



SUBMISSION

**PUBLIC HEALTH AMENDMENT BILL,
2007**

**MR PAUL MASON,
COMMISSIONER**

24 MAY 2007

The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children and young people, examining and advising the Government on policies, practices and services provided for children and laws affecting their health, welfare, care, protection and development.

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OVERVIEW

ADVERTISING AND DISPLAY OF TOBACCO PRODUCTS

The Commissioner for Children (CfC) supports any measure which reduces the advertising and display of tobacco products. Advertising including at the point of sale and on the packet is self-evidently designed to increase consumption. If it did not do so, it is ludicrous to suggest that the tobacco companies would sell their products in anything other than brown cardboard boxes.

The Tasmania Health Plan was released within an hour of this submission being drawn. It emphasizes the need to spend scarce acute health dollars on prevention rather than cure. Any measure or any watering down of a measure that appears to appease the tobacco industry will run directly contrary to every part of that bold new policy.

Government commentary on that policy includes the following passage (Hoult P. DHHS, 2007):

Fourthly the so-called 'diseases of lifestyle' are rapidly increasing the stresses on our health system. Compared to the rest of the country Tasmanians smoke more, eat worse and are fatter. While it has been obvious for many years that we need to improve primary care with a particular focus on preventative measures and promotion of health lifestyle, our performance has not matched the needs. Conditions such as obesity and diabetes are getting worse – yet we spend significantly less than 10% of our Department's budget on preventative and promotional interventions and the proportion we spend in this area has not improved in the last 15 years. If our acute care system is not to become an increasingly expensive 'ambulance at the bottom of the cliff' then we must support all Tasmanians to take more responsibility for their personal health and the health of their communities.

EXISTING SUBSECTION 72A(1)

The CfC supports all of the amendments proposed, but notes that s.72A(1) currently permits the display of tobacco products not less than 75 cm from the display of confectionery. If the idea is to disassociate tobacco from lollies in the minds of young children it is ineffective. 75cm is the length of one adult arm. Doubling that to the length of two adult arms, so that a child can look at the lollies without catching the cigarettes in their peripheral vision, may turn the smoking career of even one child and save the State thousand or tens of thousand of dollars 40 years down the track.

The CfC strongly recommends amending subsection 72A(1) to substitute "2 metres" for the matter "75 centimetres".

SMOKING IN CARS WITH CHILDREN

The CfC supports the banning of smoking in cars with children, but the issue has always raised thorny legislative issues.

Definition of "smoking"

"smoking" is defined in s.3 to include a situation in the present context where a confronting and recalcitrant adult lights tobacco products in a car with children despite direction from a police officer, and burns the tobacco product without puffing or inhaling it.

The CfC recommends that the definition of smoking be reaffirmed in the following terms:

67H (1A) For the purposes of this Part, smoke has the same meaning as in section 3 and "smoking" has a corresponding meaning.

Person about to smoke in cars

There appears to the CfC to be an inconsistency between the preamble to subsection 67H(3) "reasonably suspects that subsection (2) has been contravened" and paragraph (c) of that subsection "require a person...apparently entering the relevant vehicle to cease, or not start".

The rest of the paragraphs (a), (b) and (d) of subsection (3) all appear to relate to circumstances after the smoking within the vehicle has commenced and been detected.

The CfC recommends that proposed paragraph 67H(3)(c) be amended by the omission of the words "or apparently entering".

Concurrently, the CfC recommends that a further subsection (3A) be inserted providing:

A nominated officer who believes on reasonable grounds that a person inside the relevant vehicle is about to start smoking, or a person outside the relevant vehicle is smoking and is out to enter the relevant vehicle, may require that person not to light any tobacco product.

Opening or moving a thing concealing tobacco or tobacco products

It seems to the CfC that proposed paragraph 67H (3)(b) is anomalous. What is the purpose of requiring a person to expose tobacco products? There is no proposal to outlaw the carrying of unlit tobacco products, and to require every purse and every glove box and boot to be opened when there has been smoking in the car just to see the remaining tobacco products goes far beyond the purpose of the amendment.

The CfC recommends that this provision only remain if the Government intends to enact a provision for the confiscation of remaining tobacco products, which might be justified only if there is a flagrant challenge to the authority of the officer.

If that is the Government's intention, the CfC supports it, but the "discovery" provision and a confiscation provision should be set out and linked together in a separate sub-section.

Arrest powers

This power will be seen as extreme by some and must be fully justified by public health and public order policy if it is to be successful in Parliament and thence successful in the community.

The CfC is concerned that arresting a smoking parent in front of children would be likely to cause them more harm of a psychological and emotional nature than the smoking on that occasion would cause them of a physiological nature.

Given that the parents are to remain at liberty to smoke their heads off in the kitchen, the lounge room and the bedroom at home, the CfC does not accept that the risk of physiological harm to children from tobacco smoke on one occasion is greater than their risk of psychological or emotional harm on seeing their parents arrested (and removed to a Police Station for charging) for smoking in the car.

The CfC does see circumstances in which an arrest power would be justified, ie that the risk of psychological and emotional harm to children is less than the risk to public order.

The Bill should be amended to reflect that an officer may arrest an adult not only if the adult refuses to comply with a requirement once, but does so a second time after being informed that the officer intends to arrest them if they do not comply, and if the officer is satisfied that the convenience and welfare of the children in the car will not otherwise be interrupted or adversely affected

(for instance by the presence in the car of another responsible adult in a caring role who can drive them on).

CONCLUSION

The Commissioner hopes these observations and recommendations are of assistance to the Government and the Tasmanian community.

Paul Mason
Commissioner