



**HEALTH COMMITTEE  
NEGOTIATING MANDATE  
ON THE**

**TOBACCO PRODUCTS CONTROL AMENDMENT BILL [B7B-2008]  
(Section 76)**

05 September 2008,

**1. INTRODUCTION**

The Chairperson of the Health Committee, Dr. R A M Salojee, tables the Committee's Negotiating Mandate on the Tobacco Products Control Amendment Bill [B7B-2008], a Section 76 Bill, as follows:

**2. PROCESS FOLLOWED**

The Speaker formally referred the Tobacco Products Control Amendment Bill [B7B-2008], Section 76 Bill to the Portfolio Committee on Health, in terms of the Gauteng Provincial Legislature Standing Rule 232 (1) for consideration and report on Friday, 27 June 2008.

On Thursday, 07 August 2008, the Health Portfolio Committee was briefed by the Honourable Permanent Delegate, Ms Faith Mazibuko from the National Council of Provinces on the intentions of the Bill, and Mr Tsopane Monyemgangene, a Legal Assistant from the Gauteng Department of Health on the legalities of the bill. The Committee had an opportunity to make deliberations on the Tobacco Products Control Amendment Bill [B7B-2008].

On 29 August 2008, Committee was presented with legal opinion and a draft report on public hearings on the Tobacco Products Control Amendment Bill [B7B-2008], Section 76 Bill.

On Friday, 05 September 2008, the Committee considered and adopted the Negotiating Mandate with amendments.

### 3. INTERACTION WITH STAKEHOLDERS

A Public Hearing was conducted by the Committee on 19 August 2008 at the Johannesburg City Hall, Gauteng Provincial Legislature and 525 people (including public and stakeholders) attended.

Amongst stakeholders attended include the following, Tobacco Institute of South Africa (TISA); British American Tobacco South Africa (BATSA); Japan Tobacco Industry (JTI); National Council Against Smoking (NCAS); Cancer Association of South Africa (CANSA).

The Bill was well received by the public and the majority of the views expressed were in support of the Bill.

#### 3.1 Submissions made by stakeholders and the public

The Committee received both oral and written submissions from various organisations, institutions and the general public. The following are issues of concern that were raised during the public hearing:

- Department of Health and Education to work together on Awareness workshops and campaigns to teach the youth about the dangers of tobacco products e.g. through Print and Electronic Media and at educational institutions
- The tobacco industry should not be allowed to make any charitable donations, as this indirectly helps promote the sale and use of tobacco products
- Tobacco industry should not be allowed to use ANY form of advertising or product placement, and that they may not make charitable donations or sponsorships
- The display of tobacco products at the point of sale should be prohibited.
- Practicalities around signage and notices are realities in the informal sector
- Increasing the Sin taxes, with regards to tobacco products
- Many hawkers, spazas are out in open with no structures
- Sales through vending machines should be prohibited
- Freedom from addiction is a child's right and society's responsibility
- Internet Sales should be considered as a matter of principle
- It would be unreasonable to criminalise the entire sector of the economy because they are forced to have signs at Point of sale
- Communication with consumers is suggested as the Tobacco Industry has responsibility to convey factual information about its products to its consumers and, if there is no communication
- Definition of package is a concern
- Public smoking areas should be strictly monitored as part of law enforcement
- Concern with the NCOP consultation process in facilitating the Bill with all provinces

- The NCOP process should allow reasonable public participation as it is necessary to introduce relevant, adequate and effective regulations pertaining to these products, upon obtaining the contributions and views of all concerned parties.

## 3.2 COMMITTEE ANALYSIS OF THE BILL CLAUSE BY CLAUSE

The Committee has considered the Bill clause by clause discussion is captured below

The preamble of the bill provides *interalia*;

'to extend the provisions in respect of free distribution of tobacco products'; and

'to provide anew for tobacco sales by means of vending machines'

Our submission is that the correct wording should be;

'to extend the restrictions in respect of free distribution of tobacco products'

And 'to provide for new restrictions for the sale of tobacco products by means of vending machines'

### Ad Section 1

The Committee notes the definition of '**advertisement**' includes any commercial communication or action brought to the attention of any member of the public in any manner with the aim, effect or **likely effect** of –

- (i) Promoting the sale or use of any tobacco product . . .
- (ii) Being regarded as a recommendation of a tobacco product  
and
- (c) '~~excludes~~ commercial communication between a tobacco manufacture or 'importer', . . . and any communication required by law'

The Committee also note the insertion of '**brand element**' after the definition of '**advertisement**'

The Committee of the opinion that the inclusion of '**likely effect**' could give rise to interpretation problems, and recommend that it be deleted.

The Committee also propose that the definition and/ or inclusion of '**brand element**' after the definitions of **advertisement** be enhanced to expressly elaborate that the bill is not intended to restrict legitimate business practises within the tobacco industry, which we submit could be contrary to amongst others Competition legislations

The Committee however, is of the view that the additions to the definition clause over and above are a welcome refinement of the clause and hence

enhance the objects of the bill to restrict access to tobacco products and combat the tobacco epidemic

We note further that the bill does not seek to prohibit lawful communication as between tobacco manufacturers and their trade partners.

