the general support of the Parliament because it is what the community would like to see happen. We know the community supports this bill. Although the bill does not go as far as it would have gone without the amendments, it is a positive step. It is a step in the right direction. The Minister for Health knows that various health organisations, such as the Australian Medical Association, the Heart Foundation, Australian Council on Smoking and Health and the Cancer Council, and all the other major health organisations have given broad support to these amendments because they all realise this bill is a step in the right direction.

In conclusion, I am pleased that everyone has agreed to support these amendments, as I will be supporting them, and I thank everyone for their support of the bill.

**Mr J.E. McGRATH:** I rise to make just a few comments on the Tobacco Products Control Amendment Bill 2008. I have supported parts of the legislation, and in other parts I have not been too sure that we have gone far enough. I made that point in the party room. I understand that we are venturing into a difficult area. The biggest problem I had to get my head around was the various areas of inconsistency. The bill would ban people from smoking on a beach but not ban them from smoking in an outdoor area where there is no wind. It might be an outdoor area, but there is no howling sea breeze. I made the point in the party room that it would be a battle to light up a cigarette on some beaches.

However, I support what the member for Alfred Cove is doing. It is a step in the right direction. We are really just chipping away, and I wonder how long it will be before the member for Alfred Cove comes back to this place with another smoking bill that will move to prohibit smoking near entrances of buildings used by or open to the public. I do not think that is far away. I think we should have included that in this legislation. As the member for Albany said, it is necessary to walk through a screen of smoke when walking in and out of buildings in the city or places to which the public has access. Queensland has a four-metre exclusion zone and Tasmania has three-metre exclusion zone, and I do not think it will be long before we have that in Western Australia. I know that it is difficult for people who smoke, but as I said in my contribution to the second reading debate, smoking is a dying habit—an old slogan. Fewer people smoke now and most people smoke less often in the workplace than they used to. When I was a journalist at *The West Australian*, we would sit in a row writing our stories and everyone would be smoking. The occasional bin would go up in flames. That was how people lived in those days. That is changing. The point has been made that the number of smokers in the community has decreased from 70 per cent in the 1950s to about 15 per cent now. Our state is doing well in that regard.

As the Minister for Health said, I had an issue with hospitality workers having to go into areas where people are smoking. I do not care if people want to smoke; it is their prerogative. If people want to go into a smoking area, that is also their prerogative. However, I have a problem with a young hospitality worker having to go into an area in which he or she is not comfortable. Recently I spoke to a hospitality worker at a hotel in my electorate, and she made the point to me that she would be happy if there was no smoking in that hotel. She said that the staff have to go in and out of smoking areas, and it would be better if smoking was not allowed.

The 50 per cent rule is a good trade-off with the Australian Hotels Association. I am sure that the licensees will be responsible and will implement this legislation. The legislation imposes a requirement on employers on the way they treat staff who do not want to work in smoking areas. I have noticed that in the Windsor Hotel, which is in my electorate, there is a non-smoking area in which people can eat and drink. There is a lot of signage in that hotel indicating the non-smoking areas and stipulating that smoking is banned in those area.

In the community there is a general awareness of the direction we are going with this issue. The member for Alfred Cove's bill will take us a step closer. We will never reach a stage at which smoking will be banned in Kings Park or places like that.

**Mr P.B. Watson:** There are a lot of trees there.

**Mr J.E. McGRATH:** That is right; we do have a lot of fires in Kings Park. People cannot smoke at Subiaco Oval or the WACA. They have to go to the back of the venue or outside the ground to smoke. People at sporting

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grounds realise that it is not appropriate to smoke when other people are in close proximity. Most smokers will walk away and have a cigarette and return to watch the game.

I congratulate the member for Alfred Cove on the legislation that she has brought forward. It will receive general acceptance by the community, which understands that we are heading in a direction that one day will lead to very few, if any, people smoking. I do not know whether I will be alive to see it, but it might happen.

