

EDUCATION AND HEALTH STANDING COMMITTEE

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
TUESDAY, 10 FEBRUARY 2009**

SESSION ONE

Members

Dr J.M. Woollard (Chairman)

Mr P. