

IMPERIAL TOBACCO AUSTRALIA LTD:
SUBMISSION TO EDUCATION AND HEALTH
STANDING COMMITTEE
INQUIRY INTO THE
TOBACCO PRODUCTS CONTROL AMENDMENT
BILL 2008
JANUARY 2009

1.0 INTRODUCTION

Imperial Tobacco Australia Ltd (ITA) welcomes this opportunity to contribute to the Education and Health Standing Committee Inquiry into the *Tobacco Products Control Amendment Bill 2008*. The Terms of Reference being:

1. To consider the adequacy of the proposed actions in the Bill to protect children and adults from the harmful consequences of passive smoking.
2. To consider the adequacy of the proposed actions in the Bill to protect children and adults from tobacco promotion.

ITA supports the sound, reasonable and practicable regulation of tobacco products. We do not support Regulatory initiatives designed for the purpose of scoring points on a National Tobacco Control Scoreboard.

ITA has demonstrated our commitment to the practical regulation of tobacco products by working extensively and constructively throughout the development and implementation of the *Tobacco Products Control Act 2006* with the WA Department of Health.

However, we would like to express our disappointment at the period of time dedicated to making submissions and the notification process associated with this inquiry.

Many of our WA retailers have informed us that they were neither aware of the *Tobacco Products Control Amendment Bill 2008* nor the subsequent call for submissions. Licensed tobacco wholesalers and retailers appear not to have been directly informed by the Education and Health Standing Committee of the inquiry even though they would be directly affected by the Bill's proposals.

The two-week period in which to make written submission (which includes the Australia Day public holiday) is wholly inadequate. This Bill will have a direct impact on retailers, cafes and hoteliers livelihoods at a time of severe economic uncertainty, they must be given adequate time to make their views heard.

ITA participates in a range of Government consultations that are relevant to our business. We do this on the basis that our views will be considered in an objective manner and that the evidence we provide will be properly evaluated, with due regard given to relevant legal and legislative requirements and the principles of best practice regulation, which also relate to tobacco. Comments made by the Chairman of the inquiry during the second reading of the Bill suggest that ITA, the tobacco industry, retailers, hoteliers or any other party opposed to the Bill cannot expect to receive a fair hearing.

We believe that a proper and legitimate function of government is to safeguard the autonomy of the individual and his or her ability to be self-determining. Key to this is the ability to make informed decisions, whether or not those are “popular” with others, with an awareness of the individual’s responsibility as a member of a greater society. In our view individuals are the best judges of their own interests. It is the role of the state to protect such freedoms, not to remove them or to make such decisions on an individual’s behalf. Such freedoms should be protected by the state and should, in particular, be protected from simple majority rule.

We believe that, while complex, justification for any restrictions on personal authority, on the basis that the restriction is to prevent harm to others must be based on solid, factual evidence (rather than emotive speculation). It should be treated consistently with other potential risks which are either accepted or legislated against by the law maker.

When removing any such freedom, a burden of the highest order is placed on the regulator to examine such risks from a factual point of view and to be satisfied that the risk is; a) real; b) of a quality which has led to similar restrictions for other risks and; c) incapable of being managed in another way which does not restrict personal authority. Convenience or ease of application or enforcement is not enough to justify any restriction where other options are possible. This must be a minimum expectation for any state which attaches value to the freedom of the individual.

There is an increasing view by some that on too many occasions the tobacco control movement has now become one about political correctness rather than about protecting the public’s health¹. In a survey commissioned by the Cancer Institute NSW smokers felt that the government agenda on tobacco issues was potentially influenced by a range of other political factors². These concerns even led Jeff Stier an associate director of the American Council on Science and Health (ASCH.org) to state on smoking “Overstating the case may help the advocates win this political battle but at significant cost to the overall public-health war”.³

Recent findings in the UK tobacco consultation has prompted critics to accuse the Government of spending taxpayers’ money on establishing groups and funding non-government anti-smoking organisations designed merely to back the Government line on public health issues, in order to make a position appear more popular than it really is. This has in turn led to calls for the law to

¹ Prof. Michael Siegel of Boston University School of Public Health, <http://tobaccoanalysis.blogspot.com>

² NSW Smokers’ Attitudes and Beliefs change over three years, Cancer Institute NSW Monograph, February 2008

³ Smoke & Mirrors, Butts lies and public health, www.nypost.com 23 October 2007

be reformed to resemble the United States system, under which groups receiving government grants can only spend money raised through other means to fund lobbying, and wholly state-funded bodies are banned from lobbying altogether⁴.