**Mr P.B. WATSON:** I will follow up on the comments of the previous speakers. I thank the Education and Health Standing Committee, particularly the feather duster, the former Minister for Health. His expertise was of benefit to the committee. I also thank my colleagues on the committee. It was a very good committee. The committee received a tremendous amount of input on the pros and cons of smoking. I learnt a lot about the effects of smoking in cars and the damage it can cause children. For example, children breathe in seven times as much smoke as adults. When people get out of a car, they carry the smoke on their bodies and they bring that into a person's lounge room. A person can return to his car later in the day and the smoke residue that kills people is still in the car. It was great to be given evidence on how smoking affects people. The committee learnt about the respiratory problems that can be caused to children and others through tobacco smoke.

I have not been into many hotels over the years. When I was younger I would go to hotels and they were full of smoke. As an athlete I did not want to stay there. I was really surprised when I went into some of the hotels that I had previously driven past and thought I would not want to go into. We went into a hotel on Scarborough Beach Road opposite the shopping centre.

**Mr J.E. McGrath:** The old Nookenburra Hotel.

**Mr P.B. WATSON:** That is right. I used to go there in my younger days and leave because it would be full of smoke. I went there recently and it was like going into a restaurant. The air was clear. The operators have made an effort and put in the money to make it a place for people to go for entertainment. I would be willing to take my family there for a meal. Had I not inspected that hotel, I would never have considered that.

People smoking outside buildings is a bugbear of mine. The member for Geraldton would know about the smoking problem when he flies to and from Geraldton with Skywest. Like me, he would walk outside the airport building and find fly in, fly out workers puffing away. We have to walk through that smoke. Even when I walk down St Georges Terrace on any day of the week, particularly at lunchtime, I pass a hundred people standing outside buildings smoking. I cannot for the life of me understand why a provision to cover that situation has not been included in the bill. People should not be subjected to smoke when they are trying to get fresh air. It is bad enough that we have to inhale the fumes from the buses without having to inhale smoke as well.

The casino is a concern to me. The casino has a special dispensation. It has a special room in which the big spenders from Asia and other places overseas gamble. They are supposed to have screens there. It is wrong to allow young casino staff to work under those conditions.

**Dr K.D. Hames:** Your minister approved it.

**Mr P.B. WATSON:** It does not mean to say that it is right. From the information I have been given by the experts, it is wrong that these people's lives are put at risk for multinationals.

I applaud the member for Alfred Cove for introducing this legislation. We disagree on some things, but we agree on others. It will create peer pressure. It has been said that seven out of 10 people do not smoke. At functions people who smoke have to go outside. They feel embarrassed. In the long term peer pressure will be a great advantage. I fully support this bill and congratulate everybody involved with it.

**Mr R.H. COOK:** The Minister for Health said that this bill has presented a unique situation. It is not a piece of legislation that has come from a government with all the discipline of the party and bureaucracy that that brings. We have witnessed a unique and interesting process whereby members on all sides of the chamber have been challenged to get their head around the detail of it, make a decision on its merits and engage in the debate. From that perspective it has been a very interesting exercise for me. It is the first piece of legislation of this detail that I have been involved with. Members of this place should be commended for the way in which this process has unfolded.

It is true that there is some disappointment that the legislation does not go to the full extent of the original amendment bill. However, it is also true that the minister has provided some sensible amendments that allow those people who had reservations about the bill to find commonality and common ground.

The area of the bill that is of most interest to members on this side of the chamber is that aspect that deals with smoking in licensed premises. The members for Collie-Preston and Albany put forward a strong case to me that

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elements of the hotel environment should be preserved. From that perspective I commend the minister for coming up with a compromise that takes us a long way to meeting those reservations.

