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**Deputy Premier of Western Australia  
Minister for Health; Indigenous Affairs**

Att: Dr David Worth  
Education and Health Standing Committee  
Parliament House  
PERTH WA 6000

Dear Dr Worth

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

Please find enclosed a copy, as requested, of the review mentioned above.

Kind Regards

A handwritten signature in blue ink, appearing to read 'Kylie Mould'.

Kylie Mould  
Parliamentary Liaison Officer  
Office of the Deputy Premier  
Minister for Health; Indigenous Affairs

23-02-2009



Department of **Health**  
Government of **Western Australia**

**PUBLIC HEALTH DIVISION**  
**Environmental Health Directorate**

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# **SMOKING IN SPECIFIC OUTDOOR PUBLIC PLACES, PRISONS AND IN PRIVATE CARS: A REVIEW**

October 2008

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## **1. EXECUTIVE SUMMARY:**

In June 2007 the former Minister for Health (MFH) requested the DOH to commence research and consultations to identify relevant stakeholder positions on the introduction of legislation to ban smoking in alfresco dining areas (the Review).

In December 2007 the former MFH approved an extension of the Review to include smoking in the following places and the associated issues:

- in cars particularly with children;
- at public beaches; and
- in prisons.

An Issues Paper was developed by the DOH and circulated in April 2008 for comment by a range of health and industry representative organisations detailed at Appendix 1. The DOH received 84 responses from 173 organisations contacted. The Issues Paper provides discussion for the definitions, scope, application and enforcement issues associated with extending the Review.

Research into other state experiences with legislative smoking bans in public places has identified that Queensland has undertaken the most comprehensive steps in this direction with the *Tobacco and Other Smoking Products Act* (the Qld Act) providing offences for persons who smoke in a number of outdoor places –

- major sports facilities;
- patrolled beaches or at prescribed outdoor swimming areas (e.g. an artificial beach);
- within four metres of non-residential building entrances;
- within ten metres of children's playground equipment; and
- outdoor eating or drinking places where persons may consume food or drink provided by an on-site food service.

A public review of the Queensland legislation has provided recommendations that are relevant to implementing smoking bans in public places in Western Australia. As a result of this review, the Queensland government has announced intentions to implement several reforms including the addition of a ban on smoking in cars carrying children under 16 years of age.

Enforcement was generally seen as a problematic issue in considering bans on smoking in public places in Western Australia. Legislation could enable local government employees to act in enforcing bans alongside of state public sector employees and police officers. The constant theme amongst stakeholders considered that inadequate resources would hinder efforts to enforce legislation.

There was divided support for the phasing in of legislation, however all stakeholders were supportive of comprehensive community education programs.

A state-wide approach to legislation and enforcement was preferred to promote overall uniformity. State-wide smoking bans in outdoor public places under the

*Tobacco Products Control Act 2006* may impact current by-laws enacted by some local governments.

## **2. INTRODUCTION**

In June 2007 the former MFH requested the DOH to commence research and consultations to identify relevant stakeholder positions on the introduction of legislation to ban smoking in alfresco dining areas (the Review).

In December 2007 the former MFH approved an extension of the Review to include the associated issues and smoking in the following places:

- in cars particularly with children;
- at public beaches; and
- in prisons.

An Issues Paper was developed by the DOH and circulated in April 2008 for comment by a range of health and industry representative organisations detailed at Appendix 1. The DOH received 84 responses from 173 organisations circulated.

### **2.1. Stakeholder Considerations**

The Issues Paper provided background information to stakeholders on smoking in specified public places, in private cars and associated issues. Generally the Issues Paper asked stakeholders to provide their views on whether smoking should be banned in-

- alfresco dining areas including consideration of the following associated issues:
  - the scope of the meaning alfresco dining area;
  - the scope of coverage i.e. all of alfresco area or a percentage of the area;
  - designated outdoor smoking areas;
  - other areas similar to alfresco areas where food is served or consumed;
  - buffer zones which in addition to alfresco dining areas could also address issues of smoking outside entrances to or air-conditioning intakes of buildings;
  - phase in periods;
  - State-wide application and consistency (State vs local Government legislation); and
  - legislative or voluntary implementation and enforcement.
- beaches including consideration of the following issues:
  - the scope of application, i.e. all areas or partial; and
  - other public swimming places such as public swimming pools, dams etc.
- cars including consideration of the scope i.e. total ban or limited to cars with child passengers, and
- to consider issues of enforcement generally.

## **2.2. Public Opinion**

There is evidence of strong public support for smoke-free alfresco dining areas on the basis of health and discomfort or amenity issues.

The results of an Australian study undertaken by Freeman et al (2008) demonstrated that public opinion would support legislation on banning smoking in cars carrying children due to child protection being paramount and non-negotiable (62% of articles reviewed). The study reviewed media themes over a period of 12 years. Negative issues cited were enforcement would be too difficult (19% of the articles reviewed) and that banning smoking in cars was an invasion of personal space (12% of articles reviewed).

## **2.3. Public Health Rationale**

Non-smokers can be exposed to high levels of second hand smoke (**SHS**) in outdoor settings when close to or down wind of smokers. The health effects of exposure to SHS are well documented and indisputable, particularly in enclosed places.

Passive smoking is the inhalation of SHS. An increasing body of scientific evidence, endorsed by the Australian National Health and Medical Research Council and by the World Health Organisation (**WHO**) shows that passive smoking poses the same types of threats to the health of non-smokers as active smoking does to smokers.

There is no safe level of exposure to SHS although adverse health effects vary and are dependent on a range of factors impacting particulate concentrations. For example environmental factors, air movement, ventilation, closeness and location to source. However, the adverse health effects may vary from person to person depending on a person's vulnerability or pre-disposition to or existing health issues such as asthma, respiratory or cardiovascular problems and the unknown long-term cumulative effects.

Exposure to SHS can cause chronic bronchitis, pneumonia and other chest illnesses in children and can increase the risk of cardiovascular disease, lung cancer and other respiratory diseases in adults. Short-term exposure to SHS may irritate the eyes, nose, throat and airways due to irritant chemicals in tobacco smoke.

The 2006 report of the US Surgeon General "*The Health Consequences of Involuntary Exposure to Tobacco Smoke*" concluded on the toxicology of SHS that-

*"This broadly reaching body of evidence on the toxicology of second-hand smoke and on these biologic mechanisms indicates that any exposure to second-hand smoke will increase risk for adverse health outcomes."*

Evidence of the adverse health effects caused by people's exposure to SHS in enclosed places is well documented and accepted and the public health

rationale for banning smoking in outdoor places is justified on the basis of the factors detailed above.

Comprehensive tobacco control strategies that amongst other things aim to reduce smoking rates within the community include de-normalising smoking by reducing the opportunity for people to smoke and providing a supportive environment for smokers wanting to quit by contributing to cultural and normative change.

Limiting exposure of children to tobacco products and reducing the visibility of people smoking are also important components of strategies to de-normalise smoking, which is reflected in the preamble and purposes of the *Tobacco Products Control Act 2006*.

The establishment of smoke-free places significantly reduces non-smokers' exposure to SHS (Pickett *et al* 2006) and is the fundamental reason for the need to eliminate SHS in areas shared by smokers and non-smokers and contributes to a reduction in smoking rates.

### **3. STAKEHOLDER CONSULTATION**

The Issues Paper including a questionnaire was circulated to 173 stakeholders in mid-April 2008 with an invitation to provide comment.

- 84 responded.
- 4 declined to comment.
- 85 did not respond.

