Review of the WA Tobacco Products Control Act 2006

Discussion Paper April 2011
Contents

Part One: Background to the review .................................................................4
  1.1 Introduction ...........................................................................................4
  1.2 Objectives and scope of the review.......................................................4
  1.3 Methodology .......................................................................................5
  1.4 Participation ........................................................................................6

Part Two: The scale of the problem .................................................................7
  2.1 Health effects of smoking ....................................................................7
  2.2 Smoking prevalence in Western Australia ..........................................7
  2.3 Smoking-related costs ........................................................................10
  2.4 Future targets .....................................................................................11
  2.5 Conclusions ........................................................................................11

Part Three: Tobacco control legislation .........................................................13
  3.1 Key elements of the *Tobacco Products Control Act 2006* ...............13
  3.2 *Tobacco Products Control Act 2006* ..............................................14
  3.3 Tobacco Products Control Regulations 2006 .....................................19

Part Four: The current operation and enforcement of the Act and the Regulations .........................................................................................22
  4.1 Licensing ............................................................................................22
  4.2 Investigators under the Act .................................................................23
  4.3 Inspection of licensed retail outlets and investigation of complaints ....24
  4.4 Monitoring compliance with the prohibition on sales to minors ........25
  4.5 Inspection of outdoor eating areas ......................................................26
  4.6 Penalties .............................................................................................26
  4.7 Ongoing training of investigators under the Act ...................................26

Part Five: Progress in achieving the objectives of the Act ................................28
  5.1 Declines in smoking prevalence, tobacco consumption and incidence of disease .................................................................29
  5.2 Exposure to environmental tobacco smoke .......................................29
  5.3 Public education campaigns and trends in quitting ..........................30
  5.4 Promoting good health and healthy lifestyles ....................................31
Part Six: Tobacco control legislation in other jurisdictions ......................... 34
6.1 Queensland ........................................................................................... 34
6.2 Tasmania ............................................................................................... 35
6.3 New South Wales .................................................................................. 37
6.4 Victoria .................................................................................................. 38
6.5 South Australia ..................................................................................... 39
6.6 Northern Territory ................................................................................ 40
6.7 Australian Capital Territory .................................................................... 41
6.8 Conclusions .......................................................................................... 42

Part Seven: Options for consideration .......................................................... 44
7.1 Option 1—Ban the sale of fruit and confectionery flavoured cigarettes and splittable packs ...................................................................... 46
7.2 Option 2—Prevent tobacco purchases being included in reward schemes ...................................................................................... 48
7.3 Option 3—Introduce a buffer zone around entrances, air conditioning intakes and in relation to alfresco eating areas ......................... 50
7.4 Option 4—Extend smoke-free restrictions to other public outdoor areas 53
7.5 Option 5—Clarification of local governments’ powers to regulate smoking in outdoor areas under their control ................................. 56
7.6 Option 6—Introduce a complete ban on smoking in outdoor eating areas .............................................................................................. 58
7.7 Option 7—Consider removing the smoking exemption applying to the Burswood Casino International Room ........................................... 60
7.8 Option 8—Extend smoke-free legislation to include common shared areas of boarding/lodging houses and residential strata complexes ...62
7.9 Option 9—Amend the defence provision permitting display of tobacco products by specialist tobacco retailers ..................................... 64
7.10 Option 10—Amend the requirements relating to the size and display of price boards and price tickets and include a requirement to display graphic health warnings at point of sale ........................................... 68
7.11 Option 11—Introduce a requirement that tobacco can only be sold by persons over the age of 18 years .............................................. 70
7.12 Option 12—Amend the tobacco licensing provisions ............................. 72
7.13 Option 13—Amend the investigation provisions in the Act ................. 75
7.14 Option 14—Amend the provision providing a defence for smoking in a live stage performance ......................................................... 77
7.15  Option 15—Amend the provisions relating to the Western Australian Health Promotion Foundation (Healthway).................................................78

Part Eight: Participation in the review ..........................................................81

Part Nine: Submission to the 2011 review of the Tobacco Products Control Act 2006.........................................................................................83

References ....................................................................................................91
Part One: Background to the review

1.1 Introduction

This discussion paper has been prepared by the Department of Health as a basis for consultation with the public and interested parties on issues relating to the *Tobacco Products Control Act 2006* as amended (the Act). These consultations will inform the development of advice to the Minister for Health regarding options to improve the operation and effectiveness of the Act.

This discussion paper provides an overview of the impact of tobacco use in Western Australia, highlights issues relevant to the current operation of the Act and Regulations and examines legislative initiatives in other states, both current and in anticipation of the next generation in best practice tobacco control legislation. Finally, it identifies some potential legislative options for further consideration and discussion with stakeholders.

It should be noted that these options have not been endorsed by the Department of Health, the Minister for Health or the Western Australian Government and are presented purely for consultation and discussion.

1.2 Objectives and scope of the review

Section 127 of the *Tobacco Products Control Act 2006* states that the Minister for Health is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after four years have elapsed since Part 5 comes into operation.

The Minister for Health is to prepare a report based on the review, to be tabled before the Parliament as soon as is practicable after the report is prepared and not later than 12 months after the requirement for the review arose (ie no later than 31 July 2011).

The review of the Act will:

Examine and report on the operation and effectiveness of the *Tobacco Products Control Act 2006*;

Examine and report on the operation and effectiveness of the Tobacco Products Control Regulations 2006 (the Regulations) made under Sections 124 and 125 of the Act;

Make recommendations on amendments to the Act and the Regulations based on best practice in other states and territories in Australia and on the results of public consultation.

Section 3 of the *Tobacco Products Control Act 2006* sets out the purpose of the Act—

“To reduce the incidence of illness and death related to the use of tobacco products... and to promote good health and activities which encourage healthy lifestyles.”
In line with these objectives, this review will consider measures that will strengthen existing legislation in order to reduce tobacco-related harm and promote health. Further exemptions and the rolling back of current provisions will not be considered within this review.

1.3 Methodology

The methodology for the review is as follows:

- Preparation of a discussion paper to be undertaken by the Department of Health;
- Release of the discussion paper to be publicised by the Department of Health with details of how interested parties can participate in the review;
- Circulation and distribution of the discussion paper by the Department of Health with an invitation to key stakeholders to provide comments;
- Collection and analysis of submissions received by the Department of Health;
- Preparation of a review report incorporating information on the effectiveness of the current Act and Regulations, a summary of the consultation process and themes arising from the submissions, analysis of current Australian best practice and recommendations on action that could be taken to improve the operation and effectiveness of the Act and the Regulations; and
- Submission of the review report to Parliament by the Minister for Health.

The development of this discussion paper is the first phase of the review. This discussion paper is designed to encourage community comment on issues relevant to the Act and Regulations. It is not intended to be a complete review of the literature.

The discussion paper is divided into eight parts:

- Part One: Background to the review;
- Part Two: The impact of tobacco use in Western Australia;
- Part Three: Tobacco control legislation;
- Part Four: The current operation and enforcement of the Act;
- Part Five: Progress in achieving the objectives of the Act;
- Part Six: Tobacco control legislation in other jurisdictions;
- Part Seven: Options for consideration;
- Part Eight: Participation in the review; and
- Part Nine: Submission form template.
1.4 Participation

Parts Eight and Nine of this discussion paper outline the process for making a submission to the review of the Tobacco Products Control Act 2006. Key details of the process are summarised below.

To participate in the review, comments must reach the Tobacco Policy Branch at the Department of Health by Close of Business on Friday, 10 June 2011.

Comments and submissions can be posted to:

**Attention: Simon Wheeler**  
Project Officer—Tobacco Review  
Tobacco Policy Branch  
Department of Health  
PO Box 8172  
PERTH BC WA 6849

or can be emailed to simon.wheeler@health.wa.gov.au including in the subject heading—Consultation

Late submissions may not be accepted and will be considered at the discretion of the Department of Health.

A submission form has been developed to assist in responding to the review. This form is available at the web address:  

This discussion paper can also be accessed at:  
[www.tobaccocontrol.health.wa.gov.au/review/](http://www.tobaccocontrol.health.wa.gov.au/review/) or by emailing the following address:  
Simon.wheeler@health.wa.gov.au

Submissions should clearly indicate whether they are being made by an individual or on behalf of an organisation. Contact details should include name, organisation name (if applicable), address, telephone number and/or email contact.
Part Two: The scale of the problem

2.1 Health effects of smoking

Smoking is a leading cause of preventable death and disease in Australia, contributing to more drug-related hospitalisations and deaths than alcohol and illicit drugs combined. In 2006, tobacco use was responsible for 6.5% of the burden of preventable disease and injury in WA, second only to the impact of overweight and obesity.

Smoking greatly increases the risk of many cancers, cardiovascular disease, chronic obstructive pulmonary and respiratory diseases, peripheral vascular disease and many other disabling and potentially fatal conditions. Tobacco use harms nearly every organ of the body and evidence of further dangers of smoking continues to emerge almost daily.

Exposure to environmental tobacco smoke (ETS) also causes disease and premature death in adults and children who do not smoke. Exposure of adults to ETS has immediate adverse effects on the cardiovascular system and longer term exposure causes coronary heart disease and lung cancer. Children are particularly vulnerable to the effects of ETS and have an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.

One in every two long term smokers will die prematurely because they smoked. In Australia, approximately 15,000 people currently die each year from tobacco-related disease and tobacco claims the lives of more than 1,200 Western Australians annually. Tragically, many of these smokers die between the ages of 35–69, when they are in the most productive years of their working life and their children and grandchildren still depend on them.

Over the past forty years, comprehensive tobacco control programs have been implemented across Australia including tax increases, public education campaigns, health warnings on tobacco packaging and tobacco control legislation to prohibit advertising and sales to minors, and reduce exposure to ETS. These programs have been successful in driving down smoking rates. Despite this progress, smoking rates in Australia are still too high, causing needless suffering and thousands of preventable deaths each year.

2.2 Smoking prevalence in Western Australia

Australian smoking prevalence has fallen significantly over time. This decline is evident across all age and socioeconomic groups. Figure 1 shows the prevalence of smoking among Australian adults between 1980 and 2007.
Smoking prevalence in Western Australia has also fallen significantly over time. Figure 2 shows the prevalence of smoking among people aged 18 years and over in Australia and compares this with Western Australia. In 1998, more than one in five adults (23.6%) in WA smoked regularly and the prevalence of smoking had barely changed for the best part of a decade. In 2000, Target 15—Make Smoking History was developed and jointly funded by Cancer Council WA and the Department of Health. Target 15 referred to the goal of reducing prevalence of adult smoking in WA to 15% by 2010. Just over a decade later, smoking prevalence in WA is approaching this target.

It should, however, be noted that smoking prevalence is much higher among Aboriginal peoples and Torres Strait Islanders, people from lower
socioeconomic groups and other disadvantaged groups such as people with mental illness.\textsuperscript{9} For example, national data show that smoking among Aboriginal peoples and Torres Strait Islanders is more than double the prevalence of the general community—around 44\% of Indigenous adults are estimated to be current daily smokers.\textsuperscript{11} The higher prevalence of smoking among Indigenous peoples contributes significantly to their higher rates of hospitalisation and death from diseases caused by tobacco. Among Indigenous Australians, tobacco use is the leading contributor to burden of death and disease, responsible for 12\% of the overall disease burden and 20\% of deaths.\textsuperscript{12}

A comparison of smoking prevalence across all jurisdictions in Australia shows that Western Australia has performed well. In 2007, only the ACT had lower smoking prevalence than Western Australia with a daily smoking rate of 14.7\% in of the population aged 14+ in 2007 (Figure 3).

![Figure 3: Changes in prevalence of daily smoking, Australians aged 14+, 2001–2007 by Australian state and territory.](image)

Note: Rates not age-standardised

Source: Tobacco Working Group for the National Preventative Health Taskforce.\textsuperscript{9}

Among secondary school students in Western Australia, smoking prevalence has also fallen dramatically. In 2008, fewer than one in 20 secondary school students aged 12 to 17 years (4.8\%) were current smokers, down from 6.1\% in 2005, and 17.5\% in 1984.\textsuperscript{13} Western Australia had the lowest smoking rates nationally among schoolchildren in 2005 and while national prevalence figures have yet to be released, it appears that WA continues to lead the nation.\textsuperscript{13}

This survey also showed that the proportion of students who have never smoked has been dramatically turned around. In 2008, almost 75\% of 12 to 17 year-olds had never smoked, compared with almost 32\% in 1984.
Announcing the results, the Minister for Health Dr Kim Hames MLA said that these impressive results demonstrated the success of sustained anti-tobacco campaigning over 25 years. 14

This reduction in youth smoking will have a significant impact on future smoking prevalence in WA, as the vast majority of people who smoke first experiment with smoking during their teens. The 2007 National Drug Strategy Household Survey surveyed the age of uptake among Australians who smoke daily. Among females, the average age of trying a first cigarette was 15.9 years and the average age at which it became a daily activity was 18 years. For males, the respective ages were 15 and 17.5 years. 15

Despite declines in the prevalence of smoking since the 1980s and fewer schoolchildren taking up smoking, close to 270,000 adults 16 and 8,000 teenagers 17 still smoke daily in WA. It is clear that much more remains to be done. 7

2.3 Smoking-related costs

Smoking not only results in devastating health consequences, but also imposes a heavy financial burden on the Australian community. In 2004–05 the total costs of tobacco were estimated to be in the order of $31 billion, of which tangible costs represented around $12 billion. 18

Specific data on tobacco-related costs for WA are available from a report prepared for Cancer Council WA by health economists, Professors David Collins and Helen Lapsley. Their report estimates that the social costs of smoking in WA for the financial year 2004–05 were $2.4 billion. 7

Of these costs, slightly less than one third were tangible (31.3%) and just over two thirds (68.7%) were intangible. Intangible costs arise from loss of life, pain and suffering. The only intangible cost it was possible to estimate for the purposes of this study was loss of life, which was estimated to be $1,641.5 million. 7

In 2004–05 smoking was responsible for 1,256 deaths in Western Australia. More than 67,000 bed-days were attributed to tobacco, with hospital costs of $59.8 million. These figures include 11 deaths and 6,750 hospital bed-days caused by ETS. ETS was responsible for $5.9 million in hospital costs. The overwhelming majority (over 96%) of all hospital costs arising from ETS were attributable to illnesses caused in babies and children less than 14 years of age. 7

Lost productivity in the workforce and the household sector arising from tobacco use was estimated to be almost $400 million, and the costs of fires caused by smoking in the State were estimated to be $16 million. 7

The majority of these costs were borne by individuals and business. Individuals bore about 54% of the total tangible costs ($833.4 million), businesses bore about 41% ($629.9 million) and governments about 5% ($75.6 million). 7
The report found that the social costs of tobacco use increased by 25% in the 5 year period between 1998–99 and 2004–05. While the prevalence of smoking, and the numbers of deaths caused by smoking are in decline, the lagged effects of smoking on the population and workforce have meant that the overall costs continue to rise.7

2.4 Future targets

Australian Governments have set ambitious targets for reductions in daily smoking. In December 2008, the Council of Australian Governments (COAG) agreed to the National Partnership Agreement on Preventive Health (the Agreement).19 The Agreement sets an overall target for daily smoking of no more than 10% of adults within 10 years (by 2018).

