

## TOBACCO PRODUCTS CONTROL BILL 2005

### *Second Reading*

Resumed from 29 June.

**DR K.D. HAMES (Dawesville)** [4.28 pm]: The Opposition supports the bill, although there are some areas about which we would like to express concern, and there are some areas about which we would like further explanation. The concept of the bill is largely to reduce access by people under the age of 18 to tobacco products. I want to put on the record some of the issues that are presented in this bill. I will read from the minister's explanatory memorandum, largely because I presume he will not take the opportunity to do so during the debate. It reads -

- a) consolidates currently fragmented legislation regulating tobacco products and smoking;

On that point, some members on this side of the house wanted to know why, if there was something wrong with the Tobacco Control Act, the minister did not just fix it. I was told by the minister's adviser that an attempt to amend it proved to be extremely difficult because the disorganised statements in the act would not have easily translated into sensible provisions. It was decided to establish a separate bill. A colleague asked me that question but until now I had not been able to provide an answer. The explanatory memorandum continues -

- b) provides clear statements of the Government's policies in the preamble and objects clauses;

As I said, we support those policies. It continues -

- c) generally regulates the sale and supply of tobacco products and other smoking products such as herbal cigarettes, cigarette papers, pipes, confectionery and toys that are designed to resemble smoking products, but will not apply to cannabis or other illicit substances;

Perhaps an opportunity has been lost in not applying that provision to cannabis and other illicit substances. As far as I know, it is not illegal to supply the implements for cannabis smoking; however, it should be. In one sense there is no difference between smoking cigarettes and smoking cannabis. In terms of the effects on one's health, it is far more unhealthy for a person to smoke cannabis than it is to smoke tobacco. This legislation provided a good opportunity to ban the sale of all implements; presently there is nothing to stop those things being sold. Sadly, it is much easier for young people to take up cannabis smoking after they have taken up cigarette smoking. Smoking cannabis is more difficult for people who have never smoked a cigarette because they are not used to smoking. If members have smoked, as I have, they would know that early attempts to smoke result in coughing, spluttering and ill health. Sadly, we tend to keep going and force ourselves through those difficulties.

That was well said, member for Vasse! I hope that *Hansard* will record the big cough that came from the member for Vasse. His cough was similar to a smoker's cough. I was not aware that the member for Vasse smoked. When someone came into my surgery and coughed, I could pick whether they were a smoker from the nature of their cough. I think one of the minister's frogs has lodged itself in the throat of the member for Warren-Blackwood! It is a sad progression when a person moves from smoking cigarettes to smoking cannabis.

**Mr R.C. Kucera:** I used to encourage people to cough in my old occupation.

**Dr K.D. HAMES:** In my occupation a firm grip in the nether regions was occasionally the procedure. I am not sure whether that should go in *Hansard*; however, I guess the reporter has no choice but to include it!

The explanatory memorandum continues -

- d) adopts and strengthens provisions currently contained in the TCA that prohibit sales and supply to minors;
- e) contains a new requirement for evidence of age to be produced on request at point of sale;

Obviously that is something we strongly support. I have personal experience in this matter because members of my family smoke cigarettes. Two of them started smoking at an early age. Despite my best efforts, it was impossible to stop the local deli owners and liquor stores from selling cigarettes to minors, who continued to be able to purchase cigarettes anywhere. It is unfortunate that they have that ability and opportunity. I recall the work of the undercover sting, which the minister has previously mentioned in Parliament. I do not remember the figures he provided, but they showed a high incidence of noncompliance with the law when it came to people selling cigarettes to those under age.

**Mr J.A. McGinty:** Fifty-three per cent of retailers sold to those who were obviously children. That was the general figure.

**Dr K.D. HAMES:** I am not surprised. My sons were obviously children when they were sold cigarettes. It would have been very easy to tell that they were under age. I have six children and I am pleased to say that four of them are non-smokers; indeed, some are still quite young, but I am sure they will be non-smokers. Sadly, my two oldest boys are both smokers. I am sure that their father did not provide them with a good example. The explanatory memorandum continues -

- f) contains new provisions controlling Internet sales of tobacco products and by other means of indirect sales to further control sales to minors;
- g) contains new provisions for the licensing of tobacco retailers and wholesalers;

Members from this side of the house have expressed concern about the need to introduce a licensing system when so many things are already licensed. Forcing retailers to obtain yet another licence for carrying out their normal business is considered extreme by many of my colleagues, especially when the legislation provides so many penalties for those who do not abide by the law and who supply tobacco products to those under 18 years of age. Many of my colleagues believe it is an unnecessary imposition and that, as usual, it is part of the government/bureaucratic system that will provide access to funds. I note that funds from the licensing system will pay for the inspectors who are currently funded from another source. I do not recall the source of that funding, but they are already being funded. However, the funds from the licensing system will be used to pay their wages. Why take more money from retailers to pay for something that is currently being paid for by the government? The opposition accepts the point that if someone breaks the law, particularly if they repeatedly break the law, there must be some method of stopping them from doing so. One would have hoped that the penalty provisions, which are quite severe, would be enough to stop people breaking the law. The minister has made the point that the threat of removing a person's licence to sell cigarettes is a strong incentive to stop them breaking the law. That is true. I note that if an individual breaks the law, the penalty is between \$10 000 and \$20 000. One would think that such a penalty would stop someone from breaking the law; therefore, why do we need a licensing system? Perhaps it is to be sure, to be sure. The explanatory memorandum continues -

- i) restricts the availability and display of tobacco products;

We will discuss that later. That provision, for those who were not at the party room briefing, restricts the amount of space for the display of tobacco products to one square meter. That provision applies to everyone except those whose sole business is the sale of tobacco products. Only two or three businesses in Western Australia are purely tobacco shops whose sole purpose is to sell pipes, cigarettes and so on. That restriction will not be placed on those people and they will be able to continue working as they are. We have also had discussions with the minister about the three square metres of space, about which the legislation is not very clear. I point out to my colleagues that I have discussed that issue with the minister and his advisers, and we are looking at ways to make it more clear. In one sense, the legislation suggests that if 80 per cent of a business is the sale of cigarettes, it is allowed three square metres of advertising space. However, the same clause states that the advertising space cannot be in the same area as any other products sold in the shop. The government cannot have it both ways. If cigarettes form only 80 per cent of sales for a business, 20 per cent of its sales must come from something else. It would be silly to have the 20 per cent of something else in a room or area totally separate from where the 80 per cent of sales occur. Cigarettes often make up 80 per cent of the sales of some delis. We will discuss the percentage of profit issue during the consideration in detail stage, because the legislation requires that the profit be 50 per cent of gross profit. Clause 23 is headed "Defences in relation to certain display requirements", and states -

- (1) In this section -

**"50% retailer"** means a person who conducts a business selling tobacco products by way of retail sale if -

- (a) the person had been conducting that business on 1 July 2005; and
- (b) at 1 July 2005, 50% or more of the average gross turnover of the business was derived from the sale of tobacco products;

I am not happy that it is 50 per cent of gross turnover. A small deli may be a lotto agent. Lotto agents have very high turnovers but not large margins, so they may have a very large gross turnover but a very small amount of profit may come from that component. It may well be that 80 per cent of its profits comes from the sale of cigarettes. That is often the case with many very small delis.

