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Australian Council on Smoking and Health

Submission to: Education and Health Standing Committee

Re: Inquiry into the Tobacco Control Amendment Bill 2008

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Support for Bill

The Australian Council on Smoking and Health (ACOSH) is a non-government organisation whose members comprise some 40 medical, health, community and educational organisations concerned about smoking and health.

ACOSH supports the Tobacco Products Control Amendment Bill 2008. The measures contained in this Bill will enhance the Tobacco Products Control Act (2006). The Bill will also complement and support other tobacco control initiatives and serve four important purposes, in that it:

- continues the implementation of measures which will reduce smoking in the WA community,
- removes a significant promotional opportunity for tobacco products,
- protects children from the harmful consequences of passive smoking, and,
- reduces the exposure of people to passive smoke in public places and workplaces.

During the 1980s and early 1990s, Western Australia was a leader in tobacco control, both nationally and internationally, with the establishment of the Quit Campaign; introduction of the Tobacco Control Act 1990; establishment of the Health Promotion Foundation of Western Australia (Healthway); introduction of policies restricting smoking in enclosed public places and workplaces; and significant increases in State taxes on tobacco products. This was a period of increased awareness of the harm caused by smoking; increased public support for tobacco control initiatives; increased smoking cessation activity; increased support to smokers wishing to quit smoking; reductions in the consumption of tobacco; reductions in the prevalence and uptake of smoking; reduced exposure to environmental tobacco smoke (ETS); and reductions in youth access to tobacco.

Tobacco remains the largest preventable cause of death and disease and there is an urgent need for action. There is overwhelming evidence not only on the magnitude of the problem, but also on the action that can literally save tens of thousands of lives. Sadly, governmental action has not matched the scale of the smoking epidemic, yet public opinion in recent years has moved dramatically in favour of effective tobacco control. A recent survey of public opinion carried out by the Survey Research Centre at the University of Western Australia showed that there is overwhelming public support for strong action to reduce the tragic toll of death and disease caused by smoking in the areas outlined in this bill.

A recent study demonstrated that more than 8,900 West Australian schoolchildren (6.1%) smoked in the preceding week; this increases with age to 9.5% of 17-year-olds. Half will go on to become long term users and half of those will be killed by their smoking.

While it is well acknowledged that Western Australia has a strong record of achievement, it has become clear that tobacco control in WA is falling behind other States that have moved forward in implementing some of the strategies outlined in this

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Bill (see Attachment 1). In order to reinvigorate Western Australian tobacco control and to achieve real reductions in smoking prevalence, it is essential for the government and public health sector to demonstrate a unified and renewed commitment to tobacco control issues.

In May 2003, the World Health Assembly unanimously adopted the Framework Convention on Tobacco Control (FCTC), one of the United Nations' most widely embraced treaties in order to galvanise global and local action against the tobacco epidemic. The FCTC provides the context for effective policy interventions to neutralise this international killer of millions of people each year. A recently published World Health Organisation report, MPOWER, presents a comprehensive global analysis of tobacco use and efforts in tobacco control. It provides a blueprint for tobacco control activities globally, which reflects and builds on the Framework Convention on Tobacco Control. MPOWER consists of six proven policies:

- monitor tobacco use and prevention policies
- protect people from tobacco smoke
- offer help to quit tobacco use
- warn about the dangers of tobacco
- enforce bans on tobacco advertising, promotion and sponsorship
- raise taxes on tobacco.

In Australia, the Rudd government has established the National Preventative Health Taskforce; its first discussion paper highlights the role not only for individuals in making better health choices, but also for communities, employers, community leaders, workplaces, businesses, industries and all levels of government.

The Taskforce released technical papers that focus on the burden of disease associated with tobacco, obesity and alcohol; these papers recommend strategies that will substantially reduce the harm, caused by tobacco and alcohol, to Australian society. In relation to tobacco, the Taskforce noted:

- Over three million people (around 18% of Australians aged 14 years and over) smoke, with almost 2.9 million people smoking on a daily basis.
- Tobacco use is currently the single biggest preventable cause of death and disease in Australia, despite the use of tobacco products being at an historic low following the significant decline from the 1950s. Lung disease, lung cancer, heart attack and stroke are some of the health effects of smoking.
- Smoking rates are rapidly declining among the affluent, but continue to be substantially higher among those with lower levels of education and those living in more disadvantaged areas and among Indigenous people.
- Tobacco use is responsible for 12% of the total burden of disease and 20% of deaths in Indigenous Australians. Smoking resulted in an estimated 15,511 deaths in 2003 and cost the Australian community approximately \$12 billion in tangible net costs in 2004–05.

