



Speech by

Liz Cunningham

MEMBER FOR GLADSTONE

Hansard Thursday, 11 November 2004

TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL

Mrs LIZ CUNNINGHAM (Gladstone—Ind) (12.01 p.m.): I rise to speak to the Tobacco and Other Smoking Products Amendment Bill 2004. While supporting this legislation, I acknowledge that this legislation will hurt people. For the last number of years now things have changed in that smokers are no longer the centre of consideration. Indeed, nonsmokers and those whose health issues were exacerbated by cigarette smoke were the last to be considered 20 or 30 years ago. As the member for Nicklin said, Australian, American and British movies starred people who were almost constantly smoking. The issue of cigarette smoking in public places was not one that was given a thought. If someone chose to go to a public place—whether that was a restaurant, hotel, club or anything like that—they went knowing that they would probably walk through a shroud of smoke and remain in that shroud of smoke while inside the premises. Slowly over time there has been more consideration given to the impact of smoking and quality of life issues, particularly in terms of those spaces that are fully enclosed, to the point where smokers now comment that they are lepers because they are forced to line up outside a building to have a smoke, whether that is at morning tea, lunch or afternoon tea. If one walks up the street, they will find a little group of people outside a high-rise building having a fag. They do look rather displaced. This legislation will further erode what smokers see as their rights.

This legislation will hurt shopkeepers. I have had some communication from smaller businesses. It appears that it is the smaller businesses that have responded to the proposed legislation more vocally than the larger ones. Shop owners in my electorate would reflect the feelings of others in the state in terms of the impact on them, particularly the reduction in showcase size and the reduction in their ability to visibly carry stock. I want to quote from a letter I received from Rod's Food Market in my electorate. It states—

Just a short note with regard to the government tobacco plan.

'Lethal Tobacco Displays' See media statement 20/9/04

'1 square metre of display area'.

Does he live in a CUPBOARD?

Perhaps the minister can correct that. The letter continues—

Will W/Worths—Coles—BiLo—Action—Safeways etc have 1 square metre.

It is my understanding that the legislation covers everybody—that is, that small shops, large shops and supermarkets will all be restricted to one square metre. The writer of the letter continues—

What deals will they make.

I ask the minister to give an assurance that all shops will be treated the same and that they will all only have one square metre. The letter continues—

Tobacco products represent 32% of our business.

This is a small independent business in my electorate, and I would imagine that for many small retailers in rural and regional Queensland and the south-east corner the sale of tobacco products would be a significant percentage of their business. The letter goes on to say—

Jobs! Small businesses need help.

I thought 'Stalin' was dead.

I do not even think the minister looks like Stalin. The letter continues—

Will the government do what Premier Pete says.

Further consultation is needed. Like S/A-NSW and Victoria?

The letter attached for me a media release from South Australia. I want to put on the record the elements of the South Australian news release that this small retailer appears to feel more comfortable with. It is a statement by the South Australian Health Minister, Lea Stevens. It states—

'The pub and club industry has been gearing up for this change since last year and is ready to go,' says Ms Stevens. 'October 31 has been the target date set for the first phase of this historic process, and we need the Legislative Council to pass the laws this week.

The first phase of the smoking restrictions will see smoking banned within one metre of all service areas (including front bars and casino gaming tables), and a requirement for one bar in all multi-bar venues to be non-smoking or, for single bar venues, at least 50 percent of the floor area to be non-smoking. Half of all bar areas at the Adelaide Casino are to be non-smoking.

For gaming rooms, 25% of the gaming floor area (which contains at least 25% of the gaming machines) is to be non-smoking, increasing to 50% in October 2005.

A complete ban on smoking in pubs, clubs, gaming rooms and the casino will come into effect from 31 October 2007, in line with the timetable agreed by industry and health groups last year.

The writer of the letter from Rod's Food Market appears to support that type of phase-in much better. I have to say from experience, though, that Queensland had legislation that required restaurants to have a certain part that was nonsmoking. There were no walls dividing it. It was as if it was considered to be okay because the cigarette smoke would stay on its half. It did not. Even if someone sat in the nonsmoking area, the cigarette smoke drifted across. The intention was fine; the cigarette smoke just did not do what we wanted it to do.

