

**RESPONSE OF THE WESTERN AUSTRALIAN  
GOVERNMENT**

**TO THE**

**WESTERN AUSTRALIAN LEGISLATIVE  
ASSEMBLY**

**EDUCATION AND HEALTH STANDING  
COMMITTEE RECOMMENDATIONS**

**REPORT NO. 1 –  
INQUIRY INTO THE TOBACCO PRODUCTS  
CONTROL AMENDMENT BILL 2008**

**JUNE 2009**



## INTRODUCTION

The Western Australian State Government welcomes the Education and Health Standing Committee's report - *Inquiry into the Tobacco Products Control Amendment Bill 2008*.

This document details the Government's response to the 13 recommendations contained within the Committee's report. This response has been informed by the following agencies:

- Department of Health
- Department of Corrective Services
- Department of Indigenous Affairs

In providing this response the Government commends the important work undertaken by the Education and Health Standing Committee. Significant progress has been made in the reduction of smoking rates in Western Australia. However, smoking remains the main cause of preventable drug-related death and disease in the State, and the greatest burden of tobacco caused death and disease occurs among those most in need. In 2004/05, it was estimated that tobacco was responsible for near 1,300 deaths, and smoking-related hospitalisations alone cost the WA health system almost \$60 million.

For Western Australia to continue to build on the significant progress to date, it will be necessary to maintain strong multi-sectoral partnerships, strengthen legislation and progress a comprehensive range of tobacco control strategies as outlined in national and state tobacco control strategies so that the quality of life of all Western Australians may be advanced.

**DR KIM HAMES MLA**  
**DEPUTY PREMIER**  
**MINISTER FOR HEALTH; INDIGENOUS AFFAIRS**

**GOVERNMENT RESPONSE TO EDUCATION AND HEALTH STANDING  
COMMITTEE RECOMMENDATIONS**

**REPORT NO. 1 – INQUIRY INTO THE TOBACCO PRODUCTS CONTROL  
AMENDMENT BILL 2008**

**Recommendation 1**

The Committee recommends that the proposed section 22 to control the display of tobacco products be retained in the Bill and supports suggested amendments, including staggered implementation dates for different categories of retailers and the repealing of section 23.

The intent of this recommendation is partially supported.

The State Government supports the proposed ban on tobacco product displays in tobacco retail outlets, to be implemented 12 months after the amended legislation receives the Royal Assent. However, it is considered that the existing exemption for “specialist” tobacco retailers, defined as where 80% or more of the average gross turnover of the business for 2004-05 was derived from the sale of tobacco products, should be continued subject to the existing conditions (that the business is conducted separately from and not within the premises of any other business, and that no greater than 1 square metre of tobacco products (or such lesser area as prescribed in regulations) are visible from a public place outside the premises of the specialist retailer).

**Recommendation 2**

The Committee recommends that the proposed section 106A to ban the use of tobacco products in a car at any time if one or more passengers is a young person be retained in the Bill and supports the proposed amendments from the Commissioner of Police to the title of the section, the definition of a ‘motor vehicle’, and a new subsection 106A (2) with the age of a young person as 17 years. The Committee endorses the concept of alternate penalty options such as smoking education sessions or community service. On the spot fines for this section be increased to \$200.

This recommendation is supported. The State Government supports amendments to the *Tobacco Products Control Act 2006* to bring into effect the recommended proposals.

**Recommendation 3**

The Committee recommends that the proposed section 106B to ban the use of tobacco products in outdoor eating or drinking areas be retained in the Bill. A person must not smoke within 5 metres of an entrance to or opening of an outdoor eating or drinking area. The legislation be accompanied by a well-funded education and public awareness campaign.

The intent of this recommendation is partially supported.

The State Government supports amendments to the Bill that will ban smoking in outdoor alfresco areas of restaurants, cafes and similar areas of licensed premises, with up to 50% of outdoor areas of specific licensed areas able to access an exemption, provided that the area is not already an “enclosed public place”. Staff are not to be forced to provide service in such exempt areas and are not to be dismissed for refusing to do so.

