

Tobacco control legislation and public policy in Western Australia 1911–2010

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Serious practitioners of tobacco control appreciate that comprehensive approaches, using a variety of evidenced based strategies, are required to reduce the prevalence of smoking across the population.¹ While there may be some debate about the relative merit of each strategy most tobacco control practitioners would include the following in their list of priority strategies: regular increases in the price of tobacco, usually through increases in tax; sustained, and well resourced hard-hitting public education campaigns; legislation that prohibits the promotion and marketing of tobacco in all its forms, including sponsorship of sport and the arts; legislation that requires all enclosed workplaces and public places to be smoke-free, protecting people from exposure to second-hand smoke; graphic health warnings on cigarette packages; and the provision of proven treatments for smoking cessation.²

This paper chronicles the major changes in public policy and legislation that have driven down the prevalence of smoking in Western Australia.

The State of Western Australia took its first and inadvertent step towards a comprehensive approach to tobacco control when, in an effort to prevent fires, its Parliament prohibited smoking in theatres in 1911.³

In 1916, the Parliament passed legislation to prohibit the sale of tobacco products to persons who were not 18 years of age.⁴ This piece of legislation was revisited by the Parliament 48

¹ International Union Against Cancer, *Guidelines for Smoking Control* Technical Report Series 52 (second edition) (1980).

² Konrad Jamrozik, 'ABC of smoking cessation: population strategies to prevent smoking' (2004) 328 *British Medical Journal* 759.

³ William Musk, Ruth Shean, Noni Walker and Maurice Swanson, 'Progress on Smoking Control in Western Australia' (1994) 308 *British Medical Journal* 395.

⁴ *Sale of Liquor and Tobacco Act 1916* (WA).

years later when the provisions of this Act affecting the availability of liquor were amended, but they had no consequences for the sale of tobacco products.⁵

Reports from The Royal College of Physicians of London in 1962⁶ and the US Surgeon General's Advisory Committee on Smoking and Health in 1964,⁷ led to a greater awareness among health professionals of the health effects of smoking. This awareness also increased in the general community, mainly as a result of coverage of these issues in the mass media.

In 1969, the Federal Government, following advocacy from the Anti Cancer Council of Victoria,⁸ agreed to introduce legislation to require cigarette packets to display a health warning. While this legislation was agreed in 1969 it was not implemented in Western Australia until 1973,⁹ requiring the health warning: 'Warning – Smoking is a health hazard.'

With a growing number of scientific papers confirming the health effects of smoking, a group of concerned medical and public health specialists led by Dr Cotter Harvey, formed the Australian Council on Smoking and Health (ACOSH) in New South Wales in 1967. The Council's broad objective was to advocate for changes in public policy that would reduce the prevalence of smoking in Australia and the resulting epidemic of smoking caused disease and death. ACOSH also formed a branch in Western Australia in 1971 and, when the NSW branch dissolved in 1978, ACOSH Western Australia assumed responsibility for advocacy on smoking and health issues for the nation.¹⁰

ACOSH and the Health Education Council of Western Australia lobbied the Minister for Transport¹¹ to make a change in policy, resulting in a ban on smoking on the then Metropolitan Transport Trust buses in 1974. At the time of this prohibition, the same

⁵ *Sale of Liquor and Tobacco Act 1964* (WA).

⁶ Royal College of Physicians of London, *Summary of a Report of The Royal College of Physicians of London on Smoking in Relation to Cancer of the Lung and Other Diseases* (1962).

⁷ US Department of Health and Human Services, US Department of Health, Education, and Welfare, Public Service, Centre for Disease Control, *Smoking and Health: Report of the Advisory Committee to Surgeon General of the Public Health Service* (1964).

⁸ Nigel Gray, Anti-Cancer Council of Victoria, *Smoking Control--Australia. Case studies* (1985) Melbourne

⁹ *Cigarettes (Labelling) Regulations 1972* (WA), amended by *Cigarettes (Labelling) Regulations 1974* (WA).

¹⁰ William Musk, Ruth Shean and Stephen Woodward, Legislation for Smoking Control in Western Australia (1985) 290 *British Medical Journal* 1562.

¹¹ Western Australian Government Cabinet, Western Australian Government Cabinet Minute, *Smoking on MTT Buses* (1974).

requirement was extended to trains and ferries. The Prospector service to Kalgoorlie was made smoke-free on 10 October 1991.¹²

In 1975, the State Government passed legislation requiring persons who were involved in the business of selling tobacco to be licensed, enabling the Government to collect revenue from this activity into the future.¹³

In 1978, Western Australia made tentative steps towards making enclosed workplaces smoke-free when the Minister for Health gazetted regulations under the *Hospitals Act 1927* (WA), requiring enclosed areas of government hospitals be smoke-free.¹⁴ The Minister was assisted in this regard by changes to the *Health Act 1911–79* (WA) that required employers to provide workers with a safe environment by eliminating any nuisance-causing agents in the air.¹⁵

In 1982, public transport was again the focus of tobacco control activity when the Minister for Transport gazetted regulations under the *Metropolitan (Perth) Passenger Transport Trust Act 1957–1980* (WA) to prohibit smoking by visitors in any transport vehicle or on Transperth (as it became known) premises.¹⁶

In 1972, ACOSH formulated a priority objective to convince the Western Australian Government to pass legislation that would prohibit the advertising and marketing of tobacco products under the control of the state government.¹⁷ In an Australian first, in 1982, Dr Tom Dadour, a General Practitioner and former member of the Liberal Government, introduced a private members' Bill,¹⁸ with support from ACOSH, which aimed to prohibit advertisements relating to smoking and tobacco products. The Bill passed through the Legislative Assembly, but was defeated by a margin of two votes in the Legislative Council.