The detailed list of stakeholders provided at Appendix 1 generally includes -

- Industry associations;
- State Government agencies;
- Local Government authorities;
- Health non-government organisations (**Health NGOs**); and
- Other non-government organisations (**NGOs**) having an interest.

#### **3.1. Respondents**

##### Health NGOs

The 11 Health NGOs listed below co-signed a submission on a number of issues:

- Australian Council on Smoking & Health
- Australian Medical Association (WA)
- Asthma Foundation of WA
- Cancer Council WA
- Centre for Behavioural Research in cancer Control

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- Diabetes Association WA
- National Heart Foundation (WA)
- Public Health Association (WA)
- Public Health Advocacy Institute of WA
- Telethon Institute for Child Health Research
- WHO Collaborating Centre for Research on Children's Respiratory Health

### Industry Associations

Australian Hotels Association (WA Branch)

### Local Governments (142 total)

Total responded-

- 19 metropolitan (of 30)
- 37 country (of 112)

### NGOs

- Keep Australia Beautiful Council
- Local Government Managers Australia
- Royal Life Saving Society
- Surf Life Saving WA
- Western Australian Local Government Association (**WALGA**)

### State Government agencies

- Department of Local Government and Regional Development
- Drug and Alcohol Office (**DAO**)
- Fire and Emergency Services Authority of WA (**FESA**)
- Healthway
- Western Australian Police
- Worksafe

### Nil Response

- At the time the City of Perth was awaiting consideration by Council however intention to implement smoking bans in alfresco dining areas has since been announced.
- The City of Kalgoorlie-Boulder, Town of Mosman Park and the City of Mandurah.
- The Restaurant and Catering Industry Association of WA (**RCIA**) responded in writing and were critical of the Issues Paper, did not address the questions specifically and did not circulate the Issues Paper to its members. An invitation by the DOH to discuss the matter further was declined. In effect RCIA members have not been consulted on smoking in alfresco dining areas although the RCIA represents a large number of restaurant owners. Time has not permitted individual consultation.
- Clubs WA.

- WA Nightclub Association.

### **3.2.Issue Paper Questions**

The Issues Paper provided background information on 16 specific areas where smoking bans could be implemented and asked stakeholders to provide comment on the following questions.

#### **Questions 1-6: Alfresco dining areas and other outdoor public areas where food is served or consumed**

1. Do you think smoking should be banned in alfresco dining areas at licensed premises and unlicensed restaurants?
2. Do you think smoking should be banned in any other outdoor area of a licensed premise or restaurant when food is served or consumed in that area?
3. Do you think smoking should be banned outside takeaway shops, lunch bars etc. where seating is provided for the consumption or service of food?
4. Do you think smoking should be banned at outdoor events where food is served or consumed? For example sporting or music events.
5. Do you think smoking should only be allowed in designated smoking areas at outdoor events where food is served or consumed?
6. If smoking was to be banned in alfresco dining areas, should it be introduced on a phased in or delayed basis? For example partial bans first leading to total bans over a number of years or legislation to commence in 1 or 2 years time?

#### **Questions 7-10: Buffer Zones**

*A Buffer Zone is an area in which people do not smoke (either voluntarily or legislated) that adjoins an area where smoking is banned.*

7. If smoking was banned in alfresco dining areas, do you think there should be a buffer zone?
8. Do you think there should be a buffer zone between other areas where food is served or consumed and areas where smoking is permitted? For example street side seating provided for the consumption of takeaway food.
9. Do you think a buffer zone should be voluntary (not legislated)? For example, signage may be required to be displayed at the perimeter of a no-smoking area asking that smoking not occur within a specified distance of the area.
10. Do you think that different size buffer zones should apply to different types of areas (premises) where food is served or consumed? For example, alfresco dining areas, outside shops, at events etc.

**Questions 11-13: Smoking at public beaches**

11. Do you think smoking should be banned at public beaches:

- (a) All?
- (b) Which are patrolled only (between red and yellow flags)?
- (c) Which are occupied by a large number of people?

12. Do you think smoking should be banned at all public swimming pools?

13. Do you think smoking should be banned at other public swimming facilities, for example lakes, dams etc?

**Questions 14-15: Smoking in private cars**

14. Do you think smoking should be banned in private cars carrying adult passengers?

15. Do you think smoking should be banned in private cars carrying children passengers?

**Questions 16(a) - (h): Enforcement**

16. What issues if any do you think there would be about enforcing any ban on smoking:

- (a) At alfresco dining areas of licensed premises and restaurants?
- (b) At other areas where food is served or consumed?
- (c) In buffer zones within the control of occupiers of alfresco dining areas?
- (d) In buffer zones outside the control of occupiers of alfresco dining and other areas?
- (e) At outdoor events where food is served or consumed?
- (f) At public beaches or public swimming pools?
- (g) At other public swimming facilities such as lakes, dams etc?
- (h) In private cars.

**3.3. Stakeholder views**

The DOH consulted key stakeholders on their views about implementing legislation to ban smoking in alfresco dining areas, at beaches and in cars.

The outcome of the Review indicates strong support for the Government to legislate to ban smoking in all places proposed by the former MFH and to extend as far as is practicable the scope of each of those areas, particularly where food is served or consumed:

- That smoking should be banned-
  - in alfresco dining areas of all licensed and non-licensed premises;
  - outside any business where tables and chairs are provided for the consumption of food including takeaway food premises;

- at an outdoor event in any area where food is served or consumed;
- at any outdoor event or place that has a defined area, for example all ticketed events, outdoor concerts, plays and sporting events.

### **Australian Hotels Association (WA) (the AHA)**

The AHA limited comment to licensed premises only.

At this time the AHA is not supportive of any further ban on smoking and stated-  
*“Further regulating the manner in which outdoor areas are used, has the potential to significantly hinder tavern/hotel operations and compromise the ability for licensees to serve food to people who are consuming alcohol”*

They do not support any further ban on smoking in the grounds of or outside any licensed premises on the basis of support by the hospitality industry in successfully implementing the indoor smoking ban in partnership with the Government and industry committing 18 million dollars to renovations.

The AHA's view is that further restrictions would have a significant negative impact on business viability and further smoking bans in outdoor areas would exacerbate problems by driving smokers into public thoroughfares, shop fronts and alley ways, causing increasing levels of litter.

The AHA believes industry is more likely to embrace measures that are voluntary and can be self regulated and already venues have implemented measures designed to protect non-smokers while at the same time recognising the needs of smokers.

The AHA also believes there needs to be consistency across-the-board with local governments as many licensed outdoor areas are the property and under the control of local government.

The AHA has concerns about enforcement, particularly extending the role of employees to an enforcement role and who would enforce any bans.

If bans were to be implemented, the AHA believes where costs are involved the State Government should make funds available and compensation for money spent on renovations to accommodate indoor smoking bans addressed.

### **Health NGO's**

#### Smoking Ban in Alfresco Dining Areas

The Health NGO submission:

- suggested there is more public support for bans in alfresco dining areas as an issue of amenity and supports implementation of smoking bans on grounds of amenity in alfresco dining areas and in any outdoor eating area where food or drink is provided as part of a business.

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- stated-
- *“Increasingly the community is demanding more public spaces be smoke-free, recognising that even smoking outdoors can cause annoyance and irritation and sometimes even health problems when people are close together.”*
- provided evidence biased towards smoking bans to be implemented as a public amenity issue however acknowledged some public health issues.

### Smoking Ban in Cars

Health NGOs are supportive of a ban on smoking in cars carrying persons under the age of 18 years.