The State Government considers, on balance, that the ban should not extend to other general outdoor areas, including outdoor picnic areas, or music events at King's Park, due to concerns regarding the possibility for confusion within the community if such a broad definition was adopted, together with concerns regarding practicality of monitoring and enforcing compliance in such a wide range of loosely defined public areas. However, a provision will be included to allow Local Governments to independently legislate to restrict smoking in such wider areas where there is local support.

The State Government does not support the proposal to ban smoking within 5 metres of entrances to outdoor drinking areas or entrances to public buildings in general due to concerns regarding the potential impracticality of monitoring and enforcement and possible confusion within the community, especially in relation to pedestrian malls.

The proposal for this legislation to be accompanied by an education and public awareness program is supported within existing departmental resources.

#### Recommendation 4

The Committee recommends that the proposed draft section 106C to ban the use of tobacco products in outdoor playing areas be retained in the Bill and supports amendments from the Department of Health to the title of the section to include the term 'smoke' and the definition of an 'outdoor playing area' to include sports venues and playgrounds. On the spot fines for this section be increased to \$200.

The intent of this recommendation is partially supported.

The State Government supports a broad restriction on smoking within 10 metres of specific children's playground equipment. However, the proposed ban on smoking within sporting grounds where children are present is considered to be too broad, likely to lead to confusion within the community, and be impractical to monitor or enforce.

#### Recommendation 5

The Committee recommends that the proposed draft section 106D to ban the use of tobacco products in safe swimming areas be retained in the Bill and supports amendments from the Department of Health to the title of the section to include the term 'smoke' and modifications to the definition of a 'safe swimming area'. On the spot fines for this section be increased to \$200.

This recommendation is supported. The State Government supports amendments to the *Tobacco Products Control Act 2006* to bring into effect a proposed ban on smoking between the flags of patrolled beaches.

#### Recommendation 6

The Legislative Assembly and the Legislative Council resolve to ban smoking in the precincts of Parliament.

This recommendation has been referred for consideration by the Speaker of the Legislative Assembly and the President of the Legislative Council.

#### Recommendation 7

The Minister for Health establish a Department of Health taskforce to plan future legislative initiatives (consistent with the research of the NPHT) to lower WA's smoking prevalence rates to below 10% by 2015.

The intent of this recommendation is partially supported.

The National Preventative Health Taskforce has reported that it will be developing the National Preventative Health Strategy (The Strategy) which is due to be submitted to the Federal Minister for Health and Ageing in June 2009. The Strategy will provide a blueprint for tackling the burden of chronic disease currently caused by obesity, tobacco, and excessive consumption of alcohol. It will be directed at primary prevention and will address all relevant arms of policy and all available points of leverage, in both health and non-health sectors, in formulating its recommendations.

Existing State Government Strategies that guide legislative and other tobacco control initiatives, including the Western Australian Health Promotion Strategic Framework 2007-2011 and the Western Australian Tobacco Action Plan 2007-2011 currently outline public health policy on tobacco control for Western Australia. Planning to address future legislative and other initiatives to further lower WA's smoking prevalence rates will take into account key recommendations of the National Tobacco Strategy and the forthcoming National Preventative Health Strategy.

At this point in time, the State Government does not support the establishment of a Department of Health taskforce to plan future legislative initiatives. However, key stakeholders will be extensively consulted to aid in planning future legislative tobacco control initiatives during the next statutory review of tobacco control legislation, due to commence in the second half of 2010.

#### Recommendation 8

The Minister for Corrective Services direct the Director General to develop a plan to make all enclosed places within Western Australian prisons smoke-free by the end of 2009 and for prisons to be entirely smoke-free by the end of 2011.

The intent of this recommendation is partially supported.

The Department of Corrective Services (DoCS) has had a plan in place since 2004 related to smoking in prisons. The original plan that was developed in response to a Parliamentary request and was issued in 2006; the plan was presented as a staged approach culminating in a total smoke free environment by 2008.

In 2008 a new and expanded Plan was developed, which based on experience to date determined that the total cessation model was unacceptable to prisons at this time. Rather the plan reflected the DoCS commitment to meeting its duty of care as an employer to comply with Occupational Health and Safety legislation and regulations to provide smoke free workplaces for staff. In addition, that the DoCS would provide the means for prison based staff and all prisoners to access treatment and support to assist them to stop smoking.