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Some of the key actions recommended in the report are to:

- Increase tobacco tax and prevent evasion of duty in order to increase the cost of tobacco products.
- Eliminate all remaining forms of promotion of tobacco including by banning displays at point-of-sale and ensure plain packaging is implemented.
- Tighten and enforce State and Territory legislation to eliminate sales to minors and protect against exposure to second-hand smoking (particularly in workplaces, youth events, cars, and outdoor areas where movement is restricted).
- Change licensing laws so that state and territories license retailers, with no license being made available for sales through vending machines, internet, at hospitality and other social venues.
- Make tobacco use a classifiable element in movies and video games.
- Legislate to ensure full reporting and governmental controls over all tobacco product constituents, additives, emissions, and other aspects of manufacture and design.

The strategies contained in the Bill are consistent with both MPOWER and the key strategies outlined in the National Preventative Health Taskforce technical paper on tobacco. Both papers emphasise that a comprehensive approach in tobacco control is crucial. They reinforce the message that there is a very real concern that if the level of tobacco control loses momentum it is likely that the rate of decline in the prevalence of smoking will be reduced. In addition, COAG recently announced that the Rudd Government will invest \$872 million over six years in preventative health, to help keep people well and take pressure off hospitals; a key component of this announcement included the target of “reducing the daily smoking rate from 16.6% to 10% within ten years”.

It is vital that the momentum in tobacco control is maintained to ensure that these targets are attained and that further complementary action is taken.

Health Impact of Tobacco

Tobacco use is the single largest cause of preventable death and disease in Australia. In addition to the 32 conditions listed by Ridolfo and Stevenson in 2001, for which smoking is a known cause of disease (including cancer, cardiovascular disease, chronic obstructive pulmonary disease, respiratory disease, asthma, and sudden infant death syndrome), the US Surgeon General's Report identifies a number of diseases that were not previously causally associated with smoking. The report concludes that smoking harms nearly every organ of the body, causing many diseases and reducing the health of smokers in general. Among long-term smokers, 1 in 2 will die prematurely from a disease caused by smoking.

Almost 300,000 West Australian adults still smoke daily or occasionally, and each year an estimated 9,000 children start. Smoking costs WA \$2.4 billion a year – equal to half the entire health budget. Tobacco accounts for an estimated 15,500 deaths in Australia each year and is responsible for 80% of all drug-caused deaths. A recent study has

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estimated that reducing the prevalence of smoking to five per cent, from the current 15 per cent, would save \$938 million over 15 years, or \$5,600 for each person prevented from smoking.

Tobacco use is not only dangerous to individual smokers; it also results in significant harm for non-smokers. While the primary benefits in reducing smoking relate to health, reductions in the use of tobacco have the potential to improve mental health and well being, family cohesiveness, productivity in the workplace, and to reduce demand on the welfare system.

The 2007 National Drug Strategy Household Survey from the Australian Institute of Health and Welfare shows the proportion of the Australian population aged 14 years and over who smoked daily declined from 19.5% in 2001 to 16.6%. For Western Australia the prevalence was 14.8% for people who reported smoking daily. Nevertheless, there is still a long way to go and good evidence that significant further reductions are feasible; for example, the prevalence of daily smoking in California is currently 8.8%. To reach prevalence of daily smoking lower than 9% by 2020, smoking rates in Australia would need to reduce over the next 12 years by the same percentage as they have decreased in California over the past 12 years.

Inevitably there will be some opposition to the 'Tobacco Products Control Amendment Bill 2008' from tobacco interests and their traditional allies such as the Australian Hotels Association. Clearly, they have little interest in supporting the health measures outlined in this Bill. In the past their arguments against measures such as smokefree hotels and clubs have included exaggerated claims that they would cause irreparable damage to the hospitality industry. The reality is that both the industry and smokers adjust in response to the smoke free laws, which are welcomed by smokers and others.