The National Preventative Health Taskforce has outlined the importance of reaching such a target.9

“….if prevalence of daily smoking were to reduce to … [10% or less] … by 2020, smoking would continue to decline until rates were so low that it would no longer be one of our most important health problems. Achieving this target will require a dramatic reduction in the numbers of children taking up smoking and a doubling of the percentage of smokers who are trying to quit.”

The Agreement provides for significant reward payments for states which meet performance indicators.19 The agreed benchmarks for Western Australia require a 2% reduction on 2007 adult smoking prevalence rates by 2011, and a further 1.5% reduction by 2013. This sets a target for the prevalence of adult smoking in Western Australia of 12% by 2013.19 20 Sustained effort and new policies will be required to ensure that prevalence rates continue to decline and that these important national targets are reached.

2.5 Conclusions

Despite the reductions in prevalence of smoking, there is much more to be done. The evidence is clear—tobacco remains one of the major killers of the twenty-first century and it would be a mistake to become complacent.9 21

Smoking is still among the largest causes of preventable death in Western Australia. In 2006, tobacco use was responsible for 6.5% of the burden of preventable disease and injury in WA.2 In Western Australia, tobacco use claims more than 1,200 lives on average every year.7

Despite declines in the prevalence of smoking since the 1980s and fewer schoolchildren taking up smoking, close to 270,000 adults16 and 8,000 teenagers17 still smoke daily in WA. Further reducing the prevalence of smoking will save lives and reduce the devastating toll of tobacco-related disease for Western Australian families.
This discussion paper explores a number of legislative measures that could improve the health of Western Australians by preventing and reducing tobacco-related harm.
Part Three: Tobacco control legislation

3.1 Key elements of the *Tobacco Products Control Act 2006*

The *Tobacco Products Control Act 2006* received Royal Assent on 12 April 2006. When introducing the *Tobacco Products Control Bill* into the Parliament the then Minister for Health, The Hon JA McGinty MLA stated:

“This bill is a fundamental step forward in tobacco reform, demonstrating the government’s ongoing commitment to reducing the health hazards posed by smoking. The bill is aimed at reducing the availability of tobacco products to minors and reducing the influences of tobacco promotion generally, thereby enhancing health protection for our children and the general community.”

The *Tobacco Products Control Act 2006* replaced the previous *Tobacco Control Act 1990* and part IXB of the *Health Act 1911*. At the time it was introduced, the Act was based on best practice in other states and overseas, and incorporated a range of new provisions to strengthen the existing restrictions on the advertising and sale of tobacco products in WA. The Act also established a tobacco licensing scheme, provided for new enforcement and investigation powers and established an offence for false and misleading statements by the tobacco industry.

- In 2008 the *Tobacco Products Control Amendment Bill 2008* was introduced into Parliament by Dr Janet Woollard MLA as a Private Member's Bill. The new law was passed by Parliament on 22 September 2009 and came into effect on 22 September 2010. A range of additional restrictions on smoking and on the display of tobacco products in the retail setting applied from this date. The amendments included provisions to:

  - Ban smoking in all outdoor eating areas, ie public places provided on a commercial basis where people eat or drink sitting at tables such as restaurants, hotels, cafés and food outlets;
  - Allow liquor-licensed premises that are not the subject of a restaurant licence to allocate a smoking zone of up to 50% of all outdoor eating areas, provided the area is not already an "enclosed public place";
  - Ensure that staff of liquor-licensed premises must not be forced to provide service in a smoking zone and cannot be dismissed for refusing to do so;
  - Ban smoking in or on cars with children under 17 years present;
  - Ban smoking within 10 metres of children’s playground equipment;
  - Ban smoking between the flags of patrolled beaches; and
• Ban the display of tobacco products and smoking implements in retail premises. However "specialist retailers" are permitted to continue displaying tobacco.

• The Department of Health conducted a public education campaign to support the introduction of the new legislation.

3.2 Tobacco Products Control Act 2006

A summary of the key provisions of the Act as at December 2010 are listed below:

Part 1—Preliminary and purpose of the act (Sections 1–5)

The key purpose of the Act is detailed in Section 3:

a) to reduce the incidence of illness and death related to the use of tobacco products –

(i) by prohibiting the supply of tobacco products and smoking implements to young persons;
(ii) by discouraging the use of tobacco products;
(iii) by restricting the promotion of tobacco products and smoking generally;
(iv) by reducing the exposure of people to tobacco smoke from tobacco products that are smoked by other people; and

b) to promote good health and activities which encourage healthy lifestyles.

Part 2—Sale and supply (Sections 6–30)

Contains provisions to:

• Prohibit the sale and supply of tobacco to minors;
• Prohibit purchase of tobacco on behalf of people under 18 years (second party sales);
• Require proof of age to be produced on request at the point-of-sale or the point of delivery for indirect sales;
• Require anyone who sells tobacco products to be licensed;
• Restrict the sale of cigarette papers, pipes and other smoking implements to persons over 18;
• Require strict supervision of vending machines in liquor licensed premises or in a mines amenity area;
• Prohibit a person under the age of 18 years from operating vending machines;
• Control the sale and promotion of herbal cigarettes in a similar way to tobacco products;
• Apply controls to Internet sales and other forms of indirect sales of tobacco products;
• Limit sales to one point-of-sale only in any retail premises;
• Require tobacco products to be labelled in accordance with Regulations (consistent with Commonwealth legislation);
• Require cigarettes to be sold in a package containing at least 20 cigarettes;
• Prohibit the display of tobacco products, packages and smoking implements;
• Restrict the display of information on the availability and price of tobacco products;
• Require health warnings and warning signs about offences for selling to minors at point-of-sale;
• Prohibit mobile selling of tobacco products;
• Ban the advertising of price discounting;
• Prohibit the manufacture and sale of smokeless tobacco; and
• Require distribution of approved guides at retail outlets about the health effects of smoking and how to quit.

Part 3—Advertising and promotion (Sections 31–35)

Contains provisions to
• Prohibit the display of a tobacco advertisement in a public place;
• Ban the display of tobacco products and smoking implements in retail premises (however specialist tobacco retailers can continue to display tobacco products);
• Prohibit the use of a competition, prize, gift or benefit to promote a tobacco product;
• Ban the distribution of free samples; and
• Prohibit tobacco sponsorship.
Part 4 —Licensing (Sections 36–58)

Contains provisions to:

- Require all retailers and wholesalers of tobacco products to be licensed, including tobacco products sold by vending machine, through the post and by internet;
- Require training for all sellers of tobacco on the provisions of the Act about not selling tobacco to minors and proof of age requirements as a condition of every tobacco licence;
- Require tobacco retailers to provide proof of their licence to tobacco wholesalers to purchase tobacco products;
- Establish administrative arrangements for the tobacco licensing scheme, including a register of licences;
- Ensure that all licence holders receive information about the restrictions on the sale and promotion of tobacco products and other legislative requirements; and
- Provide a range of sanctions for retailers who do not comply with tobacco licensing laws. The State Administrative Tribunal may suspend a licence for up to 3 months, revoke a licence, or disqualify the licence holder from holding any type of licence for a period or permanently.

Part 5—Western Australian Health Promotion Foundation and administration (Sections 59–75)

Contains provisions to:

- Establish the Foundation including membership, functions and powers of the Foundation. It also includes remuneration, allowances and delegations;
- Allow the Minister for Health to issue directions to the Foundation and have access to certain information. Schedule 1 to the Act details the administrative arrangements relating to the constitution and proceedings of the Foundation and disclosure of interests;
- Establish administrative arrangements relating to staff and use of other government staff to undertake functions of the Foundation;
- Establish administrative arrangements for the financial provisions of the Foundation, specifically, appropriation of funds, investment of funds and the application of the Financial Management Act 2006 and the Auditor General Act 2006; and
- Establish the delegation and functions of the Chief Executive Officer.
Part 6—Investigations (Sections 76–97)

Contains provisions to:

- Appoint investigators and specify that Police have powers of investigation under the Act;
- Appoint Restricted Investigators from Local Government to investigate smoking in enclosed public places and certain outdoor public places;
- Require investigators to show identity cards if performing a function under the Act or if requested by a person;
- Authorise investigations under the Act to seek evidence of suspected offences, to assess compliance with the Act and any other purposes relevant to the administration of the Act;
- Provide for specific powers of investigators including right of entry, warrants and inspection of documents and goods;
- Authorise controlled purchase operations to combat illegal sales of tobacco products to minors. These are essentially “undercover operations” in which minors may purchase or attempt to purchase tobacco products with a view to gaining evidence for prosecution; and
- Authorise compliance surveys to combat illegal sales of tobacco products to minors. These are essentially “undercover operations” in which minors may purchase or attempt to purchase tobacco products with a view to gaining information on the propensity of retail outlets to sell tobacco products to minors.

Part 7—Enforcement (Sections 98–120)

Contains provisions to:

- Seize tobacco products or smoking implements from young people and inform their parents;
- Require a young person to provide details of their name and address or information relating to the person who supplied the tobacco products;
- Create an offence for providing false or misleading information to an investigator or a Police Officer;
- Increase the controls on misleading conduct by tobacco companies. A tobacco company that provides false or misleading information about the health effects of, or legislation concerning tobacco products will be subject to a penalty of $50,000, or $250,000 if a body corporate;
- Prohibit the sale of confectionery, toys and other products that are designed to resemble tobacco products;
• Ban smoking in all outdoor eating areas that is, public places provided on a commercial basis where people eat or drink sitting at tables e.g. restaurants, hotels, cafés and food outlets;

• Allow liquor licensed premises that are not the subject of a restaurant licence to allocate a smoking zone up to 50% of all outdoor eating areas, provided the area is not already an “enclosed public place”;

• Ensure that staff in a liquor licensed premises cannot be forced to provide service in a smoking zone and cannot be dismissed for refusing to do so;

• Ban smoking in or on cars with children under 17 years present;

• Ban smoking within 10 metres of children’s playground equipment and;

• Ban smoking between the flags on patrolled beaches;

• Establish and detail evidentiary matters and due processes for investigation and prosecution;

• Establish penalties under the Act. The maximum fine for a first offence under the Act is $10,000 for an individual and $40,000 for a body corporate rising to $20,000 for a second or subsequent offence by an individual and $80,000 for a body corporate; and

• Establish administrative arrangements relating to seized things and forfeiture on conviction.

Part 8—Miscellaneous (Sections 121–127)

Contains provisions to:

• Provide protection from liability for wrongdoing and ensure confidentiality;

• Provide a power to make regulations under the Act in relation to the labelling of tobacco packages, the display of tobacco products at retail outlets, storage of tobacco at retail outlets, display of information about the availability or prices of tobacco, health warnings and warning signs, vending machines and creating offences and penalties not exceeding $2,000;

• Provide a power to make regulations about smoking in public places;

• Require a review is carried out as soon as is practicable after four years have elapsed since part 5 comes into operation and on every fourth anniversary of that date; and

• Require the Minister to table in the Parliament a report on the review within 12 months of the date that the review was due to commence.
3.3 Tobacco Products Control Regulations 2006

Part 3—Smoking in enclosed public places

Contains provisions to:

- Define an enclosed public place;
- Prohibit smoking in enclosed public places;
- Create an offence by occupier and set out defence provisions;
- Require the display of no smoking signs in entrances to liquor licensed premises;
- Create a duty for the occupier to prevent smoke entering enclosed public places;
- Require investigators to notify occupiers before taking action; and
- Set out requirements in relation to directions by investigators.

Part 4a—Smoking in outdoor public places

Contains provisions to:

- Define a non-smoking zone;
- Require the display of no smoking signs in non-smoking zones;
- Require investigators to notify occupiers before taking action; and
- Set out the directions that investigators can give eg direction to stop smoking.

Part 4—Western Australian Health Promotion Foundation and administration

Contains provisions to:

- Set out the funds of the Foundation.

Part 5—Licensing

Contains provisions to

- Set out the evidence required in relation to an application for and renewal of a tobacco licence—proof of individual’s identity and other evidence;
- Set out the conditions of general application for a tobacco licence;
- Set out the arrangements for application to amend a licence;
• Prescribe the particulars of the offences under the Act for which the holder of the licence has been convicted;
• Require licence details on invoices etc and records to be kept;
• Establish administrative arrangements for fees to be paid on application for issue of, renewal or amendment of a licence; and
• Establish administrative arrangements for fees to be paid for extract of registered particulars and for duplicate licence.

Part 6—Sale and supply

Contains provisions to:

• Establish requirements for proof of age;
• Require labelling of tobacco products;
• Prohibit the display of fruit or confectionery flavoured cigarettes and split packs by specialist retailers;
• Set out requirements relating to the location of tobacco products or smoking implements on retail premises;
• Limit retail outlets to one point of sale;
• Establish arrangements for the surface area of displays in cigar cabinets;
• Set out the conditions relating to the type of tobacco products on retail premises and manner of storage;
• Place restrictions on the display of tobacco products, smoking implements or product lines by specialist retailers;
• Restrict the display and information relating to information signs about availability or prices of tobacco products or smoking implements sold by retailers;
• Restrict the size, content and display of price tickets and price lists for tobacco products sold by retailers;
• Require the display of specified warning signs about purchase of tobacco products etc to underage persons;
• Ensure the availability of approved guides for purchasers of tobacco products from retailers and wholesalers; and
• Specify the number and location of vending machines.

Part 7—Miscellaneous

Contains provisions to:
• Establish exceptions to confidentiality;
• Establish administrative arrangements for restricted investigators, authorised officers and approved officers; and
• Set out prescribed offences and modified penalties.

Schedule 1 — Warning signs about purchase of tobacco products
Schedule 2 — Health warning signs, general and vending machines
Schedule 3 — Health warning signs — cigar cabinets, humidified rooms
Schedule 4 — Prescribed offences and modified penalties
Schedule 5 — Forms
Part Four: The current operation and enforcement of the Act and the Regulations

WA has had robust tobacco control laws in place for over twenty years, since the introduction of the *Tobacco Control Act 1990*. The *Tobacco Products Control Act 2006* has now been in force for five years, with the most recent amendments having taken effect within the last six months.

The Department of Health places a strong emphasis on regular compliance monitoring and inspections, particularly in response to any new legislative requirements. Inspections also occur in response to complaints from members of the public. The Department of Health uses a range of strategies to encourage and enhance compliance including the provision of advice, education, formal warnings, infringement notices and prosecution.24

Key approaches to monitoring, inspection and enforcing the legislation are outlined below.

4.1 Licensing

An important tool in enforcing the provisions of the Act is the requirement for tobacco retailers and wholesalers to be licensed. Licences are issued to an individual or a body corporate. An applicant must be a fit and proper person and at least 18 years of age.

Licences are valid for 12 months from the date of issue and may be renewed for consecutive periods of 12 months. The tobacco licence must be displayed at the place in the premises where tobacco is sold and a penalty of up to $50,000 applies for the offence of selling tobacco products without a licence.

