

EDUCATION AND HEALTH STANDING COMMITTEE

**INQUIRY INTO THE TOBACCO PRODUCTS CONTROL AMENDMENT
BILL 2008**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 11 FEBRUARY 2009**

SESSION SEVEN

Members

Dr J.M. Woollard (Chairman)

Mr P. Abetz

Mr I.C. Blayney

Mr J.A. McGinty

Mr P.B. Watson

Hearing commenced at 3.51 pm**MITCHELL, COUNCILLOR WILLIAM**

**President, Western Australian Local Government Association,
examined:**

The CHAIRMAN: On behalf of the Education and Health Standing Committee, I would like to thank you for your interest and your appearance before us today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into the Tobacco Products Control Amendment Bill 2008. You have been provided with a copy of the committee's specific terms of reference. The Education and Health Standing Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing. Hansard will be making a transcript of the proceedings for the public record. If you refer to any document or documents during your evidence, it would assist Hansard if you could provide the full title for the record.

Have you completed the "Details of Witness" form?

Councillor Mitchell: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Councillor Mitchell: I do.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

Councillor Mitchell: I did.

The CHAIRMAN: Do you have any questions about being a witness at today's hearings?

Councillor Mitchell: No.

The CHAIRMAN: Your submission was very brief. I was hoping it was very brief because you were coming here to elaborate on your submission. I will give you an opportunity to elaborate first and then Mr Watson will ask some questions.

Councillor Mitchell: The submission was brief but we probably do not have much to elaborate on. I am sure that all members are aware that any changes to the Health Act trickle down to local government to make sure that those are implemented. The submission is based around the concept that if there is enforcement in tobacco products, the first point of enforcement should be the police department primarily because our environmental officers are nine-to-five people. If there are any breaches to this legislation, they will probably be after hours. Secondly, if there are breaches, we have occupational health and safety issues in sending our employees into unsafe workplaces. Thirdly, if there is alcohol involved, the safety of those officers needs to be considered as well. Our first preference would be that any enforcement should be with the police department. Acknowledging that that is probably not going to be the case, the intergovernmental agreement says that any new functions put on to local government by the commonwealth or the state should be followed by funding. Indeed, this is a new function, so it would be another chore that local government officers would have to carry out. If it was to be enforced rather than there being a reaction to this, we would be seeking extra funding from the government to carry that out.

The CHAIRMAN: I want to take you back a step. You have immediately come to the issue of enforcement. I believe that 10 councils have implemented the bans. Over several years my own council has asked me to take this up with the government so that changes are introduced through legislation. You have not actually stated in your response where WALGA stands on the three areas that we are looking at. You will have discussed it at WALGA. I am interested in the three areas of smoking in cars, alfresco eating and point of sale.

Councillor Mitchell: Cars are problematic. It would be incredibly hard to enforce any new legislation.

The CHAIRMAN: Are you supportive of the intent of the bill?

Councillor Mitchell: A general statement would be that of course we do not condone smoking. We understand the health risks associated with it. We also understand the health risks for passive smokers. Having said that, the councils that you refer to that have brought in their own local laws have done so on the understanding that it would be hoped that peer pressure would enforce these laws rather than local governments being very proactive in enforcing them. A number of councils have had laws in place for a number of years relating to children's playgrounds and smoking bans on beaches et cetera. It is certainly not supposed to be a local law or it would be policed 24/7.

Mr J.A. McGINTY: I would be surprised if WALGA has a view on smoking in cars or even point-of-sale advertising or displays because it is not in your jurisdiction, it is not within your area of interest.

Councillor Mitchell: That is very true.

Mr J.A. McGINTY: I congratulate local government for having risen to the challenge on the other issues that the Chair has spoken about, particularly alfresco dining. In all the key areas, except Subiaco, where there is provision for significant alfresco dining, bans have either been implemented or have agreed to be implemented. Perhaps I could include Stirling as well, although it is further out and it does not have the same concentration of alfresco dining areas. Is WALGA supportive of the ban along the lines of what has been implemented by those major councils?