The Health NGO submission stated that smoking in vehicles raises the concentration of second-hand smoke in the vehicle to alarming levels, with levels of small particles well above outdoor air standards and comparable to levels found in bars where smoking is allowed. Evidence was quoted that exposure to smoking in cars increased the risk of asthma in children by 50 per cent, can cause asthma in children who have not had it before, and can trigger attacks for those with the condition.

No position was specifically provided on smoking in cars with adult passengers.

### Smoking Ban at Beaches

Health NGOs are supportive of a ban on smoking between the flags of patrolled beaches and at all public swimming pools.

### Smoking Bans in Other Areas

The Health NGOs also called for a ban on smoking in the following areas-

- in any outdoor area where food or drink is provided as part of a business;
- within the boundaries of recreational parks and reserves;
- within the boundaries of sporting arenas;
- within 10 m of children' s playground equipment;
- at public transport waiting areas, for example taxi stands, bus stops;
- at outdoor market areas;
- at outdoor public entertainment events; and
- outside buildings - within 5 m of entrances 10 m of air-conditioning intakes.

## Designated Outdoor Smoking Areas (DOSA)

Health NGOs are not supportive of a DOSA in any area as they view the matter problematic and serving to facilitate behaviours that the legislation aims to curb, particularly the exposure of others to SHS and the de-normalisation of smoking.

## **Local Government**

### Smoking Ban in Alfresco Dining Areas

The following Councils have implemented or announced plans to implement bans on smoking in alfresco dining areas-

- City of Cockburn (intention);
- City of Fremantle (implemented);
- City of Joondalup (intention);
- City of Perth (intention); and
- City of Rockingham (implemented).

Other Councils have indicated support for a review of their position:

- The Town of Vincent has formally approved support for a ban on smoking in alfresco dining areas, if conducted as part of a state-wide initiative;
- The Executive Management Group, City of Mandurah is to consider the implications of extending smoking restrictions to its alfresco dining areas;
- The Cities of Stirling and Subiaco have indicated that they would not oppose the implementation of legislation to extend smoking restrictions to alfresco dining areas. However, both have indicated this is not a current priority.
- City of Stirling however is reviewing local laws which will include smoking in alfresco dining areas. At this time smoking at beaches is not being considered.

## **Government Agencies**

### Department of Employment Protection - WorkSafe

Although WorkSafe has no jurisdiction over the smoking behaviour of private customers dining in cafes and restaurants, they would support a move to extend the smoking prohibition under the Act to cover public alfresco dining areas.

An enclosed workplace includes vehicles used for work purposes. However drivers using their own private vehicles for work are permitted to smoke in their vehicles provided no other person is present who is also at work.

Passengers in private vehicles used for work purposes who are not themselves at work are not covered by occupational safety and health legislation and

therefore fall outside the scope of the smoking prohibition under the occupational safety and health regulations.

WorkSafe is supportive of an extension of the coverage of the smoking ban under the public health regulations to remove this exemption however, acknowledged that issues of how this might be achieved and how any ban might be enforced required careful consideration.

#### Drug and Alcohol Office (DAO)

DAO support legislation to ban smoking ban in the areas under review however acknowledge difficulties and practicalities of enforcement in some areas such as at public beaches. The proposals would gradually reduce the community acceptability of smoking, whilst also reducing other people's exposure to SHS.

#### Fire and Emergency Services Authority (FESA)

The response from FESA was limited to concerns about the fire hazards caused by ignited cigarettes being disposed from cars.

FESA supports a ban on smoking in cars on that basis and as a public amenity issue of "butt litter".

#### Healthway

Healthway are supportive of a ban on smoking in cars with all passengers particularly persons under 18 years of age however are of the view that bans limited to children passengers would be problematic.

Healthway is firmly of the view that legislation should be amended to cover areas such as outdoor eating areas, beaches, sporting and other entertainment arenas, events, children's play areas, essentially all areas where food is served or consumed or where there are children.

#### **NGO's**

##### Keep Australia Beautiful Council (WA) (the KABC)

The KABC are supportive of a ban on smoking in some of the public places on the basis of "butt" litter problem.

The KABC are however are generally of the view that implementing legislation to ban smoking in public places that is not properly enforced would cause more problems and encourage complacency and non-compliance.

The KABC encourage an alternative educative approach in areas where enforcement would be problematic.

### Royal Life Saving Society Australia (RLSS)

The RLSS support the proposal to ban smoking at public beaches however are not supportive of the RSLs having a role in enforcement.

Although, the RLSS were supportive of banning smoking at all public beaches, they were against such a move if *“insufficient resources to provide government agents in appropriate numbers to monitor compliance resulted in cost shifting of responsibility to local government”*.

### **3.4. Summary of Stakeholder’s Views - Issues**

A statistical summary is provided in the file at Appendix 2.

The summary below does not include the views of the AHA however if smoking bans are to be implemented in alfresco dining areas the AHA is supportive of a consistent state-wide approach.

In addition to health rationale, bans on smoking in outdoor places are also supported by a high number of stakeholders as an issue of public amenity (discomfort, annoyance and litter).

Many local governments support a uniform approach to state-wide bans with consistency of application from one local Government to another.

### **Smoking Bans in Alfresco Dining Areas**

There is strong support from stakeholders to implement State-wide bans on smoking in alfresco dining areas, however while supportive of the proposal, two country local governments do not support smoking bans in alfresco dining areas because of issues of enforcement by local government.

There is a high level of support from stakeholders, including a high percentage of local Governments, to implement State legislation in lieu of local laws on the basis of consistent application and public acceptance and expectations.

There is strong support from stakeholders to include bans on smoking in all outdoor areas where food is served or consumed in addition to alfresco dining areas including-

- all licensed and non-licensed alfresco dining areas;
- outside any businesses for example takeaway food shops and cafes where tables and chairs are provided for the consumption or service of food. and
- at all outdoor events where food is provided or consumed.

## **Buffer Zones**

There is strong support from stakeholders to include mandatory (legislated) buffer zones or physical barriers between areas where smoking is banned and areas where smoking is not banned.

There is strong support from stakeholders to include entrances to alfresco dining areas or an enclosed dining area as a buffer zone otherwise the issue would be problematic.

However, a large number of local Governments are of the view that although the principle is sound it would be difficult to apply in practice, particularly for buffer zones which extend beyond the elected boundary and would be difficult to enforce.

The AHA believes buffer zones if implemented should be considered on a venue by venue basis. Reasons cited were architecture and venue layout and possible forcing of patrons who smoke into areas that are unsafe such as close to curb side and main roads.

## **Smoking Bans at Public Beaches and Other Public Swimming Facilities**

There is strong support for smoking bans to be implemented at all beaches state-wide however the practicality of enforcing bans at non-patrolled beaches is acknowledged.

There is strong support from stakeholders for smoking bans to be implemented between the flags at patrolled beaches.

There is strong support from stakeholders for smoking bans to be implemented at all public swimming pools

There is strong support from stakeholders for smoking bans to be implemented at other public swimming facilities such as dams, however local governments have concerns about practicalities of enforcement.

## **Smoking Bans in Private Cars**

There is strong support from stakeholders for smoking bans to apply to all cars with passengers under the age of 18 years.

The Western Australian Police (**WAPOL**) support a ban on smoking in cars however they do not anticipate an active role in enforcement that would divert police officers from their primary role of policing.

## **Smoking Bans in Other Public Places**

There is strong support from stakeholders to implement smoking bans in other outdoor public places-

- particularly in areas attended by children;

- that are clearly defined including ticketed outdoor events irrespective of whether food is served/consumed or not; and
- at all public playgrounds or in areas where play equipment is provided for public use.