Specific Issues

1. Section 22: Display of Tobacco Products

ACOSH has long been concerned about the positioning and display of cigarettes in retail outlets. In most cases cigarettes occupy the most valued position in the store: behind the cash register or sales point. This maximises their accessibility and profile. They are often located near confectionery items, providing a false sense of their potential danger.

The tobacco industry uses point-of-sale displays to promote its products. Tobacco industry documents show the importance the industry attaches to these displays to achieve "optimal product exposure." One purpose of tobacco retail display bans is to discourage young people from starting to smoke. In an experimental evaluation, Wakefield et al. (2006) show that cigarette package displays increase children's perception that cigarettes are easy to obtain and facilitate their recall of brand names. Bans on the display of tobacco products at the point of sale are expected to result in decreased rates of smoking initiation among young people, decreased rates of smoking in the general population and fewer relapses among quitters.

In short, a ban on visible tobacco displays will:

- protect children and young people from exposure to tobacco promotion;
- support smokers who are trying to quit and former smokers that are trying to stay smoke-free; and,
- be consistent with health promotion campaigns about tobacco products being dangerous and addictive.

Tobacco displays at point of sale 'normalise' tobacco products and advertise tobacco products, even though tobacco advertising is banned. Tobacco displays influence children, are a temptation to recent quitters and people trying to quit smoking, increase impulse purchasing, and are crucial to tobacco marketing and promotion. While tobacco displays remain they undermine government investment in tobacco control and decrease the impact of tobacco control legislation.

Last year when facing similar point of sale restrictions in New South Wales, international tobacco company 'Philip Morris' wrote to all NSW tobacco retailers with a number of claims. Subsequently, Professor Simon Chapman wrote a critique that refuted the tobacco industry claims (see Attachment 2).

2. Section 106A: Use of tobacco products in cars with children

Cars are a confined space and a recent study found that concentrations of both fine respirable suspended particles (RSPs) and carbon monoxide in cars are significantly increased when smoking while driving (Rees et al. American Journal of Preventative Medicine 2006; 31:363-368). RSP levels reached dangerously high levels for the duration of the smoking of the cigarette and stayed elevated for at least 5 minutes after smoking.

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Repeated exposures of children to these RSP concentrations are likely to be detrimental to their health and there is good evidence that children's exposure to passive smoking is strongly associated with a greater likelihood of ear infection, lower respiratory tract infections and increased asthma attacks.

Concerns may be raised as to how this will be enforced. This has not proven to be a problem elsewhere. In NSW Police supported similar legislation and enforcement has worked well in both Tasmania and South Australia. It is not envisaged that enforcement will be a regular focus for the Police, or detract from other areas of policing. Policing will be opportunistic (as it is for mobile 'phones or seat belts), and the legislation will be largely self-enforced, especially as it becomes recognised and accepted as the norm. It is recommended that any costs entailed in policing and prosecution should be reimbursed to the Police from elsewhere in government, although these costs are not expected to be substantial.

The health effects of passive smoking on children are well documented. A one page summary on children and smoking from "The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General, U.S. Department of Health and Human Services" is attached (Attachment 3) for your information.

3. Section 106B: Use of tobacco products in outdoor areas (eating and drinking)

There is strong scientific evidence that smoking in crowded outdoor areas, such as restaurant and hotels, can lead to harmful levels of chronic exposure by both patrons and employees. ACOSH is pleased that the proposed reforms are addressing al fresco dining. With smoking banned from indoor eating areas, there is a higher concentration of smokers and cigarette smoke in al fresco dining areas. This is particularly of concern for non-smoking customers, diners with respiratory issues and for staff who are regularly working in these areas. Smokers have adapted to previous changes to indoor dining, and will continue to adapt if al fresco dining is prohibited. In addition smoke drift from outdoor areas can render indoor smoke-free areas ineffective if the indoor and outdoor areas are adjoined without adequate barriers, open windows and doors.