¹² Task Force on Passive Smoking, Health Department of Western Australia *Report of the Western Australian Task Force on Passive Smoking in Public Places* (1997).

¹³ *Business Franchise (Tobacco) Act 1975* (WA).

¹⁴ *Hospitals Act 1927–1976 Regulations 1979* (WA) reg 10 Model By-Law 21, 22(1).

¹⁵ *Health Act 1911* (WA), amended by *Health Act 1911* (WA) Part VII Division 1 s181.

¹⁶ *Metropolitan (Perth) Passenger Transport Trust Regulations 1977* (WA) regs 33(1), (2).

¹⁷ The Australian Council on Smoking and Health, *Council Minutes*, 19 April, 1972.

¹⁸ *Smoking and Tobacco Products Advertisements Bill 1982* (WA).

In the same year, the National Heart Foundation of Western Australia (WA Division), conducted Western Australia's first quit smoking campaign, using commercial advertising to encourage smokers to give up smoking for at least one day.¹⁹

In 1983, a Labor Government was elected and the new Minister for Health, Hon Barry Hodge MLA introduced a Bill, again with the support of ACOSH, to prevent the advertising and promotion of smoking and products associated with smoking, the sale of such products to young persons, and to repeal the *Sale of Tobacco Act 1916–1964* (WA).²⁰

The Bill proposed to create an offence for any person who published, induced or promoted the purchase of a tobacco product, smoking accessory or smoking more generally. The distribution of a free sample of a tobacco product would have become illegal, as would the offer of a prize, gift or benefit in connection with the sale of a tobacco product. Schemes designed to promote the purchase of tobacco products would also have become illegal. The Bill proposed the legal age for purchase of tobacco products be reduced from eighteen to sixteen years, and those under sixteen years of age would not be able to obtain tobacco products from vending machines. If the Bill had become law, tobacco retailers would have been required to display health warnings at point-of-sale.

The introduction of this Bill resulted in opposing public relations campaigns: one led by the Government through the Health Department and supported by ACOSH; the other orchestrated by the tobacco industry, supported by tobacco retailers and some sporting and racing organisations that risked losing sponsorship and financial backing from the tobacco industry. Again, this Bill passed through the Legislative Assembly, but was defeated by a margin of two votes in the Legislative Council.²¹

Although the legislation was defeated, the Government determined that there would be an increase in the State Tobacco Licence Fee, from 12.5% to 35%, which generated an additional \$20 million in revenue, \$2 million of which was allocated to the Health Department to conduct a state-wide smoking and health education campaign, later to become known as the

¹⁹ Robert Donovan, Deborah Fisher and Bruce Armstrong, "'Give it Away for a Day': An Evaluation of Western Australia's First Smoke Free Day" (1984) VIII *Community Health Studies* 301.

²⁰ Tobacco (Promotion and Sale) Bill 1983 (WA).

²¹ William Musk, Ruth Shean and Stephen Woodward, Legislation for Smoking Control in Western Australia (1985) 290 *British Medical Journal* 1562.

Quit Campaign.²² The Quit Campaign, and other smoking and health campaigns conducted from 1984 onward, are the subject of another monograph.²³ Increases in the price of tobacco from 1983 to 2007 played a vital role in reducing the prevalence of smoking. These increases in price resulted from changes to the State Tobacco Licence Fee, and later, to regular increases in the rate of Federal Tobacco Excise.²⁴ The price of tobacco in Australia also increased with the introduction of the Goods Services Tax.²⁵ The most recent increase in tobacco excise occurred on April 30, 2010, resulting in a retail price of approximately \$A15 for a packet of 25 cigarettes.²⁶

In 1984, the newly elected Labor Government passed occupational health and safety legislation²⁷ requiring all employers to promote and secure the health, safety and welfare of persons at work and to protect them against risks to their health and safety. Although this legislation was not developed to address the issue of exposure to second-hand smoke at work, it had the potential to be used for this purpose.

In 1985, the Minister for Health gazetted regulations under the *Health Act 1911 (WA)*²⁸ to prohibit persons, preparing or displaying food for sale, from smoking tobacco products. While this legislation was not designed to reduce the prevalence of smoking it sent a further message to the community that smoking was not desirable or hygienic.