There is strong support from stakeholders to implement smoking bans outside entrances or exits to buildings and their air-conditioning intakes. This issue is viewed by most of the stakeholders to be directly linked to smoking in alfresco areas as a buffer zone issue which should extend to all non-residential buildings not just those with alfresco dining areas.

### **Local Government Concerns**

Many local governments are concerned about the practicality of and ability to enforce smoking bans in alfresco dining areas and at beaches.

Local Governments are concerned about further cost shifting of State laws to local Government.

### **3.5. Summary of Stakeholder's Views - Quantitative**

#### **Alfresco dining areas and other outdoor public areas where food is served or consumed**

##### General summary

There is a high level of general support, including local government, for legislation to ban smoking in-

- all public places where food is served or consumed and that are not already enclosed public places, including alfresco dining areas in the normal context;
- outside businesses where tables are provided for the service or consumption of food; and
- at outdoor events in areas where food is served or consumed.

##### Question 1

Should smoking be banned in alfresco dining areas at licensed premises and unlicensed restaurants? (Question 1)

Yes:	69	(83%)
No:	4	(5%)
Not Indicated:	10	(12%)

##### Question 2

Should smoking be banned in any other outdoor area of a licensed premise or restaurant when food is served or consumed in that area?

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Yes:	57	(69%)
No:	6	(7%)
Not Indicated:	20	(24%)

#### Question 3

Should smoking should be banned outside takeaway shops, lunch bars etc. where seating is provided for the consumption or service of food?

Yes:	42	(75%)
No:	1	(25)
Not Indicated:	13	(23%)

#### Question 4

Should smoking be banned at outdoor events where food is served or consumed? For example sporting or music events?

Yes:	52	(63%)
No:	11	(13%)
Not Indicated:	20	(24%)

#### Question 5

Should smoking only be allowed in designated smoking areas at outdoor events where food is served or consumed?

Yes:	41	(49%)
No:	22	(27%)
Not Indicated:	20	(24%)

#### Question 6

If smoking was to be banned in alfresco dining areas it should it be introduced on a phased in or delayed basis (Question 6).

Yes:	50	(60%)
No:	18	(22%)
Not Indicated:	15	(18%)

### **Buffer Zones**

#### Question 7

If smoking was banned in alfresco dining areas should there be a buffer zone?

Yes:	50	(60%)
No:	18	(22%)
Not Indicated:	15	(18%)

Question 8

If smoking was banned in other areas where food is served or consumed should there be a buffer zone between other areas where smoking is permitted?

Yes:	31	(37%)
No:	19	(23%)
Not Indicated:	33	(40%)

Question 9

Should a buffer zone should be voluntary?

- The majority of stakeholders who addressed the question are in favour of legislated distances or barriers.

Yes:	20	(24%)
No:	31	(37%)
Not Indicated:	32	(38%)

Question 10

Should there be different size buffer zones applying to different types of areas where food is served or consumed? (Question 10)

- There is no general support for different size buffer zones, including different types of buffers either distance or barrier, to apply to different types of areas where food is served or consumed. Stakeholders viewed the matter problematic

Yes:	20	(24%)
No:	31	(37%)
Not Indicated:	32	(38%)

**Smoking at public beaches**

Question 11(a)

Should smoking be banned at all public beaches?

- There is generally even for support for and against banning smoking at all public beaches however those local governments against such a move generally raised issues of ability to enforce.

Yes:	32	(39%)
No:	34	(41%)
Not Indicated:	17	(20%)

Question 11(b)

Should smoking be banned at beaches which are patrolled only? (Question 11b)

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Yes:	20	(39%)
No:	17	(41%)
Not Indicated:	46	(20%)

**Question 11(c)**

Should smoking be banned at beaches which are occupied by a large number of people?

- There is minimal support for banning smoking anywhere at beaches occupied by a large number of people general reasons of enforcement being cited by local governments.

Yes:	14	(39%)
No:	20	(41%)
Not Indicated:	49	(20%)

**Question 12**

Should smoking be banned at all public swimming pools?

Yes:	44	(53%)
No:	9	(11%)
Not Indicated:	30	(36%)

**Question 13**

Should smoking be banned at other public swimming facilities, for example lakes, dams etc? (Question 13)

- There is a high level of support for banning smoking at other public swimming facilities however issues of enforcement were raised by local government.

Yes:	39	(47%)
No:	27	(33%)
Not Indicated:	17	(20%)

**Smoking in private cars**

**Question 14**

Should smoking be banned in private cars carrying adult passengers?

- Most local governments who provided comment viewed it as an issue not within their jurisdiction but one of a general state-wide issue.

Yes:	30	(36%)
No:	33	(40%)
Not Indicated:	20	(24%)

Question 15

Smoking should be banned in private cars carrying children passengers?

Yes:	56	(67%)
No:	5	(6%)
Not Indicated:	22	(27%)

**Enforcement**

Stakeholders, particularly local government, raised a number of issues and concerns about enforcing further bans on smoking.

A high level of local governments are of the view that any additional enforcement from bans on smoking in public places would increase costs and viewed the matter as one of cost shifting of State legislation to local Government.

A high level of stakeholders supported comprehensive education campaigns to complement any legislation implemented.

## **4. ENABLING LEGISLATION - SMOKING IN PUBLIC PLACES**

### **4.1. Tobacco Products Control Act 2006 (the Act)**

The legislative basis for bans in public places including alfresco dining areas and at beaches is provided by section 125 of the Act which states-

*"125. Regulations about smoking in public places*

- (1) The Governor may make regulations for the regulation or prohibition of smoking in public places.*
- (2) Without limiting subsection (1), the regulations may —*
  - (a) require occupiers of public places to display signs about smoking, and may prescribe the location, content, dimensions, colour and positioning of, and materials constituting, those signs; and*
  - (b) confer powers on police officers, investigators and environmental health officers in relation to persons who are smoking in public places where smoking is prohibited.*
- (3) Nothing in the regulations is to be construed as creating or preserving a right of a person to smoke in a public place."*

The preamble to the Act and purposes in section 3 respectively state--

*"An Act to —*

- prohibit the supply of tobacco products and smoking implements to young persons;*
- regulate the sale and promotion of tobacco products;*
- prohibit the sale of products that resemble tobacco products;*
- reduce the exposure of people to tobacco smoke from tobacco products that are smoked by other people,.."*

*“3.Purposes of the Act .....*

- (a) to reduce the incidence of illness and death related to the use of tobacco products —*
- (i) by prohibiting the supply of tobacco products and smoking implements to young persons;*
  - (ii) by discouraging the use of tobacco products;*
  - (iii) by restricting the promotion of tobacco products and smoking generally;*
  - (iv) by reducing the exposure of people to tobacco smoke from tobacco products that are smoked by other people; and*
- (b) to promote good health and activities which encourage healthy lifestyles.”*

#### **4.2. Public Transport Authority Regulations 2004 (PTA Regulations)**

The PTA Regulations ban smoking in any public passenger transport service including buses, ferries or trains provided by the Public Transport Authority and at any facility of the Authority where a no-smoking sign is displayed.

The PTA Regulations do not limit operation of the Act.

However bus stops located on local government (Council) land are the responsibility of the relevant local Government.

#### **4.3. Local Government By-laws (current or proposed)**

The *Local Government Act 1995* allows a local government to make local laws and also requires those local laws to be reviewed to determine whether the law should be repealed or amended.

However local Government by-laws on smoking are unable to apply to privately owned land within restaurants and hotels, such as beer gardens and alfresco dining areas, or any other land that is not public property.