It is vital that the principles of good regulation and transparency are upheld by the Standing Committee throughout this process, regardless of any single individual(s) personal view or personal agenda in relation to tobacco.

We agree that in general matters of public health, some individuals may require support in their decision making, but this should be achieved in ways which are educative and enabling, rather than disproportionate, coercive or discriminatory.

⁴ Government “fixing health consultations” with taxpayer-funded groups, www.telegraph.co.uk 2 January 2009

2.0 POINT OF SALE

The Bill proposes to amend the *Tobacco Products Control Act 2006* and prohibit the display of tobacco products at the point of sale. The rationale for this proposal is:

1. that tobacco displays constitute a form of marketing and promotion;
2. that tobacco displays encourage individuals to smoke; and
3. that seeing tobacco displays causes young people, occasional smokers, smokers who are attempting to quit and former smokers to smoke.

ITA does not agree or accept these views. ITA encourages the Government to respect the principles of adult choice and freedom of competition when regulating tobacco products. ITA does not support putting tobacco products out of sight in retail outlets.

The visibility of tobacco products is an important aspect of the consumer purchasing process. It provides consumers with the information to make a genuine selection from the wide range of tobacco products, brands and prices that are available in retail outlets, whilst contributing to fair and undistorted competition between tobacco manufacturers and retailers alike.

The negative impact of a tobacco display ban on fundamental rights and economic interests of various stakeholders is disproportionate, when compared to the unproven, yet claimed benefit, of reducing smoking rates and tobacco consumption.

Only two and a half years ago WA tobacco retailers were required to comply with changes to tobacco displays reducing the majority of outlets to a maximum display area of one square metre. The process of compliance to the legislation was complex, expensive and time consuming. ITA worked extensively and closely with the Department of Health throughout this process.

The rationale given in 2005 in drafting the Act at the time was for exactly the same reasons put forward by the Chairman during the reading of the Second Bill. However, as far as ITA is aware there has been no further review of what impact the changes of reducing displays to one square metre have achieved. Has the legislation reduced smoking rates or tobacco consumption? Surely, best practice suggests that these questions need to be answered first, rather than simply be ignored to push further for a total prohibition.

In fact the Chairman stated during the second reading that WA “no longer have the lowest rate of adult smoking in the country. We are now second to the ACT”⁵. It is interesting to note that this has occurred during a period in which WA has restricted tobacco displays more so than ACT.

Tobacco visibility does not encourage people to take up smoking but informs those adults who choose to smoke about what products are available, a view shared by former Victorian Premier, Steve Bracks. Mr Bracks stated that the current level of tobacco display restrictions in Victoria allowed for “information but not persuasion as part of what is presented when cigarettes are sold”⁶. Public response to proposals on reducing tobacco prevalence also suggests both smokers and non-smokers are “not convinced that hiding cigarettes is the answer”⁷.

Reality also shows that tobacco products are not commonly positioned alongside products attractive to children and adolescents. Generally persons entering a convenience store, petrol station, supermarket or newsagent to purchase tobacco products will notice that tobacco displays are usually situated behind the retailer out of reach of the consumer, not on the counter, next to confectionary nor alongside products attractive to children. This is an emotive argument used by many to deflect the discussion from the real issue.

Evidence of this can be found in a paper prepared for the Cancer Society of New Zealand and ASH New Zealand which recommends when “framing” discussions about tobacco displays using statements such as “Protecting children from tobacco products” is better than referring to “Banning displays”⁸.