This legislation will also affect clubs, and I have been contacted by one club in my electorate. This club would not be regarded as a large club. There are a number of very large leagues clubs not only in the south-east corner but also up the coast. This would be a medium sized club. It has been run very effectively. It has demonstrated good sound financial management and has grown as a result. But it was concerned about the blanket ban coming in on 1 July. The club's representatives actually spoke to me before the change—that is, when cigarette smoking was going to be banned in all contiguous areas, including the banning of taking a drink outside to have a smoke. That provision has now been changed. That would be some comfort to this particular club, but I do not think that we should entertain this legislation, albeit with the best of intentions, without recognising that detriment will come hand in hand with the changes—a detriment to business and a detriment to those people who are already hooked on smoking.

Many of our senior citizens smoke. My dad started smoking when he joined the Army. He was not quite old enough, but he told them that he was old enough. In his ration pack he was given cigarettes, and that is when he started smoking and he died of lung cancer and secondaries in his 70s. There are many older people whose commencement of cigarette smoking was not forced on them—there is always the word 'no'—but was part of a living style and an experiential pattern, particularly during the wars, that was used in part as a support. So there will be people who are hurt by the legislation.

Mr Keith Mann wrote to all state members and stated the following—

Dear state member,

Whilst agreeing in principle to some proposed bans I have grave concerns about proposed bans in hotels and clubs. Consideration needs to be given to the rights of the owner, staff and patrons. I suggest having three signs as follows: non-smoking, smoking and smoking verandah.

The owner or members (by vote) should have the right to determine their situation. Non-smoking is self-explanatory. Smoking verandah would only allow smoking and drinking in a designated area—

which I guess effectively is partly what could be incorporated with the changes where a person could go outside with their drink and have a smoke on the veranda. Keith Mann states further—

Both of these would be up to the owner or club manager to enforce. Smoking venues need to consider anti-smoking staff and restaurant facilities.

Pro-smoking staff would need to sign an indemnity prohibiting smoking related claims. Also the smoking venues should have adequate extraction fans and possibly air curtains around the service area.

Restaurant facilities need to be isolated from the smoking area and this could be achieved by having walls with doorways requiring plastic curtaining and air curtains. All new smoking hotels or clubs wanting air-conditioning would require two independent plants.

Anti-smoking staff would need to advise their union with a copy to management to their decision to prevent any unfair dismissals. These staff should not be forced to work in a smoking environment.

I believe many clubs would opt for smoking verandahs and this would give anti-smoking staff another avenue to change employment without loss of benefits.

Whilst the above may need some refining it would overcome many associated problems (especially with regard to the Human Rights and Equal Opportunity Commission Act 1986 (covenant signed by all states) and the Anti-Discrimination Act 1991—

1. No government enforcement or litigation

2. Employees have a choice—no litigation
3. Patrons have a choice—no discrimination
4. Future employees have a choice
5. No loss of jobs or revenue.

I would appreciate your thoughts and comments.

Keith Mann has given some thought to having multiple areas available for smokers to participate in their activities and for nonsmokers to be able to also enjoy a smoke-free environment. Despite those people who will be affected detrimentally, the benefits to the legislation must also be recognised, and recognised in stark contrast with the statistics that show that smoking related illnesses in Queensland and smoking related deaths in Queensland are an issue that begs attention.

I received a couple of other letters that were in opposition to the legislation, but they pretty much said the same as those that I have read. One is from the National Alliance of Tobacco Retailers. I know that the shadow minister referred fairly extensively to their submission. I acknowledge Anthony McClellan's email in relation to that. I also have some material that has been referred to already from Michael Hudson, who is the general manager of the QHA.

However, the Queensland Cancer Fund has long been campaigning for more proactive and more active disincentives and the banning of smoking. It has commended the minister for the moves that he has made. The fund states in some correspondence that I have that every year tobacco kills 3,402 Queenslanders and costs the Queensland community \$4.4 billion. They are horrendous statistics but, more importantly, it should be remembered that those 3,402 Queenslanders are fathers, mothers, brothers, sisters, sons and daughters. The family members who have to nurse those people who have emphysema and smoking related diseases—and that includes heart disease and lung disease—and who have to support them during the end of their lives know that the cost is not just a statistic; it is a cost to the family both in terms of losing a family member and in terms of the trauma that all the family goes through as they see somebody whom they love very much deteriorate.

The Scrutiny of Legislation Committee pointed out a couple of issues, but one that I just wish to raise is the use of Henry VIII clauses in the legislation in terms of the transitional powers. To my knowledge, the use of such provisions has always been criticised by the Scrutiny of Legislation Committee, and deservedly so.

An honourable member interjected.