The Cities of Cockburn, Fremantle, Joondalup, Melville, Perth and Rockingham have used or will use local laws to ban smoking in a range of public places-

- **City of Cockburn**, subject to Council approval, is proposing a blanket Smoke-Free Environment Policy (non-legislative) which will ban smoking-
  - within 10 metres of-
    - entrances of Council owned or managed buildings including balconies or covered areas of the buildings;
    - all children's playground equipment;
    - sporting facility building entrances;
    - any other persons on Council playing fields or sporting grounds;
    - any other persons on Council beaches, dunes or jetties;
  - within all covered bus stops; and

- at all Council run or sponsored events on its beaches, reserves, parks, ovals and playing fields.
- **City of Fremantle (COF)** has implemented a by-law banning smoking initially in 50% of alfresco dining areas located on Council owned land with a total ban effective 15 August 2008.
- **City of Joondalup (COJ)** has implemented a smoking ban effective January 2008 at local beaches and is currently proposing to amend two local laws that deal with smoking in public places, prohibiting smoking -
  - within 5 m of the entrances, exits and windows of all COJ owned buildings; and
  - at all outdoor dining areas on public property within the COJ
- **City of Melville** has implemented bans on smoking within 10 m of children's playgrounds;
- **City of Perth** has announced intention to ban smoking in all outdoor eating venues located on Council land from 1 July 2009.
- **City of Rockingham** has implemented a smoking ban in licensed alfresco dining areas located on council land effective 6 August 2008.

Other Councils have expressed interest in implementing smoking bans however they are awaiting possible State Government legislation resulting from the Review.

#### **4.4. Joint Standing Committee on Delegated Legislation Local By-Law Issue**

The Joint Standing Committee on Delegated Legislation (JSCDL) in April 2008 moved to disallow the COJ and COF by-laws however after consideration of information provided by the State Solicitors Office, the DOH and Department of Regional Development and Local Government the disallowance motion was conditionally removed.

However the Committee has required removal of parts of the COF by-law which held employees and licensees jointly liable for offences committed by persons who smoke in an area subject to the by-law.

#### **4.5. Enabling legislation – Smoking in Private Cars**

Private cars are not public places. Any smoking ban applying to private cars would need to be provided under other legislation, for example the *Road Traffic Code 2000* similar to mobile phone use or would require amendment of the Act to cover private places such as cars, supported by powers of enforcement and investigation for private places.

Western Australian occupational safety and health legislation deals with smoking in enclosed workplaces which includes cars when used as a workplace.

WAPOL are a major stakeholder in the issue of smoking bans in cars as it is likely police officers would be the main enforcement mechanism for any such ban, irrespective of legislative basis. However in response to the Issues Paper WAPOL provided the following comment in relation to enforcement-

*"It is not envisaged police would have an active role in enforcement of this type of legislation as it would be completely impractical for our officers to be diverted from their primary duties of policing."*

## **5. BANS IN OTHER AUSTRALIAN JURISDICTIONS**

### **5.1. Outdoor Public Areas**

The Table in Appendix 3 (summarised below) provides details of other Australian jurisdiction's smoking bans in outdoor areas and in cars.

#### Australian Capital Territory (ACT)

No restrictions on smoking in outdoor places.

#### New South Wales (NSW)

Some local Councils have enacted by-laws to ban smoking near children's playgrounds, sporting fields and in alfresco dining areas.

- Of the 24 metropolitan councils, smoking is banned by-
  - 20 councils at children s playgrounds and playing fields;
  - 7 councils in alfresco dining areas; and
  - 7 councils at beaches.
  - Mosman Council (NSW) has implemented bans in every Council-controlled public space, being the most restrictive smoking ban of any Australian local or State/Territory government and is also one of the strictest internationally.

#### Northern Territory (NT)

Smoking is banned near air-conditioning intakes or entrance areas.

Half of fixed seating in outdoor venues (eg, stadium seating) must be non-smoking.

Educational facilities must be smoke-free.

#### Queensland (QLD)

Smoking bans apply to a number of outdoor places -

- major sports facilities;
- patrolled beaches or at prescribed outdoor swimming areas (e.g. an artificial beach);

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- within 4 metres of non-residential building entrances;
- within 10 metres of children's playground equipment; and
- outdoor eating or drinking places where persons may consume food or drink provided by an on-site food service.

A public review of the enabling legislation was finalised in May 2008 (the Qld review).

Issues arising from the Qld review are relevant to implementing bans in Western Australia in outdoor public places such as alfresco dining areas. These issues are examined under separate heading below "Queensland Issues"

### South Australia

No outdoor smoking restrictions.

### Tasmania

Outdoor dining areas must be 50% no-smoking.

Smoking is prohibited within 3 metres of an entrance or exit to a non-domestic or multiple-use building and within 10 metres of an air-conditioning intake.

Reserved seating areas of sporting stadia are no-smoking.

### Victoria

Smoking is prohibited in all covered areas of train platforms, tram stops and bus shelters.

### International

A number of countries are extending indoor bans to outdoor area, for example-

- **Sweden** - prohibits smoking in schoolyards and other outdoor places for children.
- **Japan** - some restrictions on outdoor smoking in designated areas of urban centres.
- **South Korea** - smoking is banned at outdoor subway platforms.
- **South Africa** - smoking is banned at outdoor sports stadiums.
- **California** - has banned smoking and disposing of any tobacco-related waste within 7.5 m of outdoor playgrounds and sandboxes. Many cities and counties are taking the next step to protect their communities by creating outdoor smoke-free ordinances. Examples include smoke-free public events, smoke-free recreation areas and completely smoke-free parks.

## **5.2. Smoking In Cars**

South Australian and Tasmanian legislation bans smoking in cars when children are present (under 16 and under 18 years of age respectively).

The NSW and Queensland Governments recently announced intention to ban smoking in cars with children passengers under the age of 16 years.

Victoria has announced intention to conduct public consultation on whether smoking bans should apply to cars with children passengers.

## **6. POLICY CONSIDERATIONS**

There is clear evidence that the public health rationale for smoking bans to apply in outdoor areas is the same rationale that smoking bans have been implemented in enclosed areas.

The adverse health effects caused by exposure of persons to SHS and the effects of passive smoking are scientifically proven and indisputable.

Section 127 of the *Tobacco Products Control Act 2006* requires the Minister is to carry out a review of the effectiveness of the Act as soon as is practicable after four years of commencement of Part 5 (Healthway) which commenced on 31 July 2006.

However section 127 also provides that the Minister may carry out a review of the operation and effectiveness of regulations made about smoking in public places at any time.

Issues of concern raised by stakeholders generally relate to practicalities of implementing bans in certain areas and generally those concerns are all linked to the ability of enforcement.

The public health rationale supports the implementation of further smoking bans in all the places identified in the Review however a number of issues would require further stakeholder consultation and research.

Should the MFH so decide and subject to confirmation of legal advice to be obtained by the DOH, the Review may be a review conducted by the Minister under section 127 of the Act.

### **6.1. Stakeholder Views**

Many stakeholders cited the public health implications in their responses and identified that non-smokers can be exposed to high levels of environmental tobacco smoke when close, to or down wind, of smokers.

A number of stakeholders also identified the need for smoking restrictions due to the **“annoyance / discomfort factor”** and that it was unacceptable for people

who do not smoke to be subjected to the “**the unpleasant odour and smoke wafting over them while enjoying a meal**”.

## **6.2. Local Government By Laws – Inconsistencies and Scope of Application**

As previously detailed, local Government by-laws that ban smoking are able to apply only to public property.

Enactment of local Government by-laws that ban smoking also raises issues of inconsistencies caused by drafting differences and scope of application and may cause public confusion should the scope of application differ between Councils.