Given that tobacco displays only serve to inform retailers and adult consumers of the brands and products on offer in the market place, a ban would only mean the bigger and more well known brands gain market share, to the detriment of the smaller brands, product categories and manufacturers. Prohibition will play into the hands of the larger manufacturers and retailers, increase barriers to entry for new brands and suppliers, ultimately reducing consumer choice. The inability of adult consumers to see our products will limit ITA’s ability to compete against our competitors.

Display restrictions can also potentially pose a drastic punitive threat to small, family-run businesses, tobacconists and convenience stores that depend on tobacco sales for their viability, an issue which is even more sensitive during these times of financial crisis and hardship. Regardless of the anti-smoking

⁵ Hansard, Tobacco Products Control Amendment Bill 2008, 26 November 2008

⁶ The Age, “Smoking deaths highest in rural areas”, 17 February 2005

⁷ “Forget Smokescreens”, Daily Telegraph, 23 April 2008, page 30

⁸ Out of Sight, Evidence on the tobacco retail environment in New Zealand and overseas, 30 November 2007, Janet Hoek & Heather Gifford

groups' view of the merit of legal trade in tobacco products, it is a very real concern particularly to tobacco retailers and small family run businesses, which led to the Department of Business, Enterprise and Regulatory Reform in the UK objecting to a proposal to ban displays as it would harm the profitability of small businesses during the economic slump⁹. The UK Conservative shadow Health Minister, Mike Penning recently stated that "There's no evidence that [banning tobacco displays] will actually stop people smoking and there's a lot of evidence that it will actually destroy local corner shops and newsagents that are already suffering now"¹⁰.

In addition there have been reports from Canada suggesting that retailers have experienced increased levels of pilferage from their stores while they are distracted when trying to locate tobacco products¹¹.

According to the comments by the Chair of the Inquiry during the second reading it was suggested that prohibiting tobacco displays will reduce the community's exposure to tobacco advertising and promotion. ITA does not accept the view that tobacco displays constitute tobacco advertising. In addition, claims that banning displays will help reduce youth smoking initiation and help smokers reduce their tobacco use, or quit altogether, or that the mere sight of cigarette packs will cause people to start smoking, or fail to quit, is not supported by any rigorous or substantial evidenced-based research.

Over the years there has been much criticism by certain organisations of research or public opinion surveys paid for by tobacco manufacturers or retailer associations with accusations of bias and conflicts of interest. However these same groups neither appear to have such concerns, nor perceive conflicts or bias when research is published by well-known anti-tobacco advocates and organisations to further their own, their colleagues or their associates claims. Again comments made by the Chairman during the Second Reading of the Bill appear to place undue weight on some research to support the proposed actions and ignores the substantial research evidence to the contrary or that does "not fit" with the proposed rationale for reform.

It is suggested that young people start smoking simply because they are exposed to tobacco displays throughout their childhood on visits to retail outlets. Two recent Australian studies are referred to by the Chairman which are claimed to demonstrate the powerful impact of retail displays on both children and adult smokers.

The first study conducted in 2006¹² involved showing 605 ninth-grade Australian children edited photographs of a convenience store sales point which showed either: cigarette advertising and tobacco pack display; pack

⁹ Peter Mandelson 'blocking' smoking crackdown, www.telegraph.co.uk, 29 November 2008

¹⁰ Tories to oppose tobacco restrictions, www.telegraph.co.uk, 15 November 2008

¹¹ The futility of tobacco bans, www.nationalpost.com, 9 June 2008

¹² An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays, Wakefield M, Germain D, Durkin S and Heriksen L, 2006

display only; or no cigarette packs. Students then completed a questionnaire. Students who saw the photographs with either the pack displays or the advertising and pack displays “perceived it would be easier to purchase tobacco from these stores”. However in our view the study’s results are compromised.

Prior to the experiment, “all students took part in a discussion designed to increase the salience of general brand advertising and display”¹³. This could have had the effect of biasing the study by priming the subjects about its purpose. The validity of the results is called into question by the fact the students who saw pictures of the shop without any tobacco products in it still rated it 3.2 for ease of purchasing tobacco on a scale of 1-5 (where 1 is very easy and 5 is very hard). The researchers do not explain how the students expected to find it anything other than “hard to obtain” from a shop that did “not appear to have any cigarettes for sale”. There were no statistically significant differences in perceived prevalence estimates between those who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display. The hypothesis that seeing tobacco products displayed will lead to distorted prevalence was not supported by the authors’ results. Viewing tobacco products on display did not affect the adolescents’ beliefs about how many of their peers or adults smoked.