In early January 2011 there were 3,838 tobacco licences issued under three categories. Some retailers hold more than one kind of licence simultaneously (see Table 1).


The tobacco licensing process is expected to raise $832,000 in the financial year 2010–11. All of this income is used to fund the administration of the licensing system and the regulatory compliance program.
Table 1: Numbers of licences held to sell tobacco products

<table>
<thead>
<tr>
<th>Licence—Type of Sale</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Holders of single licences:</em></td>
<td></td>
</tr>
<tr>
<td>Retail sale</td>
<td>3,746</td>
</tr>
<tr>
<td>Indirect* sale</td>
<td>5</td>
</tr>
<tr>
<td>Wholesale sale</td>
<td>22</td>
</tr>
<tr>
<td><em>Holders of multiple licenses:</em></td>
<td></td>
</tr>
<tr>
<td>Retail sale and Indirect sale</td>
<td>8</td>
</tr>
<tr>
<td>Retail sale and Wholesale sale</td>
<td>46</td>
</tr>
<tr>
<td>Retail sale, Indirect sale and Wholesale sale</td>
<td>11</td>
</tr>
<tr>
<td><strong>Total licences</strong></td>
<td>3,838</td>
</tr>
</tbody>
</table>

*Indirect sale refers to sales made, for example, by mail order or via the Internet.

4.2 Investigators under the Act

Investigators

The Act provides for the appointment of investigators to seek evidence of suspected offences under the Act, assess whether the provisions of the Act are being complied with, and for administrative purposes.

4.2.1 Police have powers of investigator

For the purposes of the Act a Police Officer—

- may exercise the powers, and perform the functions, of an investigator; and
- has the same authorities and protections that apply under this Act to an investigator.

The powers that a Police Officer may exercise under this Act are in addition to, and do not derogate from, the powers that the Police Officer has under any other law. In general, tobacco-related offences are detected during other police operational activities and Police Officers will collect evidence and forward this to the Department of Health for enforcement action. However,
Police Officers are key to the enforcement of the recent provisions prohibiting smoking in or on cars when children under the age of 17 are present.

4.2.2 Restricted Investigators include:

- Environmental health officers as defined in the Health Act 1911 Section 3(1); and
- Persons employed or engaged by a local government to ensure compliance with state or local government legislation; eg Rangers.

Restricted investigators investigate matters relating to smoking in enclosed public places and new prohibitions on smoking in certain outdoor public places.

4.2.3 Department of Health investigators and the Tobacco Control Branch

Under the provisions of Section 76 of the Act, the CEO of the Department of Health appoints public servants as investigators to carry out investigations. These investigators form the Tobacco Control Branch of the Environmental Health Directorate of the Department of Health.

The primary role of the Tobacco Control Branch is to coordinate, develop and conduct activities to promote industry and community compliance with legislation including developing legislative guidelines and policies, managing the tobacco licensing system for sellers of tobacco products in Western Australia and developing and promoting education strategies that raise awareness of tobacco control legislation within the community.

The effectiveness of legislation depends on the compliance of those regulated. In promoting and ensuring compliance with the legislation, the Tobacco Control Branch recognises that most businesses and individuals want to comply with the law. Care is taken to assist businesses and others in meeting their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. To this end enforcement includes advisory visits and assisting with compliance as well as licensing and formal enforcement action such as service of Infringement Notices and prosecution action.

4.3 Inspection of licensed retail outlets and investigation of complaints

There are approximately 3,800 licensed retail tobacco sellers in Western Australia. About 2,400 of these are located in the Perth metropolitan area and 1,400 of these are located in regional Western Australia.
The Tobacco Control Branch’s inspection program is based on visiting all licensed premises within a three year period. On this basis, approximately 800 metropolitan and 450 regional licensees will be visited annually.

Inspection of the stores focuses on assessing compliance with the legislative restrictions in the Act and the Regulations, and includes checking that:

- Tobacco products are not on display;
- Tobacco products in view at the time of sale comprise no more than 150 product lines and occupy no more than 1 square metre in area;
- Only one type of product package is visible at the time of sale;
- The tobacco seller’s licence is displayed;
- The health warning sign is on display;
- The sales to minors warning sign is on display;
- Price boards if any are in correct format;
- Price lists if any are in correct format;
- Price tickets are in correct format;
- Tobacco products are not sold from more than one place on the retail premises; and
- All other storage requirements are met.

Tobacco control officers also investigate complaints regarding alleged breaches of these provisions of the Act received from members of the public.

4.4 Monitoring compliance with the prohibition on sales to minors

Surveys to monitor compliance with the prohibition on the sale of tobacco to minors have been conducted in WA since 1992. Compliance surveys undertaken in 2004 showed that compliance with the legislation was around 64%.

Compliance monitoring activities in Western Australia were temporarily ceased in 2008 to divert resources to enforcement of other tobacco control legislation and implement the tobacco licensing system, but will recommence in 2011.

These surveys will be conducted in the metropolitan and regional areas of Western Australia and are directed at determining a retailer’s propensity to sell tobacco products to minors. The results will be used for statistical purposes, to educate retailers about sales to minors and as a guide for the targeting of controlled purchase operations.
Controlled purchase operations are directed at collecting evidence regarding the offence of selling tobacco products to minors and subsequent prosecution of offenders.

Controlled purchase operations will be conducted in the metropolitan and regional areas of Western Australia in the second half of 2011.

Tobacco control officers also investigate complaints regarding alleged breaches of these provisions of the Act received from members of the public.

4.5 Inspection of outdoor eating areas

In conjunction with local governments, the Tobacco Control Branch of the Environmental Health Directorate undertakes inspections of outdoor eating areas to educate and advise the patrons and owners of premises about the new smoking laws. The Tobacco Control Branch also responds to complaints from the public.

A key factor influencing the effectiveness of smoke-free legislation is the extent of compliance with the law. Experience in WA and evidence published in the literature confirms that smoke-free legislation is popular with the community, compliance is high and the laws are effective in improving air quality and reducing exposure to ETS.25 26

Despite concerns raised by the hospitality industry, research documenting the implementation of smoke-free legislation has clearly shown that smokers and non-smokers are readily able to comply with, and increasingly support, smoke-free legislative bans.27 28 29 30

4.6 Penalties

The penalties for offences under the Act are:

<table>
<thead>
<tr>
<th>Maximum fine</th>
<th>An individual</th>
<th>A body corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st offence</td>
<td>$10,000</td>
<td>$40,000</td>
</tr>
<tr>
<td>2nd or subsequent</td>
<td>$20,000</td>
<td>$80,000</td>
</tr>
<tr>
<td>offence</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Penalty for all offences under the regulations is a maximum fine of $2,000.

4.7 Ongoing training of investigators under the Act

Training of Police Officers and restricted investigators is crucial in ensuring consistent application of the Act and promoting a collaborative approach.
Tobacco control officers conduct training for WA Police recruits and transitional officers from overseas at the WA Police academy in Joondalup up to four times a year, depending on programming of courses by the WA Police.

Tobacco control officers also conduct training at Curtin University for Environmental Health students once or twice a year.

Training on the new prohibitions on smoking in certain outdoor locations has recently commenced for local government restricted investigators. This training is being conducted throughout Western Australia and is scheduled to be completed this financial year.

Industry training in regard to the new tobacco display laws and prohibitions on smoking in certain outdoor locations is conducted at various businesses on an as-needed basis.
Part Five: Progress in achieving the objectives of the Act

Strong tobacco control legislation is a fundamental component of effective tobacco control. Western Australian and Federal legislation work together to form a comprehensive regulatory framework which governs the manufacture, packaging, supply, promotion, usage and taxation of tobacco products, and limits the exposure of non-smokers to environmental tobacco smoke. There is strong public support for tobacco control legislation in Western Australia\textsuperscript{7,31,32} and nationally,\textsuperscript{33} and this support has increased over time.

Legislative action is supported by effective social marketing campaigns aimed at discouraging uptake of smoking and encouraging quitting, and the provision of practical support for those seeking assistance with quitting smoking. As well as the State and Federal Governments, a range of non-government and other organisations participate in activities which contribute to smoking control in Western Australia and nationally.

The \textit{Tobacco Products Control Act 2006} has clear objectives:

a) to reduce the incidence of illness and death related to the use of tobacco products—

(i) by prohibiting the supply of tobacco products and smoking implements to young persons;

(ii) by discouraging the use of tobacco products;

(iii) by restricting the promotion of tobacco products and smoking generally;

(iv) by reducing the exposure of people to tobacco smoke from tobacco products that are smoked by other people; and

b) to promote good health and activities which encourage healthy lifestyles.

Given the comprehensive nature of tobacco control policies in force in WA and nationally, it is difficult to identify the impact of one tobacco control measure in isolation from the others.\textsuperscript{34} However the measurable reductions in tobacco use in adults and young people, declines in tobacco consumption, falls in death rates from major diseases caused by tobacco use, reductions in community exposure to environmental tobacco smoke and the consistent and effective social marketing and other health promotion activities which have been undertaken in WA are clear indicators of success. Some of these findings are summarised below.
5.1 Declines in smoking prevalence, tobacco consumption and incidence of disease

As noted in Section 2.2, the prevalence of adult smoking in Western Australia has declined from 23.6% to 15.6% since 1998, and is the now lowest of any state and territory other than the ACT. In 2005, WA schoolchildren had among the lowest prevalence of smoking nationally, a result which is likely to be repeated when the next tranche of survey data is released.

National data show that among people who still smoke, the number of cigarettes smoked each day has been steadily declining since 1989, corresponding with the increasing adoption of smoke-free workplaces and other regulatory measures, the increasing price of cigarettes and mass media campaigns. Over time the proportion of people in Australia who are classified as heavy smokers has declined and there has been an increase in the proportion of light and occasional smokers. Lighter patterns of smoking are associated with increased quit attempts and decreased chance of relapse.

Reductions in the tobacco usage consumed have contributed to lower death rates from lung cancer, chronic obstructive pulmonary disease and coronary heart disease.

Analysis performed by the Department of Health WA estimates that changes in smoking trends over the past 10 years have saved 158 lives, prevented 3,870 hospitalisations for conditions caused by smoking and averted $32.6 million in hospital costs.

5.2 Exposure to environmental tobacco smoke

One of the objectives of the Act is to reduce community exposure to environmental tobacco smoke (ETS). The health effects of ETS exposure are well-documented.

There is strong evidence of the positive impact of comprehensive smoke-free legislation. Smoke-free legislation improves the health of the general population and hospitality workers by improving indoor air quality and reducing population exposure to the dangerous cocktail of chemicals and carcinogens in environmental tobacco smoke (ETS).

While the focus of these regulatory measures is to protect public and employee health by reducing exposure to second-hand smoke, research shows that there is a broader range of positive policy outcomes associated with smoke-free legislation. Australian and US research has found that smoke-free legislation implemented as part of a comprehensive tobacco control program can reduce adolescent smoking and influence exposure to ETS in domestic environments. Following implementation of new smoke-free laws in Queensland in 2006, almost half of smokers surveyed reported the introduction of the new tobacco laws had a flow-on effect leading them to stop smoking at other people’s homes. Over a quarter of smokers reported...
having stopped smoking in their own vehicle or the household’s vehicle and 22% reported they had stopped smoking in their own homes, as a result of the tobacco laws being introduced. Data from the National Drug Strategy Household Survey confirms that fewer children are being exposed to environmental tobacco smoke in their homes and cars—nationally, around 8% of households with dependent children had at least one person who smoked inside the home in 2007—down from almost one third in 1995. Given the particular vulnerability of infants and children to ETS, this is an important and encouraging finding.

There is strong evidence that smokers comply with, and increasingly support, smoke-free laws. Research examining attitudes towards and compliance with the bans on smoking in licensed venues in five Australian states including WA, showed that following the introduction of the bans, more than 90% of smokers reported they were complying with the bans. Attitudes became more positive in the year before the ban, and more than doubled in the year the bans were implemented.

Research from Queensland following the introduction of new amendments to strengthen smoke-free legislation also confirms that the vast majority of smokers comply with smoke-free laws and additionally suggests that they can act as a trigger for renewed quit attempts:

- the vast majority of smokers (85%) reported they had “completely stopped smoking in all areas where it is illegal to smoke at all times” and two-thirds (67%) were “smoking less in public spaces”;
- 22% of smokers reported they had attempted to quit because of the new laws. This equated to an estimated 123,000 Queenslanders who had attempted to quit;
- Around 2% of smokers said that they had successfully quit as a result of the new laws. This equated to an estimated 14,000 new ex-smokers; and
- More than a quarter of ex-smokers (27%) reported that the new tobacco laws had helped them remain quit.

### 5.3 Public education campaigns and trends in quitting

Over many years public education campaigns in WA and nationally have helped to make smokers aware of the health risks of tobacco and motivated smokers to quit. These campaigns work synergistically with tobacco control legislation by reinforcing the health risks associated with smoking and encouraging smokers to quit.

Tobacco control legislation complements public campaign messages by prohibiting the display of tobacco advertisements and products that act as inducements to smoke. Research shows that display of tobacco products at retail outlets provide “environmental cues” to smoke and undermines quit attempts by encouraging impulse purchases of tobacco.
Public education campaigns keep quitting “top of mind” for smokers. For example following the “Bubblewrap” media campaign which ran in WA in 2005 and 2008.  

- Prompted awareness of the television advertisement was around 90% among smokers, and more than three quarters of those surveyed who were aware of the “Bubblewrap” television advertisement found it convincing and relevant;
- Almost half (48%) indicated it had made them seriously consider quitting, with two-thirds of these (68%) encouraged to do so in the next month; and
- More than a third (37%) said that the recent smoking advertisements had made them try to quit or cut down.

Smokers are also being reminded of the risks of smoking every time they reach for a packet of cigarettes through legislated health warnings on packets. As well as serving an educative purpose, health warnings increase the likelihood that young people experimenting with tobacco and established smokers will think about quitting smoking.

Calls to the WA Quitline continue to increase and in the past three years have almost doubled, rising from 1,794 in 2007–08 to 3,525 in 2009–10.

5.4 Promoting good health and healthy lifestyles

One of the stated purposes of the Tobacco Products Control Act 2006 is to promote good health and activities which encourage healthy lifestyles. To this end, the Act provides for the establishment and the administration of the Western Australian Health Promotion Foundation, also known as Healthway.

Healthway was originally established in 1991 under Section 15 of the Tobacco Control Act 1990 as an independent statutory body reporting to the Minister for Health. Healthway now functions under Part 5 of the Tobacco Products Control Act 2006, with a role to fund activities that promote good health, particularly among young people.

Healthway provides sponsorship to sport, arts, and racing organisations to promote healthy messages, facilitate healthy environments and increase participation in healthy activities. Healthway also provides grants to a range of organisations for health promotion activities and projects to encourage healthy lifestyles, as well as grants for health promotion research.

Although the replacement of tobacco sponsorship was a major priority for Healthway in its first five years, Healthway’s legislative mandate is much broader. Healthway aims to promote and support healthy lifestyles to reduce the burden of preventable disease in Western Australia.