Mrs LIZ CUNNINGHAM: It is an excellent committee. The minister responded to that committee's concerns by saying that the phasing-in process has not yet been determined. To my mind, that is a criticism of the department in terms of having legislation that opponents of the legislation say has been hastily prepared. Some people have criticised the legislation by saying that it is ill conceived. Statements such as 'the phasing-in process has not yet been determined' only adds weight to their argument. However, since the earlier announcements of this smoking ban the minister has made no secrets of his intentions. I hope that he has had time to talk to all of those who have had concerns in relation to the proposal.

The briefing paper from the Queensland Parliamentary Library—which again I would commend; they are always well-informed, interesting documents—outlines the role of local governments in administering the new prohibitions on smoking in patrolled areas, on patrolled beaches, prescribed outdoor swimming areas, within four metres of non-residential building entrances, and also within 10 metres of children's playground equipment located at a public place. I welcome the ban on smoking within four metres of non-residential buildings. When smoking in this building was banned—and I am not casting aspersions on any individual—the smokers would stand just outside that door on the fifth level. It was like walking through a wall of cigarette smoke. You needed your asthma puffer just to get from level 5 to the chamber. So imposing that buffer area means that people who are sensitive to smoking—and a lot of people are—can actually enter and leave buildings. Four metres is a reasonable amount of space in which to allow smoke to dissipate. It at least gives safe entry and exit to those who want to, or need to, access residential buildings.

I am interested in the response from the Local Government Association in relation to these impositions. The explanatory notes state that there was consultation with the Local Government Association of Queensland. This is not a question that the minister can answer, but I would be interested in that association's consultation with its own councils. At times, I have found that the Local Government Association may consult with the government, but sometimes the point of view of the LGAQ differs from that of the councils that I have talked to on certain issues. The explanatory notes state that there will not be a duty on local governments to enforce these provisions, but it goes on to say, however, that Queensland Health will collect information regarding which local governments decide to exercise their powers to enforce the smoking bans and to monitor the overall enforcement of the bans. The explanatory notes state further that the chief executive of Queensland Health may, by written notice to a local government, require a local government to provide information about the local government's administration and enforcement of

the prohibition of smoking. My question is: in the longer term, is there an intention to in some way coerce local governments, or cause disadvantage or detriment to local governments that choose not to proactively enforce or be involved in these bans?

I think the bans will be difficult. People are used to going down the beach and lighting up while the kids are in the sea or in the pool. As I said earlier, there are costs and imposts with this legislation. It just sounds rather ominous that, whilst local authorities will not have a duty to enforce the bans, the government will collect information. I am not a conspiracy theorist, I do not think, but I would be interested in what impositions the government may be considering placing on those councils that do not perhaps fall into line.

Smaller councils often do not have enough resources. They have been the vehicle of change for the last 15 years. There was enormous change taking place when I was still in local government, and that has continued. There is significant devolution, from the state government in particular—there is a little from federal government but it is primarily state government—and councils constantly have to absorb more and more responsibility for areas of legislation that they have no control over, hence my concern about this devolution and any intention the government may have to disadvantage those councils that choose for a number of reasons not to be so directly involved.

I acknowledge again that there will be people who find this legislation difficult to accept and difficult to abide by. They will see disadvantage to their business, I would hope only in the short term. The information from the American experience was that in some places businesses that thought they were going to lose a lot of patronage because the smokers just would not bother coming made up that patronage by nonsmokers who appreciated the cleaner environment. Equally, though, there were areas in America that said they lost the patronage and it really was not made up. I think that cost has to be acknowledged; however, one would hope that the result in the long term is that fewer young people will be encouraged or tantalised to commence smoking and that fewer people will then have to go through the excruciating process of lung cancer or other smoking related illness.

In closing, I acknowledge that I will be supporting the banning of the bongs. It has always been ironic that the smoking of cannabis and other illegal substances is clearly mandated in Queensland—it is legislated—yet even in service stations we can find some rather ornate apparatus. If you say to somebody at the serving counter, 'What are they for? Are they for drugs?' they will say, 'No. You can smoke tobacco in those,' or, 'It is Turkish culture.' There are some really novel answers, but the reality is that they are instruments for smoking prohibited substances. I commend the member for Cunningham for seeking to include that prohibition.

I refer to his amendments in relation to an expansion of the area available for display of cigarettes and tobacco from one metre to four metres. Whilst I can understand those businesses that have approached him and implored that he move those amendments, and whilst I support the businesses in my electorate that will suffer as a result of these restrictions, for those families who have lost loved ones through smoking and smoking related deaths, for those of us who have children whom we nurture and try to grow through the temptation of cigarette smoking and for future generations who will benefit from this because of a reduced access and accessibility to cigarette smoking and cigarette products, I will not be supporting that part of his amendments. I commend the bill to the House.