**Dr J.M. Woollard:** Are you speaking on behalf of the Liberal Party or the Australian Hotels Association?

**Dr K.D. HAMES:** Is the member all right?

The point is that 80 per cent of profit may come from the sale of cigarettes. Such businesses will be allowed three square metres of display space, but this will then be limited by subclause (2)(d), which states -

the display could not be seen from an area where goods other than tobacco products were available for sale;

This is a little extreme given that, by and large, that is the business they are in. Overall, we support the government's position of having one square metre of display space for all other businesses.

In Western Australia, only about 15 per cent of the population smoke, although everyone would regard that as still being too high. However, it is the lowest rate in Australia, which has an average of 17 per cent. I read in a recent magazine article that the rate of smoking in Australia is the lowest of all Organisation for Economic Cooperation and Development countries. All the work that has been done and is being done by governments of both persuasions to reduce the number of people who smoke cigarettes is working very well. It is now outside the norm for people to smoke. Very few members of Parliament smoke. When I go to medical functions, almost 100 per cent of delegates are non-smokers. The exception would be if my father were there; he would be plus one. Most doctors and most people in the medical and health professions are non-smokers. They are setting an extremely good example.

The reality is that most people who smoke have a brand of cigarettes that they always smoke, and that brand is normally determined by what their parents or their circle of friends smoke. People will tend to smoke cigarettes that are the same or similar to those smoked by the people with whom they hang out. When they go to a shop to buy cigarettes, the amount of display space devoted to cigarettes does not matter to them; they do not look at the display cabinet and wonder what cigarettes they will buy. Extra display space will allow businesses to promote and advertise cigarettes, which is what we are obviously opposed to. It may influence children in the area who look at the big displays of cigarettes. That is why we strongly agree with the reduction in display area. People who smoke will not change the brand of cigarettes they buy because of these displays.

Small businesses expressed to us their concerns with the bill, but I do not think they will be any worse off; they will still sell cigarettes. The requirements regarding literature are good. Small businesses read the bill to mean that every time they sold a packet of cigarettes, they would have to hand over literature to the person who bought the cigarettes. However, I am advised that that is not so. Even though the bill states that, in selling cigarettes, businesses will provide pamphlets to their customers, that means that they will have the pamphlets on the counter; they will not be required to stick them in people's hands. We hope to discourage people from smoking and to reduce the number of people who smoke in a range of ways. However, small businesses will not be worse off following the introduction of this legislation. In some ways, they will be better off. Big shops like Woolies and Coles have big display and advertising areas, and people are more likely to buy cigarettes from them, partly for that reason. Under this legislation, everyone will be equal; Woolies will have the same-sized signs as the small deli down the road.

**Mr J.A. McGinty:** One of the problems that you might have some insight into how we can tackle is that of the somewhat more elderly people who still smoke. I will give one example. The Heart Foundation ball was held in Fremantle earlier this year. Halfway through the night I went outside and saw a number of very senior people puffing away on their cigarettes, which I thought was disgraceful. I do not quite know how we can get the message through to those people, who should know better.

**Dr K.D. HAMES:** It is very hard. As I said, my father is one of those people who are set in their ways and will not change. Without dobbling him in too much, he still denies the full effects of smoking on health. I find that difficult to understand. It is very hard to stop smoking. I am more concerned about discouraging people from starting to smoke. I am pleased to say that I am an ex-cigarette smoker, but I have not been able to say that for very long. I smoked in my youth, and during my life I have been a one or two a day or sometimes a one or two a week smoker - I continued to smoke. Even at that non-addictive level it becomes a habit that is very hard to stop. Now that I have done that, since 1 January this year -

**Mr J.A. McGinty:** Well done.

**Dr K.D. HAMES:** People think that smoking a cigarette settles one's nerves. In the old days doctors said to patients who had trouble with their nerves that they had better take up smoking cigarettes. People would thank their doctors and would go away and rot their lungs. Obviously, that is not the case. As a smoker, one finds that the stress of waiting for the next cigarette is more stressful than giving them up. Non-smokers do not have the stress of thinking that they would like to have a smoke, and that is a very relaxing and peaceful situation in which to be. I say to any person in the chamber who still smokes that it feels much better when one stops.

Clause 27 restricts the number and location of vending machines. That is obviously an important point. Vending machines used to be available just about anywhere, so people could easily access cigarettes from these machines when they ran out. It is very good that controls are being put in place. However, I am not sure of the value of the provision making it harder for mining companies. Few people who work in the mining industry are under the age of 18. My son happens to be one of them, but he is a non-smoker. Hopefully these restrictions

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

will make sure that he does not take up smoking. There are very few people of that age in the mining industry; people generally need to be 18 to work in that industry.

The bill also bans tobacco advertising, including suggestive forms of advertising such as “brand stretching” and “buzz marketing”. I do not understand the meaning of those terms. Perhaps the minister will explain them in his reply.

Restricting the advertising of tobacco has been very successful and that is the reason for Healthway. Healthway provides funds to those organisations which used to go to tobacco companies to get sponsorship and that is a tremendous step forward. When it was first established I was not of that opinion, because so much money was going into the development of sport that I thought at the time it was not worth it. I have certainly changed my mind since then and Healthway does a huge amount in the community by providing funds for different organisations and groups. On that issue, I notice that the budget component that was designated for the restructure of Healthway in the previous legislation is not included in this bill. I think \$12.9 million was designated in the previous legislation. However, there is no designated amount in this bill, but I know the amount paid to Healthway is in the order of \$19 million plus, which is a larger amount. Will the minister clarify the position by explaining why it was taken out of the previous legislation, why it was a fixed amount in the first place and not a CPI-driven amount, where it is now and what guarantee can be given that the funding for Healthway will continue and not be reduced by this or any other government in the future. That money is essential to supporting an organisation that otherwise would have sought tobacco advertising funding.

The purpose of the bill will be achieved by several provisions, including the control of information signs about the availability and price of tobacco products. We have already covered that to some degree. One square metre of space will not provide for any costing or comparison of brands. Therefore, a company selling a particular brand would not be able to buy up all of the one square metre of space to display its products. As a matter of fact, that small space will not allow for the display of all brands. I understand that there are approximately 250 brands of tobacco products. In many cases several products are produced by the same manufacturer. That number of products cannot be shown in one square metre of space, nor would we want that to happen. The concern is that, firstly, a company with market dominance will make sure it provides sufficient incentive to the retailer to display its product and, secondly, that there will be competition between the manufacturers for that space. The provisions in the legislation will prevent that occurring, but I ask the minister to expand on that and explain what stops one company from buying out the whole one square metre from the retailer and in that way promote its own products.

I have covered all the main areas of the bill. It goes on to refer to other minor issues that we will cover, if necessary, during the consideration in detail stage; for example, the defence of Australia Post workers. We must ensure that they are not seen to be selling cigarettes because they deal with the goods as they pass through a post office.

On the issue of Healthway, I ask the minister to explain the need for it to be included in this bill. Why is it not treated as a separate organisational structure? The only link Healthway has to tobacco is that it was established so that the sponsorship that came from tobacco was provided by an alternate group. Initially, it was logical to include it in this legislation, but it is no longer logical to do that. Healthway has come a long way since then. It provides support and sponsorship in a similar way to Lotterywest. It is a government-sponsored body that provides support to not only sporting organisations but also all sorts of health-related activities. It seems a shame that it should still be linked with tobacco legislation. Perhaps it could be separated from it.