<033> H/5

[4.00 pm]

Councillor Mitchell: Again, the policy on individual alfresco or whatever areas is a matter for individual jurisdictions. We have the overarching role, I suppose, of looking at whatever the state may say or do. In this case, that is our response to this inquiry. If it became a mandated state act, we would be mandated to enforce that under regulation.

Mr J.A. McGINTY: And therefore a question of resourcing.

Councillor Mitchell: Correct. Individually, it is completely up to those councils. Where they have come from in their own individual situations is that the alfresco areas obviously go out, in a lot of areas, onto the pavement and into local government land, if you like. They are reacting to a call from their local ratepayers on what should or should not happen.

Mr J.A. McGINTY: Does WALGA have a view?

Councillor Mitchell: No, we leave that to individuals.

Mr J.A. McGINTY: Is it the same with beaches and children's playgrounds?

Councillor Mitchell: Indeed. We have not formed a state position on whether that should happen on a statewide basis.

Mr J.A. McGINTY: Right. That probably answers the question you asked.

The CHAIRMAN: In fact, I preferred the answer I got. I do not think you were listening. I preferred the answer that you gave that you were, in general, in support of the principles behind the bill. I think you were reading the document when that was said, Hon Jim McGinty.

Mr J.A. McGINTY: I heard that, but I do not think he was actually saying that though.

The CHAIRMAN: That was my impression of what he was saying. Did I mishear?

Councillor Mitchell: No, I think it is a general duty of care with smoking but I do not think you can read that as being WALGA's endorsement of this bill.

The CHAIRMAN: So you are not endorsing the bill. Are you opposing the bill?

Councillor Mitchell: If the bill were passed and these regulations became mandatory for local government to carry out in a proactive form rather than as a lot of the ancillary smoking legislation is being administered at the moment or, alternatively, in a reactionary way—that is, we react to complaints and try to do something about them rather than patrolling and making sure it does not happen—we would be seeking some support from the state government to allow councils, in the initial stages, to employ extra resources such as environmental health officers and/or to allow overtime for those who already exist.

Mr P.B. WATSON: Mr Mitchell, you said before that you do not want to send your environmental officers into situations like that. Would they not be doing that already?

Councillor Mitchell: No.

Mr J.A. McGINTY: I just want to probe that a little. You mentioned before that your environmental health officers work nine to five. That is when people use kids' playgrounds and beaches. The issue of the timing does not arise there. It does arise in alfresco situations. The bulk of alfresco dining is now covered as a result of actions by individual councils, which have adopted that as a policy and therefore their environmental health officers or rangers will be taking the appropriate action, I should imagine. I have some knowledge of Fremantle but I do not have particular knowledge of the others.

Councillor Mitchell: I do not think you can say that it is a majority. I think only three or four jurisdictions have local laws concerning non-smoking in alfresco areas.

Mr J.A. McGINTY: I thought it was a lot more than that.

Councillor Mitchell: No.

The CHAIRMAN: A list was provided to us by ACOSH on the back of its submission.

Mr J.A. McGINTY: Where local laws have been made or a commitment given to do them or things of that nature.

Councillor Mitchell: I think they sent around the metropolitan area. I would be surprised if it is more than half a dozen. I would be interested to know the figure.

Mr J.A. McGINTY: They are the areas in which the predominance of alfresco areas are located.

Councillor Mitchell: Perhaps that may be the case.

Mr J.A. McGINTY: It really does not matter for some councils, because they have minimal alfresco facilities anyway.

Councillor Mitchell: That is true, but if you are making a state law, you want people to react to it on a statewide basis.