To date in excess of 50% of prisons and all work camps are on target to have all enclosed areas smoke free by 30 June 2009, and the balance of prisons are scheduled to be smoke free in enclosed areas by the end of the year.

At this time there is no consideration for prisons to be completely smoke free, and a number of factors have influenced this decision by senior management within the DoCS. The responsibility to ensure the security and good order of prisons is the key priority, with a requirement for each site to develop a risk management plan which targets the demographics of their site. There are many factors that must be taken into consideration in the development of plans for individual sites. Given the diversity of prisoners and prison types, a "one size fits all" approach is not acceptable and poses risks to staff and prisoners. For example, a newly remanded prisoner may have several underlying issues to deal with in relation to becoming smoke free, including other drug dependency, when compared to a sentenced, minimum-security prisoner. Similarly, the issues relating to remote Aboriginal prisoners with regard to smoking pose different challenges than those facing metropolitan based non- Aboriginal prisoners.

Corrections is a highly specialized, multi-layered area of expertise. It is disappointing to note that the Inquiry has made this recommendation without taking this fact into consideration by consulting with the many experts of vast experience within the DoCS. This includes members of the Senior Management Reference Group on Smoking Reduction which was formed at the commencement of the Greenough Trial in March 2008 and senior staff who formulated the plan relating to smoking in prisons, produced in 2006.

Another consideration is that to declare prisons as entirely smoke free, exceeds community standards, and this case has been succinctly outlined by an Issues Paper published by the Office of the Inspector of Custodial Services in May 2008.

Given all of the above, at this time the DoCS is unable to support the recommendation for smoke free prisons by 2011.

#### Recommendation 9

The Minister for Corrective Services make public the report into the management of smoking in prisons in Western Australia.

The intent of this recommendation is partially supported.

It is difficult to determine from the description given which report is referred to in this recommendation. The Department of Corrective Services (DoCS) has not prepared or commissioned a report into the management of smoking in prisons generally in Western Australia. A report from the Greenough Regional Prison Smoking Trial is the only formal report that has been developed on the introduction of smoking restrictions to date.

The Executive Summary and Recommendations from the report on the Greenough Trial, which will be publicly released by the DoCS, together with the 2008/2009 Plan as detailed within the previous recommendation above, indicate that the Department has progressed the restrictions on smoking in prisons significantly in the last twelve months.

Strong objection is raised from the Department to the comment within the Inquiry report which states that "the prison environment offers very little support for inmates trying to quit".

Such a statement suggests corrections experts within the DoCS were not consulted with regard to this area of the report. The reality is that prisoners in WA have free access to the following:

- Quitline counsellors
- Nicotine Replacement Therapy
- Print and electronic media resources on support for smoking cessation
- The Fresh Start Quit Program
- Individual brief intervention therapy on smoking cessation

#### Recommendation 10

The Minister for Indigenous Affairs develop a smoking reduction plan for Indigenous West Australians by the end of 2009 and provide additional funding to employ people to work in this area throughout the State.

The intent of this recommendation is partially supported.

The strategy proposed by the Committee is most appropriately responded to within the Health Portfolio, and the Minister for Indigenous Affairs has requested that the Minister for Health respond to this item.

The Department of Health (DOH) works in partnership with Aboriginal communities and health service providers to ensure that Aboriginal people receive culturally appropriate healthcare that meets their needs. Reducing smoking amongst Aboriginal People is a priority for the DOH and Minister for Health, and is core business. The DOH intends to work with relevant agencies, including the Department of Indigenous Affairs, to progress this.

In response to the Committee's recommendation for a 'smoking reduction plan', the DOH would comment that there are a number of activities currently underway within the DOH and WA Government to reduce smoking and increase health outcomes for Aboriginal People. These activities are detailed within key strategies as outlined below.

The aim of the Western Australian Tobacco Action Plan 2007-2011 (WA TAP) is "*To improve the health of Western Australians by reducing the harm caused by tobacco, especially among priority population groups*". The WA TAP works to achieve this through facilitating improved integration of state wide tobacco control activities. Aboriginal people are identified as a key priority population group within the WA TAP, and as such strategies are being developed to effectively target this group.

In order to achieve its goal, key objectives of the WA TAP are to: prevent the uptake of smoking, reduce the number of people using tobacco, and reduce exposure to tobacco and the harm it causes. Four Action Areas are identified within the WA TAP including: 1. Regulation; 2. Community Education; 3. Cessation Services and Treatment; and 4. Research and Evaluation. The WA TAP is also consistent with the broader Western Australian Health Promotion Strategic Framework 2007-2011 which outlines the key directions for the promotion of healthier and safer lifestyles for the Western Australian population.

In November 2008, Council of Australian Governments (COAG) leaders agreed to an historic \$1.6 billion National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes (the NPA) to specifically address the first of the COAG Closing the Gap targets –

to close the gap in life expectancy within a generation. The Commonwealth will contribute \$805.5 million to address three priority areas of the NPA – Tackling Smoking, Primary Health Care Services That Can Deliver, and Fixing The Gaps And Improving The Patient Journey. State and territory governments will contribute to all priority areas of the NPA. States and territories, including WA, are working with the Commonwealth to develop complementary implementation plans based on evidence that shows Aboriginal Australians experience a burden of disease two and a half times that of non-Aboriginal Australians. Chronic diseases and associated risk factors are the key drivers of excess mortality among Aboriginal adults, and account for about two-thirds of the health gap.

A key element of the Commonwealth and State NPA implementation plans is to tackle chronic disease risk factors. Many of the chronic diseases affecting Aboriginal Australians have common risk factors. Measures in this priority area will address chronic disease risk factors including smoking, obesity, poor nutrition and lack of exercise, and deliver community education initiatives to reduce the prevalence of these risk factors in Aboriginal populations. It is anticipated to provide national and local Indigenous tobacco campaigns, a new tobacco control workforce, a health promotion workforce, lifestyle modification programs, improved access to quit smoking services by Aboriginal Australians, and comprehensive social research and evaluation to build the evidence base.

Given the level of guidance provided within existing National and State strategies and the Commonwealth and State NPA implementation plans currently under development, the State Government supports the development of Aboriginal smoking reduction plans at a community level, through engagement and consultation with Aboriginal communities throughout the State, supported by existing strategic frameworks. It is envisaged that the DOH will work closely with the Department of Indigenous Affairs to ensure appropriate and effective engagement, policy development and implementation strategies are employed. This work will also be coordinated with the activities occurring through COAG.

Additional funding to address Aboriginal smoking will be committed as part of the State's implementation of the National Partnership Agreements on Closing the Gap in Indigenous Health Outcomes and Indigenous Early Childhood Development.

#### Recommendation 11

The Minister for Mental Health retain all smoking bans and smoking education programs aimed at mental health patients in Western Australia.

The intent of this recommendation is supported. At present all public Mental Health Services comply with the *Smoke Free WA Health System Policy*.

#### Recommendation 12

The Minister for Mental Health make public the report into the impact of smoking in health institutions, with particular emphasis on mental health patients in Western Australia.

The intent of this recommendation is supported. It is difficult to determine from the description given which report this refers to. There has been an evaluation undertaken by TNS Social Research in 2008 at the request of the Respiratory Health Network - the *Overview of the Smoke Free WA Health System Policy compliance evaluation*. This report is a public record and is available on the Department of Health's Smoke free website:



Recommendation 13

The Minister for Health negotiate with his counterparts on the Australian Health Ministers Council as to:

- (i) what steps can be implemented to phase out smoking in casino high roller rooms.
- (ii) developing a plan to make Federally-funded nursing homes and aged-care facilities smoke-free within two years.
- (iii) the introduction of a higher excise on tobacco products as a way of reducing smoking prevalence rates, especially for young people.
- (iv) amend duty-free laws to prevent overseas travellers purchasing cheaper tobacco products.

The intent of this recommendation is supported.

Successive Western Australian State Governments have consistently supported Federal Government activities and nationally cooperative approaches to reduce the harm caused by smoking. This Government will continue to monitor opportunities to support the abovementioned and other appropriate actions at a national level.