In the same year, libraries in Western Australia were declared smoke-free under the *Library Board of Western Australia Act 1951 (WA)*.²⁹

Work undertaken during 1985 and 1986 by the then Health Department of Western Australia, to support the West Australian Minister for Health and other ministers for health, contributed to the introduction of new health warnings on cigarette packages in 1987 throughout

²² Cancer Council Western Australia, *The Progress of Tobacco Control in Western Australia: Achievements, Challenges and Hopes for the Future* (2008) 78.

²³ Ibid.

²⁴ Margaret Winstanley, Stephen Woodward and Noni Walker, *Tobacco in Australia: Facts and Issues 1995* (Victorian Smoking and Health Program Australia (Quit Victoria) 2nd ed, 1995).

²⁵ MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and Issues* (2008).

<http://www.tobaccoinaustralia.org.au/chapter-13-taxation/13-2-tobacco-taxes-in-australia>

²⁶ Emma Rodgers, 'Cigarette Tax to increase 25pc from midnight, ABC News, 29 April 2010
<http://www.abc.net.au/news/stories/2010/04/29/2885725.htm>.

²⁷ *Occupational Health, Safety and Welfare Act 1984 (WA)*.

²⁸ *Food Hygiene Amendment Regulations 1985 (WA)* reg 28(1)(b).

²⁹ *Library Board of Western Australia Act 1951 (WA)* s 20.

Australia, which included the warnings: *Smoking Causes Lung Cancer*, *Smoking Causes Heart Disease*, *Smoking Damages Your Lungs*, and *Smoking Reduces Your Fitness*,³⁰ accompanied by an attribution: Health Authority Warning. The introduction of these new warnings to replace *Warning—Smoking is a Health Hazard* was bitterly opposed by the tobacco industry.

In 1987, the Federal Government prohibited smoking on all domestic aircraft effective from 1 December of that year.³¹ In 1989, the Western Australian Public Service became a smoke-free workplace, following the lead set by the Commonwealth Public Service in 1986.³²

From 1983 to 1989, health and medical organisations in Western Australia led by ACOSH, together with the leaders of public health programs within the Health Department of Western Australia, maintained their advocacy on the need for legislation to prohibit the advertising and marketing of tobacco products. During these years the Health Department's Quit Campaign conducted a series of hard-hitting advertising campaigns covering the most prevalent diseases caused by smoking, while at the same time encouraging and supporting smokers to quit.³³

During 1989, the Western Australian Government announced its intention to introduce legislation prohibiting all forms of tobacco advertising and establish a health promotion foundation to replace the sponsorship of sport, racing and arts activities that were, at the time, receiving tobacco industry sponsorship. Similar legislation had been passed previously in Victoria,³⁴ and South Australia.³⁵

Unlike the earlier attempts in 1982 and 1983, this tobacco control legislation was passed into law and proclaimed on 1 February 1990.³⁶

³⁰ *Tobacco (Warning Labels) Regulations 1987* (WA).

³¹ *Air Navigation Regulations – Reg 246 Smoking in Aircraft* (1987) (Cth) reg 246.

³² Public Service Commission Western Australia, *Administrative Instruction 709* (1989).

³³ Maurice Swanson, 'Winning the Battle – The WA Smoking and Health Campaign in Betty Durston and Konrad Jamrozik (eds) *The Global War: Proceedings of the Seventh World Conference on Tobacco and Health* (1990) 218.

³⁴ *Tobacco Act 1987* (Vic).

³⁵ *Tobacco Products Control Act Amendment Act 1988* (SA).

³⁶ *Tobacco Control Act 1990* (WA).

The major provisions of the Act prohibited most forms of tobacco advertising under State control such as tobacco advertisements published in Western Australia, outdoor billboards and tobacco advertisements that dominated the outside surfaces of retail outlets. Importantly, the Act allowed tobacco advertising inside shops only if the advertising was sited directly adjacent to where the tobacco products were displayed for sale. However, the Act gave the Minister for Health the power to ensure these advertisements complied with certain conditions regarding their size and whether they displayed a prescribed health warning.

Schemes and competitions designed to promote the sale of tobacco products were declared illegal as was the distribution of free samples of tobacco products. Sponsorship of activities by tobacco companies was made illegal, but the Minister for Health was provided with the power to exempt certain events. All tobacco sold in Western Australia was required to be labelled in accordance with regulations that described health warning statements and any other information the Minister deemed relevant.

As in 1916, the Act prohibited the sale of tobacco to persons under the age of 18 years, but also specified it was illegal for a proprietor to allow the purchase of a tobacco product from a vending machine by a minor. Vending machines were restricted to licensed premises or staff amenity areas and required to display prominent health warnings. Selling loose cigarettes or in packets containing less than 20 cigarettes was made illegal to limit the tobacco industry's ability to make their products more accessible to young people. The manufacture or sale of smokeless tobacco was made illegal.