I did not have access to previous legislation that established Healthway and I want to be assured that there is no significant difference between that and this bill, other than the removal of the funding specification. For example, a concern that was raised at one of our party room meetings was that currently the cheques provided by Healthway cannot be distributed for political gain. In other words, local members cannot present those cheques. The view from this side of the house is that is a good move.

**Mr J.A. McGinty:** That will not be altered by these changes.

**Dr K.D. HAMES:** I have a concern about the ability of the chief executive officer to delegate powers. Perhaps he could delegate his responsibility to administer cheques to another party. It was pointed out by the minister’s adviser that this provision was included in that spot because it was difficult to find another one for it. It must be clarified that the CEO of Healthway cannot arrange for someone to distribute funding.

I think I have covered the major issues. I expected a lot of people to contact my office about this matter, but they did not. I thought small business may well be up in arms, but it is not.

While small business operators are annoyed about the requirement for a licence, they are sensitive about sting operations. Many of them say they have never been subject to sting operations in their life and they question

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

why they are necessary. The minister made it clear in his second reading speech that they are necessary to catch people who are not operating within the law. Generally, small business can see the writing on the wall that cigarettes are becoming anathema to most Western Australians and that it is time for us to continue moving down the road of restricting the opportunities for people to smoke in Western Australia. Given that probably at least 85 per cent of Western Australians are non-smokers, there is general support for the introduction of measures against smoking in Western Australia.

I will refer to one other matter. It is a matter I have already discussed with the minister, but I want it on the record. I refer to the issue of prizes competitions. The legislation states -

A person must not, in connection with the sale of a tobacco product or for the purpose of promoting a tobacco product or smoking generally, supply to any person (whether or not the purchaser) -

- (a) a prize, gift or other benefit; or
- (b) a stamp, coupon, token, voucher, ticket or other thing . . .

My concern relates to the meaning of the word "supply". There could be two unintended consequences resulting from this legislation. Firstly, in providing a large volume of a product - this relates to any product; for example, from the meat and fruit and vegetable industry - to Coles or Woolworths, it is purchased by them at a lower price than it is supplied to other retailers. If it is the government's intention to change that, so that everyone has to pay the same amount, small businesses would be very happy with it. I am not certain that that is the intention, so it needs to be clarified. The other thing is that people who purchase more than \$30 worth of goods at Coles or Woolworths receive a 4c a litre discount on petrol. That purchase may include cigarettes. That would not change if somebody went to the cigarette counter and bought more than \$30 worth of cigarettes; they would still get the 4c a litre discount. All purchases over \$30 in those stores attract the fuel discount, which under clause 33(1)(b) would qualify as -

a stamp, coupon, token, voucher, ticket or any other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit.

If it is not the intention of the minister to allow that, I ask that he clarify that during his response. We will go through that again during consideration in detail and determine whether an amendment is required or whether the statement of the minister to this house will be sufficient when the legislation is interpreted in the future.

That is all I wish to say. The opposition supports this legislation. It is the right direction to take. Legislation of this nature will be ever increasing in its severity in the future in Western Australia.

**MR R.C. KUCERA (Yokine - Minister for Sport and Recreation)** [5.01 pm]: I will take only a small amount of the time of the house to commend this bill to members. As a previous Minister for Health, a reformed smoker - a non-smoker nowadays - and a former president of the WA division of the National Heart Foundation, I can say that this is probably one of the most important pieces of legislation to come before the house in this session, because it will save lives. Smoking is the biggest preventable cause of illness in our state, and indeed in the world. It is very pleasing to see the results of campaigns by the Heart Foundation and the Cancer Council WA and other programs of the past few years to reduce the levels of smoking in Western Australia. I was particularly keen to push this legislation when I was Minister for Health. I commend the present Minister for Health for having the courage to almost totally rewrite the legislation to make sure that these issues are dealt with. I noted that the member for Dawesville commented on the possibility of amending the existing act, but the reality was that that was never going to be possible. The reviews that were conducted during my time as Minister for Health and later on showed that there was a need to bring a totally new bill before the house.

I will comment on the remarks made by the member for Dawesville on cannabis implements. My previous experience would be that anything to do with cannabis is illegal, and possession of implements and everything else should be linked to the offences provided for under the police and criminal jurisdictions generally. I do not see this as a lost opportunity. It is far better to make sure that we reinforce the message that cannabis use is illegal, and linking it to the criminal jurisdiction will have much more impact than would be provided by this bill, even if there was an opportunity to deal with those issues under this legislation.

**Dr K.D. Hames** interjected.

**Mr R.C. KUCERA:** I was not being critical of the member for Dawesville.

**Dr K.D. Hames:** Are cannabis implements definitely illegal, because I have seen them on display in shops?

**Mr R.C. KUCERA:** Their sale is not illegal, but once they have been used and have cannabis products attached to them, they are illegal. It is as simple as that. I understand that the Attorney General intends to make amendments to related drug acts to cover that issue. It is something that was probably overlooked when the cannabis legislation went through. I had carriage of that legislation, and the issue was not raised when it was

passed. However, it would be a backward step if we removed the criminality of those issues and put them into something that is more a health-related bill.

I am particularly pleased to see in the public gallery today Maurice Swanson, the current chief executive officer in Western Australia of the National Heart Foundation. I pay particular tribute to the Heart Foundation and the Cancer Council for making sure that pressure is maintained on the government about tobacco products. My mother died at age 61, and the diagnosis was that smoking had killed her. I lost her at such an early age because of smoking-related diseases. I was a very heavy smoker in my youth, but I am very pleased to say that nowadays I am a non-smoker. I also pay special tribute to Michael Daube, the former head of the Department of Health, who designed the original Quit campaign. Four weeks ago I was in South Africa speaking with its medical research council and senior sporting people about programs to keep young people healthy. One of their key issues is smoking. In Western Australia the rate of smoking is on the way down, but in South Africa it is going up, particularly amongst young people. The Quit campaign is still the best campaign ever designed, not only here, but worldwide. It has been recognised worldwide for what it is and I pay particular tribute to the people who are involved in that campaign, and in maintaining the rage on this product.

This legislation is another step along the way, and an increment to the fight against the use of tobacco products, and it is to be commended for that. It is not possible to fix everything overnight. I know there have been debates about the various exemptions that apply to various places across the state, but the reality is that tobacco is a product that kills people. The more we can do to reinforce that message, the better.

As Minister for Sport and Recreation, I will touch on Healthway, which is one of the principal contributors to sport in this state. I am pleased that the restriction on the amount of money available has been removed by the legislation. There is nothing sinister in that. In fact, while I was health minister, we were trying to get around the legislation to increase the amount of money flowing to Healthway. I commend Healthway. In discussions with the sports minister in South Africa recently I learnt that he was of the view that South Africa had made a serious mistake in not following Western Australia's model and putting in place alternatives and substitutes for tobacco advertising, rather than just banning tobacco advertising. That just drove the sale and advertising of tobacco underground and has had the opposite effect to that of Western Australia's program of putting alternatives in place.