The CHAIRMAN: The City of Rockingham made alfresco areas smoke-free as of 1 July 2008, and Fremantle from 15 August 2008. Alfresco areas in the City of Perth will be smoke-free from 1 July 2009. All beaches in the City of Joondalup have been smoke-free since 2007, and alfresco areas will be smoke-free effective from early 2009. The Town of Vincent has smoke-free alfresco dining areas

from January 2009. The City of Nedlands has some restrictions under consideration. The City of Geraldton-Greenough has made a decision to develop a comprehensive smoke-free policy. The City of South Perth has a policy on smoke-free alfresco areas under consideration, as has the City of Stirling and the City of Mandurah. As I stated previously, the City of Melville has been very supportive of this area but has asked for legislation to assist it.

Councillor Mitchell: That is five councils currently with local laws, three or four with them under consideration and a couple not associated with alfresco areas but with beaches and playgrounds. As I said, there are 139 councils in Western Australia. You certainly cannot say that it is the majority.

Mr J.A. McGINTY: There are not many alfresco facilities in Sandstone, are there?

Councillor Mitchell: I am sure there would be.

Mr P.B. WATSON: I am just trying to think how many there are in Albany. There would be only two there anyway.

The CHAIRMAN: We might get population statistics for those areas. Basically, then, your response is a bit like the police department and the Commissioner of Police, who is looking for the dollars for his area. You are not saying that you support the bill.

Councillor Mitchell: It is not WALGA's role to support any legislation that would impose costs on its member councils.

The CHAIRMAN: So, provided that the bill is implemented in a way that will not cause any additional costs for local councils, would WALGA be supportive of the measures proposed in the bill?

Councillor Mitchell: That question itself is problematic because I do not think you are able to do that. Once it is legislated, it is either in or out. The question is about how it is policed or implemented. If the state is willing to accept that this will be a peer pressure-type bill, as has been the case with the various bits of smoking legislation that have occurred in the past 18 months or so for which there has been very little active policing by councils yet the community has accepted that you do not smoke in bars any longer and you do not do this or that, it will not be an impost on local government and the community will accept it.

Mr J.A. McGINTY: I do not often go to bars but when I have done so in recent times, I have never seen anyone smoking. Anecdotally, other people have said that you just do not see people smoking.

Councillor Mitchell: Again, the best example of that is in Kalgoorlie, which I believe has the highest percentage of smokers of any jurisdiction. There have been issues with the smoking bans in bars in that a number of the Kalgoorlie bars do not have breakout areas and therefore the patrons break out onto the pavement, resulting in public drinking issues, litter issues with butts and so on, and the blocking of normal passage along footpaths. A lot of that seems to have been resolved.

Mr J.A. McGINTY: Yes. In fact, you are quite right. That was when it was initially introduced. The only pushback I heard of was from Kalgoorlie.

The CHAIRMAN: Since we sent you a copy of the bill and invited your comments, have you canvassed local councils?

Councillor Mitchell: We have. Our process is to go through a zone structure, both country and metro, and then to have state council endorse policies or otherwise on a bi-monthly basis. This has gone through state council. The position is, as I articulated at the beginning, that if the bill is brought in and there is a policing requirement, it should stay with the police. If not, appropriate resources need to be given to local government to police the bill.

The CHAIRMAN: I am very happy with the intent of your submission but I am still unsure as to the position of local councils in relation to the communications between you and them. It has been suggested to me in the past that when I write to councils I should be writing to WALGA. Then I

wrote to WALGA. It now appears that the committee should possibly have written to local councils, because you are not giving me the information I want in terms of the feedback you have had from councils on the measures in this bill.

<034> D/4

[4.10 pm]

Councillor Mitchell: I think I am giving you the feedback, Chair, but perhaps you are not liking the answers I am giving you. The feedback is, as you have stated and as Mr McGinty has stated, that a number of councils have brought in by-laws, local laws, to prohibit alfresco smoking etc. They number about half a dozen at this stage. They have done that with a fair bit of support and commitment by the ratepayers and their elected reps.

The CHAIRMAN: Are they the bigger councils?

Mr J.A. McGINTY: Not necessarily the bigger.

Councillor Mitchell: In terms of population, no.