The *Tobacco Control Act 1990* (WA) established the Western Australian Health Promotion Foundation later to be known as Healthway. The Foundation's primary objectives included the funding of activities relating to the promotion of good health with particular emphasis on young people; to offer an alternative source of funds for sporting and arts activities previously supported by the tobacco industry and to support sporting and arts activities designed to promote healthy lifestyles. At the time of its establishment, the Foundation was funded by 10% of the revenue generated through the collection of State Tobacco Licence Fees.³⁷ Later governments increased the rate of the licence fee resulting in substantial increases in revenue and decisions to amend the Act to cap the allocation of funds to Healthway.³⁸

³⁷ *Tobacco Control Act 1990* (WA).

³⁸ *Tobacco Control Amendment Act 1993* (WA).

Healthway proceeded to replace tobacco sponsorship in those sporting, arts and racing events that had previously accepted financial support from the tobacco industry, funded major health promotion programs and research, while the Health Department managed a successful phasing out of outdoor tobacco advertising that was concluded in 1995.

Following advocacy by ACOSH, in 1991 the enclosed areas of all state government schools were declared smoke-free in response to the requirement under s 19 of the *Occupational Health, Safety and Welfare Act 1984* (WA) for employers to provide for employees and maintain, as far as practicable, a hazard free working environment.³⁹ Later, in 2005 the Education Department revised its *Smoking in the Workplace* policy and the new policy prohibited staff, students and visitors from smoking on Education Department premises including Central and District Offices.⁴⁰

For similar reasons, the Totalisator Agency Board adopted a policy of making the enclosed areas of their agencies smoke-free.⁴¹ In 1994, pressure from the public and from health organisations resulted in the Taxi Control Board declaring all taxis smoke-free, protecting both passengers and drivers from the effects of second-hand smoke.⁴²

This change in policy followed an approach by the Taxi Control Board (Western Australia) to the Hon Minister for Transport, in February 1991, for smoking to be banned in all taxis from January 1992. It was recorded in the Taxi Control Board Annual Report, 1992 that the number of taxis registered with the Board as non-smoking taxis had increased from 17 per cent in 1986 to approximately 58 per cent in 1992.⁴³

As a result of strong advocacy from national non-government health organisations, in 1992, the Federal Government passed the *Tobacco Advertising Prohibition Act 1992* (Cth). The objectives of the Act were to limit the exposure of the public to messages and images designed to persuade them to start smoking, or continue smoking, tobacco products. This legislation prohibited the broadcasting and publication of tobacco advertisements, and the

³⁹ Ministry of Education of Western Australia, *Smoking in the Workplace* (1991).

⁴⁰ Department of Education and Training, *Smoking in the Workplace* (2005).

⁴¹ *Totalisator Agency Board (Betting) Regulations 1988* (WA).

⁴² *Transport (Taxi-Cabs) Regulations 1994* (WA).

⁴³ Taxi Control Board (WA) *Annual Report 1992*, Smoking in Taxi-Cars – Update (1992).

prohibition of sponsorship of sporting and cultural events by tobacco companies after October 2006. However, between 1993 and 2006, the broadcast of tobacco advertisements that were an incidental or accidental accompaniment to the broadcasting of these events was permitted. This Commonwealth legislation complemented the prohibitions on tobacco advertising contained in the *Tobacco Control Act 1990* (WA).

Following a decision of the Ministerial Council on Drug Strategy, Western Australia gazetted regulations to require new health warnings for cigarette packages from April 1995 and covered - 25% of the front of the pack together with an explanation of the warning covering 33% of the back of the pack.⁴⁴ Western Australia was the only state to gazette these regulations despite a ferocious campaign by the tobacco industry to undermine the earlier unanimous agreement by Health Ministers.⁴⁵

The warnings, which appeared in equal frequency on packages, were: *SMOKING CAUSES LUNG CANCER*, *SMOKING IS ADDICTIVE*, *SMOKING KILLS*, *SMOKING CAUSES HEART DISEASE*, *SMOKING WHEN PREGNANT HARMS YOUR BABY* and *YOUR SMOKING CAN HARM OTHERS*. These new warnings were achieved as a national requirement by regulations, identical to those of Western Australia, under the *Trade Practices Act 1974* (Cth).⁴⁶ These new warnings added to the growing awareness in the community of the health effects of smoking.

Publication of the National Health and Medical Research Council's *Report of the working party on the effects of passive smoking* initiated momentum for restrictions on smoking in enclosed public places.⁴⁷ Additional reviews on the health effects of passive smoking by the US Surgeon General and the National Research Council Committee (US) on Passive Smoking encouraged ACOSH and other health organisations to advocate for legislation to prohibit smoking in enclosed public places.^{48,49} This advocacy was given further impetus by reports

⁴⁴ *Tobacco Control (Package Labels) Regulations 1994* (WA), amended by *Tobacco Control (Package Labels) Amendment Regulations 1995* (WA) and repealed by the *Tobacco Products Control Act 2006* (WA) s. 126.

⁴⁵ Simon Chapman and Stacey Carter, "Avoid health warnings on all tobacco products for just as long as we can": a history of Australian tobacco industry efforts to avoid, delay and dilute health warnings on cigarettes' (2003) 12 *Tobacco Control* Supplement III iii13 – iii22.

