



Australian Hotels Association
WESTERN AUSTRALIA

6th February, 2009

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Dr J M Woollard MLA
Chairman
Education and Health Standing Committee
Parliament House
PERTH WA 6000

Dear Dr Woollard,

re: Inquiry into the Tobacco Products Control Amendment Bill 2008

The Australian Hotels Association (WA) is pleased to provide the following for consideration in the Education and Health Standing Committee's Inquiry into the Tobacco Products Control Amendment Bill 2008.

While the AHA is pleased to support the majority of the Bill, including measures to ban smoking in public areas such beaches and cars carrying children, we have a number of concerns about the impact of banning smoking on private land including hospitality business outdoor areas such as beer gardens, outdoor dining and drinking areas.

The Australian Hotels Association is Western Australia's peak tourism and hospitality industry association representing over 1,000 licensed hospitality and accommodation businesses across the state. Our membership includes internationally recognised accommodation hotels and resorts, taverns, hotels, small bars, restaurants and suburban and country pubs.

The Past Ten Years – a Record of Success

Over the past decade the AHA has a demonstrated record of cooperation and support of the Western Australian government's implementation of indoor smoking restrictions and the eventual bans within all enclosed hospitality and licensed premises that occurred in 2006.

Despite the deliberate misrepresentation advocated by publicly funded anti tobacco lobbyists and their allies, the AHA has a proven record in supporting practical and realistic solutions.

This has been demonstrated through the cooperation with the 'Court Coalition Government' in 1999, which resulted in Western Australian being the first Australian state to implement enclosed public places smoking bans.

Again in 2004, the AHA worked with the Gallop Labor Government to support a gradual and practical phase-in of a ban, which culminated in the smoking curtain falling in 2006, and all indoor areas being smoke free.

Successful smoking bans were achieved by working closely with the then Minister for Health, the Hon Jim McGinty MLA, in developing and implementing one of the world's most successful and cooperative total indoor smoking bans.

WA's model for phased-in practical smoking bans has been recognised nationally and internationally as leading world's best practice in industry government collaboration to bring about behavioural change.

The AHA does not retreat from the fact that it is a strong and fierce advocate of its member's interests and has been highly successful in achieving practical, common sense solutions through cooperation and collaboration with Government.

Our success however, is being deliberately misrepresented by those with financial and political interests in advancing additional and further public funding, or anti tobacco campaign research.

Our success can be demonstrated as follows:

- Providing Government and policy makers with expert practitioner advice;
- Recommending practical and realistic solutions that can be implemented;
- Identifying legal and regulatory options that provide legislators with simple and practical industry-backed solutions to ensure the restrictions were implemented successfully;
- Industry education and information on the actual operation and implementation of bans;
- Providing businesses with the planning tools to support adjustments in operations to cater for no smoking indoors;
- Public endorsement and support for the Government's final restrictions, models and implementations.

Without the AHA's support and collaboration, Western Australia could have ended up like many European countries, such as France and Spain, where smoking bans are law, but ignored by the public and many hospitality operators.

Flawed Policy Development and Drafting

The author of this Bill has failed at every step, in establishing solid research-based foundations for the development of public policy and proper and effective community consultation.

The author has not engaged in proper consultation or research-based processes as has been undertaken by all previous governments.

There was no consultation with the AHA in the development of the Bill, nor was there any known consultation with hospitality industry operators.

There has been no evidence provided of research demonstrating the specific dangers and need for banning smoking in outdoor areas versus the exposure of patrons in street-aligned alfresco areas and their exposure to the carcinogens discharged by trucks, buses and cars.

Of equal concern and importance is the lack of community surveys undertaken, the lack of hospitality venue and patron surveys undertaken, and the fact that no practical solution or plans have been offered up to manage the practical implementation of the Bill.

Despite reasonable requests, the author of the Bill has refused to meet and consult with the AHA regarding technical flaws and practical problems in implementing the proposed legislation.

The author has also failed to disclose what level of contact and/or relationships exist between her and the anti tobacco lobbyists and/or their allies.

The author has also failed to disclose who and if any anti tobacco lobbyists and/or their allies were involved in drafting the Bill and her Second Reading Speech to the Legislative Assembly.

Specifically the author has failed to disclose her direct relationships with person or persons who are, or who have actively been, lobbyists and/or advocates of the anti tobacco movement.

The failure of all of the above disclosure together with the refusal of the author to meet with us regarding its contents and the absence of any public consultation substantially undermines the transparency required in an open and accountable democratic system.