In conclusion, I commend the people who have brought the tobacco products legislation to this stage, in particular, I repeat, the Heart Foundation and the Cancer Council, and I commend the minister for bringing this legislation before the house in this session. I support the bill totally.

**MR A.J. SIMPSON (Serpentine-Jarrahdale)** [5.08 pm]: I have never smoked, and neither have my children, which is probably a good thing as they are aged only six and 10. The Minister for Sport and Recreation made the point that this substance has been killing people, and that has been proved thoroughly. I lost my father to a small-cell cancer and my mother to pneumonia. They were both heavy smokers, so I can understand what the minister said. It is quite interesting to learn that in 2004, 53 per cent of cigarettes were sold to children. That is a very sad state of affairs. It is very interesting to read in the bill about the licensing of retailers. This is a good step forward, but I am not sure whether it will overcome the present loophole. Is a good idea to tighten the control of tobacco products in a similar way to that in the liquor licensing legislation. As a small business owner, people often asked whether I sold cigarettes in my bakery. I said that I did not, but that the supermarket next door did. I was not very interested in it. It was quite expensive to carry the stock. Shops that sell cigarettes are always being broken into. Therefore, it is not worth carrying them. As a small business owner, I can relate to what these people have to go through. I will not stock them. The member for Dawesville touched on the turnover generated by the sale of cigarettes for small businesses. He also touched on supermarkets and the discount fuel voucher system. The supermarkets are getting into the cigarette market too. They are selling cigarettes and the people who buy them are receiving a 4c fuel discount, which is not the right way to go about it. People who are older than 18 will always buy cigarettes for people who are not legally allowed to buy their own cigarettes. By tightening these regulations, we are heading down the right road.

The workplace issue should be looked at. The provisions regarding vending machines is a good step forward. I do not know how that will be policed in workplaces. We will have to look at that issue. It is good to be looking at issues relating to the workplace. I hope the minister is thinking along the same lines as I am about workplace agreements. Members must remember the workplace agreement in place at the Burswood Casino. That issue will be addressed sooner or later.

The member for Dawesville mentioned cannabis, and it is a very good point to raise. Most people who smoke cigarettes are more likely to be cannabis users. These measures will probably be a good step towards banning cannabis use. The member touched also on the issue of smoking implements, which must also be looked at. Again, I can see the situation the minister is in; a smoking implement can be used to smoke tobacco as well as cannabis. I hope the minister will clarify a couple of points about the cost of inspection, licensing renewal

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

processes and so forth. I gather that that will be funded out of the licence fees. I am interested to hear more about that. I am supportive of the bill.

**MR T.R. BUSWELL (Vasse)** [5.11 pm]: I will add some brief comments to this debate, given my shadow portfolio responsibilities for small business. I have been approached by a number of small business people. I hasten to add that I have not had my door knocked down about this issue, but I would like to put some comments on the public record on behalf of small businesses because these measures affect small businesses. There is little argument, as the member for Dawesville indicated, about supporting the intent of this bill. While we are on the subject of making confessions about smoking habits, I confess that I have smoked one cigarette under the Busselton jetty and I have smoked a cigar at the birth of each of my sons. I have a lifetime habit of smoking one cigarette and two cigars that I am admitting to - which I inhaled!

**Mrs M.H. Roberts** interjected.

**Mr T.R. BUSWELL**: I am trying to be nice to the minister.

**Mrs M.H. Roberts**: You will have to try harder.

**Mr T.R. BUSWELL**: I have had six weeks in which to practise being nice.

The aim of the bill is to reduce rates of smoking among children. There is a very interesting health argument for it. The member for Churchlands, who unfortunately had to leave the chamber, left some information that I found quite interesting. She pointed out that tobacco accounts for approximately 19 000 deaths each year across Australia, about 1 500 of which occur in Western Australia. Some 18 per cent of all male deaths and 10 per cent of all female deaths are attributed to tobacco smoking. We have talked about contracting cancer as being one of the consequences of smoking tobacco, and the member for Churchlands has spoken about some of the other consequences. I am interested in obstructive pulmonary disease. This morning members of the opposition were lucky to be given a brief presentation by a former member for Vasse, Barry Blaikie, who unfortunately suffers from that disorder. He gave an interesting insight into the tragic impact that smoking has had on his life as he moves into his later years. It brought home to me the personal cost of some of these diseases and of smoking.

In his second reading speech, the minister said that, on average, in country regions, 60 per cent of retail outlets surveyed were willing to sell cigarettes to children. Although I do not dispute that 60 per cent of retail outlets sold cigarettes to children, I do not think it is fair to deduce that the owners of those businesses were willing to sell cigarettes to children. I know that those types of statements made by the minister caused a lot of disquiet in small business communities in country areas, especially those towns that were identified as having been investigated. Although they did sell the cigarettes, I do not think that was the intent of the business owners. That point must be made.

I will discuss issues about the effectiveness of these proposed measures, the impact of tobacco advertising on youth and the impact these proposed measures will have on small businesses. I had the good fortune about two weeks ago to be asked to visit Busselton Senior High School in my electorate to discuss, with a group of year 10 students, who were probably about 15 years of age, how laws were made in Western Australia. That is something I do not know much about, but I gave it my best shot! Fortuitously, I had a copy of the Tobacco Products Control Bill with me, and we conducted a very interesting forum on it in the classroom. The issue of cigarette smoking is particularly important for young people. The member for Churchlands pointed out that, by the age of 18, 28 per cent of girls smoke cigarettes on a weekly basis, compared with 25 per cent of boys. Of some concern is the reason teenage girls take up smoking more often than boys and are less likely to quit during adulthood, which is that they are concerned about body image and weight gain. It has been shown that young women use nicotine, supposedly as an appetite suppressant; that is despite the fact that a study conducted by the University of Glasgow showed that smoking does not help young women stay thin. Indeed, it inhibits fat burning and causes muscle damage, which leads to weight gain, flabby midriiffs etc. That highlights the reasoning behind the importance of the bill targeting young people.

I had a very interesting forum with the students when we discussed this bill. I am surprised by the number of students who either smoke or know somebody who smokes, and the statistics bear that out. When we discussed the prohibition on sale as an effective means of stopping children from getting access to cigarettes, the consensus was that it would be relatively ineffectual. Admittedly, they did not know the details of the bill or the penalties that would apply. I accept the member for Yokine's comment that this bill is all about pushing the margin. We are looking to see a marginal improvement in the number of people who take up smoking, rather than hoping to produce a wholehearted change. We will not get a wholehearted change. I had a very interesting discussion with those schoolchildren, and I am glad I had the opportunity to go there.

I am reminded of the prohibition in the United States on Cuban cigars, as smoked by Arnold Schwarzenegger. It is illegal to either sell or import Cuban cigars in the US, but a heck of a lot of people in the US smoke them,

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

because it is not illegal to smoke them. Similar issues are raised in this bill. It is illegal to sell cigarettes to children under the age of 18, but it is not illegal for a person under the age of 18 to sell cigarettes per se, although it is if the person buying them is under the age of 18. That creates some challenges. I do not know what the answer is, and I am sure the minister would agree. He would agree also that a lot is being done to educate young people. I wonder whether children will have the opportunity to grow two plants at home for personal consumption. This issue was raised in the party room this morning.