Mr J.A. McGINTY: But they are the ones where the most people are—sorry.

Councillor Mitchell: They are the social hubs, I think, as Mr McGinty was saying. If people do alfresco dine, they go to the Northbridges, the Fremantles, the Vincents etc.

Mr J.A. McGINTY: Yes.

The CHAIRMAN: So the areas where councils would be most affected by this legislation have already introduced measures off their own bat then.

Councillor Mitchell: Some of them; half a dozen, as we said earlier. I think in terms of the health risks no-one can deny that there is either a passive smoking health risk or a disturbing nature of someone smoking next to someone eating; and it is probably not desirable as a good night out to have that occur. But to go down the path of enforcing their own local laws, they are not prepared to do that or have not been prepared to do that up-to-date, even though four or five councils have done that. So the state position is that they are happy to leave things as they are at the moment; that it seems to be self-regulated in the main; that the customer will not come back if they have an unsatisfactory dining experience due to a smoker next door to them; and the licensee or whatever takes that into consideration and does their own self-regulation. We are happy to leave that as it is; that is the industry's statement. If that is not to be the case and the state decides to legislate to make it a smoking-no-go area, then we are looking at the costs associated to implement that legislation.

The CHAIRMAN: I think, as you said earlier, in many of the councils where these measures have been introduced, it is self-enforcing.

Councillor Mitchell: Yes.

The CHAIRMAN: I know certainly you mentioned the playgrounds earlier and I think the City of Melville was one of the first cabs off the rank in terms of signage in children's playgrounds.

Councillor Mitchell: Yes.

The CHAIRMAN: That has had a very good reception from the community. I have also heard of some of these councils who have introduced the alfresco bans that people are crossing the road to sit in an area where they cannot have the effects of passive smoking or second-hand smoke. So I think the community very much appreciates the position that those councils have taken.

Councillor Mitchell: Just one point of correction, I suppose, Melville is the only council to my knowledge that has smoking bans in playgrounds, and they have been leaders in that regard, for three or four years to my knowledge. But certainly the patronage of areas that do not have break-out areas or mixed smoking or whatever, people vote with their feet, and I think that is equally as effective as legislating.

Mr P.B. WATSON: Mr Mitchell, you have your zone meetings and that. Has this ever come up in regional areas?

Councillor Mitchell: Yes. It does not come up, it is generated through a policy team unit at WALGA and then we seek the opinions of metro and non-metro.

Mr P.B. WATSON: So what is the feedback then in regional areas?

Councillor Mitchell: Very similar to the metro; they are happy for the pubs and clubs and restaurants to self-regulate; but if they have enough complaints from patrons, they will change their ways anyway.

The CHAIRMAN: For the councils that have already implemented measures, do you know if they have issued any infringements, in the councils that have already introduced bans in alfresco areas

Councillor Mitchell: I believe that when they do initially proclaim a local law that they do ask their environmental health officers, particularly in the beach-smoking area, to patrol in the first instance; and I think a series of warnings are given for a short period of time and that is gradually phased out when people understand that this is a non-smoking beach, this is a non-smoking alfresco area et cetera. We tend to work with our communities rather than belt them.

The CHAIRMAN: Sorry, you tend to what?

Councillor Mitchell: To work with our communities rather than belt them, if the local laws are built in.

The CHAIRMAN: I think that some communities would like a bit more from their local councils, in fact a great more input, into directions that councils are taking, but we will not move into some of those areas now.

Councillor Mitchell: Noted.

Mr P.B. WATSON: It is interesting to hear you talk about the cost shifting, because the Commissioner of Police said that they do not mind doing the cars one, but they want to have resources to cover for it, too; from the health department actually they were going to seek that from. I do not know whether that is in your area. I know Mr McGinty is here, but I think education is a very good idea and if we can get that from the health department, I think that is a good way to go.