In the current strategic period, the key health priorities across Healthway’s program areas are reducing harm from tobacco, reducing harm from alcohol,
reducing obesity and promoting good mental health. Some population groups experience poorer health than others, and Healthway seeks to prioritise health promotion initiatives targeting these groups, particularly Aboriginal people, people living in rural and remote areas and other groups experiencing inequalities.

Since 1991, Healthway has invested approximately $186 million into sponsorship of sport, arts and racing in WA to promote health promotion campaign messages. More than $110 million of this has been allocated to sport.

Sponsorship has enabled Healthway to achieve sustained policy changes in entertainment and recreational environments in WA, through making it a condition of sponsorship that organisations implement a range of healthy environment policies in venues under their control. Healthway’s requirements for smoke-free policies have consistently extended beyond the prevailing public places legislation, and currently require sponsored groups to implement 100% smoke-free venues.

A survey conducted in 2009 by the University of WA, also showed that nearly 60% of Healthway sponsored organisations have introduced healthy food choices as a result of Healthway sponsorship and more than 25% have introduced safe alcohol service policies. In the vast majority of cases, these are long term changes.

Healthway has funded or co-funded a number of major health promotion campaigns in WA which have been internationally recognised for their achievements and innovation. These include the Smarter than Smoking project, the Mentally Healthy WA campaign and the Make Smoking History campaign. Since Healthway’s inception, around $60 million has been allocated to support health promotion projects.

Similarly, research funded by Healthway includes work which has significantly influenced practice and policy, including research by the Child Health Promotion Research Unit at Edith Cowan University, which has had a major impact on how schools nationally tackle issues around bullying, and research on liveable neighbourhoods at UWA, which led to the establishment of the internationally recognised Centre for the Built Environment and Health. Around $40 million in Healthway research funding has been awarded to the universities in WA since 1991.

In terms of expenditure against Healthway’s identified priorities, since 1991 more than $86 million has been allocated to tobacco control activities in WA, $65 million to preventing overweight and obesity, more than $26 million to tackling alcohol and other drug use and nearly $15 million to promoting positive mental health. Funding for projects and sponsorships reaching young people and children has exceeded $100 million over the same time period, and around $20 million has been allocated to projects and sponsorships specifically targeting Indigenous people although this figure does not include
the many community-wide programs that would have also included Aboriginal people in their reach.
Part Six: Tobacco control legislation in other jurisdictions

6.1 Queensland

Tobacco advertising and promotion is controlled and restricted by the Tobacco and Other Smoking Products Act (Qld) 1998 and the Tobacco and Other Smoking Products Regulations 2010. The Act prohibits tobacco advertising including any promotions, competitions, and product giveaways. This also extends to any images of the consumption of tobacco products at retail point-of-sale.50

In 2001, significant changes were made to Queensland's Tobacco and Other Smoking Products Act 1998 to address the impact of tobacco smoking on the community.

In 2004 a review of the tobacco laws was carried out. Consultation with industry and the public resulted in more than 1,300 submissions.

The Review informed the drafting of new tobacco laws under the Tobacco and Other Smoking Products Amendment Bill 2004, passed by the Parliament of Queensland on 11 November 2004. The laws commenced in phases between 1 January 2005 and 1 July 2006 and include:

- Bans on smoking inside pubs, clubs, restaurants and workplaces;
- Bans on smoking in commercial outdoor eating or drinking areas;
- Bans on smoking in outdoor public places such as patrolled beaches and in the vicinity of children's playground equipment;
- Bans on smoking inside major sport stadiums and within four metres of non-residential building entrances;
- No sales of tobacco products to children under 18 years of age;
- Mandatory training of employees who sell tobacco;
- Mandatory no smoking and quit smoking signs;
- Restrictions on how tobacco products can be displayed at retail outlets;
- No tobacco advertising or competitions; and
- Tobacco vending machines must be located in bar or poker machine areas only.

In October 2007 another review of Queensland's tobacco laws was conducted, this time with a particular focus on smoke-free enclosed and outdoor places. On 26 May 2008, the newest changes to Queensland's tobacco laws were announced. These are:

- A ban on smoking in cars where children under the age of 16 years are present; and
• A transfer of power to local government to regulate smoking at pedestrian malls and public transport waiting points such as bus stops, taxi ranks and ferry wharves.

6.2 Tasmania

In August 2010, the Tasmanian Department of Health and Human Services released a discussion paper on tobacco control legislation, *Building on our Strengths.*

Tasmania already has tobacco legislation in place to protect the community from the effects of ETS and to regulate the display and availability of tobacco. This legislation includes:

- A ban on smoking in cars when a child is present;
- Restrictions on tobacco display sizes;
- Controlled purchase operations testing retailer compliance on selling tobacco to children;
- Smoke-free enclosed public places and workplaces;
- A complete ban on smoking in casinos; and
- A ban on the display tobacco and tobacco products in any premises other than specialist tobacconists.

The discussion paper explores a number of legislative measures designed to improve the health of Tasmanians by preventing and reducing tobacco-related harms. Twelve proposals for proposed legislative changes to the *Public Health Act 1997* were presented for consideration and discussion.

Proposals 1–7 aim to protect people from environmental tobacco smoke and de-normalise the use of tobacco in the community by further restricting smoking in public places. Of these, proposals 5–7 focus on sport and separating its association with tobacco. The remaining proposals (8–12) impose further restrictions on the availability and display of tobacco products and allow for tobacco to be confiscated from children.

These proposals are listed below:

- Ban smoking in all outdoor dining areas;
- Remove the three metre exemption which permits patrons to smoke at tables within three metres of an entrance/exit to an eating establishment;
- Ban smoking in all pedestrian malls, bus malls and covered bus shelters;
- Ban smoking within enclosed children’s playgrounds or within 10 metres of any children’s playground equipment in unenclosed areas;
Ban or further restrict smoking in outdoor sporting stadia and cultural venues;

Ban smoking within 20 metres of the competition area at all sporting events where children are participating;

Ban smoking at all public swimming pool complexes;

Ban tobacco product vending machines;

Ban or restrict specialist tobacconist’s displays and/or phase out specialist tobacconists;

Remove tobacco and tobacco products from reward schemes;

Ban tobacco sales at all temporary events such as music, sport or art festivals or where the majority of patrons are likely to be under 18; and

Enable confiscation of tobacco and tobacco products in the possession of a child.

The discussion paper notes that “some of these proposals will impact on those industries who gain financially from the consumption of tobacco, but our first priority must be the health and wellbeing of the Tasmanian community.”

In March 2011 the Tasmanian Government announced a range of new measures that would further restrict smoking in public and “de-normalise” tobacco use. The package of reforms was developed after an extensive period of consultation following the release of the discussion paper in 2010.

The reforms included:

- Banning smoking in all outdoor dining areas;
- Making it illegal to smoke in and within 20 metres of the competition and seating area at all outdoor sporting venues;
- Banning smoking near playgrounds and in all pedestrian malls, bus malls and covered bus shelters;
- Introducing smoke-free areas in all outdoor public swimming pool premises;
- Banning the display of cigarette packets and cartons in specialist tobacconists;
- Restricting the use of traditional cigarette vending machines;
- Confiscating cigarettes and tobacco products from children by approved officers;
- Enabling the Director of Public Health to specify some types of public gatherings (defined as “Places of Assembly” under the Public Health Act) as being smoke-free;
- Banning the sale of tobacco at temporary events; and
• Banning tobacco and tobacco products from being included in shopper loyalty programs.

The government is preparing legislation to be brought to the Parliament.

6.3 New South Wales

The *NSW Public Health (Tobacco) Act 2008*, in force from 1 July 2009, introduced new requirements for tobacco retailers and the community in NSW, and incorporated provisions of the *Public Health Act 1991* relating to tobacco control.

The new provisions in this legislation include:52 53

• Banning smoking in cars in which a person under 16 years is present;
• Prohibiting the display of tobacco products and smoking accessories in retail outlets;
• Limiting retail outlets to one point of sale for tobacco products;
• Introducing a notification scheme for tobacco retailers;
• Further restrictions on tobacco vending machines;
• Increasing penalties for tobacco-related offences; and
• Requiring tobacco products to be removed from all shopper-loyalty programs.

These provisions had effect from July 2009, except for the prohibitions on display, which were phased in. Large retailers had to comply by 1 January 2010 and small retailers had to comply by 1 July 2010. Specialist tobacconists have until 1 July 2013 to comply with the display bans.

The Act also transfers the provisions in Part 6 of the *Public Health Act 1991* relating to the sale, advertising and packaging of tobacco products and non-tobacco smoking products into the new Act. These include:52

• Selling tobacco to minors;
• Advertising tobacco products;
• Sale of novelty items and confectionery that resembles a tobacco product; and
• Sale of fruit or confectionery flavoured cigarettes.

Smoking is banned in enclosed public areas in NSW under the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2007*.

On 2 July 2007, smoking was banned in all substantially enclosed licensed premises through the *Smoke-free Environment Amendment Act 2004* and the *Smoke-free Environment Amendment (Enclosed Places) Regulation 2006*
which provided for three incremental stages in the lead up to a total smoking ban in enclosed public areas of licensed premises.\textsuperscript{54}

The NSW government released its Strategic Directions for Tobacco Control 2011-2016 discussion paper for public consultation in November 2010.\textsuperscript{55} To reduce exposure to environmental tobacco smoke in workplaces, public places and other settings, the paper suggests that amendments to the \textit{Smoke-Free Environment Act 2000} be considered to ban smoking:

- In commercial outdoor eating areas;
- In public playgrounds and within 10 metres of children’s play equipment;
- In and around public swimming pools and public recreation centres;
- In sporting stadia;
- At public sports grounds;
- At enclosed or covered bus stops and taxi ranks; and
- Within 4 metres of the entrance to a public building.

Since the release of this paper, the Government has changed and the NSW Government is considering the results of the consultation.

\textbf{6.4 Victoria}

In August 2008, the Victorian Government undertook public consultation to hear community views on the next steps for tobacco control in Victoria. A large number of submissions were received from the general public and other stakeholders, including the health sector and the tobacco industry. The consultation found substantial support for legislative reforms, particularly those which protect children from the dangers of environmental tobacco smoke and which reduce the likelihood of youth smoking initiation.

In August 2009, the Victorian Parliament passed amendments to the \textit{Tobacco Act 1987} as part of the implementation of the Victorian Tobacco Control Strategy 2008-2013. These amendments include:\textsuperscript{56}

- Smoking bans in a motor vehicle if a person under the age of 18 years is present;
- A ban on the sale of tobacco products from temporary outlets;
- A power for the Minister for Health to ban the sale of certain tobacco products and packaging that appeal to young people;
- A ban on the display of tobacco products at point-of-sale with an exemption for certified “specialist tobacconists”; and
- Amendments to penalties and enforcement provisions including:
Amending the definition of “occupier”; 

Power for the Secretary of the Department of Health to request tobacco manufacturers or wholesalers to provide the names and addresses of persons whom they have supplied with tobacco; and 

Increases to the maximum infringement penalties for a number of offences, and specific provisions for higher “body corporate” offences.

These laws, with the exception of the point-of-sale tobacco display ban, commenced on 1 January 2010. The point-of-sale display law commenced on 1 January 2011.

Amendments to the Tobacco Act 1987 made it an offence from 1 March 2006 to smoke in an enclosed workplace. From 1 July 2007 it has been an offence to smoke in:

- Enclosed licensed premises (under the enclosed workplaces offence in Section 5A of the Act, as amended from 1 July 2007); and 
- Outdoor dining or drinking areas where there is a roof in place and walls that cover more than 75% of the total notional wall area.

The “occupier” of the enclosed licensed premises or outdoor dining or drinking area is also liable if smoking occurs (unless certain circumstances apply) and/or if they fail to display acceptable no smoking signage.

6.5 South Australia

Tobacco sales, distribution and use of tobacco, including areas where smoking is prohibited are regulated by the SA Tobacco Products Regulation Act 1997 and the Tobacco Products Regulations 2004.

All activities intended to publicise or promote the purchase or use of tobacco products are banned. This includes advertising and promotional material at point of sale. The offer of prizes, gifts or other benefits in association with the sale of a tobacco product is prohibited. From 1 June 2008, customer reward or loyalty schemes in connection with the sale of tobacco products were also prohibited.47

SA also has a ban on the sale of fruit-flavoured cigarettes and a prohibition on the sale of splittable cigarette packets which can be divided into portions containing less than 20 cigarettes.

From 1 July 2008, amendments to the Act ensured that tobacco products can only be sold in vending machines that are staff operated or controlled by a token system available over a counter so that staff can verify the age of the purchaser.

Variations to retail tobacco licenses commenced on 19 January 2009, preventing tobacco products from being displayed at booths, tents or other
temporary structures or at points of sale that are available for not more than two weeks in a year. The license conditions also prevent vendors from providing inducements to encourage young people to frequent the points of sale. Inducements include furnishings and entertainment and signage is limited to only prescribed signage.

The display of tobacco products in retail outlets is currently restricted to three square metres. On 31 May 2010, the South Australian Minister for Health announced that the South Australian Government would introduce measures to ban the display of tobacco products at the point of sale by January 2012.57

Effective from 1 November 2007, all enclosed areas in liquor-licensed premises, bingo venues and the casino have been smoke-free, without exception. Smoking is prohibited in cars in which children under the age of 16 years are present.

### 6.6 Northern Territory

Legislation and regulation pertaining to tobacco advertising in the Northern Territory falls under the *Tobacco Control Act 2002* and the *Tobacco Control Regulations*. The Act and Regulations were significantly amended by the *Tobacco Control Legislation Amendment Act 2010*.58

No tobacco advertisements of any type may be displayed, published or broadcast in the NT. All tobacco advertising at point-of-sale such as posters, backlit signs, desk pads, flags and floor stickers is also banned. Retail staff are not permitted to wear clothing or other items with tobacco logos or trademarks. Shops cannot be decorated in tobacco brand colours. Retailers cannot advertise brand names of cigarettes or the sale of cigarettes at discounted prices, including by using expressions such as “cheap smokes” or “discount cigarettes”. Giveaways, competitions and other-value added marketing are prohibited.

In June 2010, the Northern Territory Government amended the Northern Territory’s *Tobacco Control Act* providing for the following four key changes to the Act and its Regulations.

- Smoke-free areas—the introduction of a ban on smoking in all public outdoor eating and drinking areas (with exempt areas for licensed venues);
- Voluntary outdoor smoke-free areas—the power for owners and occupiers of outdoor public areas to declare the area smoke-free with legislative support;
- Displays and point of sale—the prohibition on the display of all tobacco products at the point of sale; and
• Licensing of tobacco retailers—the introduction of an annual licence fee and renewal process, as well as new licence conditions that will ban the sale of fruit and sweet flavoured cigarettes and require sales data to be submitted.

The ban on the display of all tobacco products at point of sale applied to ordinary and specialist tobacconists alike from 2 January 2011. One point of sale is permitted. Licensed venues may have one over-the-counter point of sale and one vending machine in each bar area of the premises. A health warning must be displayed at point of sale, including at vending machines. Either a price board or shelf tickets may be displayed, but not both.