⁴⁶ *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* (Cth).

⁴⁷ National Health and Medical Research Council, *Effects of Passive Smoking on Health* (1986).

⁴⁸ US Department of Health and Human Services, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (1986).

from the United States Environmental Protection agency,⁵⁰ the Californian Environmental Protection Agency,⁵¹ a report of the Senate Community Affairs Reference Committee,⁵² and a scientific paper of the NHMRC, *The health effects of passive smoking*.⁵³

In response to growing pressure from members of the community for smoke-free public places and workplaces the Government of Western Australia announced, on 24 August 1996, that it would establish a Task Force on Passive Smoking in Public Places to ‘among other things, identify and assess both regulatory and non-regulatory strategies designed to minimise the community’s exposure to passive smoking in public places’.⁵⁴ In announcing the Task Force, the then Minister for Health said, ‘there is now conclusive scientific evidence and substantial public concern about the health risks for non-smokers exposed to tobacco smoke’.

At the same time the Task Force was deliberating on this issue, in October 1996, one year before the Task Force reported, a coalition of health agencies in Western Australia including the AMA (Western Australia), ACOSH, the Cancer Foundation of Western Australia and the National Heart Foundation of Australia (Western Australia Division) launched a campaign for a *Smoke-Free State*.⁵⁵ The campaign had fifteen objectives four of which related directly to the following becoming smoke-free: workplaces, public places, educational institutions, cafes, restaurants, hotels and entertainment venues.

In July 1997, also prior to the Task Force on Passive Smoking reporting its recommendations to the then Minister for Health, the Minister for Labour Relations announced the Government had moved to restrict smoking in enclosed workplaces.⁵⁶ Specifically, the Minister for

⁴⁹ National Research Council (US) Committee on Passive Smoking, *Environmental Tobacco Smoke: measuring exposures and assessing health effects*, Committee on Passive Smoking, Board on Environmental Studies and Toxicology, National Research Council (1986).

⁵⁰ Office of Health and Environmental Assessment Office of Research and Development US Environmental Protection Agency, *Respiratory Health Effects of Passive Smoking: Lung Cancer and other Disorders* (1992).

⁵¹ Californian Environmental Protection Agency Office of Environmental Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke* (1997).

⁵² Parliament of Australia, Report of the Senate Community Affairs References Committee, *The tobacco industry and the costs of tobacco-related illness* (1995).

⁵³ National Health and Medical Research Council of Australia, *The Health Effects of Passive Smoking: A Scientific Information Paper* (1997).

⁵⁴ Hon Kevin Prince, Minister for Health (WA), ‘Ian Taylor to Head Task Force on Passive Smoking in Public Places’ (Ministerial Media Statement, 24 August 1996).

⁵⁵ Australian Council on Smoking and Health, *Smoking or Health*, Newsletter 13 (5), *Smokefree Campaign Launched!* (October 1996).

⁵⁶ Hon Graham Kierath, Minister for Labour Relations, ‘Move to Restrict Smoking in Enclosed Workplaces’ (Ministerial Media Statement, 22 July 1997).

Labour Relations gazetted regulations under the *Occupational Health and Safety Act 1984* (WA)⁵⁷, which effectively prohibited smoking in all enclosed workplaces, including those within the hospitality industry, from 1 August 1998.

In its report published in October of 1997, the Task Force on Passive Smoking made twenty-two recommendations.⁵⁸ Central among these was a recommendation to ‘...ensure uniform protection across the entire community, all enclosed public places (except bars) where children have legal access (whether or not children are present) should become smoke-free from 1 August 1998’. This recommendation applied particularly to restaurants and food service areas. Other recommendations relating to bars, nightclubs and the Burswood Casino recommended incomplete prohibitions, the application of ventilation as a method of reducing the effects of second-hand smoke, and varying timetables for their introduction. These recommendations, as they applied to the hospitality industry, were inconsistent with the new requirements under the *Occupational Health and Safety Act 1984* (WA) for enclosed workplaces to be smoke-free. Another inconsistency was an agreement by the Chairman of the Task Force, and all Task Force members other than the Australian Hotels Association, that ventilation was not a solution to the problems created by second-hand smoke.⁵⁹

The Western Australian Government responded to these inconsistencies and advocacy from health organisations by introducing amendments to the *Health Act 1911* (WA) to create Part IXB of this Act entitled ‘Smoking in enclosed public places’ and enabled the creation of associated regulations.⁶⁰ These regulations required all enclosed public places to be smoke-free from 29 March 1999. There were, however, exemptions permitted allowing smoking in specified areas of the hospitality industry providing certain conditions were met. Exemptions were granted for hotels, taverns and other licensed premises including licensed restaurants, nightclubs/cabarets, the Burswood International Casino and the Royal Western Australian Institute for the Blind (Inc) Bingo Centre that permitted smoking in specified areas in accordance with specific conditions. Inconsistencies created by the *Occupational Safety and*

⁵⁷ *Occupational Safety and Health Amendment Regulations (No. 2) 1997* (WA).