This bill does two things. It includes provisions pertaining to the conduct of not only the sale of tobacco, but also the consumption of tobacco. The provisions pertaining to the consumption of tobacco are those to which these amendments apply. I am very pleased to see support around the chamber for those laws that impact upon the sale of tobacco. Maintaining the provisions relating to advertising in the amendment bill is a very important step, as are the provisions of the bill that relate to smoking in cars when a minor is present. I do not think anyone in the chamber—certainly no-one has ever approached me about this—would say that that was a bad aspect of the bill. It is unfortunate that we had some rather farcical public commentary on that aspect of the bill when it was originally introduced. Those provisions deal with a very important and dangerous aspect of smoking—the impact of smoking around children. As a whole the community should be taking every possible opportunity to ensure that minors and young people are not exposed to cigarette smoking.

One of the amendments that is particularly important deals with employees working in smoking zones. Along with a number of my colleagues, I grappled with that in the early days of this bill. The way it has been handled in this bill has great merit.

The minister made the comment that some licensed premises are worried about the impact that this legislation may have upon international visitors. I wanted to make the comment that when international visitors come to Australia, they should observe our cultural sensitivities as we do theirs. I would like to think that this legislation is a sign of the developing culture in our community to move away from smoking.

The member for South Perth, who has been a very strong supporter of this bill, made the comment that we are making great progress on reducing the incidence of smoking in our population—I think it is about 15 per cent—although the incidence of smoking in the Indigenous community is extraordinarily high.

**Dr K.D. Hames:** It is 25 to 26 per cent.

**Mr R.H. COOK:** We have a long way to go. I think we will see further legislation in the future. I hope it targets those areas and continues to receive the sort of cross-party support that this bill is enjoying.

**Mr J.N. HYDE:** I seek clarification on clause 4, the deletion of section 22 and the insertion of proposed new section 22 relating to the display of tobacco products. I also ask for some feedback on the regulations. Will this prohibition on the display of tobacco products apply to the entire premises? Will it be illegal to display tobacco products on the facade of any retail outlet? I understand that this provision would also apply to any wording that promotes the procurement, enjoyment or sale of tobacco products, apart from the other exclusions in the bill. That is my specific query on this proposed section.

**Dr J.M. WOOLLARD:** In relation to the displays on advertising, general retailers—that is, smaller supermarkets and the bigger supermarkets—will be completely prohibited from advertising tobacco products. The amendment that the minister has put on the table means that specialist retailers—there is one specialist retailer left in Perth—will be prohibited from advertising outside the premises. However, if the name of the store included the word “tobacco”, that is not prohibited but advertising per se is prohibited. The act currently states that advertising is only permitted one metre from the doorway. There is no change to the act relating to advertising outside the store. At the moment a store could be called a tobacco retailer. The changes in this bill mean that general retailers and the 50 per cent retailers would either have to have the cigarettes in a cabinet above the counter or in a drawer under the counter. They will be able to take them out to show them to a customer but I would hope that after this legislation is enacted, 90 or 95 per cent of the time the parents and children coming into those stores will not be able to see those cigarettes and will not be encouraged to take up smoking.

**Mr J.N. HYDE:** I seek further clarification. If the signage outside the shop is “Cigarettes are wonderful; please come in”, will that be allowed under this legislation?

**Dr J.M. WOOLLARD:** No. If the business name of the store was “Smith’s Tobacco Store”, that would be permissible. I do not foresee any store changing its name to that described by the member.

**Mr J.N. HYDE:** The member is generous towards the tobacco industry. We already have Toys“R”Us; soon we may have Smokes“R”Us. The industry will come up with a number of creative ways and get away with it.

**Mr R.H. Cook:** We’ll get them next time.

**Mr J.N. HYDE:** Yes.

**Ms A.J.G. MacTiernan:** I thought you supported creativity.

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**Mr J.N. HYDE:** I do, but not on the side of darkness.

I have a further question on the regulations. Let us say, for example, that this legislation is assented to by the Governor in three weeks. When will normal delis have to stop displaying packets of cigarettes?