Alfresco dining areas located on private property are not able to be captured under smoking bans implemented by local government by way of by-laws

State legislation, implemented either as mandatory or by voluntary adoption by local Government would provide consistent application and scope.

## **6.3. Queensland Issues**

Queensland is the only Australian State/Territory jurisdiction to implement smoking bans in outdoor public places on a state-wide basis similar to those proposed by the former MFH.

The *Tobacco and Other Smoking Products Act* (the Qld Act) provides offences for persons who smoke in a number of outdoor places –

- major sports facilities;
- patrolled beaches or at prescribed outdoor swimming areas (e.g. an artificial beach);
- within four metres of non-residential building entrances;
- within ten metres of children's playground equipment; and
- outdoor eating or drinking places where persons may consume food or drink provided by an on-site food service.

Some exemptions from the ban on smoking at non-residential building entrances apply to premises with a general or club liquor licence and a number of prescribed outdoor pedestrian malls in Queensland (including the Queen Street Mall, Brisbane).

Premises with a general or club liquor licence may choose to have a designated outdoor smoking area DOSA no larger than 50% of the total outdoor liquor licensed area, for drinking and smoking only. Prohibited activities in a DOSA include the consumption of food, food or drink service and offering any form of entertainment or gaming machines. A smoking management plan and dedicated signage is also required for premises choosing to have a DOSA.

Queensland Health conducted a public review of the Qld Act during November 2007-January 2008 (the Qld review) with recommendations for some changes as a result of that review announced by the Queensland Government in May 2008.

Issues arising from the Qld review are relevant to implementing bans in Western Australia in outdoor public places such as alfresco dining areas and their entrances and buffer zones or barriers.

The Qld review identified a number of issues relevant to operation of the Qld Act since commencement:

- The current 4 metre distance smoking ban from building entrances was problematic and should be extended.
- Applying stricter controls on smoking in the Queen Street Mall, Brisbane and at all public transport waiting points (e.g. bus stops, ferry wharves).
- That DOSA's at certain licensed recreational facilities such as golf courses were impractical and unenforceable.
- Industry lobbying to-
  - allow for some relaxation of the prohibited activities in DOSAs such as the provision of snack foods and passive entertainment; and
  - modify the 50% rule for DOSAs on the basis that many venues experienced overuse of smoking areas and underutilisation of non smoking areas.
  - Health groups concerns that children were allowed in DOSAs and therefore exposed to concentrated SHS.
- Health groups and community members issues of-
  - non-compulsory requirements for smoke-impervious buffers around DOSAs and other outdoor areas of premises and lack of a requirement for a buffer between DOSAs and enclosed areas of premises; and
  - smoke drift and continual exposure to SHS, particularly with regard to outdoor pedestrian malls (specifically the Queen Street Mall, Brisbane), at public transport waiting points, at building entrances and in areas adjoining DOSAs.

The Qld Review sought public comment on whether-

- the current smoke-free outdoor places provisions of the Qld Act met the Act's objective to "reduce public exposure to smoke from tobacco and other smoking products".
- further reforms are required-;
  - clarifying the definition of an outdoor place;
  - giving local government the power to regulate smoking in pedestrian malls and at public transport waiting areas;
  - Increasing the distance from building entrances where smoking is banned;
  - removing the building entrances exemption for premises with a general or club licence, resulting in no smoking within 4 metres of an entrance to a hotel or club;

- increasing the distance from building entrances where smoking is banned;
- clarifying existing outdoor smoking bans as they apply to golf courses; and
- amending the DOSA provisions of the Qld Act –
  - what can and cannot be taken into a DOSA;
  - who is allowed access to a DOSA, including children;
  - the size of the area used for DOSAs;
  - buffers;
  - phased removal of DOSAs)
- ban smoking in cars carrying children;
- removing the smoking ban exemption applying to casino high roller rooms.

#### **6.4. Qld Review – Outstanding Issues for WA Consideration**

Licensed premises in Queensland may have a DOSA no larger than 50% of the total outdoor liquor licensed area, for drinking and smoking only.

The consumption of food, food or drink service and offering any form of entertainment or gaming machines is prohibited in a DOSA.

Qld health has received numerous complaints since commencement of the Qld DOSA provisions about-

- smoke drift from DOSAs into non-smoking areas; and
- DOSAs being located directly next to no-smoking areas with no buffer zone or barrier to prevent or limit smoke drift.

Information provided to the DOH by Queensland Health is that reforms were strongly opposed by industry groups during the Qld Review which may have impacted further reforms and that buffers should have been initially included as a DOSA requirement.

Queensland Health also indicated to the DOH that an exclusion zone greater than 4 m should apply to smoking bans at entrances to public buildings including outdoor eating areas as it was the source of many complaints of people having to enter buildings “through a haze of smoke” and smoke drift.

#### **6.5. Recent Changes Announced by Queensland Government**

As a result of the Qld review the Queensland Government on 26 May 2008 announced intention to implement a number of reforms-

- a ban on smoking in cars carrying children under 16 years of age with fines of \$150;
- providing legislative power for each city and town to decide if smoking bans should apply to pedestrian malls and public transport waiting areas; and

- seeking a nationwide ban on smoking in casino high roller rooms through the Australian Health Ministers Council.

## **6.6. Legislation**

The *Tobacco Products Control Act 2006* (the Act) provides for regulations to be made to regulate or prohibit smoking in public places.

The *Tobacco Products Control Regulations 2006* (the Regulations) currently prescribe bans for enclosed public places only.

Implementing smoking bans in non-enclosed public places would require amendment of the Regulations only.

While local governments may enact by-laws or implement non-legislative policy to ban smoking in certain areas including outdoor dining areas, those bans can apply only to areas which are located on public property and may result in interpretive and application issues between Councils and differences in penalties.

## **6.7. Enforcement issues – Smoking Bans in Public Places**

Smoking bans currently implemented or proposed at local government level are by way of local government by-laws or in the case of the City of Cockburn, Council policy. These by-laws are enforced by a range of local government officers including environmental health officers, rangers and other compliance officers.

The Act provides that only persons employed under Part 3 of the *Public Sector Management Act 1994* are able to be appointed as investigators under the Act. The Act confers functions of an investigator to all WAPOL officers.

However the Act provides for regulations to be made to also confer powers on environmental health officers in relation to matters about smoking in public places. Those powers are currently conferred for smoking in enclosed public places matters.

If Local Government is to remain the primary enforcement body for smoking bans proposed in outdoor public places the Act would need to be amended or some other legislative instrument drafted to confer powers on persons employed in local Government other than environmental health officers (DOH to seek legal advice).

WAPOL officers have functions of an investigator under the Act, including enforcement of smoking bans in public places. However, it is anticipated that the current limited involvement of WAPOL officers with enforcing smoking bans in enclosed public places would operate similarly with proposed bans in public places.

## **6.8. Smoking in Prisons**

The banning of or other controls on smoking in prisons are matters of responsibility of the Minister for Corrective Services. The DOH has undertaken a pro-active role in providing policy support to the Department of Corrective Services (**DOCS**) on this matter.

## **6.9. Beaches and Other Public Swimming Places**

### Beaches

Many stakeholders while supportive of smoking bans at all beaches acknowledged and raised issues of practicalities and enforcement and whether a smoking ban for example at a remote beach, the only person or persons present being smokers, is justified.

### Public Swimming Pools

There was a high level of support for smoking to be banned in all public swimming pools. Stakeholder views included the safety of small children and promotion of health and wellbeing of the community. Some stakeholders believed allowing smoking in these areas was not a good message to be sending to children.