#### Ad Section 2

The additions to the above clause i.e. 'distribution, display, packaging and labelling of tobacco products, promote, or cause any other person to advertise or promote' are noted and legal's view is that they are consistent with the object of other relevant legislations alluded to above.

The Committee also note the concern raised during the public participation process by some role players in the Tobacco Industry that the extension of the definitions of **advertisement and package** as well as the expansion of the provisions of **clause 2** result in a ban of legitimate business to consumer communication and/ or have a sequel of prohibiting the interaction of the final container with the consumer.

The Committee's view in that regard is that the bill envisages discouraging smoking tendencies particularly amongst the young and vulnerable, hence the need to even restrict the purchasing of tobacco products through vending machines.

The bill still makes provision in terms of subsection 3 and subsection 9, for the interaction between the existing tobacco users and the products, provided the stipulated notices are posted in accordance with the regulations to the Act.

On the issue of the economic effects the provisions of the bill might have on retailers, particularly small scale, we would envisage that there should be promulgation of parallel by-laws to regulate through for instance the licensing of small scale retailers and their places of trade so as to ensure the enforceability and practicality of the provisions of the bill.

It is also noteworthy that the bill does not seek to ban the contribution of role players in the tobacco industry from contributing to for example charitable organisations, provided the said contributions or sponsorship is not for purposes of advertisement as is provided for in subsection 3 of the bill.

#### Subsection 6

Clause 2(6) provides for the prohibition of the package or labelling of tobacco products that is false, misleading, ..., or that directly or indirectly creates an impression that a particular tobacco product is less harmful than another

The said provision of the bill read together with the other provisions relating to the prohibition on the use of subtle and complex ways of advertising by the manufacturers of tobacco products e.g. viral marketing and the use of technology, is laudable and also in tandem with the objects of the bill and related legislation.

#### Subsection 11

It is also notable that subsection 11 of the bill provides for the alignment of the bill with other applicable laws, and hence does not seek to vitiate the other laws of the country.

#### Ad Section 3

Section 3 of the bill provides for the expansion of the heading in the principal act and the subsequent amending legislations, to include the words importing, which is all encompassing and in keeping with the international legislative framework as elaborated above.

#### Ad Section 4

The provisions of section 4 provide that

'no person shall sell or supply any tobacco product to any person under the age of 18'.

Further for the prohibition of the sell of tobacco products at any health establishment as contemplated in terms of the National Health Act, 2003<sup>i</sup> and at any place where a person under the age of 18 years receives education or training.

In conclusion the amendments afore-stated are commendable and also consistent with the relevant legislative framework.

A concern however is on the practicality and enforcement of same, we recommend that the intended regulation be tied with an appropriate criminal sanction.

The Committee note that the bill seeks to align with the Criminal Procedure Act, 1977 and is subject to Chapter 2 of the Constitution of RSA

## 5. PRINCIPLE AND DETAIL OF THE BILL

The Bill seeks to amend the following

- To amend of the Tobacco Products Control Act, 1993 seeks to clarify certain expressions, amend and add new definitions
- To strengthen section that prohibits advertising, promotion and sponsorship

- To provide for better packaging and labelling of tobacco products
- To set the same standards for manufactures and importers of tobacco products
- Prohibit sales to and by those under 18 years
- To expand or widen the prohibition of free distribution of tobacco products
- Restrict the location of vending machines
- To empower the minister to make regulations regarding the health information to be displayed on a package.
  - Notices that may be displayed at point of sale
  - Display of tobacco at the point of sale
  - Quantities that must be contained in a package
- To set penalties for contravention of the Act.

**6. FINANCIAL IMPLICATIONS OF THE BILL AND SOCIAL IMPACT ASSESSMENT**

In respect of financial implications of the Bill on the Province, the Committee envisages positive financial obligations for the state in that additional revenue will be generated as a result of the prohibition of duty-free and tax-free sales of tobacco.

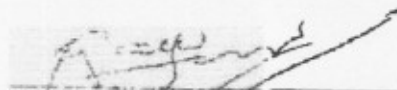
With regards to the social impact assessment of the Bill on the Province, the Committee envisages notes as confirmed by the department, that the Bill will serve and protect the public as it is covered by Departmental Healthy Promoting activities that aims to empower communities to voluntarily enforce the Act.

**7. VIEWS FROM THE GAUTENG DEPARTMENT OF HEALTH**

The Health Department supports the principle and the detail on the Tobacco Products Control Amendment Bill [B7B-2008].

**8. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The Health Portfolio Committee and the Gauteng Department of Health supports the principle and detail of the Tobacco Products Control Amendment Bill [B7B-2008].



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Dr. R. A. N. Salojee  
Chairperson: Health Portfolio Committee

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