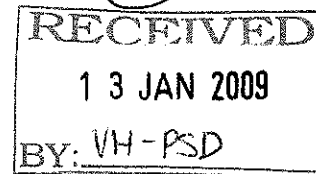


Submission ①



10 January 2009

The Principal Research Officer
Parliament House
Perth
Western Australia 6000

Dear Sir,

Inquiry into Tobacco Products Control Amendment Bill 2008

Thank you for the letter, and the enclosure, posted on 5 January 2009, and sent to me by Tim Hughes, Research Officer. I am enclosing herewith my submission to the Education and Health Standing Committee, as it deliberates over the Tobacco Products Control Amendment Bill 2008, introduced by Dr. Janet Woollard MLA.

Yours Sincerely

D. R. Peiris
D. R. Peiris

SUBMISSION

(1) **Name of Committee:** Education and Health Standing Committee

(2) **My Name:** Peiris Telephone No

(3) **Occupation:** Registered Nurse, working in the aged care sector of the health service. I work through a nursing agency, and therefore have the opportunity to go to, and observe the practices within, a broad range of aged care facilities.

(4) I will be happy to appear before the Committee to present my case.

(5) **My General Attitude:** I believe it would be fair to say, that those older Australians who enter nursing homes, to live out their final years, are hoping that the conditions of their existence, will be as similar as possible to that which they experienced in their own homes. In the context of this discussion, there will then be two distinct groups of residents, 'smokers' and 'non-smokers'. Balancing the rights of each group, has been the task of nursing home proprietors and managers, and with a few exceptions, their performance has been dismal.

Overall, there is no conception of the need to ensure, that when a smoker goes out of the building to smoke, it is done in such a way that the 'smoke' remains outside, and does not enter the building, carried in the draught of air passing through open doors and windows. Many of those who contribute to the problem are employees. The living conditions for those non-smokers in nursing homes (both residents and employees), is anything but similar to that which they experienced in their own homes, and from the point of view of the employees, it is contrary to occupational health and safety regulations.

Representations made to nursing home proprietors and managers, have fallen on deaf ears. The Occupational Health and Safety Department has been fascinating in its inaction. The Health Department couldn't care less, and the Standards and Accreditation Agency have remained moribund. Across the political and bureaucratic spectrum, from the Federal and State Health Ministers, to the Aged Care Complaints Agency and other government departments which might even remotely be connected with this issue, the response has been 'zilch'!

There are two issues which carry political implications, arising from the foregoing. (1) Philosophically, it appears to be self evident, that nobody should have their health damaged, by the deliberate activities of anybody else. Damage to person or property is covered by the provisions of the Criminal Law and Tort. The failure to include damage to health through exposure to passive smoking, within the provisions of Tort, by an Act of Parliament, appears to me to be a serious inadequacy in the law of Tort. (2) At a time when a need to encourage the broader community to lead healthy lives has been recognised, due to the escalating cost associated with hospitalisation following on from the obesity and diabetes epidemics, it would be remiss on the part of politicians to fail to

take every possible step to protect the health of those who are seeking to protect their own health. **Effective government intervention is essential. This is one area wherein, social change will not come in the absence of social control.**

When those who are accommodated within aged care facilities, are exposed to the effects of passive smoking, this becomes a failure on the part of the proprietors and/or managers of those facilities to meet the need to provide the residents with a safe, healthy environment in which to live, and the employees with a safe, healthy environment in which to work. The entry of smoke into a nursing home, has much in common with smoking within a motorised vehicle, in the presence of a child. In both instances, there is a captive population, without a voice to express their concern, but in possession of all of their civic and political rights, being dealt with in a manner which is not of their choosing.

(6) In summary: The present arrangements to protect nursing home residents and employees from the harmful effects of passive smoking, are ineffective. Parliament, as the elected representatives of the people, has the duty to legislate, in order to protect the health of non-smokers, in particular, those who reside and work in nursing homes. In doing so, Parliament will benefit society as a whole, by reducing the overall cost associated with health care in hospitals.

(7) Recommendations: Make it unlawful for anybody to smoke, on any property, connected with health care. This means that those residents who smoke, those employees who smoke and those visitors and contractors who smoke, will have to remove themselves from the property, and stand on the public foot path, if they intend to smoke. **Nothing less than this will deliver the results which are being looked for.** Failure to meet this requirement should be penalised by a substantial fine which constitutes a realistic deterrent.

A fine of \$150-00 appears to be woefully inadequate, because it does not reflect the scope or the extent of the damage which could be inflicted in such facilities. In any health care facility, the health status of those attending, will already be compromised. To expose the numbers of individuals concerned, to the harmful effects of passive smoking, should attract a minimum penalty of \$500-00 and a maximum penalty of \$1000-00, in my opinion.

(8) My position in regard to the Bill: I am in favour of this bill, because I see marked similarities between the position of children, trapped in a car with a smoking adult, and nursing home residents (and employees), trapped in an enclosed space, said to be a facility which cares for, and promotes health!

(9) My reasons for supporting the Bill: The health of the community is at risk from a variety of sources. It is prudent to act whenever possible, to reduce the overall risk, because failure to do so will inevitably increase costs associated with health care.

(10) The changes I am hoping for: I would like to see the ban on smoking in any health care facility in WA (inclusive of public or private hospitals, specialist in-patient and out-

patient clinics, general practitioner's surgeries, nursing homes and hostels), incorporated as a Section of the 'Inquiry into Tobacco Products Control Amendment Bill 2008', or as an Appendix to that Bill. If it is being added as a Section, a suitable position for it might be as section 106A (3). This is because the position of nursing home residents and minors in motor vehicles is very similar.

(11) Suggested new wording: 106A might be re-written as.....

Use of Tobacco products in passenger cars, and/or public or private hospitals, specialist in-patient and out-patient clinics, general practitioner's surgeries, nursing homes, and/or hostels, will be an offence

106A(3) could read.....

No person, whether a resident, employee, visitor, contractor, accidental entrant or unlawful entrant, may smoke or facilitate the smoking by another, of Tobacco products, on any property designated as a health care facility (for the purposes of this Act, health care facility will be inclusive of public and private hospitals, specialist in-patient and out-patient clinics, general practitioner's surgeries, nursing homes and hostels).