Furthermore, the final Bill illustrates significant deficiencies in a number of key areas including:

- The definition of an outdoor drinking or eating area in relation to property ownership;
- The failure to recognise the industry already self-regulates in outdoor areas;
- The financial impact on hotels;
- The negative impact on responsible service of alcohol principles;
- Targeting the display of tobacco products on licensed premises only;
- Patently unfair penalties for venues;
- The lack of practical enforcement procedures;
- The failure to understand the role hotels and taverns can play in reducing the overall number of people that smoke in the community.

As previously outlined the AHA has not been presented with any evidence, documented support or demonstrated public demand for alfresco outdoor smoking bans.

The recognised success of the indoor smoking bans and the minimal financial harm to hospitality businesses was due to the fact that smoking patrons were provided with an alternative in outdoor areas.

The success of patron compliance with total indoor bans was underpinned by the fact that smoking patrons had comfortable, yet attractive outdoor smoking areas. The community cannot afford for the successes of the past decade to be compromised by ill conceived and ideologically-driven vested interest radical proposals that could become law.

We look forward to meeting with yourself and members of the Committee on Monday 16th February 2009.

Yours sincerely,

A handwritten signature in black ink that reads "Bradley Woods". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end of the name.

Bradley Woods
CEO/EXECUTIVE DIRECTOR

Tobacco Products Control Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Dr Janet Woollard MLA)

Tobacco Products Control Amendment Bill 2008

A Bill for

An Act to amend the *Tobacco Products Control Act 2006*.

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This Act is the *Tobacco Products Control Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows —

- 5
- (a) sections 1 and 2 on the day on which this Act receives the Royal Assent;
 - (b) the rest of the Act within 6 months of sections 1 and 2 receiving the Royal Assent.

3. Act amended

10 This Act amends the *Tobacco Products Control Act 2006*.

4. Section 4 amended

In section 4 insert in the appropriate alphabetical order:

outdoor eating or drinking area means —

- 15
- (a) a part of a thoroughfare or public place in which tables, chairs and other structures are provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public; or
 - (b) any outdoor area within any licensed premises defined in section 3 of the *Liquor Control Act 1998*.

20 ***outdoor playing area*** means an area primarily designated for the use of children for play or sporting purposes;

passenger car has the same meaning as in the *Motor Vehicle Dealers Act 1973*;

25 ***safe swimming area*** means a beach or part of a beach identified as a safe swimming area by flags, marker buoys or otherwise.

5. Section 22 replaced

Delete section 22 and insert:

22. Display of tobacco products

- 5 (1) A person who is the responsible person in relation to
licensed premises on which tobacco products or
smoking implements are sold must ensure that
customers cannot see any of those products or
10 implements from inside or outside of the licensed
premises.
Penalty applicable: see section 115.
- (2) This section does not apply to:
- 15 (a) the display of tobacco products and smoking
implements to a customer at his or her specific
request; or
- (b) the display of tobacco products and smoking
implements by customers on licensed premises.

6. Sections 106A to 106D inserted

20 After section 106 insert:

106A. Use of tobacco products in passenger cars an offence

- 25 (1) A person must not use tobacco products in a passenger
car at any time if one or more passengers is a young
person.
Penalty applicable: \$150.
- (2) For the purposes of this section, a young person has the
meaning given to it in section 98.

106B. Use of tobacco products in outdoor eating or drinking areas an offence

- (1) A person must not use tobacco products in an outdoor eating or drinking area.

5 Penalty applicable: \$150.

- (2) The license holder, if the outdoor area is part of licensed premises, or the person otherwise responsible for the outdoor eating or drinking area must not allow the use of tobacco products in that area.

10 Penalty applicable: see section 115.

- (3) The Governor may make regulations that are necessary to be prescribed for the signage to be displayed on outdoor eating or drinking areas prohibiting the use of tobacco products.

106C. Use of tobacco products in outdoor playing areas an offence

A person must not use tobacco products in an outdoor playing area.

15 Penalty applicable: \$150.

106D. Use of tobacco products in safe swimming areas an offence

A person must not use tobacco products in a safe swimming area.

20 Penalty applicable: \$150.

25

7. Section 115 amended

In section 115(b) in the Table:

- (a) in column 1 delete “s. 22(1), (2), (3), (4)” and insert:

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s. 22(1).

- (b) in column 2 after “s. 106” insert:

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s. 106B(2).

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