**Dr J.M. WOOLLARD:** Going back to the previous query, any change to business names would go to the Department of Commerce. If anybody were to put up a name like the member suggested, I would certainly lobby against it and I am sure other people would, too.

These provisions will come into force one year from when the act is proclaimed. The member for Perth knows that under the original bill, they were meant to come into force within six months. It has been changed to 12 months following the advice from the Department of Health to give it adequate time to prepare the regulations that need to accompany this legislation.

**Ms A.J.G. MacTIERNAN:** The amendments that have been advanced make this a much more practical piece of legislation. Pubs in my area were very concerned about their capacity to continue to provide the sorts of social opportunities that they deliver to the community if there were a total ban on outdoor smoking. The best reform of this bill is the ban on smoking in cars where children are present. Even though it is true that it will not be highly enforceable, it sends an extremely clear message to parents that it is not acceptable conduct. There is obviously a very real risk to children subjected to cigarette smoke in the enclosed environment of a car. To me, that is probably the most important reform in this legislation.

There have been a number of articles in journals, particularly in *New Scientist*, of late where some critique has emerged of the impact of what is called third-hand smoking and the impact of passive smoking in outdoor areas. Some reputable scientists who are not funded by the tobacco industry are concerned that an overstating of this case may undermine the very good health arguments that need to be advanced. We must always keep an open mind and listen very broadly to the scientific information on this matter. In particular, the impact of what is called third-hand smoking has been challenged by reputable scientists, not by the servants of tobacco companies. Bearing that in mind, I believe the amendments that are proposed today are eminently supportable on good policy grounds. We must get this mix right. If we get this wrong and we go overboard—perhaps in reference to the member for Perth’s comment about the devious ways of industry—we will lose the very good health argument and message that we have spent many years building up in the community. I am not sure that it is altogether a bad thing that there might be some creative and subtle ways of indicating to smokers that tobacco is sold in particular premises. In Amsterdam—the Minister for Police would know from his visits to Amsterdam, which I am sure have been very frequent—a little dog logo appears on bars to indicate that people can go in and buy hash. I only knew about that because —

**Mr R.F. Johnson:** How did you know about that? I wouldn’t have had a clue.

**Ms A.J.G. MacTIERNAN:** I was on a fact-finding mission!

Several members interjected.

**Mr R.F. Johnson:** I have never smoked a marijuana joint ever!

**Ms A.J.G. MacTIERNAN:** I am just telling the Minister for Police. He probably walked through Amsterdam and did not notice the little dogs painted on the windows of bars.

No doubt there will be some creative responses by purveyors of tobacco, but I do not believe we need to be overly fearful of that. There are people who are smokers and they know the health risks. The aim of this legislation and the pulling back on advertising is to prevent advertising from being confronting, from being enticing and from bringing new people into the fold. The work of many members of the committee is to be commended and I believe we will get a better outcome as a result of these amendments.

**Dr J.M. WOOLLARD:** I thank the member for Armadale for her very positive and appreciative comments. I thank the other committee members: the members for Southern River, Geraldton and Albany, and the former member for Fremantle. The member for Armadale’s comments have been very supportive. When the member for South Perth spoke, he asked, “Where to from here?”

**Mr J.E. McGrath:** You’ll be gone; you know that. I’ll give you about six months!

**Dr J.M. WOOLLARD:** Maybe not six months, but we know that the majority of the community supports the measures in this bill. In fact, other committee members will tell the member for South Perth that during the committee hearings we were actually challenged and asked: why is this bill not doing this and why is this bill not doing that? That is why the committee made several other recommendations that are not included in the bill.

Mr Rob Johnson; Mr John Kobelke; Speaker; Dr Kim Hames; Dr Janet Woollard; Mr John McGrath; Mr Peter Watson; Mr Roger Cook; Mr John Hyde; Ms Alannah MacTiernan; Mr Martin Whitely; Mr Chris Tallentire; Mr Fran Logan

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However, the recommendations have been made to the Minister for Health and he was asked as usual to respond to the committee and to Parliament on those recommendations. I therefore thank the member for Armadale for her positive comments.

