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The Principal Research Officer
Education and Health Standing Committee
Legislative Assembly, Parliament House
PERTH WA 6000

Email: laehsc@parliament.wa.gov.au

Dear Sir or Madam,

Re: Inquiry into the Tobacco Products Control Amendment Bill 2008

Below please find our comments relating to the Bill. We trust you find them useful in your review of this legislative proposal:

- We note that the Bill has **not** been subjected to regulatory impact assessment and as such does not comply with the agreed COAG principles for best-practice regulation making.
- The absence of a Regulatory Impact Statement (RIS) makes it impossible to determine whether the proposed regulation has a net positive impact on the Western Australian community – i.e. whether the costs it imposes on the community are exceeded by the supposed benefits.
- The Committee has asked for those making submissions on the Bill to indicate whether they are 'for or against the Bill'. It is thereby implied that the making of legislation is a matter of public popularity rather than a matter of good governance. We suggest that good governance should be the priority.
- We note that the Tobacco Products are legal and that their sale provides substantial revenue to governments. Sale of tobacco products also sustains many small businesses and provides employment.

- The Tobacco Products Control Act 2006 and regulations only came into effect less than 18 months ago. This legislation, among other things, restricted the display of tobacco products to a display area of less than 1 square metre. We are not aware of any research that demonstrates the effectiveness of that display restriction in terms of a reduced incidence of smoking or uptake of smoking, nor of any research that suggests that further restrictions placed on display are warranted or going to be any more effective than the restrictions already in place.
- We note that the Act and regulations as they currently stand, as well as restricting cigarette sale display to an area of 1 square metre or less has the following restrictions:
 - Prohibits supply to persons under 18 years of age;
 - Prohibits purchase on behalf of anyone under 18 years of age;
 - Requires proof of age before supply;
 - Prohibits the use of vending machines by persons under 18 years of age;
 - Restricts the location of vending machines;
 - Restricts display and sale to only one location per licensee;
 - Prohibits the display of cigarette cartons or packets (other than as prescribed);
 - Prohibits the display of signs indicating the availability or price of tobacco products (other than as prescribed);
 - Requires the display of signs advising that sale to minors is illegal;
 - Requires the display of health warnings and specifies their size and location;
 - Requires the licensee to make available to purchasers an approved anti-smoking guide;
 - Requires the licensee to display this guide;
 - Prohibits advertising of tobacco products;
 - Prohibits promotion of tobacco products.
- Current regulations place significant restrictions on display. Apart from the display area requirement, regulations:
 - Require the display area to be behind the service counter (i.e. out of direct view of children);
 - Require the base of the display area to be 1.7 metres from the floor (i.e. out of reach of children);

- Restrict the range and types of products that may be displayed;
 - Prohibit illumination of the display area;
 - Restricts the perimeter of the display area;
 - Restricts product display to one pack per product line;
 - Prohibits the display of tobacco products near confectionery;
 - Prohibits the display of flavoured product;
 - Prohibits the display of products with less than 20 cigarettes;
- In view of the restrictions on sale, promotion, advertising and display already in place, and in absence of any data indicating that further restrictions would have a measurable impact on smoking behaviour, it is not clear what these restrictions are intended to achieve.
 - The argument used to further restrict display is based on an assumption that any such display is a form of promotion. If it were in fact considered to be promotion, it would already be prohibited under current legislation.
 - We note that retailers have expended significant funds to modify their tobacco displays in order to comply with the current Act and Regulations. The proposed changes will impose further costs on the sector. No evidence has been provided to indicate that a further cost imposition on the retail sector is warranted.
 - Display restrictions such as those proposed make serving customers more difficult and time consuming, adding to retailing costs. All cost increases put upward pressure on prices – including prices paid by consumers of non-tobacco products.
 - The Bill seeks to prohibit smoking in outdoor eating or drinking places, outdoor playing areas and safe swimming areas. We note that the current Act already provides for the making of regulations prohibiting smoking in public places and that the definition of public places is sufficiently broad to cover these areas.

Please contact me should you need any further information.

Yours faithfully,

Ken Henrick
Chief Executive Officer