The extension of smoke-free areas to all outdoor eating and drinking venues and areas came into effect from 2 January 2011. Outdoor eating and drinking areas are defined as any outdoor public place provided for the consumption of food or drink, or where a person would expect to be able to consume food or drink provided by an onsite food service.

The smoke-free arrangements therefore effect a smoking ban in all public outdoor areas of clubs, pubs, cafés, restaurants and seating areas established for kiosks (and take-aways) or temporary events.

However, premises that hold a full liquor licence may designate an Outdoor Smoking Area/s (OSA) that is no more than half the size of the total outdoor eating and drinking area/s. OSAs will be subject to specified regulatory guidelines that aim to maximise protections against environmental tobacco smoke for staff and patrons.59

Smoking in cars is not prohibited in the NT.

6.7 Australian Capital Territory

Advertising and promotion of tobacco is controlled by the Tobacco Act 1927. The Act sets out strict requirements for how smoking products (tobacco and herbal smoking products) can be advertised and displayed.

Items that advertise or promote tobacco products or tobacco smoking are not permitted at point of sale. No gifts, rewards schemes or “value-added” promotional items can be associated with the purchase of tobacco products. A tobacco product itself cannot be given away if this promotes the sale of a tobacco product. It is illegal to conduct a competition that promotes smoking or promotes a tobacco product. Examples of prohibited advertising include brand-name promotional material, and toys, novelty items or clothes with a tobacco name or logo.54

Amendments made to the Act by the Tobacco Amendment Act 2008 (ACT) prohibited the sale of splittable cigarette packets designed to be divided into portions containing fewer than 20 cigarettes each, and prohibited the offer of customer rewards in association with the sale of smoking products. The
Minister for Health was also given the power to declare that a smoking product is prohibited if it has a distinctive fruity, sweet or confectionery-like character, and the nature of the product or the product's package or packaging could be attractive to children.54

The 2008 amendments to the Tobacco Act 1927 also introduced new restrictions banning the display of smoking products at point of sale. From 31 December 2010, all retailers must store smoking products out of sight of customers. This provision applied to standard tobacconists from 1 January 2010, and to specialist tobacconists from 1 January 2011. One point of sale is permitted per retail outlet. Licensed premises may have up to five points of sale. Price tickets must comply with size and design requirements (they must use 12 point Times New Roman font, and be no larger than 15 cm squared). Tobacco vending machines are prohibited.

Enclosed public places became smoke-free on 1 December 2006 with the removal of exemptions for pubs, clubs and casinos to have certain areas provided for smoking. An enclosed public place can be any public place, including business premises, a community centre, a place of worship or a shopping centre. Essentially, a public place can be any place to which the public or a section of the public has access. There are no exemptions applicable to casinos.

All outdoor eating and drinking areas across the ACT became smoke-free on 9 December, 2010. An outdoor eating and drinking area is:

- A public place where tables and chairs are provided for customers to consume food purchased from an onsite service such as a restaurant, café, food van or take-away store; or
- All liquor licensed outdoor areas at venues across Canberra.

Certain liquor licensed venues such as pubs, clubs, taverns and bars may choose to designate part of their liquor licensed outdoor area as a designated outdoor smoking area (DOSA).

A DOSA is designed to be an area where people who wish to smoke may take their drink while they have a cigarette break before returning to their friends in non-smoking areas. They are separate to other non-smoking outdoor areas and are subject to stringent rules such as no food or drink service and no eating.

Smoking at underage music/dance functions is banned. However, smoking in cars is not prohibited in the ACT.

6.8 Conclusions

This overview of legislation and policy proposals from other jurisdictions highlights some potential legislative issues that should be included in the review and form part of the consultation process. These potential options include:
• A ban on the sale of fruit/confectionery flavoured cigarettes and split packs;
• Preventing tobacco purchases from being included in reward schemes;
• Establishing an end date for the display exemption for specialist tobacco retailers;
• Extending existing smoke-free provisions to some other public areas;
• Empowering local government to ban smoking in public places, for example in public transport waiting areas (bus stops/taxi ranks); and
• A ban on smoking within 5 metres of entrances/openings to enclosed public places and consideration of “buffer zones” in relation to alfresco smoking bans.
Part Seven: Options for consideration

A number of legislative options have been identified for broader consultation and discussion across WA as part of the review. These options would further protect the Western Australian community from tobacco-related harm. Some of these proposals focus on improving the effectiveness and operation of existing provisions of the Act (for example those focusing on tobacco licensing and investigation powers). Others have been identified through examining legislation which has been introduced in other states or territories, or proposals under active consideration which represent the “next generation” of changes to improve tobacco control legislation.

It must be emphasised that these options have not been endorsed by the Department of Health, the Minister for Health or the Western Australian Government, and are presented purely for consultation and discussion. We invite your feedback on the specific proposals in this discussion paper and ask you to identify other tobacco-related issues which you believe to be important to the implementation of best practice tobacco control in this State.

Fifteen potential legislative options have been identified for further consideration and discussion with stakeholders:

Option 1: Ban the sale of fruit and confectionery flavoured cigarettes and split packs;

Option 2: Prevent tobacco purchases being included in reward schemes;

Option 3: Introduce a buffer zone around entrances, air conditioning intakes and in relation to alfresco eating areas;

Option 4: Extend smoke-free restrictions to other public outdoor areas;

Option 5: Clarification of local governments’ powers to regulate smoking in outdoor areas under their control;

Option 6: Introduce a complete ban on smoking in all outdoor eating areas;

Option 7: Consider removing the smoking exemption applying to the Burswood Casino International Room;

Option 8: Extend smoke-free legislation to include common shared areas in boarding and lodging houses and residential strata complexes;

Option 9: Amend the defence provision permitting display of tobacco products by specialist tobacco retailers;
Option 10: Amend the requirements relating to the size and display of price boards and price tickets and including new graphic health warnings;

Option 11: Introduce a requirement that tobacco can only be sold by persons over 18 years;

Option 12: Amend the tobacco licensing provisions;

Option 13: Amend the investigation provisions in the Act;

Option 14: Amend the provision providing a defence for smoking in a live stage performance; and

Option 15: Amend the provisions relating to the Western Australian Health Promotion Foundation (Healthway).
7.1 Option 1—Ban the sale of fruit and confectionery flavoured cigarettes and splittable packs

Current Situation

Fruit and other sweet flavoured cigarettes and splittable of cigarettes (cigarette packets that are designed to be divided into portions that contain fewer than 20 cigarettes each) are products with a particular appeal to children.60

The Tobacco Products Control Act 2006 currently provides for regulations to be made to ban the display of prescribed tobacco products. The Tobacco Products Control Regulations 2006 bans the display of fruit and confectionery flavoured cigarettes and the display of information about their price and availability.

In contrast to all other states and territories in Australia, WA has no legislative restrictions on the sale of fruit or confectionery flavoured cigarettes. These products have been available from limited specialist retail outlets in Western Australia for approximately 10 years. They are generally supplied from a WA-based wholesaler who imports them directly from overseas.

Fruit and confectionery flavoured cigarettes, with their colourful pastel designs and sweet smells, may project an idea of fun and glamour that is clearly at odds with the devastating health consequences of smoking. Flavours such as apple, lemon and chocolate cover up the harsh tastes normally associated with smoking and appeal to young people, including those who may not otherwise consider trying smoking. Research by the Cancer Council of Victoria found that 46% of 16- and 17-year-old girls and 31% of boys the same age agreed that lolly or fruit flavoured cigarettes made them curious to try smoking.61

Splittable packs, dubbed by some as "kiddie packs",62 are attractive to children because they are smaller and more easily concealed and the cost of a packet of cigarettes can be shared between two people and the pack itself can be halved. Given that the majority of adult smokers begin smoking during their teens, it is essential to restrict products that make cigarettes more appealing to young people.

The matter of the sale of fruit and confectionery flavoured cigarettes was raised at the Australian Health Minister’s Conference (AHMC) of April 2008 and the Ministerial Council on Drug Strategy (MCDS) in May 2008. At the MCDS meeting of 18 May 2008 it was agreed that:

- State and Territory Governments will enact regulation and/or legislation to prohibit the sale of fruit and confectionery flavoured cigarettes within their jurisdictions by December 2009;
The Commonwealth would take steps to investigate a ban on the importation of fruit and confectionery flavoured cigarettes.

The US Food and Drug Administration has recently banned the sale of cigarettes with flavours characterising fruit, candy or clove on the basis of evidence that these flavours make the cigarettes more appealing to first time smokers and are a gateway for many children and young adults to become regular smokers.63

**How it could work**

The proposal is to:

- Amend the Act and Regulations to ban the sale of fruit and confectionery flavoured and splittable pack cigarettes in WA.

**Action by other jurisdictions**

The sale of fruit and confectionery flavoured cigarettes and splittable packs is prohibited in all jurisdictions except Queensland and WA.

**Some arguments for**

- Prohibiting the sale of fruit and confectionery flavoured cigarettes would remove products from retail outlets that have particular appeal to children and could entice them to experiment with smoking;
- Prohibiting the sale of split packs would remove a product from sale that could make cigarettes more affordable and easier to access for children; and
- Introducing these bans would meet commitments made by WA at the MCDS and AHMC meetings to do so.

**Some arguments against**

- Implementing a ban on the sale of fruit and confectionery flavoured cigarettes may impact on the current Western Australian distributor of these products. It is expected that the impact will primarily be limited to the single importer of these products.
7.2 Option 2—Prevent tobacco purchases being included in reward schemes

Current Situation

In WA, it is an offence to distribute or supply free tobacco products. However, it is not an offence for tobacco products to be included in retailer shopper loyalty or reward programs. A variety of reward schemes operate widely throughout WA. These schemes give customers discounts and rebates for groceries, petrol and other products.\(^{51}\)

These programs may provide an incentive to customers to purchase smoking products from a particular retail outlet in order to receive customer benefits. They also effectively reward customers for smoking, as higher rewards go to those who purchase the most tobacco.\(^{51}\)

Tobacco is banned from reward schemes in the ACT, New South Wales, Queensland and South Australia. For example in NSW, the Public Health (Tobacco) Act 2008 introduced a requirement for tobacco retailers to ensure that tobacco products or non-tobacco smoking products are excluded from shopper loyalty programs. This means that under the Act, the following programs are not permitted:

- Any program under which a gift or other benefit could be obtained by the purchaser of tobacco or non-tobacco smoking products (such as herbal cigarettes), regardless of whether the program extends to the purchase of other products; or
- Any program under which a purchaser of goods or products may be entitled to a gift of tobacco products or non-tobacco smoking products, regardless of whether the purchaser may choose to accept another type of gift instead.

The only exceptions to this ban are programs where a gift or benefit may be obtained by a purchaser of goods on the basis of method of payment used, such as the use of a particular credit card. These programs are not affected by the legislation.

However programs conducted by manufacturers or distributors of tobacco products or non-tobacco smoking products where the retailer receives the gift or benefit directly (and the gift or benefit is not intended for resupply) are not affected.

How it could work

The proposal is to:

- Amend the Act and the Regulations to ensure that tobacco and tobacco products would no longer be included in shopper loyalty
programs. No points/rewards would be accrued for their purchase and no points/rewards would be redeemable for purchasing tobacco and/or tobacco products.

**Action by other jurisdictions**

Tobacco is banned from reward schemes in the ACT, New South Wales, South Australia and Queensland. The Government of Tasmania has recently announced that it will ban tobacco from reward schemes.

**Some arguments for**

- Banning the inclusion of tobacco products in shopper loyalty programs would result in removal of incentives or rewards being provided to customers for purchasing tobacco products.

**Some arguments against**

- Banning the inclusion of tobacco products in shopper loyalty programs may increase the burden on retailers to exclude tobacco products from such schemes.
7.3 Option 3—Introduce a buffer zone around entrances, air conditioning intakes and in relation to alfresco eating areas

Current Situation

The establishment of smoke-free places significantly reduces non-smokers’ exposure to ETS and is the fundamental reason for the need to eliminate ETS in areas shared by smokers and non-smokers. They can also contribute to a reduction in smoking rates, particularly among young people. However, non-smokers can also be exposed to high levels of ETS in outdoor settings when close to or downwind of smokers.

From 31 July 2006, the Act and Regulations prohibited smoking in all enclosed public places including those on licensed premises. This means that in addition to venues which were required to be smoke-free prior to 31 July 2006 (eg shopping centres, theatres, airports, cinemas, cafés and restaurants etc), venues such as pubs, sporting clubs, night clubs and licensed restaurants were also required to be smoke-free inside. Amendments introduced in 2009 placed additional restrictions on smoking in public places including:

- smoking “between the flags” at a patrolled swimming area on a beach;
- smoking in outdoor eating areas;
- smoking within 10 metres of playground equipment in a public place; and
- smoking in or on vehicles if someone under 17 years old is in or on the vehicle.

Since the implementation of the amendments, a number of issues have continued to be raised with the Department of Health by a range of stakeholders. These include

- problems associated with smoking around entrances and doorways and near air conditioning intakes; and
- smoke drift from outdoor areas where smoking is permitted to those outdoor eating areas where smoking is prohibited.

As restrictions on smoking in enclosed public places have become more common, smokers are increasingly required to smoke outdoors. Problems arise when smokers cluster around entrances and exits and near air conditioning intake vents to smoke. People who enter and exit the building are exposed to ETS and there may be problems with smoke drift into indoor smoke-free areas.

A previous review of smoking in outdoor public places, prisons and cars by the Department of Health in 2008 identified strong support to include
mandatory (legislated) buffer zones or physical barriers between areas where smoking is banned and areas where smoking is not banned.\textsuperscript{64}

A buffer zone is an area in which people do not smoke (either voluntarily or legislated) that adjoins an area in which smoking is banned.

One option to address this issue would be to require a buffer zone of up to 5 metres around entrances and exits and up to 10 metres around air conditioning intakes. Smoking is already banned in these buffer zones around the entrances to WA State Government buildings and air-conditioning vents to these buildings (including State Government offices, hospitals, courts and police stations); and has been since 1 January 2005.\textsuperscript{65} Similar policies have also been enacted elsewhere. In Tasmania, for example, smoking is prohibited within 3 metres of a doorway to a public building and in areas within 10 metres of air intake for ventilation equipment servicing a public building.\textsuperscript{66} In Queensland smoking is not permitted within 4 metres of the entrance to non-residential buildings.\textsuperscript{50}

The Department of Health review in 2008 also identified strong support from stakeholders to include a buffer zone around entrances to \textit{al fresco} dining areas or enclosed dining areas to reduce exposure to ETS, although some concerns were raised by some stakeholders about public safety issues (by the Australian Hotels Association) and enforcement (by local government).

A buffer zone (of perhaps up to 3 metres) could be introduced for \textit{al fresco} dining areas. This would considerably reduce the problem of smoke drift from areas where smoking is permitted into non-smoking areas. In Tasmania, smoking is prohibited within 3 metres of a doorway at some premises where food and tables are provided for dining.\textsuperscript{66}

Experience in enforcing smoke-free legislation in WA and elsewhere has demonstrated that the vast majority of smokers comply with smoking restrictions, particularly when appropriate signage and education are put in place, and that there have been few difficulties with enforcement.