**Mr M.P. WHITELY:** I support this legislation wholeheartedly. Being a smoker, I mean being a non-smoker who shares a house —

**Ms A.J.G. MacTiernan:** I was going to say that I hadn't seen you bring your cigarettes out.

**Mr M.P. WHITELY:** No, I am not a smoker. Being a non-smoker who shares a house with a long-term smoker, I assure the member for Armadale that we have even stronger restrictions at home than are in this bill.

I want to ask a question on behalf of a very specific group of people in my electorate. They are the patrons of the beer garden at Bassendean Hotel. I want to be absolutely sure of the answer to my question because they were not very trusting of what I told them. I tried to explain to them that the proposed amendments would meet their requirements, but they were not terribly trusting about that and wanted me to raise the issue in the Parliament. I therefore take this opportunity to ask a question on their behalf. It is fair to say that they are long-term patrons and they enjoy a drink and a smoke in the beer garden at the front of Bassendean Hotel. Bassendean Hotel has two beer gardens of about equivalent size, one downstairs and one on the veranda upstairs. The patrons go for a drink and a smoke in the lower beer garden at the front of the hotel. As I understand it, if the hotel designates the upper beer garden, which is the equivalent size of the lower garden, as the non-smokers' outdoor dining area and the lower beer garden as the smokers' area, would that be okay? I notice the Minister for Health nodding, but I do want a response.

I note that one amendment refers to a smoking zone as a place that is in licensed premises but not in a place with a restaurant licence. I am assuming—I do not have detailed knowledge of this—that, even though Bassendean Hotel runs a restaurant, it runs it under a hotel licence; therefore, will that be okay? I want confirmation that a restaurant licence does not apply to this hotel, because it runs the restaurant under a hotel licence, and that it will be able to maintain the beer garden. The beer garden out the front of Bassendean Hotel is inhabited in practical terms only by smokers and it is a very important social outlet to these smokers who enjoy a smoke and drink with their mates. If the minister can assure me that the situation I have outlined will continue to be permissible, I am sure I can go back to the patrons at Bassendean Hotel and reassure them that they can continue to enjoy their habit.

**Dr J.M. WOOLLARD:** Unless the member for Bassendean is certain at this point of the type of licence the hotel has, if it has a restaurant licence —

**Ms A.J.G. MacTiernan:** It's a tavern licence, isn't it?

**Mr M.P. Whitely:** It's a pub.

**Dr J.M. WOOLLARD:** If it is a general hotel and the amendment is passed, it will mean that up to 50 per cent of the hotel's area can be used for smokers.

**Mr M.P. Whitely:** If the hotel has two identically sized areas, one of which is non-smoking and one of which is smoking, is that fine?

**Dr J.M. WOOLLARD:** It is up to 50 per cent of the alfresco area. At the moment inside would be a non-smoking area.

**Mr M.P. Whitely:** Yes.

**Dr J.M. WOOLLARD:** The external area might be in various parts, but all those parts would add up to 100 per cent.

**Mr M.P. Whitely:** Okay.

**Dr J.M. WOOLLARD:** Therefore, provided that it has a general licence, there can be smoking in 50 per cent of the total outdoor area. If the hotel has a restaurant licence, this amendment does not apply.

**Mr M.P. Whitely:** A hotel does not have to have a restaurant licence to run a restaurant out of the hotel, though. Am I correct?

**Dr J.M. WOOLLARD:** No, but some hotels actually have a restaurant licence. Therefore, for those hotels that are licensed, this exemption will apply.

While I am on my feet, I take this opportunity to thank Dr David Worth, the committee's principal research officer, who is in the Speaker's gallery. I also thank Timothy Hughes, who is not in the gallery at the moment.