Increasing community awareness of the harmful effects of passive smoke has led the community to accept, and expect the availability of smoke-free areas. A recent study which measured cigarette smoke levels in a variety of outdoor locations showed that a person sitting near a smoker in an outdoor area could be exposed to levels of cigarette smoke similar to the exposure of someone sitting in an indoor tavern where smoking is allowed.

A key advantage of the outdoor eating or drinking places provision is the broad range of venues that it captures. This means that all alfresco eating areas in Western Australia will become smoke-free. This also will eliminate the problems of smoke-drift from outdoor to indoor areas where alfresco areas are immediately adjacent to indoor bar and eating areas.

Making outdoor areas smoke free is not only about the dangers of exposure to passive smoke. The proposed laws are also about supporting social change, reducing the

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opportunity to smoke and creating a smoke-free environment where non-smoking is the norm. Social change is being encouraged by separating the acts of eating and drinking from the act of smoking and having outdoor environments where smokers are required to move away to smoke. Reducing the opportunity to smoke by creating more smoke-free areas is effective in decreasing cigarette consumption, reducing the prevalence of adult smoking, and reducing tobacco by young people.

Business and Employer

From a legal perspective, hotels, clubs, restaurants, cafes and the casino have a duty of care to protect employees and patrons from proven hazards. That is an established tenet of common law and the fundamental basis of workplace, health and safety statutes.

Tobacco Industry Arguments lack Credibility

Research commissioned by the tobacco industry has found that any initial resentment of smoking restrictions subsides soon after implementation, and dozens of studies in various jurisdictions have repeatedly shown there is no adverse economic impact on revenue that is attributable to the introduction of smokefree policies in the hospitality sector. The tobacco industry has long been aware that its (and others') public predictions of dire consequences for the hospitality sector were unfounded. To quote from an internal Philip Morris document in 1994: "The economic arguments often used by the industry to scare off smoking ban activity are no longer working, if indeed they ever did. These arguments simply had no credibility with the public, which isn't surprising when you consider that our dire predictions in the past rarely came true."

Local Government approach or a State wide approach

A growing number of WA local government authorities have taken the initiative to introduce smokefree policies and bylaws (see Attachment 4). While this is to be applauded, it has lead to some inconsistencies within certain localities. For example, from 1 January 2009 the popular Mount Lawley retail and café strip is in both the town of Vincent and the City of Stirling (Walcott St is the boundary between those authorities); this means that Mount Lawley is currently smokefree on the City side of Walcott St; with smoking being permitted on the Perth College side of Walcott St. A very confusing scenario.

Statewide laws would clearly overcome this problem and allow for effective promotion of smokefree regulations. To date Queensland has the most comprehensive smoking bans in outdoor areas. Since July 2006 in Queensland, outdoor eating and drinking areas where food or drink is provided or able to be provided as part of a business must be also no-smoking. An outdoor smoking area can be provided as long as no food or drink sold is provided or consumed in the area, and the area is not within four metres of a building entrance. Hotels and clubs may set aside designated outdoor smoking areas where only smoking and drinking can occur, provided the area is not serviced.

4. Section 106C: Use of tobacco products in outdoor areas (playing areas)

Passive smoking can have significant health effects on children. The benefits of this amendment will contribute to legislation and regulations that protect their health, in areas designed for the use of for children, teenagers and young adults. There is strong community support to make playgrounds smoke-free zones. Passive smoke is harmful to both children and adults. Children exposed to second hand smoke are more likely to suffer from colds and ear infections; it is especially dangerous to children and adults with asthma or other chronic illnesses because it aggravates their condition. Littered cigarette butts are also hazardous to children. Young children may pick up the butts and put them in their mouths, with the risk of choking or burning themselves. The harmful chemicals and nicotine in discarded cigarettes can be toxic and even fatal to a small child.

5. Section 106D: Use of tobacco products in outdoor areas (safe swimming areas)

Patrolled beaches attract large numbers of people, particularly families with children. ACOSH supports the prohibition of smoking in all outdoor public spaces where large groups of people gather. Smoking on beaches is problematic for several reasons. Firstly, cigarette smoke in open spaces can cause discomfort for those people with respiratory problems. Secondly, beaches are places that families with young children; and as such, should be deemed a smoke-free public place. Thirdly, cigarette butts are a major contributor to environmental damage on beaches.