### Other Public Swimming Places

Affected local Governments were generally not supportive of banning smoking at public swimming places such as lakes and dams however they acknowledged they serve the same purpose for inland communities as beaches and swimming pools. The reasons for not supporting such a ban were being difficult to police and impossible to enforce.

## **6.10. Private Cars Carrying Passengers**

There is overwhelming support from stakeholders to ban smoking in cars when there are children present.

Stakeholders believe that children are particularly vulnerable when exposed to second hand smoke and that this may lead to health issues such as increased risk of asthma and respiratory problems later in life. However, many stakeholders stated that there would be difficulties with policing such a ban.

Further consideration of an appropriate legislative framework and consultation with the WAPOL is required.

## **6.11. Other Public Outdoor Areas**

Key stakeholders including the Health NGO's and a majority percentage of local government raised concerns about and indicated support for smoking bans in a number of areas outside the scope of the Review.

Generally these areas are outdoor areas in which smoking bans have been implemented in other Australian jurisdictions, however not any one jurisdiction has implemented bans in all areas:

- at all ticketed outdoor events, for example - concerts, plays and sporting events.
- within 10 m of children' s playground equipment;
- at public transport waiting areas, for example taxi stands, bus stops;
- at outdoor market areas;
- at outdoor public entertainment events;
- outside all non-residential buildings within 5m of entrances 10m of air-conditioning intakes; and
- at any outdoor event or place that has a defined area, for example within the boundaries of sporting arenas;

The DOH does not anticipate additional opposition to implementing smoking bans in all additional places. However, industry having an interest in outdoor events has not been consulted, other than the AHA.

#### **6.12.Phase-In of Legislation**

There was divided support for phasing-in of legislation if smoking was to be banned in alfresco dining areas. Comments from stakeholders ranged from immediate to delayed implementation of legislation.

However, there was a bias towards legislation being commenced later than the date of publication and this view was particularly strong from the AHA.

Implementing smoking bans in different outdoor public places impact different stakeholders and will have differing associated issues.

All Stakeholders are supportive of comprehensive community education should further smoking bans be implemented.

Further consideration and consultation with relevant stakeholders is necessary to establish workable timeframes, particularly on issues of enforcement with local government and WAPOL and on modifications that may be required to outdoor areas to comply with the proposed changes to bans in alfresco dining and other areas.

#### **6.13.Legislative Issues**

Implementation of state-wide smoking bans in outdoor public places under the *Tobacco Products Control Act 2006* may impact current by-laws enacted by some local governments that ban smoking in alfresco dining area and some other public places.

Other issues concerning enforcement of smoking bans by local government compliance persons having differing roles requires further consideration and consultation with local Government.

Further consultation with affected local governments would be required. The DOH is to seek legal advice on these matters.

#### **6.14.Enforcement Issues – Smoking Bans in Private Cars**

The Act does not provide powers for investigators or police officers in relation to smoking in private places.

While the Act could be amended to provide those powers a question of whether it is appropriate for public servants (**non-WAPOL**) to have those powers will be raised.

Alternatively enforcement could be limited to WAPOL officers only, which could be achieved by incorporating the ban in legislation administered and enforced by the WAPOL, for example similar to the ban under the *Road Traffic Code 2000* on mobile phone use while driving.

#### **6.15.Buffer Zones or Impermeable Barriers**

The implementation of a legislated buffer zone of different distances determined on the basis of practicality and ability to enforce provides an appropriate option to address-

- issues of exposure to SHS from smoke drift between smoking and non-smoking areas; and
- concerns of the AHA and local governments raised in response to the Review.

The mandating of buffer zones or a physical barrier will also provide opportunity for Western Australia to implement current best practice smoking bans that address deficiencies of the Qld Act.

The prescription of buffer zones is a relatively new initiative both nationally and internationally and is considered best practice where smoking bans apply in outdoor areas. Further research and industry consultation would be necessary to establish an appropriate benchmark.

The lack of prescribed buffer zones or barriers is a deficiency of the Qld Act identified in the Qld Review.

#### **6.16.Designated Smoking Area (DOSA)**

There was general support from stakeholders to allow smoking in designated smoking areas at outdoor events where food is served or consumed.

However, some stakeholders stated that having these designated areas set a bad example for young people. There was also the potential for smoke drift into non-smoking areas, an issue identified with DOSA's in the Qld Review.

Healthway was of the view that the provision of designated smoking areas would be problematic and stated that these areas would serve to enable or facilitate smoking and the exposure of others to second hand smoke.

There was not any general support for DOSAs to apply to hotels.

Prescription of a buffer zone may be an appropriate option should smoking be proposed to be banned in areas where food is served or consumed including outdoor events.

A buffer zone separating all areas where smoking is prohibited and smoking is permitted may be an appropriate alternative to DOSAs.

## **7. IMPLEMENTATION OPTIONS**

### **7.1. Smoking Ban in Alfresco Dining Areas and Other Similar Areas**

A State-wide ban on smoking in alfresco dining areas can be implemented under the Act.

Similar to bans proposed for alfresco dining areas, a State-wide ban on smoking in other areas where food is served or consumed can be implemented under the Act.

Subject to legal confirmation being obtained by the DOH, all alfresco dining areas in local Governments that have enacted legislation or are considering such action, would be covered by implementing State-wide bans under the Act.

#### DOH Recommendations

##### Scope of ban

- That an alfresco dining area is any outdoor dining area of premises whether or not a licensed premises under the *Liquor Control Act 1988*;
- That a beer garden, for example in a hotel where patrons are not served or do not eat food other than snacks such as potato chips etc, should not be captured.

That smoking also be banned in other areas that serve the same purpose as an alfresco dining area (where food is served or consumed):

- outside any business, for example takeaway food shops, where tables and chairs are provided for the consumption of food; and

- at any outdoor event in any area where food is served or consumed.

## **7.2. Buffer Zones or Impermeable Barriers**

Buffer zones can be implemented under the Act as regulations dealing with smoking in public places.

### DOH Recommendations

That subject to further research and further consultation with stakeholders, buffer zones should be legislated and initial recommended buffer zones are-

- **5 metres** between an area in which smoking is banned and where smoking is permitted, other than those areas or in the circumstances listed below. Adoption of this option will form a reference base for all buffer zones and will simultaneously address issues about people smoking outside all buildings including open windows of enclosed restaurants and adjacent to alfresco dining areas etc.
- **10 metres** from-
  - any public children's playground equipment or play areas specifically designated for children; and
  - air-conditioning intakes of buildings other than private residences and workplaces that the public do not have access to, for example mine site buildings (would need to be covered under occupational safety and health legislation).
  - **Nil** if an area in which smoking is banned has a physical impermeable barrier that is at least 2 m in height between that area and any area where smoking is permitted.
  - This option would provide an alternative to a buffer zone in places where it is impractical or impossible to comply. A 2 m height is a suggestive only and requires further consideration.

## **7.3. Designated Smoking Area (DOSA)**

Many stakeholders viewed DOSAs as problematic.

An alternative approach, that may also include limited DOSA application, is to apply buffer zones or a physical barrier to areas of public places where smoking is banned.

### DOH Recommendations

That the DOH undertakes further research and further stakeholder consultation to examine the effectiveness and appropriateness of DOSAs in different areas where it is proposed to ban smoking.

#### **7.4. Smoking Ban at Beaches and Other Similar Areas**

State-wide bans on smoking at public beaches can be implemented under the Act as regulations dealing with smoking in public places.

##### DOH Recommendations

##### Enforcement

That the DOH undertake further consultation with local governments on issues of enforcement, particularly in relation to the appointment of persons employed by local government who currently are not able to have enforcement powers under the Act.