There were no statistically significant differences in the approval of smoking between students who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display. This is a finding which undermines a central claim about tobacco displays – that they encourage smoking by leading young people to have more favourable views of smoking. Moreover, there were no significant differences in assigning favourable attributes to teenagers who smoked between students who saw pictures of the convenience store with no cigarettes and those who saw pictures of the store with a cigarette display.

Crucially, there were no statistically significant differences between perceptions of the risks of smoking between students viewing pictures of the store with no tobacco on display and those viewing pictures of the store with a tobacco display. This fails to confirm the hypothesis that seeing tobacco displays encourages smoking by altering perceptions about the risks of smoking. When the students were asked if they felt smoking can harm your health on a scale of 1 to 5 (with 1 being strongly agree and 5 strongly disagree), those students who viewed no tobacco displays averaged 1.4 and those who saw tobacco displays 1.3. This suggests that prohibiting tobacco

¹³ Wakefield et al (2006), An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays.

displays might actually have an undesired impact on the public health message¹⁴.

Most significantly (given its close connection with an actual measure of smoking behaviour), there were no statistically significant differences in future intentions to smoke between those who saw pictures of the store with no tobacco and those who saw pictures of the store with tobacco displays. Therefore rather than supporting the proposed reform to prohibit tobacco displays the 2006 study actually refutes most of the claims about the influence of such displays on adolescent smokers.

The second study published in 2008¹⁵ attempts to address the issue of impulse purchase of tobacco products. It is important to be precise about what is meant by an impulse purchase. Those who promote retail display bans imply that tobacco purchases are impulsive in the sense that they are unplanned and would not have occurred if the tobacco product had been absent. Their view is that a display ban would mean there would be no impulse buying of tobacco. This, however, represents a confusion between impulsiveness in the sense of buying something previously unwanted, and impulsiveness in the sense of being opportunistic – buying a regularly-used item on the spur of the moment. In studies involving impulse purchases, these are not items that a consumer does not regularly use. They are simply items that they had not planned to buy before coming to the store. In other words, what is impulsive is the time of purchase, not whether the item is purchased.

Equally important is the fact that most impulse purchases are not category purchases but brand purchases, in which the consumer decides to try a different brand from the one normally used. As Inman and Winer 1998¹⁶ note, some impulsive shoppers – often defined as those without a shopping list – do not enter a shop without planning their purchases but their shopping planning is only to the category level; the “impulsive” aspect of their purchase is the decision between brands in a category, not whether to purchase the category at all. This is congruent with the positioning of tobacco products in retail displays.

The fact that cigarette purchases are not impulsive, in the sense of deciding to start smoking based on seeing a tobacco display, follows from what is known about smokers’ habits. Smokers tend to smoke approximately the same number of cigarettes each day. They do not suddenly decide to smoke more. This means that they usually know when they will need to buy more

¹⁴ Table IV, An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays, Wakefield et al, 2006

¹⁵ The effect of retail cigarette pack displays on impulse purchase. Wakefield M, Germain D and Heriksen L, 2008

¹⁶ Inman and Winer, 1998, Where the Rubber Meets the Road: A Model of In-store Consumer Decision Making, Marketing Science Institute Working Paper (98-122)

cigarettes, which also means that cigarette purchases are commonly routine and planned, both in regard to location and to brand availability.

The research surveyed a total of 2996 adults by telephone, of whom only 526 (around 16%) were smokers. The report concludes that when shopping for something other than cigarettes, only 2.9% of smokers always decided to buy cigarettes as a result of seeing the tobacco display, 74.8% of smokers replied rarely or never¹⁷. Whilst there are fundamental problems with the study's methodology and its findings, this result in itself is hardly conclusive evidence about impulse purchases of tobacco products.