\textbf{How it could work}

The proposal is to

- Create a buffer zone and ban smoking within 5 metres of entrances/openings to enclosed public places and within 10 metres of air-conditioning intakes; and
- Create buffer zones in relation to \textit{al fresco} smoking bans to minimise smoke drift.
Action by other jurisdictions

A number of states and territories have buffer zones in place. In Tasmania smoking is prohibited within 3 metres of a doorway to a public building and in areas within 10 metres of air intake for ventilation equipment servicing a public building. Smoking is also prohibited within 3 metres of a doorway at some premises where food and tables are provided for dining.66

In the NT, people are not permitted to smoke within 2 metres of entrances to all non-domestic buildings or within 3 metres of air-conditioning inlets.59 This rule does not apply to al fresco dining areas or beer gardens that allow smoking.

In Queensland, smoking is not permitted within 4 metres of a non-residential building entrance. This applies to the entrances of public places such as offices, banks, non-licensed food premises, BYO restaurants, snack bars and cinemas. This law does not apply to residential premises (entrances to homes and multi-unit residential accommodation) or liquor licensed premises with a general, club or special (casino) licence or certain outdoor pedestrian malls.

In NSW the former State Government released a discussion paper for public consultation, Strategic Directions for Tobacco Control 2011–2016, in November 2010.55 The paper suggests a ban on smoking within 4 metres of the entrance to a public building.

Some arguments for

- Creating a buffer zone and banning smoking within 5 metres of entrances/openings to enclosed public places, within 10 metres of air-conditioning intakes and in relation to al fresco smoking bans would reduce the exposure of the public and employees to ETS;
- These options would also minimise the risk of smoke drift from smoking areas to non-smoking areas; and
- These options would contribute to the de-normalisation of smoking in the community.

Some arguments against

- This option could potentially create problems for some venues with limited space in al fresco dining areas or with dining areas situated near entrances to public buildings.
7.4 Option 4—Extend smoke-free restrictions to other public outdoor areas

Current Situation

In 2009 amendments were introduced to require smoke-free areas “between the flags” at a patrolled swimming area on a beach; in outdoor eating areas; within 10 metres of playground equipment in a public place; and in or on vehicles if someone under 17 years old is in or on the vehicle.

Subsequently, concern has been raised in relation to a number of other crowded outdoor public areas. These include:

- A range of ticketed outdoor events, for example concerts, plays and sporting events.
- Public transport waiting areas, for example taxi stands and bus stops;
- Outdoor market areas;
- Outdoor public entertainment events;
- At any outdoor event or place that has a defined area, for example within the boundaries of sporting arenas;
- Areas used frequently by children such as skate parks and children’s sporting grounds; and
- Swimming pools and other public swimming facilities such as dams and rivers.

A 2008 review of smoking in public spaces identified strong support from stakeholders for smoking bans to be implemented at all public swimming pools and other public swimming facilities such as dams. At this time local government raised concerns about practicalities of enforcement. However, experience in enforcing smoke-free legislation in WA and elsewhere has demonstrated high levels of compliance with smoke-free restrictions and minimal problems with enforcement when education and appropriate signage are in place.

These proposed reforms would expand smoke-free areas to include many outdoor areas where Western Australians meet, socialise, work and play sport. Increasing outdoor smoking bans also supports social change and creates a culture in which smoking is not considered the norm. Public surveys consistently show high levels of support for smoke-free legislation.

Research shows that limiting opportunities for smoking is a successful strategy for reducing cigarette consumption—smokers are less likely to light up and may be more motivated to quit. Additionally, research shows that smoke-free legislation implemented as part of a comprehensive tobacco control program can reduce adolescent smoking. Smoke-free legislation can also influence exposure to ETS in the home. Following the implementation of smoke-free legislation in Scotland, there was an increase in
the proportion of children reporting a complete ban on smoking in their household.25

**How it could work**

The proposal is to:

- Extend smoke-free restrictions to other crowded public outdoor areas. These could include all ticketed outdoor events (for example concerts, plays and sporting events); at public transport waiting areas (for example taxi stands, bus stops); at outdoor market areas; at outdoor public entertainment events; and at any outdoor event or place that has a defined area (for example within the boundaries of sporting arenas). It would also include areas used frequently by children such as skate parks, children’s sporting grounds, swimming pools and other public swimming facilities such as dams and rivers.

**Action by other jurisdictions**

A number of jurisdictions have already acted to prohibit smoking in a range of these outdoor public spaces. For example Queensland has prohibited smoking in:

- Outdoor public places such as patrolled beaches and around children’s playground equipment; and
- Major sport stadiums.

The NSW Government has released discussion documents seeking views from the community on the implementation of similar proposals.55

In March 2011 the Tasmanian government announced that it would develop legislation to:

- Make it illegal to smoke in and within 20 metres of the competition and seating area at all outdoor sporting venues;
- Ban smoking near playgrounds and in all pedestrian malls, bus malls and covered bus shelters;
- Introduce smoke-free areas in all outdoor public swimming pool premises; and
- Enable the Director of Public Health to specify some types of public gatherings (defined as “Places of Assembly” under the Public Health Act) as being smoke-free.
Some arguments for

- Extending smoke-free restrictions to a range of other crowded outdoor areas would reduce the exposure of the public and particularly children to ETS;
- Extending smoke-free restrictions would also contribute to the de-normalisation of smoking in the community, potentially reducing consumption of tobacco and preventing uptake of tobacco use among young people; and
- It would ensure a consistent level of protection from ETS across the majority of crowded outdoor public places in WA.

Some arguments against

- Some groups may argue that existing controls on smoking in outdoor public spaces are adequate and that there is no need to extend them.
7.5 Option 5—Clarification of local governments’ powers to regulate smoking in outdoor areas under their control

Current Situation

Section 107E of the Act states that:

107E. Local government legislative power not affected

Nothing in Section 107A, 107B or 107C is intended to limit the power conferred on a local government by the Local Government Act 1995 or any other Act to make local laws about matters mentioned in those Sections.

[Section 107E inserted by No. 22 of 2009 s9.]

The Department of Health has received some requests to clarify perceived uncertainties arising for some local governments that introduced bans prior to the most recent introduction (in 2009–10) of State laws on smoking in outdoor settings.

How it could work

The proposal is to

- Provide local government with the power to regulate smoking in outdoor areas under their control, for example in pedestrian malls and public transport waiting points.

Action by other jurisdictions

The Queensland Government recently implemented a transfer of power to local government to regulate smoking at pedestrian malls and public transport waiting points such as bus stops, taxi ranks and ferry wharves. South Australia has announced a similar measure.

From 1 January 2010, Queensland’s local governments can choose to regulate smoking in pedestrian malls and at public transport waiting points such as bus stops. This means that public concerns about exposure to tobacco smoke in crowded areas can be specifically targeted and enforced on a local level. Individual local governments can respond more directly to community concerns and manage appropriate allocation of associated enforcement and monitoring resources.

Some arguments for

- Extending smoke-free restrictions to a range of other crowded outdoor areas would reduce the exposure of the public and particularly children to ETS;
- Extending smoke-free restrictions would also contribute to the de-normalisation of smoking in the community, potentially reducing
consumption of tobacco and preventing uptake of tobacco use among young people; and

- The proposal would provide flexibility for local government to respond to local concerns about outdoor public places and resolve the current uncertainty.

**Some arguments against**

- Local governments may not respond in the same way to community concerns about ETS exposure and this mechanism does not provide a consistent level of protection across the state; and

- Some groups may argue that existing controls on smoking in outdoor public spaces are adequate and that there is no need to extend them.
7.6 Option 6—Introduce a complete ban on smoking in outdoor eating areas

Current Situation

Amendments introduced in 2009 introduced additional restrictions on smoking in public places including a ban on smoking in outdoor eating areas.

The Act states that a person must not smoke in an outdoor eating area unless the place in which the person is smoking is a smoking zone.

An outdoor eating area is a public place or part of a public place:

- That is provided, on a commercial basis, as an area where food or drink may be consumed by people sitting at tables; and
- That is not an enclosed public place.

Smoking bans apply in outdoor eating areas in which people eat and or drink while sitting at tables, for example restaurants, cafés, delis, lunch bars and other food outlets.

Liquor licensed premises may currently allocate a smoking zone of up to 50% of all outdoor eating areas, provided that the area is not already an “enclosed public place”.

A smoking zone is a place in a liquor licensed premises that:

- is not in a place on the premises to which a restaurant licence applies, is an outdoor eating area at the premises, and has a total area not more than 50% of the whole area of that outdoor eating area.

Adequate measures must be taken to ensure that smoking and non-smoking areas are clearly delineated at all times. This is to ensure that the boundary between the zones is clearly identifiable to a person in either zone.

Owners/occupiers of licensed premises are encouraged to reduce the potential of tobacco smoke exposure on their patrons and smoking in their premises generally, including outdoor eating areas, and can elect to ban smoking entirely in their licensed premises.

Staff in a liquor licensed premises must not be forced to provide service in a smoking zone and cannot be dismissed for refusing to do so.

The introduction of smoke-free areas in outdoor eating and drinking areas contributes to de-normalising smoking by separating it from the consumption of food and drink, and removing it from areas in which people congregate. Smoke-free outdoor eating and drinking areas also afford protection for staff that work in those areas and for the public that use them, from the harmful effects of environmental tobacco smoke.

Health groups have continued to argue that smoking in outdoor eating areas should be prohibited to protect public health.
How it could work

The proposal is to:

- require all outdoor eating areas, including those in licensed premises, to be smoke-free by a specified date.

Action by other jurisdictions

No jurisdiction has banned smoking in all outdoor eating areas. While Queensland, Northern Territory, ACT and WA have implemented complete bans in non-licensed outdoor eating areas, most jurisdictions provide similar arrangements for licensed premises to have a 50% smoking area in outdoor eating areas.

Tasmania has recently announced that it will prohibit smoking in all outdoor dining areas. This will apply to all eating establishments, whether licensed or non-licensed.

Some arguments for

- This proposal would reduce exposure of the public and employees to exposure to ETS;
- Smoke-free legislation contributes to the de-normalisation of smoking. Smoke-free laws can also have broader policy effects for example reducing cigarette consumption, reducing adolescent smoking and reducing children’s exposure to ETS in the home; and
- The proposal would ensure a consistent level of protection from ETS across all outdoor eating areas in WA.

Some arguments against

- Given the recent amendments came into effect only 6 months ago some groups in the community may argue that there should be a longer period of implementation before additional changes are made.
7.7 Option 7—Consider removing the smoking exemption applying to the Burswood Casino International Room

Current Situation

Smoking is prohibited in all enclosed public places in WA except for the International Room at the Burswood International Resort Casino. Sub-regulations (1) and (2) of Regulation 10 currently state that:

- A person must not smoke in an enclosed public place. Penalty: a fine of $2,000.
- Sub-regulation (1) does not apply to the International Room at the premises at Burswood Island that are the subject of a casino gaming licence granted under the Casino Control Act 1984, if the International Room has adequate ventilation.

The former Western Australian Government supported the exemption for the Burswood International Resort Casino (BIRC) International Room provided that the following conditions were met:

- That the BIRC International Room install the world’s best smoke extraction technology to minimise the effect of environmental tobacco smoke;
- That the BIRC work with employees (Staff Consultative Committee) and the Liquor Hospitality and Miscellaneous Workers Union (LHMU) on human resources issues associated with the new facility, and in particular on rostering policies. Importantly, that the BIRC will not discriminate against those who do not wish to work in the International Room;
- That the BIRC, as good human resource practice, have periodic independent monitoring of air in the new International Room and health checks of workers engaged in that area; and
- That the Government expects that the International Room is for genuine “high rollers” and not a public venue for gamblers who wish to smoke.

Burswood management has been required to provide 6-monthly reports to the Director General of the Department of Health (with copies to the WorkSafe Commissioner) confirming its ongoing compliance with the conditions detailed above.

However health groups have continued to argue that the exemption should be removed to require consistent application of smoke-free legislation across all enclosed public places in WA providing protection for employees and the public. There is strong evidence that ventilation is ineffective in eliminating the risks associated with exposure to ETS.60
How it could work

The proposal is to:

- Remove the smoking exemption applying to the Burswood Casino International Room by a specified date.

Action by other jurisdictions

All enclosed areas of casinos in South Australia, Tasmania and the ACT are required to be completely smoke-free. Smoking is also banned in all casinos in New Zealand.

Exemptions still apply to “high-roller” or “premium gaming areas” of casinos in WA, Victoria, Northern Territory, NSW and Queensland.

Some arguments for

- This proposal would reduce exposure of the public and employees to exposure to ETS (for which there has been no “safe” level of exposure identified);

- The proposal would ensure a consistent level of protection from ETS across all enclosed public places across WA, and uniform compliance with occupational health and safety legislation.

Some arguments against

- Other major casinos in Australia may continue to access smoking exemptions for high-roller areas, effectively placing Burswood Casino’s International Room at a competitive disadvantage.
7.8 Option 8—Extend smoke-free legislation to include common shared areas of boarding/lodging houses and residential strata complexes

Current situation

The issue of smoking in the common/shared areas of boarding and lodging houses has attracted concern from various groups for a number of years. Currently the common areas of boarding/lodging houses do not meet the definition of an enclosed public place under the legislation. Therefore residents of these premises are denied protection from exposure to ETS, apart from policies introduced by individual proprietors, which compounds existing health inequalities for this group.

In relation to the common areas of residential strata complexes there is a degree of uncertainty as to the extent to which these areas are currently captured by the definition of an enclosed public place under the legislation. Complaints on the matter are currently dealt with through strata companies or strata councils on an individual basis under the Strata Titles Act 1985.

Dealing with the issue of exposure to ETS in common areas in the thousands of residential strata complexes in WA on a case by case basis is both inefficient and inequitable. It also fails to provide the same level of protection from ETS in these places as compared to other public places in WA.

There would be considerable benefits for the public and particularly for residents, owners and occupiers in providing certainty on this matter. This approach would ensure a “level playing field” whereby protection from ETS is provided across all common areas of residential strata complexes and boarding houses rather than depending on action from individual proprietors or strata corporations. It is incongruous that Western Australians can enjoy public places free of smoke yet are denied protection from ETS exposure in common areas in densely-populated residential complexes.

It is also common practice for owners of rented apartments to make it a requirement of a lease that smoking is prohibited inside the rented premises. This often results in smokers moving outdoors or into common areas causing exposure to ETS and potential for smoke drift into nearby apartments.

How it could work

The proposal is to:

- Amend the Act and Regulations to include a legislative provision requiring that common areas in residential strata complexes and boarding/lodging houses are required to be smoke-free;
- These areas may include main entrances and common property spaces to which a number of owners or visitors may have access;
• Private residential units will not be required to be smoke-free under this proposal; and

• The owner corporation or the proprietor of a boarding/lodging house would be responsible for posting of appropriate signs and ensuring that common areas that are enclosed public places, such as thoroughfares and car parks are smoke-free.