A mixture of local government and state action has led to restrictions on smoking at some Australian beaches. In May 2004, Sydney's Manly Council became the first in Australia, and only the second in the world following Los Angeles, to legislate a smoking ban on a public beach. Sydney's Waverly Council immediately followed, banning smoking on their beaches, including Bondi. In 2005, the Queensland Government banned smoking between the flags on all patrolled beaches and on artificial beaches.

Other issues for consideration

There is still scope for action in a range of other areas especially at the national level, however the 'Tobacco Products Control Amendment Bill 2008' is an important Bill that will do much to protect the health of the West Australian community.

Key references:

- WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER package. Geneva, World Health Organization, 2008.
- National Preventative Health Taskforce. Australia, the healthiest country by 2020: A discussion paper. Commonwealth of Australia 2008.
- National Preventative Health Taskforce. Technical Report No 2, Tobacco Control in Australia: making smoking history, Commonwealth of Australia 2008.

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Attachment 1

	Smoke Free Cars/Children	Point of Sale/Under Counter
South Australia	Legislation passed - introduced legislation to make cars with children smokefree from May 31 2007. (Under the <i>Tobacco Products Regulation Act (Smoking in Cars) Amendment Act 2006</i> , section 48, smoking in a motor vehicle is prohibited if a child is present).	
Tasmania	Legislation passed – laws to ban smoking in cars carrying children aged up to 18 years came into effect January 1 2008 under the <i>Public Health Amendment Act 2007</i>	Legislation passed – all tobacco retail display to end by February 2, 2011 under the <i>Public Health Amendment Act 2007</i>
New South Wales	Legislation passed – A new tobacco control law passed by NSW Parliament to ban smoking in cars carrying children. Proposals announced by the NSW Government on Feb 28, 2008 under the <i>Public Health (Tobacco) Act 2008</i>	Legislation passed – tobacco products out of sight under the <i>Public Health (Tobacco) Act 2008</i> (announced July 2008). Under changes before State Parliament in September 2008, retailers have six months to put their products under the counter and tobacconists 12 months.
Queensland (See below table for Qld on eating and drinking areas)	Legislation passed – new laws banning smoking in cars carrying children introduced November 12, 2008 under the <i>Health and Other Legislation Amendment Bill 2008</i> .	
Victoria	Legislation announced - Cars carrying children under 18 smokefree by law from Jan 2010 as outlined in the government's tobacco control strategy	Legislation announced – All tobacco products out of sight in shops from Jan 2011 as outlined in the government's tobacco control strategy

Queensland Smoke-free Legislation

Under the *Tobacco and Other Smoking Products Act 1998*, smoking is banned in a number of outdoor places in QLD.

Since 1 July 2006 smoking is banned in outdoor eating or drinking places where persons may consume food or drink provided by an on-site food service.

Since 1 January 2005 smoking is banned in major sports facilities, patrolled beaches or prescribed outdoor swimming areas (e.g. an artificial beach), within 10m of children's playground equipment and within 4m of non-residential building entrances (*hotels, clubs and casinos and a number of prescribed outdoor pedestrian malls in Queensland are exempt from the ban on smoking at non-residential building entrances*).

As at 29 January 2009

Attachment 2

Critical review of Philip Morris Australia's letter to NSW tobacco retailers

**Prof Simon Chapman
University of Sydney
May 2008**

“Additional serving time to dispense the product” will be needed: This is nonsense. Photo 1 below is from Coles Supermarket in Forestville, Sydney. It shows the dispensers behind the counter, covered so as to not display the packs. Each is clearly marked with the name of the brand and the price. The shop assistant simply reaches behind them and selects the brand requested from the drawer. Photo 2 is from a Thai retail outlet in Bangkok where all tobacco displays are banned. It shows just how easy it is for staff to access products by opening the cover of the row in the dispenser which holds the brand requested.

“Customers will be unable to determine if you have their brand of choice”: Again, more nonsense. Customers will simply ask for their brand. If a store has it, it can be sold. If the store does not stock it, the fact it is not on display is irrelevant as the customer would have to go to another store anyway. And at those other stores, it would not be displayed either. So a level playing field for all stores.