The impact that tobacco visibility has on overall tobacco consumption and prevalence is also questionable. The Tasmanian Discussion Paper released in 2006 stated as a result of a total tobacco display ban the number of smokers who actually quit and do not relapse as a result of the measure was expected to be marginal¹⁸. Smoking prevalence in Tasmania also remains above that of Victoria at 25.4%¹⁹ in spite of a voluntary cover-up of some tobacco displays in Tasmania by a large grocery chain for the past few years.

The UK Government has also acknowledged that the evidence on tobacco consumption declines since the display ban in Iceland, introduced in 2001 has not been definitive²⁰. During 2001 when the ban was introduced in Iceland, smoking prevalence amongst the 15-19 year old age group rose by 3.1% from 14.4% to 17.5%. During 2002, the first full year after the ban, smoking prevalence among this age group was the highest it had been for 5 years.²¹ Although smoking prevalence then fell from this peak, in 2007 (the latest year for which data is available) smoking prevalence was 15.2% - still higher than it had been before the display ban was introduced.

Canada, often held up as an example by anti-smoking advocates and organisations for implementing display bans, recently released its smoking prevalence figures²². According to the 2007 Tobacco Use Monitoring Survey, smoking rates have virtually unchanged from the rates in 2005 and 2006, even though many provinces have tobacco display bans in place. Smoking prevalence amongst the young smokers in Saskatchewan and Alberta has actually increased since the display bans were introduced²³. Given that some

¹⁷ The Effect of retail cigarette pack displays on impulse purchase, Wakefield M, Germain D and Henriksen L, 2008

¹⁸ Tasmania Department of Health and Human Services, Discussion Paper Strengthening Measures to Protect Children from Tobacco, May 2006

¹⁹ Strengthening Measure to Protect Children from Tobacco, Tasmania Department of Health and Human Services Discussion Paper, May 2006.

²⁰ Department of Health Consultation on the future of tobacco control, May 2008

²¹ Statistics Iceland, www.statice.is/Statistics

²² Health Canada Tobacco Control Programme, Canadian Tobacco Use Monitoring Survey, 7 November 2007

²³ Anti-smoking campaigns apparently have little effect on youth, www.cba.ca, 2 September 2008

organisations are stating that display bans are meant to enhance quitting, it is interesting to note that, from the Canadian statistics, Saskatchewan has the second lowest percentage of smokers intending to quit in Canada. The National Party in New Zealand stated that recent bans of retail displays in Thailand and Canada have not yet shown positive results in smoking rates and that there is a need for more international evidence at this time in order to present a compelling and convincing case to banning tobacco displays²⁴.

A survey of more than 92,000 teenagers in 27 countries was recently published in the scientific journal *Addiction* challenging the notion that restricting the sale of tobacco will encourage people to kick the habit. Professor Candace Currie, director of Edinburgh University's child and adolescent health unit and co-author of the study said of the results "They challenge our assumptions that if we ban something then it won't happen. Young people simply get more inventive about the way they obtain cigarettes. It raises a question mark about the way legislation is enforced and how effective it is"²⁵.

A ban on the display of legal tobacco products may also lead to an increase in the sales of illegal products such as counterfeit and chop-chop. If legal products are hidden from view, it will be more difficult for retailers, customers and enforcement officers to distinguish between legal, duty paid products and illegal, non-duty paid products. Moreover, a display ban could lead to a reduction in the number of retail outlets legitimately selling tobacco. Any reduction in the legitimate retail universe is likely to lead to an increase in illicit sales as those channels replace legitimate ones. ITA believes that removing legal products from view will further encourage Australia's illicit tobacco trade, estimated to be valued at up to \$450 million annually²⁶.

The distribution of illegal counterfeit cigarettes has increased significantly in recent years, spurred by high government taxes on tobacco products.

Removing legal tobacco products from display puts them in the same category as, and possibly along side, chop-chop and counterfeit cigarettes and other illegal tobacco products. Bans on display are unlikely to affect overall cigarette consumption, but rather encourage the use of cheaper, unregulated products.