**Action by other jurisdictions**

Currently restrictions over smoking in apartment blocks apply in NSW and Queensland but not specifically in other jurisdictions.67

In NSW, smoking in common areas that are accessible by the public is prohibited under NSW legislation (*Smoke-free Environment Act 2000*). Examples of such areas include main entrances and stairwells. There are no statutory laws that regulate smoking in the private areas of residential places although there is some case law in which the NSW Consumer Trader and Tenancy Tribunal have ruled on this issue.

**Some arguments for**

• Residents of residential strata complexes and boarding/lodging houses as well as visitors would be protected from exposure to ETS in common areas of these premises;

• The exposure of children and infants to ETS would be reduced;

• The problem of smoke drift from common areas into private smoke-free apartments would be resolved; and

• A consistent legislative standard would provide protection from exposure to ETS in all common areas of boarding/lodging houses and residential strata complexes reducing confusion and inequity where a minority of residents are protected while the majority are not.

**Some arguments against**

• Some may argue that common areas of residential strata complexes and boarding houses should be considered as private dwellings and not be subject to additional requirements.
7.9 Option 9—Amend the defence provision permitting display of tobacco products by specialist tobacco retailers

Current Situation

The Act banned the display of tobacco products and smoking implements in retail premises from 22 September 2010. However, the exemption in Section 23(4) of the Act permits “specialist retailers” to continue displaying tobacco.

The legislation places specific requirements on the classification of “specialist retailers”. A “specialist retailer” is defined as a person who conducts a business selling tobacco products by way of retail sale if:

- the person or any other person had been conducting that business on 1 July 2005;
- 80% or more of the average gross turnover of the business for the financial year 2004–05 was derived from the sale of tobacco products; and
- the business is conducted separately from, not in conjunction with, and not within the premises of, any other business.

Currently there are only a small number of “specialist retailers” in WA which meet these requirements.

Three issues have been identified in relation to the exemption for the display of tobacco products by specialist retailers:

- Should the current exemption for specialist tobacco retailers to display tobacco products be subject to an end date?
- Should the display exemption in Section 23(4)(b) of the Act be deleted to restrict product displays that are visible from a public place outside specialist retail outlets, in alignment with existing bans that apply to product displays by all general tobacco retailers?
- Should specialist tobacco retailers be required to provide the evidence of 2004–05 financial information as well as more recent financial data to show 80% or more of their current business is derived from tobacco sales?

Currently the Act provides an open ended exemption for specialist tobacco retailers who can demonstrate they can meet the specific criteria. However an anomaly is created, particularly in relation to the operation of Section 23(4)(b). While all other tobacco retailers across WA are required to place their tobacco products and smoking implements out of sight, an adjacent specialist tobacconist will still be able to display up to one square metre of tobacco products that are visible to passers-by, including children, undermining the intention of the display ban which is to further de-normalise tobacco to children.
Concerns have been raised by other retailers which argue that this measure is anti-competitive and treats one type of retailer differently to the others. Additionally, health groups have argued for the symbolic importance of the introduction of a complete ban on the display of tobacco in line with that adopted by other states and recommended by the World Health Organization.

Since the complete display restrictions came into place (September 2010), a number of other retailers have been attempting to argue that they should be allowed to access the defence. The intention of the legislation was clearly to introduce a ban on the display of tobacco and tobacco products and the requirements to access this defence were very tightly defined. The provision of additional current financial data to show 80% or more of their current business is derived from tobacco sales will assist the Department of Health in monitoring the appropriateness of the application of defence provisions.

Concerns have also been expressed regarding the legality of specialist tobacco retailers displaying smoking implements that may be visible from outside the store. The types of smoking implements covered by the display ban in the legislation include cigarette papers, pipes, cigarette holders, rolling machines, hookahs and water pipes intended for the use of smoking tobacco products, and any other smoking implements which may be used for smoking tobacco. Matches and cigarette lighters are not smoking implements, so are not covered by the display ban and may continue to be displayed.

The Act banned the display of smoking implements from 22 September 2010. The defence for specialist retailers in Section 23(4) of the Act is currently limited to tobacco products and packages. While it seems anomalous that specialist retailers are permitted to display up to 1 square metre of tobacco products visible from a public place outside the retail premises, yet cannot display smoking implements, broadening the exemptions in the Act is not an appropriate option. Such an approach would undermine the intent of the display ban. It is also important to note that the additional allowance for up to 1 square metre of public display of products in a specialist retail outlet provided for under Section 23(4)(b) was only included to maintain some degree of a “level playing field” at a time when all general tobacco retailers were permitted to have up to one square metre of tobacco product on public display.

In light of the above, should the exemption in 23(4)(b) be removed so that no display of tobacco can be seen from outside all retail premises?

Health groups have argued that this provision, along with the open ended exemption for specialist retailers to display tobacco products, undermines the effectiveness of the legislation in ensuring that the display of tobacco products and smoking implements is prohibited in WA.

A prohibition on the advertising and display of tobacco products is a critical component of an effective tobacco control program. As stated by Dr Janet
Woollard MLA in the Second Reading Speech when the *Tobacco Products Control Amendment Bill 2008* was introduced into State Parliament:68

“The display of tobacco products in stores contributes to the perception that cigarettes are widely and easily available, and that smoking is the norm. ...Two recent Australian studies demonstrate the powerful impact of retail displays on both children and adult smokers.... children who viewed cigarette displays perceived that it would be easier to purchase tobacco and tended to recall displayed cigarette brands more often than the respondents who saw no cigarettes. ...adults found that cigarette displays act as cues to smoke even among those not explicitly intending to buy cigarettes and among those trying to avoid smoking.”

**How it could work**

The proposal is to:

- Amend the Act to remove the exemption in Section 23(4) completely within two years to bring all retail outlets into alignment across WA, as has been the case in other jurisdictions such as NSW.
- Amend the Act to remove the exemption for specialist retailers to publicly display up to one square metre of tobacco products, to bring them more closely in alignment with the complete bans on product displays for all other tobacco retailers.
- Amend the Act to require specialist retailers to provide the evidence of 2004–05 financial information as well as more recent financial data to show 80% or more of their current business is derived from tobacco sales. The simplest approach could involve inclusion of an additional requirement to provide financial records for the most recently completed financial year to show that 80% or more of current business is still derived from tobacco sales.

**Action by other jurisdictions**

All jurisdictions have a ban on the display of tobacco products in retail outlets in place or have announced their intention to regulate. NSW and Tasmania currently allow some exemptions or special phased-in arrangements for tobacconists. The ACT, the Northern Territory and Victoria phased in the display ban by January 2011. South Australia has announced that a ban will be in place by 2012, and Queensland will have a ban in place by mid-2011.

NSW provides an exemption for tobacconists that is more broadly defined than in the WA legislation. The ban on display of tobacco was phased in, with large retailers having to comply by 1 January 2010 and small retailers having to comply by 1 July 2010. Specialist tobacconists have until 1 July 2013 to comply with the display bans.
In March 2011 the Tasmanian government announced that it would introduce legislation to ban the display of cigarette packets and cartons in specialist tobacconists.

**Some arguments for**

- These measures would create a level playing field for all retailers in WA which sell tobacco products;
- These measures would ensure that complete bans on the display of tobacco products from public places are in place in WA within two years;
- These measures would ensure that environmental cues to smoke provided by the display of tobacco products and smoking implements are minimised in all retail outlets; and
- These measures would reduce children’s exposure to cigarette displays and contribute to de-normalising smoking.

**Some arguments against**

- Given the small number of specialist retailers in WA the impact of the displays in these outlets is already limited.
7.10 Option 10—Amend the requirements relating to the size and display of price boards and price tickets and include a requirement to display graphic health warnings at point of sale

Current Situation

The Regulations set out the restrictions relating to the content and display of price tickets and price boards. The Department of Health has received numerous complaints regarding the visibility and prominence of price boards. This is particularly anomalous given the ban on the display of tobacco products. Some concerns have also been expressed about the presence of prominent Quitline information on price boards for tobacco products potentially leading to undesirable associations between information regarding the availability and price of tobacco products and a well recognised smoking cessation service.

How it could work

The proposal is to:

- Amend the Regulation to require the size of price boards to be reduced to A4 size, and only allow them to be displayed when price tickets are not on public display on the outside of tobacco storage units at the same premises; and

- Amend the Regulation to require that the public display of price boards or price ticketing for tobacco products must be accompanied by the display of a graphic health warning sign, from a selection of the most effective of the current Commonwealth health warnings for tobacco products.

Action by other jurisdictions

In the ACT price tickets must comply with size and design requirements (using 12 point Times New Roman font, and being no larger than 15 centimetres squared). In NSW either a single price board or price tickets may be displayed, but not both. Price tickets may not use more than two colours, and must be 35 centimetres squared or less in area. The information that can be included on a price ticket is limited to the name of the product line, a bar code, the price and a symbol identifying the country of origin. A health warning must be displayed at the point of sale and on any vending machine. In the NT either a price board or shelf tickets may be displayed, but not both. Tasmania and Victoria have implemented requirements for the display of large, full colour graphic health warning signs at retail points of sale.

In Tasmania in 2004 a statutory requirement was issued to all licensed tobacco retailers to display a specific graphic health warning on the retail tobacco display (as opposed to at the point of sale). The “diseased mouth” graphic warning is the same one as appears on tobacco packages. The...
regulatory system allows the point-of-display warnings to be varied in a flexible manner without legislative changes.47

Some arguments for

- The proposal would bring the restrictions on the display of price boards and ticketing in WA in line with other jurisdictions and would be more consistent with the ban on the display of tobacco products;
- This would result in Quitline information no longer being required on price boards, as it could be included as part of the associated health warning; and
- Health warnings on packets of tobacco products have been successful in increasing the level of consumer awareness regarding the harmful effects of tobacco use. The display of the most effective health warnings at retail points of sale is expected to further reinforce the provision of timely and accurate health information regarding tobacco use to consumers.

Some arguments against

- Some tobacco retailers have previously raised concerns that some graphic health warning signs may offend some customers.
7.11 Option 11—Introduce a requirement that tobacco can only be sold by persons over the age of 18 years

Current Situation

The Act prohibits the sale and supply of tobacco to minors and prohibits the purchase of tobacco on behalf of people under 18 years (second party sales). Additionally it requires proof of age to be produced on request at the point-of-sale or the point of delivery for indirect sales.

The Act also requires anyone who sells tobacco products to be licensed. However, it does not contain provisions on a minimum selling age.

Employees under 18 years of age are currently allowed to sell tobacco products in retail outlets. There is evidence from compliance monitoring activities that some sales people under the age of 18 years do sell tobacco products to minors. It is also possible that young people may feel coerced into selling cigarettes to their peers and may not feel as confident in asking to see ID or refuse sales.\(^70\)\(^71\)

Australia has ratified the World Health Organization Framework Convention on Tobacco Control, including article 16(7), which recommends prohibiting the sale of tobacco products by persons under the age of 18 years.

How it could work

Employees under the age of 18 years would not be permitted to sell tobacco products in retail outlets.

Action by other jurisdictions

No state or territory in Australia has implemented such legislation. Other countries, such as Singapore and Norway, do prohibit the sale of tobacco products by persons under the age of 18 years.

Some arguments for

The proposal could:

- Decrease the illegal sale of tobacco products to minors;
- Increase consistency in approach with current legislation prohibiting tobacco sales to minors;
- Reduce the exposure of employees under 18 years of age to tobacco products;
- Increase consistency with legislation whereby minors are prohibited from selling alcohol; and
- Reduce peer pressure to sell tobacco products to young people.
Some arguments against

- The proposal could potentially increase the difficulty of young people obtaining employment in some retail outlets if they are not permitted to sell tobacco products; and
- The proposal could impose difficulties on small businesses run by families.
7.12 Option 12—Amend the tobacco licensing provisions

Current Situation

Provisions under the Act that require tobacco retailers and wholesalers to be licensed commenced on 31 May 2007. Anyone in Western Australia who sells tobacco products by retail sale, wholesale sale or indirect sale must be licensed. This includes tobacco products sold by vending machine, through the post and by internet.

Tobacco retailers in WA are required to provide proof of holding a licence to tobacco wholesalers to purchase tobacco products.

Applications for a tobacco licence are made to the Department of Health. Application fees range from $51 for retailers up to $127.50 for wholesalers. The total cost of a new tobacco license ranges from $204 for a retailer to $510.50 for a wholesaler. The cost of renewing an existing tobacco licence currently ranges from $153 for a retailer up to $383 for a wholesaler. Once a licence has been issued, all licence holders receive information that contains relevant information about the sale and promotion of tobacco products and other requirements that must be complied with as part of the licensing scheme.

At the time the new provisions were introduced, the Department of Health initially wrote to approximately 5,000 businesses providing advice about the new licensing requirements and provided application packs. Up to mid-October 2007, the Department received approximately 3,800 tobacco licence applications.

However, a very high proportion of applications received were completed incorrectly or had insufficient supporting documents, which resulted in a considerably greater than anticipated amount of time being spent on follow-up and corrections.

Extensive consultation between the Department of Health and tobacco retail and other industry representatives resolved the majority of these issues and identified the need for further legislative amendments to clarify and streamline the administrative and reporting arrangements for licences.

A range of administrative changes are proposed to clarify the information that should be provided by applicants seeking a new licence or a renewal of a licence.

In addition, the following issues have been identified regarding the renewal, of licences:

- Should a limited period of grace for expired licences and transition to a new licence be introduced (perhaps 21 days)?
- Is there a need to consider amendments to Sections 36 and/or 37 of the Act to clarify the eligibility and documentation required of government agencies or other non-incorporated entities seeking to...
apply for a tobacco sellers licence (eg prisons, detention centres, associations)?

- Should the ability to issue a licence for temporary premises; eg at music festivals, be removed given the likelihood of these events being frequented by youth and the difficulty in ensuring these transient operators are aware of their obligations under the legislation?

Tobacco products are already widely available throughout WA and there have been concerns raised regarding the difficulty of ensuring that temporary sellers are aware of and compliant with their obligations under the Act. In addition, as a high proportion of these events are targeted to young people, this measure is consistent with other policies focusing on reducing availability of tobacco to young people and de-normalising smoking.

**How it could work**

The proposal is to:

- Amend the Act and Regulation to clarify and streamline the administrative and reporting arrangements for tobacco licences;
- Remove the ability to issue a licence for temporary premises; eg at music festivals;
- Amend the Act to provide a limited period of grace for expired licences and transition to a new licence (perhaps 21 days); and
- Amend the Act if required to clarify eligibility and documentation required to issue licences to Government agencies or other non-incorporated entities where tobacco products are sold (eg prisons, detention centres, associations).

**Action by other jurisdictions**

The majority of jurisdictions have tobacco licensing schemes in place. The administrative arrangements for these schemes vary considerably to meet local needs and administrative systems.