Another point that has been highlighted by some of my colleagues is the business of drug paraphernalia. I understand that the minister has initiated a review on the sale of drug paraphernalia. I have confidence, which I am sure will not be misplaced, that when the opportunity presents itself, the minister will address that issue in the same way he has addressed this issue.

**Mr J.A. McGinty:** The complication with that is that a lot of drug paraphernalia can be used for non-drug related purposes. That is the difficulty of defining what it is. It is one thing if someone says, "This is a cocaine snorting kit" and it says that on the label and contains the key ingredients; however, the same things can be used for innocuous purposes. That is the difficulty we are encountering. If it were a simple, one-off thing that could be used only for illegal drug use, it would be a simple law to pass.

**Mr T.R. BUSWELL:** That is a fair point, and I appreciate the minister for making it. It is admirable that the bill goes some way towards addressing some of the innovative techniques that cigarette companies are using to circumvent the bans on advertising cigarettes. The member for Dawesville raised the issue of buzz marketing. I had a note on that matter, because I wondered whether he was talking about marketing me, but that is not the case. Unfortunately, I have misplaced it, but I will locate it shortly. Essentially, buzz marketing is a marketing technique that revolves around the use of customers marketing to others on a company's behalf. It is a quite interesting technique and is something that has been used quite aggressively in a number of states in the United States to promote some brands. On 30 July 2001, the *Business Review Weekly* explained buzz marketing to public relations non-practitioners as a form of advertising that is known - perhaps more appropriately in this case - as viral marketing. A company gets consumers to do the "heavy lifting" of advertising the product for it. Some of the most successful practitioners of buzz marketing include alcohol and tobacco advertisers. Long excluded from the mass media, they have an obvious interest in making any sort of "buzz" work. Lucky Strike was an all but dead brand that was hemmed in by ever-tightening restrictions on cigarette advertising, merchandising, sampling and promotions. The Brown and Williamson Tobacco Corporation and its advertising agency decided to add buzz to Lucky Strike's equation. The result was the Lucky Strike Force. It consisted of attractive couples working trendy nightclub neighbourhoods offering hot tea and coffee and telephone calls to shivering smokers during icy winter nights. It is a form of more personalised marketing, which involves targeting people selling the products on to others. It is obviously quite effective. In the article, the director of Lucky Strike said that the strike force had helped the one-time icon back towards broad availability. He said that, as a marketer, it was hoped that consumers would do the marketing for the companies etc. It is something that the cigarette companies have used quite successfully, at least in the United States. It is good to see that action is being taken to address buzz marketing here.

For a few minutes I will highlight some of the concerns that have been raised with me by small business concerning the limitation of the bill. There is a perception in small business - I do not think it is misplaced - that it is often required to carry the cost of implementing government social policy when that social policy is enforced through regulation. I will not comment on the appropriateness or otherwise of the regulations; in fact, I have indicated that the intent of the bill is more than laudable. However, there is still a perception in small business - it is really a fact when one looks at compliance costs and licensing that must be borne by small business - that it bears the brunt of a lot of social policy and other initiatives that governments wish to embark on.

I turn to display requirements. There are a number of issues that need to be teased out during the consideration in detail of the bill. It is very important to get a clear definition of the term "gross turnover". If a small business generates a large percentage of its income from what are effectively commissionable products such as lotto, scratchies and the like, there is a real chance that the gross turnover will be significantly inflated. That will make it a lot harder for such businesses to qualify for the 50 per cent ruling as it is applied.

It would also be worthwhile examining the suggestion that was made to me by one franchise group that some type of concession over the one-metre rule be given to businesses that choose to arrange their stores in such a way that the tobacco sale area is isolated from the general sales area. I know of a number of businesses that have done that to assist them to meet their social obligations prior to this bill coming on stream. It would be good if businesses were encouraged to embrace their social obligations and were not necessarily penalised. We can discuss that further during consideration in detail.

**Mr J.A. McGinty:** Would the member flesh that out a little bit, please?



**Mr T.R. BUSWELL:** There are some businesses for which the sale of tobacco products is an important part of the business. The retail stores have a specific counter that is only for the sale of tobacco products. Their argument is that they will lose a lot of retail space and probably will not make the investment. There is an argument that if the sale of tobacco products is to be isolated to a specific part of a store, the owners are going some way to meeting their social obligations by discouraging people from buying cigarettes. The products will be located away from the general sales area - confectionery, magazines and things that younger people generally buy. That is something we can discuss further during consideration in detail.

There will be a period of transformation for many small businesses as they adjust to the changes in the regulations that affect display space. I hope that flexibility and adequate time are given for businesses to make those changes. I hope there is some consideration of the costs they may incur.

I will quickly discuss fines, which are of concern to many small businesses, especially those that trade as a proprietary limited company. Many businesses believe that the fines are very onerous. A fine of up to \$40 000, as I am assured by the member for Dawesville, is applicable to a first offence. A fine of up to \$80 000 is applicable for subsequent offences. Those levels of fines could have a significant impact on the viability of small businesses. If a small business with a gross profit margin of 20 per cent is fined \$40 000, that equates to the need for an additional turnover in the period of \$200 000 just to generate the gross profit needed to meet the fine. I want to know the real purpose of the fines. Is it to deter, which they obviously will, or is it to drive people out of business, which they quite reasonably could in a number of situations? A lot of small businesses that trade as proprietary limited companies do not necessarily have large turnovers. I am concerned that fines of that magnitude, when taken as a percentage of gross profit for a year, could wipe out the profitability of a business. It could make it very difficult for a business to survive.

A lot of small business owners have asked me to look at the relative impact of regulation on small businesses as opposed to large retailers. Inevitably, the impact on small businesses is relatively greater than on the larger retailers. For example, larger retailers can carry fines and charges more effectively. They have the capacity to more effectively train their staff. They certainly have professional supervisors. There is something of an irony in Western Australia with the current industrial relations system. A staff member of a small business may, through actions of his own, choose to sell cigarettes to a friend who may be under the age of 18 years. The business will be fined \$40 000 for the transaction. The staff member may be sacked but the owner of the business may be taken to court for unfair dismissal. I have concerns about the potential financial liability that the fine regime may have on small business.

My last point concerns licensing. Small business groups I have spoken to have serious concerns about the intent and the lack of definition that surrounds the licensing provisions of the bill. It would appear that the licensing regime has the capacity to become complex. The minister's second reading speech referred to a two-phase licensing fee arrangement: an initial fee and an ongoing annual fee, which, I assume, is required to recover the costs of implementing and managing various aspects of the bill. In other words, it should be a revenue-neutral activity. My experience of running a small business is that when these types of regimes are put in place, the compliance costs are high and have a tendency to get higher because these things become more complicated, not less. The cost of licences tends to be somewhat open ended. It is like creating a beast that grows and grows and has to be fed with higher fees paid by a finite number of sellers to cover costs. I raise that as a concern. From my experience of the licensing that occurred in my industry with the Department of Conservation and Land Management, the licensing fees and compliance costs kept getting higher and, in the end, the one-year licence was abandoned. There is now an option for a five-year licence. During consideration in detail I would like to discuss the possibility of at least mitigating the compliance costs that small businesses will be faced with through a licence period greater than 12 months.