Mr Rob Johnson; Mr John Kobelke; Speaker; Dr Kim Hames; Dr Janet Woollard; Mr John McGrath; Mr Peter Watson; Mr Roger Cook; Mr John Hyde; Ms Alannah MacTiernan; Mr Martin Whitely; Mr Chris Tallentire; Mr Fran Logan

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The other committee members will tell the house that our research staff were absolutely excellent. They gave us so much support, guidance and assistance. We really appreciate all the help they were able to give us, and all the committee members look forward to working with them over the next few years.

**Mr J.E. McGRATH:** I would like some clarification following on from the question from the member for Bassendean. Must the 50 per cent area for smokers be a separate area or can it make up 50 per cent of the total area, so that smokers can be dotted through an area? We need to be clear on that.

**Dr K.D. HAMES:** It is quite clear that it will be up to hotels to decide how they configure their outdoor areas up to 50 per cent for smoking. They have really two options. They can take each outdoor area that they have, draw a line down the middle and half would be smoking and half non-smoking. The trouble with that, of course, is that smoke knows no boundaries, so it would drift across into the non-smoking area, and I am sure non-smokers would complain very quickly that they were being affected by smoke from the smoking area. The best way to do it, as the member for Bassendean suggested, and this is what we are encouraging, is to have two separate areas. As the member for Bassendean suggested, the upstairs area of the hotel in his electorate is non-smoking and the downstairs area is smoking. It is up to hotels to work out how they do that and the sort of configuration they have.

**Mr M.P. Whitely:** My concern is about a hotel that runs a restaurant under a hotel licence.

**Dr K.D. HAMES:** I am not an expert on licensing. I understand that restaurants are run under a restaurant licence and hotels have a hotel licence. A hotel can serve food as part of the hotel licence. The restaurant in the Cobblers Tavern next to me, for example, faces the street, but it has separate areas at the back of the hotel. I am assuming the hotelier has a restaurant licence for the front of the hotel and a hotel licence for the back. The Queens Hotel in Mt Lawley provides a large outdoor area where people eat. Logically, the proprietor will say that that is the non-smoking area because that is where most people will sit and eat, and have the outdoor area along the front as the 50 per cent smoking area. We would prefer that the areas be separate. Some hotels do that now. The Odin Hotel is a good example of a hotel that provides two separate areas. That is what people want so that they are not affected by people in the smoking area.

**Mr C.J. TALLENTIRE:** I am very supportive of this legislation and these amendments. We can see that there is a genuine desire to improve controls on smoking in Western Australia. However, I think the tobacco industry and associated bodies, such as the Australian Hotels Association, need to be on notice that it is part of an incremental step forward. The minister's words indicate how different hotels may deal with the separation of smoking zones. That is useful information, but I think we must bear in mind that, for many hotels, it will be a simple division of areas, although that can lead to situations. I have heard different antismoking lobbyists say that prohibiting smoking in part of an outdoor eating area is rather akin to having a non-urinating end in a swimming pool. We have to keep that in mind. This is a positive step forward, but it is only a step towards the end game, which is eventually to see the sale of tobacco products banned. I support this legislation. However, one other area that needs some comment is the litter problem associated with tobacco products, which we need to address properly in subsequent reforms of tobacco legislation in Western Australia.

**Mr F.M. LOGAN:** A pub in my electorate, the Gate in Cockburn Central, has been purpose built. It is a brand-new pub and a lot of money has been poured into it. It was built specifically to take account of the needs of smokers when outdoor areas mesh with indoor areas. At both the sports bar and the saloon bar, the doors open to allow a modern, indoor-outdoor setting for the pub. Currently, people stand outside and smoke. Does this amendment mean that the current outdoor areas in this brand-new pub will have to be split 50 per cent? The pub was designed, effectively, in light of the changes in this legislation. Will the outdoor areas also have to be split in half for smokers and non-smokers? It would be a major problem for that pub if it had to make a lot of architectural changes to an already substantial investment.