**Some arguments for**

- These proposals will streamline and clarify the administrative and reporting arrangements for tobacco licences and improve the efficiency of the licensing system for both the Department of Health and retailers. The need for many of these changes has been identified through consultation with tobacco retailers and industry representatives.
- Removing the ability of tobacco licences to be granted to temporary events will contribute to the de-normalisation of tobacco use particularly for young people.
Some arguments against

- There may be some unanticipated effects of the proposal which may increase the administrative burden for the Department of Health. However, such an increase is considered likely to be only of a minor nature, and in any event, the Department is currently required to deal with an increased administrative burden caused by the current inflexible provisions within this part of the Act.
7.13 Option 13—Amend the investigation provisions in the Act

Current Situation

The Act provides for appointment of investigators to seek evidence of suspected offences under the Act, to assess whether the provisions of the Act are being complied with and for administrative purposes.

For the purposes of the Act a Police Officer may exercise the powers, and perform the functions, of an investigator; and has the same authorities and protections that apply under this Act to an investigator.

Under the provisions of Section 76 of the Act the CEO of the Department of Health appoints public servants as investigators to carry out investigations. These investigators form the Tobacco Control Branch of the Environmental Health Directorate of the Department of Health.

The Act also allows for the appointment of Restricted Investigators. Restricted Investigators investigate matters relating to smoking in enclosed public places and new prohibitions on smoking in certain outdoor public places and include:

- Environmental Health Officers (EHOs) as defined in the Health Act 1911 Section 3(1);
- Persons employed or engaged by a local government to ensure compliance with State or local government legislation; eg Rangers

Issues have arisen under Section 77(1) which relates to the appointment of restricted investigators. The current provision is inefficient and time consuming. It is proposed to remove the requirement for the CEO to appoint a “person” as long as they belong to one of the class of persons created and listed under Regulation 59.

The Food Act 2008 provides a useful model. Section 122 provides for the appointment of authorised officers by an enforcement agency. Section 123 provides that each authorised officer have a certificate of authority provided by the enforcement agency. These two Sections of the Food Act 2008 could be used as templates for the appointment of EHOs, Rangers and others by a local government.

Concerns have also arisen in regard to the requirement in sub-regulation 15(2) to “put oral direction in writing”. This provision has created some difficulties especially in light of the introduction of infringements system for some breaches of the smoking regulations.

In cases in which a direction to stop smoking is made and immediately complied with, it would be unnecessary to provide a written notice. In cases in which a direction is made and not complied with, the issuing of an infringement notice would include full details of the time, place and nature of the alleged breach, making the provision of a separate written notice unnecessary.
In addition, it is proposed to amend Section 119 to add a clause allowing for the automatic forfeiture and disposal of forfeited things to the Department of Health. Potential problems have been identified during the course of court proceedings where an omission to request forfeiture and disposal could lead to the Department of Health having to return contraband property, even when a conviction has been recorded.

**How it could work**

The proposal is to:

- Remove the requirement for the CEO to appoint a “person” under Section 77 as long as they belong to one of the class of persons created and listed under Regulation 59;
- Remove the requirement in Regulation 15(2) relating to offences against the prohibition on smoking in enclosed public places to “put oral direction in writing”; and
- Amend Section 119 to add a clause allowing for the automatic forfeiture and disposal of forfeited things to the Department of Health.

**Some arguments for**

- The proposals would improve efficiency of the operation of the Act.

**Some arguments against**

- Some stakeholders may consider that existing provisions are sufficient.
7.14 Option 14—Amend the provision providing a defence for smoking in a live stage performance

Current situation

Regulation 10(1) states that a person must not smoke in a public place. Regulation 10(3) provides a defence against this offence if the person is an actor who smokes for the purposes of a performance; the occupier consented to the smoking and did so before the performance commenced. This is similar to Section 32(1)(f) of the Act.

Concern has been raised regarding the application of this provision to live stage performances targeted at children. The Department of Health received a complaint regarding a character in a season of "Disney on Ice" performances smoking a cigarette in an elongated cigarette holder during part of this predominantly children's stage show.

Clearly this is inappropriate in a performance for which a significant majority of the audience will be children.

The proposal is to restrict smoking during live performances if the performance is aimed at or expected to be attended by a significant number of children.

How it could work

The proposal is to:

- Amend the Regulation to add a further condition under Regulation 10(3) to ensure that smoking for the purpose of a performance is not to be permitted if the performance is aimed at or expected to be attended by a significant number of people who have not reached 18 years of age.

Some arguments for

- The option would prevent exposure of children to inducements to smoke and contribute to de-normalising smoking in WA; and
- The option provides a balanced response to the issue by protecting children, while continuing to allow the defence provisions that apply to live stage performances targeted at adults.

Some arguments against

- Some groups in the community may suggest the measure amounts to censorship.
- Others may argue that the defence should be removed completely as there is no longer a justification for allowing smoking in venues that are smoke-free as part of dramatic performances.
7.15 **Option 15—Amend the provisions relating to the Western Australian Health Promotion Foundation (Healthway)**

**Current Situation**

Healthway (the Western Australian Health Promotion Foundation) was established in 1991 under Section 15 of the *Tobacco Control Act 1990* as an independent statutory body reporting to the Minister for Health. Healthway now functions under Part 5 of the *Tobacco Products Control Act 2006*, with a role to fund activities that promote good health, particularly that of young people.

Healthway provides sponsorship to sport, arts, and racing organisations to promote healthy messages, facilitate healthy environments and increase participation in healthy activities. Healthway also provides grants to a range of organisations for health promotion activities and projects to encourage healthy lifestyles, as well as grants for health promotion research.

Currently, some of the provisions in the Act relating to Healthway are narrowly defined and more accurately reflect the period of time during which replacement of tobacco sponsorship was a priority for the organisation. Given the legislative bans on tobacco sponsorship, and the much broader scope of Healthway’s activities in the twenty-first century to address the challenges of tobacco, alcohol and obesity, it is questionable whether some of these provisions remain relevant and effective.

Two major issues have been identified in relation to Healthway:

- Currently the Act contains provisions that Healthway should “endeavour to ensure” that not less than 30% of monies paid from Healthway’s annual appropriation in any one financial year is disbursed to sporting organisations, and likewise not less than 15% is disbursed to arts organisations. These arbitrary funding caveats restrict the most effective use of funds in line with objective assessment processes aligned to Healthway’s current strategic priorities.

- The composition of Healthway’s Board is prescribed in Section 61(1) and is essentially unchanged from that first prescribed in the *Tobacco Control Act 1990*. It is worth noting that only three positions on a Board of eleven are nominees of organisations with expertise in public health. There may be benefits in amending the composition of the Board to ensure a greater range and depth of public health expertise, particularly in relation to public health issues that have emerged since Healthway was first established.

Currently, Healthway assesses all applications for sport, arts or racing sponsorship against standardised selection criteria. The existing requirements on the allocations of funds across different categories of sponsorship impose a funding bias and undermine the standardisation of objective assessment processes. For example, an arts organisation is likely to receive substantially
less funding than a sport organisation that receives a comparable assessment score, given that the available pool of funds for sports organisations is required to be twice that available to arts organisations. The funding caveats prescribed in Section 71(8) potentially restrict the most effective use of funds.

The composition of Healthway’s Board is prescribed in Section 61(1). Only three positions on a Board of eleven are nominees of organisations with expertise in public health; ie the nominees of the Australian Medical Association, the Australian Council on Smoking and Health (ACOSH) and the nominee of the Chief Executive Officer of the Department of Health. The Australian Council for Health, Physical Education and Recreation (ACHPER) also provides a nominee to the Board; however ACHPER’s expertise is not specifically related to key public health issues such as smoking, alcohol use and nutrition.

Given the purposes of the Act as outlined in Section 3, and the challenges associated with the burden of chronic disease in Western Australia, ensuring the depth of public health expertise on the Board is extremely important.

The current Regulation to the Act stipulates funding for the Foundation for the 2006 year only, and therefore requires annual changes to reflect the current Consolidated Account appropriation. It is proposed to amend the Regulation to reflect the annual standing appropriation which includes CPI adjustments. This type of approach has been used in other legislation such as the Barrow Island Act 2003.

How it could work

The proposal is to:

- Amend Section 71(8) of the Act to remove the arbitrary funding caveats. This would permit the most effective use of funds, in line with an objective assessment processes aligned to Healthway’s strategic priorities.
- Amend the Act to change the composition of the Board of Healthway, ensuring a greater range and mix of public health expertise.
- Amend the Regulation to reflect the annual standing appropriation which includes CPI adjustments. This type of approach has been used in other legislation such as the Barrow Island Act 2003.

Action by other jurisdictions

Victoria is the only other state which has a similar health promotion foundation to Healthway. This is the Victorian Health Promotion Foundation, also known as VicHealth.

A Board of Governance comprising eleven ministerial appointments and three members elected by Parliament oversees VicHealth. Two Board Committees, several Advisory Panels and a dedicated and professional staff support the Board. The role of the VicHealth Board, acting on behalf of the Minister for Health, is to govern the organisation so that VicHealth fulfils its statutory
responsibilities and delivers on its aims and objectives while acting ethically and prudently, and remaining within the law.\textsuperscript{72}

Strategic priorities for VicHealth are broadly consistent with those of Healthway. VicHealth’s Strategy and Business Plan 2009–2013 features a particular focus on increasing participation in physical, social and economic environments, and the role they play in priority health issues. A key strategic priority aims to reduce health inequalities. Major health challenges include: tobacco consumption; overweight and obesity; physical inactivity; social exclusion; discrimination; violence; alcohol misuse; the links between social and economic disadvantage and poorer health and UV protection.

These priorities are consistent with VicHealth’s obligations under the \textit{Tobacco Act 1987}. They also align with Victorian State Government policy and program directions, and national and international health promotion priorities and policies.

Some arguments for

- The proposals will increase the flexibility and potentially the effectiveness of Healthway, allowing them to select the most effective project proposals to improve health in WA without considering arbitrary funding caveats;
- The proposals to reform the funding caveats will create a level playing field for all community organisations in WA; and
- Changing the composition of the Board of Healthway could potentially ensure a greater depth of public health expertise and a broader mix of skills to provide strategic advice to Healthway.

Some arguments against

- Some organisations currently receive an advantage under the current arrangements. This would no longer be the case if the proposal were to be implemented.
Part Eight: Participation in the review

The Department of Health is extending an invitation to individuals and organisations across WA to have your say on how we can reduce tobacco-related harm and achieve a healthier community in WA.

Some of the options canvassed in this paper may be controversial. As always with tobacco control, there may be competing health and business interests. That is why it’s time for the whole community to have its say. The Department of Health wants to hear your views. Which of the policy options in this Discussion Paper do you support? What ideas do you have to help us stop the harm caused to our community by smoking?

A submission form has been developed to assist with responding to the review. It is included in this discussion paper for your convenience; however other written submissions are also welcome. This form is also available at the web address: www.tobaccocontrol.health.wa.gov.au/review/

Your submission will be taken into account in the formulation of recommendations for amendments to the Act, which will then be submitted to the Minister for Health for consideration.

Copies of this discussion paper can be accessed at: www.tobaccocontrol.health.wa.gov.au/review/ or by emailing the following address:

simon.wheeler@health.wa.gov.au

To participate in the review, comments must reach the Tobacco Policy Branch at the Department of Health by Close of Business on Friday, 10 June 2011.

Comments and submissions can be posted to:

Attention: Simon Wheeler
Project Officer—Tobacco Review
Tobacco Policy Branch
Department of Health
PO Box 8172
PERTH BC WA 6849

Or can be emailed to simon.wheeler@health.wa.gov.au including in the subject heading – Consultation

Late submissions may not be accepted and will be considered at the discretion of the Department of Health.
Copies of the legislation are available on line at [www.slp.wa.gov.au](http://www.slp.wa.gov.au) or can be purchased from the State Law Publisher, Ground Floor, 10 William St Perth

Individuals or organisations who wish their comments to be treated confidentially should indicate this clearly, by marking correspondence private and confidential. However, any submission may be subject to release under the Freedom of Information Act 1992.

Only written submissions will be accepted.

Anonymous submissions will not be accepted.

The submissions should clearly indicate whether it is being made by an individual or an organisation. Please include contact details including name, address, telephone number and/or email contact.
Part Nine: Submission to the 2011 review of the Tobacco Products Control Act 2006

Name:

Organisation:

Mailing Address:

Phone:

Email:

Confidential

yes  no

Please indicate if you are:

under the age of 18

an owner or manager of a business that sells tobacco products

an employee of a business that sells tobacco

a professional association or nongovernment organisation

involved in the tobacco industry other than by retailing

a health or medical professional

a teacher, educator or youth worker

a union

involved in the advertising industry

an interested member of the public

other (please specify)
1. Are the current provisions of the Tobacco Products Control Act 2006 and Regulations meeting the stated objective to “To reduce the incidence of illness and death related to the use of tobacco products.... and to promote good health and activities which encourage healthy lifestyles.”

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Why? / Why not?

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2. Are further reforms required?

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3. Do you support Option 1—A ban on the sale of fruit and confectionery flavoured cigarettes and splittable packs?

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4. Do you support Option 2—Preventing tobacco purchases being included in reward schemes?

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Why? / Why not?

5. Do you support Option 3—Introducing a buffer zone around entrances, air conditioning intakes and in relation to alfresco eating areas?

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Why? / Why not?

6. Do you support Option 4—Extending smoke-free restrictions to other public outdoor areas?

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Why? / Why not?
7. Do you support Option 5—Clarifying local governments’ powers to regulate smoking in public outdoor areas under their control?

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Why? / Why not?

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8. Do you support Option 6—Introducing a complete ban on smoking in all outdoor eating areas?

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Why? / Why not?

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9. Do you support Option 7—Removing the smoking exemption applying to the Burswood Casino International Room?

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10. Do you support Option 8—Extending smoke-free legislation to include common shared areas in boarding and lodging houses and residential strata complexes?

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11. Do you support Option 9—Amending the defence provision permitting display of tobacco products by specialist tobacco retailers?

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Why? / Why not?

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12. Do you support Option 10—Amending the requirements relating to the size and display of price boards and price tickets and including new graphic health warnings?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Why? / Why not?

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______________________________________________________________________________
13. Do you support Option 11—Introducing a requirement that tobacco can only be sold by persons over 18 years?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
</table>

Why? / Why not?

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________________________________________________________________________
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14. Do you support Option 12—Amending the tobacco licensing provisions?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
</table>

Why? / Why not?

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15. Do you support Option 13—Amending the investigation provisions in the Act?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
</table>

Why? / Why not?

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16. Do you support Option 14—Amending the provision providing a defence for smoking in a live stage performance?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
</table>

Why? / Why not?

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17. Do you support Option 15—Amending the provisions relating to the Western Australian Health Promotion Foundation (Healthway)?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Somewhat</th>
</tr>
</thead>
</table>

Why? / Why not?

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18. Do you have any further comments regarding new provisions for the control of tobacco products in Western Australia?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Please give detail

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19. Do you have any further comments regarding the operation or enforcement of the Act and Regulations?

| Yes | No |
---|---|
Please give detail

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20. Are there other issues that could be considered that would assist the Act meet its objective, "To reduce the incidence of illness and death related to the use of tobacco products... and to promote good health and activities which encourage healthy lifestyles."

| Yes | No |
---|---|
If yes, what are the issues and how could they be addressed?

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________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
References


49. Government of Western Australia, Department of Health. Unpublished data; 2011