In conclusion, the intent of the bill is something that we should all support. However, as I have indicated, there are issues about the effectiveness of the bill. I thank the students of the Busselton Senior High School for discussing them in a frank and open way. We had to shut the classroom door and ask the teacher to go for a walk! It was a very good discussion. There are also significant issues that small businesses justifiably have. Small businesses have been burnt before and they see this as potentially another cost impost that they will have to carry.

**DR J.M. WOOLLARD (Alfred Cove) [5.30 pm]:** I support the Tobacco Products Control Bill and congratulate the government for introducing it, even though it has taken a while. This is a very good bill. However, there is always room for improvement in any bill, so I will suggest a few ways in which the bill could be improved. I have listened to the comments made by opposition members. The facts and figures they have put on the table are accurate. In the minister's second reading speech he outlined the statistics about cancer and the number of young people who are smoking. The minister also referred to the fact that most people take up smoking before they have reached the age of 18, which is why this bill is so important, because it seeks to prevent people from taking up smoking. Unlike the opposition, I believe the requirement that anyone who sells

tobacco products must be licensed is a good idea, because it will enable the Department of Health to know who is selling tobacco products and to conduct checks to make sure they are abiding by the rules that have been set out in this legislation. I also disagree with the opposition view about the display of tobacco products. I agree that if we tried to ban the sale of cigarettes tomorrow, there would almost be civil war in the community, because so many people are addicted to cigarettes and find it very difficult to give up smoking, to the point that it has even caused couples to divorce. However, if we continue to allow the display of tobacco products, we will continue to give the community, and in particular young people, the message that it is okay to smoke cigarettes. Although I appreciate the concerns that have been raised by the Liberal Party on behalf of small business people, our role is to protect the community. We will not be protecting the community if we do only half the job and allow people to continue to display cigarettes in stores so that young children will see them and will be encouraged to purchase and try them out. We know from the statistics that the minister has presented in this house that if people get into the habit of smoking cigarettes when they are young, they find it very difficult to break that habit. That being the case, I have asked the minister to consider an amendment to clause 22 to add, after line 30, the words -

Notwithstanding any other provision of this or any other Act, no tobacco product or package may be displayed after 31 August 2007.

I believe most people would be willing to negotiate on the date. Although I would like to ban the display of tobacco products from today, and I believe many people would agree that it should be done straightaway, I do not think the minister would support that. However, because this bill is such a good bill in what it will do for the youth of today and the adults of tomorrow, I hope the minister will seriously consider such an amendment. The member for Dawesville's background is medicine. My background is nursing. We have both looked after people, not only in hospitals but also in the community, who have been suffering from a smoking-related illness. We have seen the hardships that family members go through in looking after a loved one who has cancer, chronic obstructive airways disease, or one of the many other illnesses that are linked to tobacco smoking.

Like the member for Vasse and the Minister for Health, I congratulate the Heart Foundation of Western Australia for the hard work it has put into this area over many years. I also congratulate the Australian Council on Smoking and Health, because it has been working very hard with the minister to ensure that this bill comes into the Parliament and passes through this house and the upper house this year rather than next year.

The bill refers to tobacco products. I do not believe the federal government has restricted the sale of flavoured cigarettes. I am not sure whether this bill covers that area. The bill prohibits the sale and promotion of herbal cigarettes. It also prohibits the sale of confectionery, toys and other products that are designed to resemble tobacco products. While flavoured cigarettes are not another product, if flavoured cigarettes are introduced into Western Australia it will be just another way in which the tobacco companies are encouraging people to smoke.

**Mr J.A. McGinty:** I will explain the government's position on this matter. Things like the chemical content of cigarettes and the packaging of cigarettes need to be dealt with at a national level, to be fair to everyone. It would be very difficult for us at a state level to take on that responsibility. We must take what is in the packet as a given. However, once we take that as a given, we can deal with the marketing and sale of those cigarettes, which is very much what this bill is about. The Australian Capital Territory announced recently that it would be taking steps to prohibit the sale of flavoured cigarettes - I forget what the flavouring was -

**Dr K.D. Hames:** Cinnamon is the most common flavour.

**Mr J.A. McGinty:** It was not that; it was something else. In my view, we would wholeheartedly support, through the regular meetings of health ministers, that national action be taken, either at the state or federal level, so that one set of rules will apply throughout the whole of Australia to these sorts of things. We are looking more at what we can do on the marketing, sale and display side of things, because we need to take what is in the packet of cigarettes as a given.

**Dr J.M. WOOLLARD:** So the minister has stated that, although it may not be included in the bill, he will support the prohibition of those products.

**Mr J.A. McGinty:** There is absolutely no question about that.

**Dr J.M. WOOLLARD:** Again, I will be congratulating the minister when that happens. It will be a shame if we end up -

**Mr T.R. Buswell:** You are going to give him a big head at this rate! He will not be able to get over the bridge and back to Fremantle!

**Dr J.M. WOOLLARD:** The Tobacco Control Act was passed in 1990. It has taken 15 years to get this bill on the table. The minister deserves congratulations.

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

I ask the minister to consider adding something to clause 22 so that a time limit applies to the displaying of tobacco products. I believe that the government's intent with this bill is genuine. A time limit on displaying tobacco products will provide support to those who have been selling cigarettes and send them a clear message that they will have only a limited time in which to display cigarettes. Goodness knows how many more thousands of people will take up smoking in the next year or two because cigarettes are displayed. However, at least with a time limit we would know that the writing is on the wall and that young children - up until 18 years of age they are young children - will no longer see cigarettes on display and want to try them out.

**MR J.A. McGINTY (Fremantle - Minister for Health)** [5.42 pm]: I sincerely thank all members who have contributed to this debate, and also those who have not, for what is obviously a universal view in this Parliament that we need to take stronger legislative action to control not only the effects of cigarettes in the general community but also their sale to children. I felt heartened listening to the contributions to this debate. Experts working in the field have told me that this bill is now the model legislation for Australia. In some areas it is equal to the best in Australia; in others, however, we have broken new ground. We now have legislation that we can be justifiably proud of, assuming that it will be passed through Parliament. For that reason, it is heartening that every member of this house supports the passage of this legislation.

**Mr R.F. Johnson:** You're a trailblazer!

**Mr J.A. McGINTY:** Indeed.

We have seen a significant change in community attitudes over time. A number of members related their personal circumstances, such as the loss of a loved one or the way in which attitudes have changed dramatically over what is, in the overall scheme of things, a relatively short period. I can remember the debate, perhaps 20 years ago, about being able to smoke in the lunch or crib room in factories. At that time it would have been difficult to tell people that they could not smoke during their smoko or lunch break. Today the idea of smoking in a confined space, especially when other people are eating their lunch, is something that everyone finds abhorrent - one simply would not do it.

**Mr R.F. Johnson:** Even smokers think that way.

**Mr J.A. McGINTY:** There has been a big attitudinal change. I expect that the support that has been shown in this house today for the bill - which, as I said, is model legislation - reflects the view that we have collectively arrived at. We recognise the extremely harmful effects of smoking and that the problem area is children taking up smoking. At its heart, this legislation seeks to stop people from taking up smoking and it aims to achieve that end through limits on advertising and a series of promotional activities.

