



## Katy Gallagher MLA

CHIEF MINISTER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Dr Kristine Klugman  
President  
Civil Liberties Australia  
PO Box 7438  
FISHER ACT 2611

Dear Dr Klugman

Thank you for your letter of 14 September 2011 about the Smoking in Cars with Children (Prohibition) Bill 2011 (the Bill) and your concerns with certain provisions of the Bill.

The Smoking in Cars with Children (Prohibition) Bill 2011 aims to prohibit smoking in cars when children under the age of 16 are present. The Bill's purpose as a vital public health measure is to reduce the harm passive smoking presents to children when in the confined space of a car.

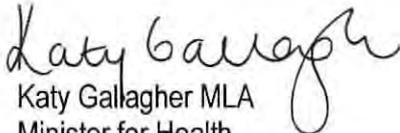
I agree that strict liability provisions should only be applied to legislation under certain circumstances after careful examination of its necessity. I can advise you that the government took great care in considering strict liability and the evidentiary provision during the Bill's development. Strict liability was considered appropriate because its inclusion helps to protect those who are unable to protect themselves. It is on this basis that a strict liability offence is proposed and not 'to protect the integrity of the regulatory system'. The Bill's explanatory statement further discusses the basis of strict liability and quite explicitly states that other circumstances can permit its application.

In relation to the evidentiary provision in clause 7(3), I refer you to the discussion on page 10 of the explanatory statement. It is acknowledged that this places a burden on the defendant but it is not considered to be a particularly onerous one. It is envisaged that police officers will take steps to establish the age of all people in the car before any enforcement action is taken. It is also acknowledged that there may be circumstances in which vehicle occupants are not aware of the age of other passengers and unknowingly breach this law, however, this is considered unlikely to occur.

ACT LEGISLATIVE ASSEMBLY

Thank you for raising your concerns about the Bill's application of strict liability and its evidentiary provision. Vigilance is certainly required to ensure the presumption of innocence is not eroded. In this circumstance, I consider the approach taken with the Bill to be appropriate. The Bill is now before the Legislative Assembly and is expected to be debated later this year.

Yours sincerely

  
Katy Gallagher MLA  
Minister for Health

19 October 2011