⁵⁸ Task Force on Passive Smoking, *Report of the Western Australian Task Force on Passive Smoking in Public Places* (1997).

⁵⁹ *Ibid.*

⁶⁰ *Health (Smoking in Enclosed Public Places) Regulations 1999* (WA).

Health Amendment Regulations (No. 2) 1997 (WA) were remedied by further amendments that took effect on 29 March 1999.⁶¹

Part IXB of the Health Act 1911 (WA), s 2891 required that the Minister for Health carry out a review of the operation and effectiveness of this Part and the regulations, after these changes to the Act and the regulations had been in operation for three years. The Minister for Health was then required to prepare a report based on this review, recommending further steps to be taken to achieve smoke-free enclosed public places and present it to both houses of Parliament for their consideration.

This report was tabled in the Parliament and made ten recommendations.⁶² The first recommendation, and the most important in relation to what further steps could be taken to achieve smoke-free enclosed public places was, ‘All exemptions under the current legislation that allow smoking to occur in certain enclosed public places be removed.’

In response to this report, the Government, in November 2003, proposed further restrictions on smoking in enclosed public places within the hospitality industry including reducing the number of bars in hotels permitting smoking and reducing the floor surface area in nightclubs in which smoking could continue.⁶³ However, they proposed the exemption for the International Room at the Burswood Casino continue indefinitely.

These proposed changes were not consistent with the primary recommendation of the review report to the Parliament, and did not meet the expectation of health and medical organisations that were campaigning for an earlier end-date to any smoking being permitted in the enclosed areas of bars, nightclubs and at the Casino. In May 2004, the health organisations, through ACOSH, communicated their dissatisfaction with the Government’s position to the Greens (Western Australia), and the Greens proposed a motion for disallowance of the regulations proposed by the Government.⁶⁴ This forced the Government to commit to a review of the proposed regulations, and ensure this review be provided to the Parliament in December

⁶¹ *Occupational Safety and Health Amendment Regulations (No.2) 1999* (WA).

⁶² Department of Health Government of Western Australia, *Review of the Operation and Effectiveness of Part IXB of the Health Act 1911 and the Health (Smoking in Enclosed Public Places) Regulations 1999* (2003).

⁶³ *Health (Smoking in Enclosed Public Places) Regulations 2003* (WA).

⁶⁴ Western Australia, *Parliamentary Debates, Legislative Council*, 4 May 2004, 2111b (Giz Watson, Leader of the Greens).

2005. Further, the Government committed to implementing the recommendations from this review and any suggested timeline for implementation.

Later, in 2004, the Minister for Health negotiated with the Hospitality industry, mainly the Australian Hotels Association, for an end to smoking in all enclosed areas of hotels on 31 July 2006.

The Government announced further changes to the State's regulations governing smoking in public places that would see a smoking ban introduced in two stages over nineteen months: smoking would be limited to one room only in licensed premises by 1 November 2005, followed by a total smoking ban in all enclosed public places by 31 July 2006.⁶⁵ Unfortunately, the Government decided that the International Room at the Burswood Casino would remain exempt from this prohibition. This announcement was confirmed in regulations gazetted on 30 November 2004.⁶⁶ Consequently, a review of the 2003 Regulations was not required.

These changes in public policy made by the Government in relation to prohibitions on smoking in the hospitality industry were second only to the State of Tasmania, which banned smoking in hotels from 1 January 2006,⁶⁷ but followed the lead set by several States in the US and Ireland where smoke-free pubs had been achieved in 2004.⁶⁸ Nonetheless, these changes would weaken the association between smoking and alcohol consumption, and do much to denormalise smoking in the community and, at the same time, reduce exposure to second-hand smoke for employees and patrons.

In 2000, a review was undertaken by the Commonwealth Department of Health and Ageing of current health warnings and new warnings, possibly with pictures, were considered. In 2006, the Federal Government required the first set of seven graphic picture warnings should appear on 30% of the front and 90% of the back of cigarette packets and cartons manufactured after 1 March 2006. Later, in 2006, the second set of seven warnings began to appear.

⁶⁵ Government of Western Australia Media Statement, Delivering a Healthy WA – smoking banned in pubs and clubs (2004).

⁶⁶ *Health (Smoking in Enclosed Public Places) Regulations 2004* (WA).

⁶⁷ *Public Health Amendment Act 2004* (TAS) s 67B.

⁶⁸ Fenton Howell, 'Ireland's Workplaces, Going Smoke Free' (2004) 328 *British Medical Journal* 847.

This new system of hard-hitting graphic health warnings took full effect from 1 March 2006, through amendments to the Trade Practices Regulations under the *Trade Practises Act 1974* (Cth).⁶⁹ Subsequent minor amendments were gazetted in October 2005 and February 2007.