The legislation contains a number of things that, at first glance, I had to think long and hard about. The licensing regime is one issue that was addressed by a number of members. When it was first drawn to my attention as having been recommended as a result of a study, I did not think that the legislation should be about putting an impost on small business owners, including deli owners. However, in considering the need for the strongest possible sanctions against people who continually sell cigarettes to kids, I decided that, in addition to a very substantial financial impost, people should lose their capacity to sell tobacco products if they continue to sell to kids. That is what we have sought to achieve. In putting the licensing regime together, I asked the Department of Health - this goes some way towards answering some of the questions that have been raised - not to consider a regulatory regime as such but to give the capacity to impose the ultimate sanction against people who continually sell cigarettes to kids. I was motivated significantly by the finding that a majority of retailers who sell tobacco products sell to kids knowing that they are kids and when there is no mistake that they are kids. After learning that, I was motivated to put in place the strongest possible regime.

**Mr T.R. Buswell:** When you say that a majority of retailers knowingly sell, is it not more accurate to say that a majority of employers made that choice during the transaction? I do not think it is necessarily fair to deduce that all employers would knowingly sell to young children if they had an opportunity.

**Mr J.A. McGINTY:** The member is right. I will put it more precisely: a majority of outlets sold to children when children tried to buy cigarettes from them. I do not impute any responsibility or blame to anyone in that equation. Some people would no doubt say that the sale was an innocent mistake - although I do not think that is possible; others might have been trying to make the last cent they could out of their business; while employees may have sold cigarettes to children under direction by an employer. I do not know and I do not cast any aspersions. However, the bottom line is that kids were getting cigarettes from a majority of outlets when they should not have been.

**Mr T.R. Buswell:** Will the Department of Health develop training packages for small business proprietors and their staff to assist them to develop the skills they will need to comply with the regulations?

**Mr J.A. McGINTY:** I am not sure about any detail, but I am supportive of ensuring that the new legislation - given what is involved - is accompanied by educational packages. I will try to get more information for the

member for Vasse. When another part of the smoking package was agreed to - I refer to the prohibition on smoking in pubs and clubs, of which the substantive effect will take place in 11 months - we set aside a significant budgetary amount to help hotels, particularly those in country Western Australia, to make that adjustment, to restructure their business if need be, to think of ways to do things differently and to promote regional tourism in smoke-free pubs. That significant financial commitment was made in the announcement and was followed up in the subsequent budget through the Small Business Development Corporation and the Tourism Council Western Australia to deal with the impacts of the change. It is fine for the Coles and Woolworths of this world, but many retailers, including the deli on the corner of my street in South Fremantle, will most probably need to be provided with detailed information about the new requirements. I suspect that that will be true of outlets the length and breadth of the state. That is something I am responsive to; however, I do not have details about what is being thought of by the Department of Health. It would be unusual for a significant change in legislation not to be accompanied by a significant effort to ensure a smooth transition. I will endeavour to find out what the Department of Health intends to implement to see this legislation through. The purpose of the licensing regime is not to have another bureaucratic impost on small business. It will provide, to my way of thinking, the ultimate sanction against people who flout the provisions of the act, particularly when it comes to the sale of cigarettes to children.

Members did not raise this next issue during the course of this debate; however, I know that other members of Parliament have concerns about, if I can put it bluntly, the sting operation that involves children. For years the Department of Health has recruited people who are obviously well under age to buy cigarette products. That operation has provided us with the figures that have shown us the ease with which children can obtain cigarettes from retail outlets. We are legitimising that in this legislation. It is important that we do everything we can in this area. By that I mean introducing significant penalties and a loss of licence to sell the product - measures backed up by, to use the phrase, covert operations to ensure compliance.

**Mr R.F. Johnson:** I agree wholeheartedly with what you are saying. Cigarette retailers who knowingly sell tobacco products to children who are underage are deplorable, but I have some sympathy for some retailers because some young ladies who are 15 or 16 years old very often look 18 these days. If they do themselves up, they can pass as 18, and even older sometimes. I have some sympathy for retailers who lose their licence for selling in good faith. Maybe it is because of my age - I don't know - but they all look a bit older. Very often it's better if 18 or 19-year-old people are behind the counter, because they are often better at telling whether somebody is of an adult age. A lot of people, particularly young ladies, who are 16 or 17 years old, and often 15 years old, look older than they are. I have some sympathy for those people who inadvertently sell a packet of cigarettes to somebody, genuinely believing that that person is 18, and then finding out that he or she is not.

**Mr J.A. McGINTY:** The way in which the sting operations have been conducted by the Department of Health to date is that a panel chooses people because they look at least two years younger than the age at which a person can legally buy tobacco products. That is the criterion. It is not just that they do not look 18, it is the fact that they look like young kids. The chances of an honest mistake occurring are being minimised. That is not to say that it will not happen on the odd occasion, but it is minimised by that process.

**Mr R.F. Johnson:** I think it is bound to.

**Mr J.A. McGINTY:** Yes. A lot of issues have been raised, particularly by the member for Dawesville. It is appropriate to answer those issues during the consideration in detail stage. We have had the opportunity for some discussion. I will move some amendments and I think the member for Dawesville will move an amendment to improve the legislation. However, I should also say that this legislation is part of a package that includes the decision to take a number of steps towards banning smoking in public places. That will culminate on 31 July next year with a total ban on smoking in pubs and clubs. I am very pleased that in Western Australia we were able to recognise the reality and were able to negotiate an arrangement with the Australian Hotels Association and the bulk of health authorities, including the organisations that have been referred to today - that is, the Australian Council on Smoking and Health, the Cancer Council WA and the National Heart Foundation of Australia - and the union that represents employees in the hospitality industry. Everyone would have preferred it to be done either later or sooner, but July next year has been accepted. Smoking bans will apply to pubs and clubs in Tasmania from January. The next cabs off the rank will be Queensland and Western Australia in July. The ban in New South Wales and Victoria will come some 12 months later again. We are very much at the forefront of the ban on smoking in pubs and clubs. It has been done amicably by agreement and in a sensible way with employers, unions and health authorities. I acknowledge the work done by Bradley Woods and the staff of the Australian Hotels Association and the Licensed Clubs Association, as well as by the health authorities to which I have referred. This is the best possible end result. Everybody has agreed that the ban has a far greater chance of being successfully implemented than it would have if it had been acrimoniously imposed. We are at the forefront.

That was the first step in this process. The second step is the legislation that we are debating tonight, which, as I have indicated, is model legislation, according to independent experts in this field. The third component is to deal with the three outstanding areas of smoking; that is, in the Burswood Casino international room, prisons and psychiatric hospitals. I had hoped to resolve the question of smoking in prisons by now. I am aware from my time as justice minister that there is a strong view in the prison system, where smoking by prison officers is rife, that smoking is something that calms the nerves and therefore minimises the prospect of suicide in prisons.