Councillor Mitchell: I agree with you, and I think that the track record of gradually implementing smoking bans in certain areas and not having to actively enforce that legislation has been pretty good. As Mr McGinty said, neither of us frequent bars often but the ones that I do have to have a meeting with, or whatever, it is just accepted these days.

Mr J.A. McGINTY: I do not think you got the answer that you were hoping for but I think we understand perfectly WALGA's position.

The CHAIRMAN: Yes, we understand that it is a case of "show me the money" basically.

Mr P.B. WATSON: I can understand that from local government though.

Councillor Mitchell: But having said "show me the money", the major change in non-smoking areas has been the bars, and we have not had to go down the path of actively enforcing that. So I cannot see what would change in alfresco.

The CHAIRMAN: In fact, even with the bars it has been self-enforcing once legislation has been introduced.

Councillor Mitchell: Exactly.

The CHAIRMAN: Which is why, I guess, I am disappointed that you were not a bit more positive towards this legislation, because I would have thought that certainly now my local council website talks about council being there for community needs and response to the community. I would have

thought that WALGA as a whole would have had a similar philosophy in terms of your responsibilities. So I would have expected a bit more from you.

Councillor Mitchell: Well, we react to demands, and I would put it back to you that this demand has not been there.

The CHAIRMAN: Has not been?

Councillor Mitchell: Has not been there. It is not something that councils are lobbied on day in, day out.

The CHAIRMAN: No, I have just been lobbied by my local councils, but maybe other members have not been lobbied and maybe those councils need to actually lobby you more as a central body for support for these measures.

Councillor Mitchell: Indeed.

The CHAIRMAN: So maybe I should have written to all those councils then.

Councillor Mitchell: No, I do not think that would have been a good idea.

The CHAIRMAN: Is there anything that you would like to add?

Councillor Mitchell: No; I am quite happy, Dr Woollard.

The CHAIRMAN: When you have asked about the resources, do you have any indication of what type of resources you would actually be seeking in support?

Councillor Mitchell: Again it would be commensurate with the level of enforcement that is required. If it is environmental health officers physically going in and out of bars between—whatever it is—five o'clock and closing, or eateries or whatever it may be, then the maths can clearly be done on the cost of that. But I think we have come to a common agreement that the concept of these bills is all about having peer support, or peer pressure I should say, to make them workable rather than enforceable.

The CHAIRMAN: So really that is something that I guess you would agree would be looked at in terms of regulations rather than anything being added to this legislation.

Councillor Mitchell: Well, indeed. It is: how long is a piece of string? I would imagine that if there is active enforcement, then there would be some cost, probably not excessive but I do not believe it will go down that path.

Mr P.B. WATSON: I think peer pressure—people will know it is illegal for someone to smoke and they will go up and tell them. I would.

[4.20 pm]

Councillor Mitchell: That works quite well when you and I first sat down at the table, but late into the evening, if someone has consumed alcohol and they are fairly large and gregarious, then you may be in trouble.

The CHAIRMAN: I possibly could have asked some of the previous people who have given submissions, but in terms of the recommendations that have come from WALGA, have you looked at the enforcement in other states? For instance, in Queensland, where these measures were introduced several years ago, could you tell me what happens there with the councils?

Mr J.A. McGINTY: They do not have as many small councils in Queensland as we do here.

The CHAIRMAN: Really?

Councillor Mitchell: They did when the legislation was introduced. No, I could not answer that question, I am sorry.

The CHAIRMAN: I do not know if that is something you might like to look into in terms of supporting your submission, and if you would like to look into that to give some support to your

submission in terms of some reimbursement to councils, then we would certainly accept that, as a committee, from you, so that that can be taken into consideration.

Councillor Mitchell: Yes, happy to do that.

The CHAIRMAN: Is there anything further you would like to add?

Councillor Mitchell: No, I am quite happy, thanks, Madam Chair.

The CHAIRMAN: In that case, I would like to thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added by these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript. Thank you once again for coming today.

Councillor Mitchell: It was a pleasure.

Hearing concluded at 4.21 pm