As already stated, a number of Provinces in Canada have bans on tobacco displays which have not led to a reduction in smoking rates particularly amongst youth, but have led to an increase in the prevalence of illicit tobacco. Rob Cunningham from the Canadian Cancer Society has also suggested that the reasons for no further reduction in smoking rates in Canada has stemmed

²⁴ Petitions 2005/140 of Dalton Leo Kelly and 20,000 others and 2005/174 of Craig Foss, Report of the NZ Health Committee, September 2008

²⁵ Age limit 'encourages children to smoke', www.timesonline.co.uk, 11 May 2008

²⁶ Illegal Tobacco Trade: Costing Australia Millions, PriceWaterhouseCoopers Report, August 2007

from “the widespread contraband problem that is providing access to inexpensive cigarettes”.²⁷

ITA does not support the option to ban the complete display of tobacco at the point-of-sale.

²⁷ Decline in smoking rates flatlines; cancer group blames contraband cigarettes, The Canadian Press, 25 August 2008

3.0 SMOKING IN OUTDOOR AREAS AND IN CARS WITH CHILDREN

ITA recognises that many people find tobacco smoke in enclosed areas to be unpleasant or annoying, particularly in clubs and pubs, and that they want access to smoke-free areas.

Similarly there are many smokers who use licensed premises and outdoor facilities who want to enjoy the amenities and be able to smoke at the same time. We support measures that can accommodate the interests of all parties, including the hospitality industry that has been seriously disadvantaged when smoking inside licensed premises was banned.

Claims that smoking bans in enclosed licensed areas would have had no effect on sales and that non-smokers would flock to hotels, clubs and pubs as result of introducing the smoking ban have proven to be completely unfounded.

There is now clear and strong evidence that the smoking ban implemented in various states across Australia has led to a decline in revenue and jobs in the hospitality sector. According to figures from the Office of Liquor, Gaming and Racing, in New South Wales alone, revenue plummeted \$616 million compared with 12 months before the smoking ban and was said to be costing clubs and pubs almost \$1.7 million a day.²⁸

A recent survey carried out for the National Health Service in England recently suggested that smokers who could no longer smoke in licensed premises such as pubs and clubs simply ended up smoking at home. This has led to an increase in the proportion of men who smoke rising since in the ban in July 2007 and has also failed to increase the number of people quitting.

According to the UK Liberal Democrat health spokesman Norman Lamb the figures demonstrate that the strategy of introducing smoking bans has not been successful and is “yet another case of Government pursuing tough eye-catching initiatives which in the end don’t succeed in tackling the real problem”²⁹.

²⁸ Smoking ban costs \$1.7m a day, Sydney Morning Herald, 10 December 2008.

²⁹ Smoking ban fails to curb the habit: figures reveal men are smoking MORE, www.dailymail.co.uk 18 December 2008

3.1 OUTDOOR AREAS

ITA believes that regulation on environmental tobacco smoke should be determined by sound science, with smoking policies based on cooperation, courtesy and common sense. If smokers are comfortable taking food and drink into an outdoor smoking area whether it be a licensed restaurant or a hotel or club, they should be allowed to do so. We appreciate that some persons do not wish to eat or be served food in outdoor smoking areas, but question the rationale for not allowing smokers to take their food into a designated outdoor smoking area if they wish. It has even led some to say the smoking bans are contradictory while buses and traffic are allowed to drive through the middle of outdoor restaurant areas such as Fremantle.

The Western Australian hospitality industry has spent millions of dollars in adapting to the current indoor smoking bans introduced in WA a couple of years ago. The industry identified that the needs of the smokers and non-smokers alike deserved to be recognised and considered their daily business operations. By adopting a common sense approach to the smoking in outdoor areas and making considerations on a case-by-case basis dependent on the demand of their customers, the hotel and hospitality industry has managed to successfully accommodate the needs of everyone³⁰.

In the UK in 2006, the House of Lords' Economic Affairs Committee enquiry into Government Policy on the Management of Risk published the results of its enquiry. On environmental tobacco smoke, the Committee argued that "the risks associated with passive smoking do not justify a ban [In the UK]. Failure to consider these matters properly has resulted in the introduction of a policy that appears to demonstrate a disproportionate response to the problem [of environmental tobacco smoke]"³¹.