##### Beaches

- That smoking is banned at beaches only between the “flags” of patrolled beaches.
- That a 5 m buffer zone to be determined shall apply.

##### Public Swimming Pools

- That smoking is banned at all public swimming pools.
- That a 5 m buffer zone (subject to consultation with local Government to be determined) shall apply outside the public swimming pool.

##### Other Public Swimming Facilities such as Dams and Lakes

- That legislation under the Act by way of regulations be implemented to allow local Governments to determine which designated public swimming facilities such as lakes and dams within their jurisdiction where smoking is banned.

#### **7.5. Smoking Ban in Cars**

##### DOH Recommendation

That subject to further consultation with the WAPOL on an appropriate legislative framework and WAPOL enforcement concerns a ban apply to smoking in private cars only with passengers under the age of 18 years.

#### **7.6. Smoking Bans in Other Outdoor Public places**

State-wide bans on smoking at other public places can be implemented under the Act as regulations dealing with smoking in public places.

##### DOH Recommendations

That smoking is banned -

- at all ticketed outdoor events, for example concerts, plays and sporting events within 10 m of children's playground equipment;
- outside all non-residential buildings within 5 m of entrances and 10 m of air-conditioning intakes (subject to consideration if such a restriction would ban smoking entirely in a particular area, for example this may ban smoking in the Hay Street Mall).

That legislation under the Act by way of regulations is implemented to allow local Governments to determine where smoking is banned:

- at public transport waiting areas, for example taxi stands, bus stops;
- at outdoor market areas;
- at outdoor public entertainment events; and
- at any outdoor event or place that has a defined area, for example within the boundaries of sporting arenas;

### **7.7. Signage**

For reasons of public clarity, state-wide consistency and enforcement the legislative prescription of signs to clearly identify no-smoking in outdoor areas is supported by a high percentage of stakeholders.

#### DOH Recommendation

It is recommended that signage identifying buffer zones and outdoor non-smoking areas is mandated by legislation.

### **7.8. Penalties**

The current penalty under the *Tobacco Products Control Regulations 2006* (the Regulations) for offences relating to smoking in an enclosed public place is \$2000.

It is proposed to prescribe these offences as offences for which infringement notices may be issued with a modified penalty, under authority of the *Criminal Procedure Act 2004* (the CPA). The CPA provides that a modified penalty shall not exceed 20% of the statutory penalty (\$2000).

#### DOH Recommendation

It is recommended that a modified penalty for an offence relating to smoking-

- in any public place is 20% of the statutory penalty - \$400; and
- in a car with a passenger less than 18 years of age is \$250, consistent with that proposed in NSW. (Note: This penalty is proposed to be prescribed in the *Road Traffic Code 2000* and will require consultation with the WAPOL having legislative responsibility).

### **7.9. Phase in periods**

The majority of stakeholders believe the proposed bans should be published with a date of commencement later than the date of publication as this would provide clarity and a practical lead in time for education and any changes that industry may need to make to premises, staff training etc.

#### DOH Recommendation

It is recommended that subject to consultation with local Government, legislation banning smoking-

- In public places commences 6 months after the date of publication.
- in cars commences 6 months after the date of publication.

### **7.10. Education**

All Stakeholders including the AHA believe that a comprehensive education campaign should support the implementation of further smoking bans.

#### DOH Recommendation

It is recommended that a comprehensive mass media education campaign (including television, radio, press and other appropriate media) should be developed to complement the announcement of the full range of further smoking bans at the time of publishing legislation, during the lag period between commencement and after commencement, with an estimated cost of \$700,000 - \$1 million.

# Appendix 1

## Smoking in Specific Outdoor Public Places, Prisons and in Private Cars

### Key Stakeholders Consulted

<b>Local Government</b>
141 Local Governments
Australian Institute of Environmental Health
WA Local Government Association
Local Government Managers Australia
<b>Health Non-Government Organisations</b>
Asthma Foundation WA Inc
Australian Council on Smoking and Health
Australian Medical Association (WA)
Cancer Council Western Australia
Diabetes WA
National Heart Foundation of Australia (WA Div)
<b>Industry Representative Organisations</b>
Australian Hotel's Association (WA Branch)
Clubs WA
Property Council of Australia (WA)
Restaurant and Catering Industry Association WA
WA Nightclub Association
<b>Non-Government Organisations</b>
Keep Australia Beautiful Council
Royal Life Saving Society Australia
Surf Life Saving WA
<b>WA Government</b>
Department of Local Government and Regional Development
Drug and Alcohol Office
Fire and Emergency Services Authority
Healthway
WA Police
WorkSafe WA
<b>State and Territory Jurisdictions</b>
Australian Capital Territory – ACT Health
New South Wales – Dept. of Health
Northern Territory – Dept. of health & Community Services
Queensland – Queensland Health
South Australia – Dept. of Health
Tasmania - Dept of Health & Human Services
Victoria – Vic Health

## Appendix 2



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Briefing Attachment 2

## Appendix 3

	<i><b>QLD</b></i>	<i><b>NSW</b></i>	<i><b>VIC</b></i>	<i><b>SA</b></i>	<i><b>TAS</b></i>	<i><b>ACT</b></i>	<i><b>NT</b></i>	<i><b>WA</b></i>
<b>Cars with Children</b>	No Restrictions.  26 May 2008 Qld Govt announced intention to introduce legislation to ban smoking in cars with children under 16.  No penalty announced	No restrictions.  July 2008 the NSW Govt recently announced intention to ban smoking in cars with children passengers under the age of 16 years.  Propose penalty \$250	No Restrictions. The Victorian Govt. has announced intention to conduct public consultation on whether smoking bans should apply to cars with children passengers	Smoking prohibited in vehicles carrying children under the age of 16 years. Penalty \$200	Smoking prohibited in vehicles carrying children under the age of 18 years. Penalty \$2200 or Infringement \$110	No Restrictions.  Current internal policy development and examination of legislation to prohibit smoking in vehicles carrying children under the age of 18 years.	No Restrictions.  Current internal policy development and examination of legislation to prohibit smoking in vehicles carrying children under the age of 18 years.	No Restrictions.  Currently being considered by Government.
<b>Beaches</b>	No smoking in a patrolled beach area.	Waverley & Manly Councils have implemented local laws in order to ban smoking on local beaches (including Bondi, Bronte, Tamara & Manly beaches).	No Restrictions.	No Restrictions.	No Restrictions.	No Restrictions.	No Restrictions.	Currently being consider by Government.  Joondalup Council has announced a smoking ban on local beaches.
<b>Outdoor Alfresco Dining Areas</b>	Smoking prohibited in any outdoor eating or drinking areas, licensed or non-licensed. Exemptions for up to 50% of outdoor liquor licensed areas under strict conditions, including non-smoking buffer-zones, and with no service or entertainment being provided in such areas.	Some local councils have enacted bylaws to ban smoking in alfresco dining areas.	No Restrictions.	No Restrictions.  SA Govt has announced a review of smoking legislation with a view to considering further restrictions.	All outdoor drinking and dining areas are required to be a minimum of 50% smoke-free.	No Restrictions.  ACT Govt is currently developing policy to consider introducing further restrictions in outdoor areas.	No Restrictions.  NT Govt is currently developing policy to consider introducing further restrictions in outdoor areas.	Currently being consider by Government  City of Fremantle has passed a local bylaw to ban smoking in 50% of local alfresco areas, with a total ban by August 2008.  City of Rockingham has banned smoking in alfresco dining areas.  Cities of Joondalup and Perth announced intention to ban smoking in alfresco dining areas.