**Dr J.M. WOOLLARD:** If there are separate areas, the hoteliers can choose, as long as 50 per cent of the external areas are for non-smokers.

I would now like to thank everyone for their contributions. The Leader of the House wants the debate to finish at five o'clock and I hope we can get the bill through the third reading before the house rises. So, at this point, I thank everyone for their contributions to this debate and assure members, particularly Labor members, who have questions that have not been answered that I am more than happy to meet them after this debate. I am sure they can ask their colleagues to put those questions in the upper house.

**Mr F.M. LOGAN:** It is not a question of debate outside; I want the information on the record. That is why I am asking these questions. If there are two sides of the pub, a sports bar and a saloon bar, does the 50 per cent cover the total of the outdoor area of that pub, or each individual bar?

Mr Rob Johnson; Mr John Kobelke; Speaker; Dr Kim Hames; Dr Janet Woollard; Mr John McGrath; Mr Peter Watson; Mr Roger Cook; Mr John Hyde; Ms Alannah MacTiernan; Mr Martin Whitely; Mr Chris Tallentire; Mr Fran Logan

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**Dr J.M. Woollard:** It is the total.

**Mr F.M. LOGAN:** Thank you.

**Amendments put and passed.**

**Clauses, as amended, put and passed.**

**Title put and passed.**

*Third Reading*

**DR J.M. WOOLLARD (Alfred Cove) [5.56 pm]:** I move —

That the bill be now read a third time.

**DR K.D. HAMES (Dawesville — Minister for Health) [5.56 pm]:** I will take two minutes so that I keep within our time constraints. I thank the member for Alfred Cove. The quality of the people at the desk is a good example of the broad support the bill has received. There was a senior representative from the Australian Medical Association, a representative from the Heart Foundation and a representative from our own health department, who were pushing me all the way to support this bill. I am sure that if the representative from the Australian Council on Smoking and Health had been able to get here, he would have been doing the same, particularly considering that, with the AMA, ACOSH played a large part in drafting the legislation in the first place. We have reached a good outcome, a compromise that everyone is comfortable with. I am very pleased to have been part of working in such a cooperative way with all the members of this house.

**MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [5.57 pm]:** I will stand for a maximum of 30 seconds to say how pleased we are on this side of the chamber to support this very important legislation. It has involved a lot of compromise and consideration from members from all sides. It is very commendable that we have come up with this package.

**DR J.M. WOOLLARD (Alfred Cove) [5.58 pm] — in reply:** In closing the debate, I thank all members of the house as well as the Liberal Party, Labor Party and National Party committee members, and our committee staff. I also again thank the Australian Medical Association, the Heart Foundation, the health department, the Cancer Council and ACOSH—a representative of ACOSH is at the back of the chamber sitting tall.

**Mr D.A. Templeman:** Keith.

**Dr J.M. WOOLLARD:** Yes. I thank my family for their support. Two of my daughters and my third grandchild-to-be are sitting up in the public gallery.

This bill, particularly the ban on advertising, will stop people from taking up smoking. Nine thousand children each year take up smoking. The bill will protect children whose parents or their friends have been prepared to smoke while the children are in the car.

Exposure to cigarette smoke can stunt the growth of children's lungs. The Tobacco Products Control Amendment Bill 2008 will protect children and families on beaches; it will mean that people are going to have to move away from certain areas of the beach if they want to smoke. It will protect children in playgrounds.

I have 30 seconds left and I will again thank everyone and hope that the support that the Liberal, National and Labor Parties have given to this bill in this house will be equally forthcoming in the upper house. I hope that this legislation will be proclaimed as soon as possible, to stop deaths and ill health from tobacco smoking. It is a bill that the community wants to see introduced. I hope that the government will ensure that the regulations are produced as soon as possible.

Question put and passed.

Bill read a third time and transmitted to the Council.