Set A of the warnings is as follows: required from 1 March in years ending with an even number i.e. 2006, 2008 and are as follows:

1. *Smoking causes peripheral vascular disease*
2. *Smoking causes emphysema*
3. *Smoking causes mouth and throat cancer*
4. *Smoking clogs your arteries*
5. *Don't let children breathe your smoke*
6. *Smoking – a leading cause of death*
7. *Quitting will improve your health*

Set B is required from 1 March in the years ending with an odd number:

8. *Smoking harms unborn babies*
9. *Smoking causes blindness*
10. *Smoking causes blindness*
11. *Smoking causes heart disease*
12. *Smoking doubles you risk of stroke*
13. *Smoking is addictive*
14. *Tobacco smoke is toxic.*

These new graphic warnings complemented the comprehensive approach to tobacco control in Western Australia and provided opportunities for health agencies to increase the awareness of the health effects of smoking.

In June 2005, the Western Australian Government introduced a revised and strengthened *Tobacco Control Bill 2005* (WA),⁷⁰ in response to concerted advocacy by the AMA (WA Branch), ACOSH, the Cancer Foundation of Western Australia and the National Heart

⁶⁹ *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* (Cth).

⁷⁰ *Tobacco Products Control Bill 2005* (WA).

Foundation of Australia (WA Division).⁷¹ This Bill was prepared to address the shortcomings of the *Tobacco Control Act 1990*, in particular to prohibit new marketing and promotional activities by the tobacco industry, and facilitate the collection of evidence to support prosecutions. It replaced the *Tobacco Control Act 1990* and Part IXB of the *Health Act 1911*, and was introduced by the Minister for Health, Hon Jim McGinty, based on best practice in other states of Australia and in other countries.

This bill will introduce a new act that will replace the Tobacco Control Act 1990 and part IXB of the Health Act 1911, based on best practice in other states and in other countries, and incorporate new provisions relating to indirect sales of tobacco products. This will control a currently unregulated market readily accessed by minors, such as Internet, mail order and phone order sales of tobacco products. The bill is substantially different from the Tobacco Control Act, with amendments relating to advertising, sponsorships, packaging and labelling, exemptions, sales to minors, licensing, enforcement, administration, interpretations, judicial processes, extending coverage to non-tobacco products, such as herbal cigarettes and confectionary and toys that resemble tobacco products, and updating the purposes.⁷²

The *Tobacco Products Control Act 2006* (WA) was assented to by Parliament on 12 April 2006. Following the example set in Tasmanian public health legislation, s 104 of the Act, prohibits a tobacco company, or anyone selling tobacco products, from providing any person with information about the health effects of smoking that they know to be incorrect. The penalty for this offence is \$50,000 for the individual or \$250,000 for a body corporate.⁷³ A similar provision can also be found in the Tasmanian tobacco control legislation.⁷⁴

Since the *Tobacco Products Control Act 2006* (WA) was proclaimed, two sets of regulations under the Act have been gazetted. The first were gazetted on 25 July 2006, dealt with regulations relating to the sale and supply of tobacco products and smoking in enclosed public places.⁷⁵ The most contentious issue in these regulations is the definition of an enclosed public place, a structure that has a roof, and walls, the surface area of which does exceeds

⁷¹ Cancer Council Western Australia, National Heart Foundation (WA), Australian Medical Association (WA Branch), Asthma Western Australia and Australian Council on Smoking and Health, *Recommendations for Strengthening the Tobacco Control Act 1990* (WA) unpublished (2002).

⁷² Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 June 2005, 3598d.

⁷³ *Tobacco Products Control Act 2006* (WA) s 104.

⁷⁴ *Public Health Amendment Act 2008* (TAS) s 74AA.

⁷⁵ *Tobacco Products Control Regulations 2006* (WA).

50%. There is evidence the proprietors of hotels have moved to construct outside semi-enclosed areas to accommodate their smoking patrons; a strategy undermining a primary purpose of the Act.

The second set of regulations was gazetted on 28 February 2007,⁷⁶ and dealt with the application for a licence to sell tobacco products; licensing procedures and conditions; and the responsibilities of licencees when selling tobacco. These regulations also covered the requirements for labelling tobacco products, and the limits placed on the surface area of tobacco products that can be displayed. In addition, the regulations set out the requirements for information that had to be provided to the purchaser of tobacco products and health warnings that had to be displayed at point of sale. These regulations were to take effect on World No Tobacco Day, 31 May 2007.

In September of 2008, the State election resulted in a Liberal National Coalition Government in Western Australia. At this election, an independent candidate with a strong health background, Dr Janet Woollard, was elected to represent the electorate of Alfred Cove, and her vote ensured the passage of Liberal Party sponsored legislation that did not necessarily have the support of the National Party members of the Coalition. Dr Woollard took this opportunity to introduce, on 26 November 2008, a Private Member's Bill to amend and strengthen the *Tobacco Products Control Act 2006 (WA)*.⁷⁷ The Bill was developed in consultation with the Australian Council on Smoking and Health, the Cancer Council, the Heart Foundation of Western Australia (WA Division) and the Australian Medical Association (WA Branch).

The Legislative Assembly resolved to refer the Bill to its Education and Health Standing Committee. While the Bill received strong support from health agencies, there was equally strong opposition to the Bill from the tobacco industry, the Australian Hotels Association and the Independent Retailers Organisation.