“Inability to display promotional prices”: More nonsense. As shown in Photograph 1, the prices of each brand are marked on the drawers. Health groups in NSW also support the provision of a printed price list that could be kept on the counter and shown to customers.

“theft or shrinkage may increase” because store staff have to retrieve the product from the covered display: Still more nonsense. This argument would of course apply to tobacco products (or any product) stored and fully displayed behind the servers' position, requiring them to turn away from a customer when obtaining such products from a shelf. How many shops leave all that retail display area empty because of this concern?

“Alteration of your tobacco merchandising system will take time to install, cost money and may not be feasible.” This one takes the prize. As all retailers know full well, tobacco companies will pay for, install and modify these merchandising systems in all retail tobacco outlets as fast as the law will requires, least they lose any ability to have stores selling tobacco products.

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Attachment 3

Children are Hurt by Secondhand Smoke

- Secondhand smoke contains more than 250 chemicals known to be toxic or carcinogenic (cancer-causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide. Children who are exposed to secondhand smoke are inhaling many of the same cancer-causing substances and poisons as smokers.

Health Effects of Secondhand Smoke in Children

- Because their bodies are developing, infants and young children are especially vulnerable to the poisons in secondhand smoke.
- Both babies whose mothers smoke while pregnant and babies who are exposed to secondhand smoke after birth are more likely to die from sudden infant death syndrome (SIDS) than babies who are not exposed to cigarette smoke.
- Mothers who are exposed to secondhand smoke while pregnant are more likely to have lower birth weight babies, which makes babies weaker and increases the risk for many health problems.
- Babies whose mothers smoke while pregnant or who are exposed to secondhand smoke after birth have weaker lungs than other babies, which increases the risk for many health problems.
- Secondhand smoke exposure causes acute lower respiratory infections such as bronchitis and pneumonia in infants and young children.
- Secondhand smoke exposure causes children who already have asthma to experience more frequent and severe attacks.
- Secondhand smoke exposure causes respiratory symptoms, including cough, phlegm, wheeze, and breathlessness, among school-aged children.
- Children exposed to secondhand smoke are at increased risk for ear infections and are more likely to need an operation to insert ear tubes for drainage.

Exposure to Secondhand Smoke Among Children

- The Surgeon General has concluded that there is no risk-free level of secondhand smoke exposure. Even brief exposures can be harmful.
- On average, children are exposed to more secondhand smoke than nonsmoking adults.

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- Based on levels of cotinine (a biological marker of secondhand smoke exposure), an estimated 22 million children aged 3-11 years and 18 million youth aged 12-19 years, were exposed to secondhand smoke in the United States in 2000.
- Children aged 3-11 years and youth aged 12-19 years are significantly more likely than adults to live in a household with at least one smoker.
- Children aged 3-11 years have cotinine levels more than twice as high as nonsmoking adults.
- Children who live in homes where smoking is allowed have higher cotinine levels than children who live in homes where smoking is not allowed.

Information contained on this attachment has been taken directly from *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*.

Last revised: January 4, 2007

Attachment 4

Smokefree Local Government as at 29 January 2009

City of Rockingham as of 1 July 2008 alfresco areas smoke-free,

City of Perth alfresco areas smoke-free from 1 July 2009

Fremantle full implementation of smoke free al fresco from 15 August 2008.

City of Joondalup all beaches smokefree from December 2007; Joondalup has voted to ban both smoking in alfresco areas on public property and smoking within five metres of the entrances and exits of all City-owned buildings- effective early 2009

Town of Vincent smoke free alfresco dining from 1 January 2009.

City of Cockburn, Cockburn is the first WA council in to decide on a comprehensive smokefree policy- covering all key areas.

City of Nedlands restrictions on smoking currently under consideration

Geraldton/Greenough smokefree alfresco currently under consideration

City of South Perth smokefree alfresco currently under consideration

City of Stirling smoke free al fresco currently under consideration

City of Mandurah smoke free al fresco under consideration

Town of Armadale comprehensive smokefree policy- covering all key areas is currently under consideration.

City of Geraldton Greenough has made a decision to develop a comprehensive smokefree policy.