**Mr R.F. Johnson:** And riots.

**Mr J.A. McGINTY:** I do not know that I accept that argument. Nonetheless, that is the argument that is put.

**Ms S.E. Walker:** Have you ever smoked?

**Mr J.A. McGINTY:** Is that a leading question? In my sillier, younger days, yes.

**Ms S.E. Walker:** I am not talking about your pot-smoking days.

**Mr J.A. McGINTY:** Okay. Everyone else has told anecdotes, so I might as well. I was in Bunbury playing in a hockey carnival, where I played about six games in the rain in the middle of winter. Hay Park was under about six inches of water. I was absolutely drenched. I hopped in the car to drive home, lit a cigarette with the two kids sitting in the back of the car and thought, "I would have to be an absolute mug", so I stubbed it out and have not had one since. That was when I was 25, so it was a long time ago.

**Ms S.E. Walker:** You smoked until you were 25?

**Mr J.A. McGINTY:** Yes.

**Ms S.E. Walker:** The minister would know, then, that it calms people's nerves to smoke. I do not know why you do not have sympathy for prisoners who are often under a great deal of stress, particularly remand prisoners.

**Mr J.A. McGINTY:** I did not have nerves, so it did not calm me. Anyway, it was that long ago that I have forgotten.

We have begun the process with prisoners. I had hoped that it would be resolved by now, but it has not been. I hope that we can move towards a greater ban on smoking within prisons, starting with the staff. The historical view is that a prison cell is a prisoner's home; therefore, prisoners should be able to smoke because there is no prohibition on smoking in the home. I do not personally support that point of view, particularly when airconditioning units link a prisoner's cell to other cells in the complex. That is no doubt the case. A designated place could be provided within a prison where prisoners could smoke. Prisoners enjoy poor health outcomes because of their social conditions and life circumstances, and we only add to that by allowing, and perhaps even encouraging, smoking while they are in prison. I would rather see more of a health emphasis placed on smoking in prisons. That matter has not yet been resolved but it is being progressed.

**Dr K.D. Hames:** It is not their home; it is the taxpayers' home. They should not smoke in the taxpayers' home any more than they should smoke in my home. They should go outside.

**Mr J.A. McGINTY:** Exactly.

**Mr R.F. Johnson:** We do not want them to go outside and have a cigarette, do we?

**Mr J.A. McGINTY:** That is an issue that needs to be resolved. Can members opposite sort out their position? About 70 per cent of prisoners smoke cigarettes, which again contributes to their poor health. The incidence of smoking is even higher among mentally ill patients in psychiatric hospitals. We must do something to deal with that. I think it is more problematic in the psychiatric hospital setting, but we are determined to do it.

The third area is the Burswood Casino. This has been a vexed problem. I do not believe for one minute that there is a health-related argument about reducing the incidence of smoking. There is only one environment that is safe from a health point of view and that is a smoke-free environment. Even with the world's best technology to extract the smoke, any smoking will subject the staff employed there to a risk. I acknowledge that health argument. However, we are also confronted with the argument that when other states, particularly the major states of New South Wales, Victoria and Queensland, announced a ban on smoking in pubs and clubs, they granted an exemption to high-roller rooms on economic grounds. We have taken the position that an exemption should be granted to the Burswood Casino for its high-roller facilities. It is not a decision that was taken easily or is supported by health considerations. This decision is supported by comparisons with other major states. Also, it is a decision that can be supported on economic grounds.

Burswood initially applied to retain the smoking exemption in the existing high-roller facility and then build a new one in the Windows Restaurant area of the Burswood International Resort Casino. I indicated that that was not acceptable and it has come back to the government with a proposition that it intends to support; that is, to

allow smoking in the new Windows Restaurant area and not the old high-roller facility in the international room. Again, it is acceptance of one area to allow for the transfer of the high-roller facility to the new area but not, however, to continue in the old. The floor area in the new area is significantly larger than the floor area in the existing high-roller facility.

I have been particularly concerned about the impact of smoke on staff. Although we indicated that we would support the proposition, we will be requiring Burswood to address a number of issues, one of which relates to the way in which staff are rostered. No-one should be required to work in a smoky environment. Also, we will be looking at other facilities.

*Sitting suspended from 6.01 to 7.00 pm*

**Mr J.A. McGINTY:** Before the dinner suspension I was outlining to the house the government's approach in respect of the international room at the Burswood International Resort Casino. I indicated that the original proposal from Burswood for there to be two high-roller rooms - one based in the existing high-roller facility and the other in the Windows Restaurant area - was not supported by the government. As a result, Burswood came back with a further proposal to transfer the smoking exemption from the existing high-roller facility to the new high-roller facility, which would be in the Windows Restaurant area. I indicated that would be a significantly larger area than the current high-roller facility, but less than double the floor space. The government indicated to Burswood that it was prepared to transfer the existing smoking exemption to that particular area when renovations were completed. I am not aware of the time frame, but there were earlier indications that Burswood was hoping to have that in place for the forthcoming Chinese New Year. That indication of support should be sufficient for Burswood to proceed with whatever capital works it is proposing to undertake.

I indicated to the house that there were three, perhaps four, qualifications on that support relating to matters the government would want addressed. First, the government wants to be assured, without stipulating the nature of the technology, that the Burswood high-roller facility will use the best smoke-extraction technology available in the world to reduce the incidence of smoke in that area.

Secondly, Burswood's human resources policy relating to the rostering of staff in the smoking areas is important. In today's environment and with today's medical knowledge, staff should not be rostered in that area against their will. Again in relation to the human resources policies, it is very important that no-one be discriminated against in terms of future promotion and things of that nature if they choose not to work in that area. They are the sorts of commitments the government would like enshrined in Burswood's human resources policies and the way in which it runs its business.

Thirdly, the government would seek to have independent health checks for workers engaged in the international room. I am talking about independent checks in relation to both the incidence of smoke in the room and the effect it will have on the health of the employees who work in that area. These are matters I am confident we can successfully resolve with the Burswood Casino, but at this stage they have not been satisfactorily resolved.

Fourthly, it is the government's view that access to the international room is too easy and the staffing is at too low a level. If the justification for the exemption is economic, and we are talking about high rollers who invest very large amounts of money, the current level of ease of access by Australians, Western Australians and high rollers to that room needs to be significantly lifted, so that the people who use that facility will have a very significant turnover in terms of the amount of money they gamble in that facility.

It was not an easy decision. We looked at requiring a certain percentage of the area to be smoke-free. We think we have achieved that by requiring the existing high-roller facility to be smoke-free. It is up to Burswood whether it uses that as a high-roller facility or for some other purpose. In terms of its original proposition, it would then have had a significant facility which, if it were run as a high-roller facility, would be smoke-free. It has been a question of fairly delicate negotiations - discussing the issues and indicating that certain broad approaches by Burswood would not be acceptable - and hopefully the details can now be sorted out. That is the in-principle position we have relayed to it, and one we intend to negotiate and see through to its end result.

All in all, on the smoking issue we have tried to take an enormous step forward to put Western Australia back in a leadership position. We think we have done that in this legislation before the house. It will ban smoking in pubs and clubs. Also, the government has not agreed to the initial proposition by Burswood, although that is the remaining battleground with respect to the smoking issue. I think the legislation will fix most of the contentious issues in this area.

I thank all members of the house for their indication of support for what will hopefully lead to a healthier life and future for our children and grandchildren.

Question put and passed.

Dr Kim Hames; Mr Bob Kucera; Mr Tony Simpson; Mr Troy Buswell; Dr Janet Woollard; Mr Jim McGinty

---

Bill read a second time.