The Education and Health Standing Committee made the following recommendations:

⁷⁶ *Tobacco Products Control Regulations 2007 (WA)*.

⁷⁷ *Tobacco Products Control Amendment Bill (WA) 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.

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 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.

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 meters 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.

Recommendation 4 The committee recommends that the proposed draft section of 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 definition of an 'outdoor playing area' to include sports venues and playgrounds. On the spot fines for this section be increased to \$200.

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 'smoke' and modifications to the definition of a 'safe swimming area'. On the spot fines for this section be increased to \$200.

Recommendation 6 The Legislative Assembly and Legislative Council resolved to ban smoking in the Precinct of Parliament.

Recommendation 7 The Minister for Health established a Department of Health taskforce to plan future legislative initiative (consistent with the research of the NPHT) to lower WA's smoking prevalence rate to below 10% by 2015.

Recommendation 8 The Minister for Corrective Services direct the Director General to develop a plan to make all enclosed places within the Western Australian Prisons smoke-free by the end of 2009 and for prisons to be entirely smoke-free by the end of 2011.

Recommendation 9 The Minister for Corrective Services make public the report into the management of smoking in prisons in Western Australia.

Recommendation 10 The Minister for Indigenous Affairs develop a smoking reduction plan for Indigenous West Australian by the end of 2009 and provide additional funding to employ people to work in this area throughout the state.

Recommendation 11 The Minister for Mental Health retain all smoking bans and smoking education programs aimed at mental health patients in Western Australia.

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.

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 room.
- (ii) developing a plan to make Federally funded nursing home 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.⁷⁸

The Tobacco Products Control Amendment Bill 2008 (WA) was designed to reduce further the marketing and promotion of tobacco products and limit exposure to second-hand smoke in public places. Specifically, the Bill aimed to prohibit the display of tobacco products at point-of-sale, and prohibit smoking within the patrolled swimming areas of beaches, in outdoor eating areas, within 10 meters of children's playground equipment, and in vehicles carrying children under 17 years of age. The health organisations advocated strongly for the outdoor areas of hotels to be entirely smoke free. However, there was strong support from all political parties for a compromise that permitted smoking in fifty per cent of the area allocated to beer gardens in hotels.

The *Tobacco Products Control Amendment Act 2009* (WA) was assented to on 22 September 2009.

⁷⁸ Education and Health Standing Committee, Parliament of Western Australia, *Inquiry into the Tobacco Products Control Amendment Bill 2008*, (2009) [xxv-xxviii].

The effective date for the major provisions of the *Tobacco Products Control Amendment Act 2009* (WA) was 22 September 2010. The Regulations governing these new requirements are the *Tobacco Products Control Amendment Regulations (No. 2) 2010*.

This paper has chronicled the progressive development of tobacco control legislation and major changes in public policy from 1916 to September 2010, predominantly in Western Australia. A comprehensive approach to tobacco control has been used to confront the epidemic of diseases caused by tobacco and a similar approach has been taken in other countries.⁷⁹ With the establishment of ACOSH in 1971, the level of advocacy for tobacco control increased substantially. ACOSH gave high priority to the passage of state legislation that would prohibit most forms of tobacco advertising and marketing, and complement the Commonwealth's ban in 1976 on tobacco advertising through radio and television. There were two unsuccessful attempts to ban tobacco advertising in 1982 and 1983. From 1983 onwards the Western Australian Health Department's Smoking and Health Program conducted a series of effective mass media-led smoking and health campaigns. Tobacco Advertising under State Control was prohibited with the passage of the *Tobacco Control Act 1990* (WA) and its successor legislation, the *Tobacco Products Control Act 2006* (WA). Regulations promulgated under this legislation have severely restricted the tobacco industry's ability to promote and market its lethal products. Legislation to restrict smoking in enclosed public places, especially the hospitality industry, has further eroded the social acceptability of smoking. The prevalence of smoking in Western Australia from 1983 to 2007,⁸⁰ has shown a steady and persistent decline. It is difficult, if not impossible, to attribute these changes in the prevalence of smoking to any specific change in public policy or legislation.⁸¹ It is more likely they have acted in concert with each other to create a strong downward pressure on smoking that has also resulted in a decrease in the incidence of death and disease caused by smoking in the late part of the 20th century and the early part of the 21st century in Western Australia.⁸²

⁷⁹ Thomas Frieden et al, 'Public Health in New York City, 2002 – 2007: Confronting Epidemics of the modern era' (2008) 37 *International Journal of Epidemiology* 966.

⁸⁰ Australian Institute of Health and Welfare, *2007 National Drug Strategy Household Survey*. Canberra: AIHW; 2008. AIHW Catalogue No.: PHE 107.

⁸¹ Simon Chapman, 'Unravelling gossamer with boxing gloves: problems in explaining the decline in smoking' (1993) 307 *British Medical Journal* 429.

⁸² Department of Health, Government of Western Australia, *Health Measures 2005: A report on the health of the people of Western Australia* (2005).

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