The Chairman of the Committee, Lord Wakeham, commented "We are also concerned that the Government does not pay enough attention to the cumulative impact of legislation on personal freedom and choice."³²

Professor Simon Chapman, a member of the National Preventative Health Taskforce Tobacco Working Group has stated "let's not confuse health and morality, the anti-tobacco brigade has gone too far with proposals to ban outdoor smoking"³³. Prof Chapman goes on to say that "people have forgotten values such as justice and choice, personal freedom and such."³⁴

³⁰ Changes for smokers, West Australian, 22 November 2008.

³¹ Press Release, House of Lords Economic Affairs Committee "Threats to personal liberty need to be incorporated in government risk assessments", 7 June 2006

³² Press Release, House of Lords Economic Affairs Committee "Threats to personal liberty need to be incorporated in government risk assessments", 7 June 2006

³³ "Let's not confuse health and morality", page 12 The Australian, 20 March 2007

³⁴ "Stubbing out basic values in fight against fighting", page 66, Australian Financial Review, Thursday 30 August 2007

ITA believes that WA smokers and non-smokers alike should continue to be offered the freedom of choice connected with better options for pubs and licensed premises to create outdoor smoking areas that will be better able to provide personal choice, rather than forcing smokers onto the footpaths and streets.

3.2 SMOKING IN CARS CARRYING CHILDREN

In the same way as smokers should show courtesy to other adults when smoking, this courtesy should be extended to children, who are often unable to exercise choice in their environment and surroundings in the way that adults can. Generally, most smokers do show courtesy to others when smoking in cars.

The NSW Joint Select Committee also recognised that a ban on smoking in cars would entail a greater encroachment on individual liberties as cars are considered private areas, as did the Queensland Government in their 2007 Review of Smoke-free Laws³⁵. In addition comments made by Police Commissioner Karl O'Callaghan warned that police would need more resources if enforcing such a ban was to be a priority³⁶. The WA Local Government Association also criticised the proposed legislation and has stated that councils will not actively enforce such a move³⁷.

Professor John Gullotta of the Australian Medical Association has also stated that the best approach to smoking in cars with children present "is an educational approach, to educate parents and drivers to ensure they know the risks that they are exposing their children to, and to get them to take the responsible upper hand and not smoke in their vehicles"³⁸.

Dr David Roberts former president of the Australian Council on Smoking and Health has also said "there is simply no convincing evidence to suggest that smoking in cars represents anything like the health danger that he claims"³⁹.

Calls for Western Australia to ban smoking in cars with children in 2006 led the former Health Minister the Hon Jim McGinty to say that WA could become "a 'nanny-state', if legislation to ban people from smoking in their cars while children are present, was approved"⁴⁰. Mr McGinty went on to say "When it comes to smoking in private homes and cars we agree...that it is better to change people's attitudes through education rather than legislation. Police have a tough enough job..it is better to change attitudes"⁴¹.

³⁵ 2007 Review of Smoke-free Laws, Queensland Health, November 2007.

³⁶ McGinty's smoking in car ban foolish, West Australian, 21 August 2008

³⁷ Councils will not police smokes ban, West Australian, 28 November 2008

³⁸ Joint Select Committee on Tobacco Smoking, Inquiry Tobacco Smoking in New South Wales, Public Hearing, 21 March 2006

³⁹ "Lib plan to ban car smoking is hit from within", West Australian 7 June 2006.

⁴⁰ Radio Grab, MIX 94.5 (Perth), 14:00 News, 6 June 2006 (02:02PM)

⁴¹ McGinty's backflip on smoking in car ban "foolish", West Australian, 21 August 2008.

The Queensland Government has adopted a different approach to this issue other than prohibition. They have acknowledged that “public education campaigns and existing smoke-free legislation were likely to result in further decreases in the prevalence of smoking in cars”⁴².

ITA believes the Queensland approach of further education is a more appropriate and ongoing solution to this issue, rather than more legislation.

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⁴² 2007 Review of Smoke-free Laws, Queensland Health, November 2007.