

Office of the Mayor

Date: 27 January 2009

Your Ref:

Enquiries:

Our Ref: 71624
901184



Dr David Worth
Principal Research Officer
Education and Health Standing Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Dr Worth

INQUIRY INTO THE TOBACCO PRODUCTS CONTROL AMENDMENT BILL 2008 INVITATION TO PROVIDE SUBMISSION

I thank you for the opportunity to comment on this very important piece of legislation. It relates to an issue that the City of Joondalup feels very strongly about and has been actively supporting and promoting for some time now.

The smoking prohibitions proposed in the Bill are commendable and align closely to the City's own position. It is also satisfying to receive support at a State level after the hard work local governments have put into instigating and promoting outdoor non-smoking initiatives over the past two years.

In terms of the content of the Bill, I provide the following comments:

s. 106A - Though not necessarily relevant to local government, I appreciate the intent of this proposed offence. It should be noted, however, that without the support of the WA Police to enforce the law, such good intentions may be undermined.

s. 106B - The City of Joondalup has recently introduced a local law amendment to give effect to the same offence. The issue with the City's law, however, is that as a local government it is restricted in its capacity to apply the law to land that is not owned by or vested in the City to manage.

It is assumed by the manner in which this section is drafted that the offence extends to outdoor eating areas located on both public and private land. The City avidly supports such an initiative as it is a significant extension on the area currently captured by the City's local law.

The term "*the person otherwise responsible for the outdoor eating or drinking area*" used in s.106B(2) is, in the City's opinion, too broad a term to refer to an individual who may be subject to a penalty under the law. When drafting the City's local law amendment, the Joint Standing Committee on Delegated Legislation did not support the use of such terms and preferred instead applying the offence to the proprietor only. The rationale being, that if a proprietor is held accountable, all staff would be adequately directed to adhere to the law's requirements in order for the proprietor to avoid penalty. In general, the Standing Committee was very hostile to the notion that an employee could be subject to a penalty, which the current wording may not avoid. Consequently, I would advise that the wording be reviewed.

The City also understands that should this Bill be enacted, it would be prudent to repeal its own local law amendment so as to avoid any inconsistency with State legislation. As this can be achieved during the City's eight year local law review process, there is no concern that introducing State legislation will have implications on the City's current local law nor impose additional administrative costs on the City.

s. 106C - I fully support the inclusion of this section in the legislation given that the City has considered a similar initiative in the past.

s. 106D - The City fully supports the application of smoking prohibitions on metropolitan beaches, however, this section appears to capture only safe swimming areas indicated by markers. The City's position is that the prohibition should apply to the entire beach area to capture not only the public health aspect of the ban, but also cigarette-butt littering and general amenity concerns.

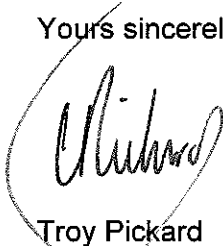
Without expanding the prohibition's area of application, the City is concerned that its own "smoke-free beaches" local law would be inconsistent with the State approach, which the City does not agree with. Repealing the City's local law amendment to remain consistent with State legislation would be considered unfavourably by the City.

I would also like to take this opportunity to propose that an additional offence be included in the Bill to prohibit smoking within 5m of entrances and exits of all government owned buildings. The City has recently adopted a local law amendment for its own buildings which reflects the Department of Health's current non smoking policy. The introduction of this Bill would be a good opportunity to enshrine the policy in statewide legislation, creating an enforceable offence for a policy that is already widely accepted.

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In conclusion, I would like to congratulate you on your efforts to initiate this Bill and thank you for seeking my views on the draft. I support wholeheartedly the principles contained within the proposed legislation and I look forward to hearing of its progress.

Yours sincerely

A handwritten signature in black ink, appearing to read "Troy Pickard", is written over a faint circular line.

Troy Pickard
Mayor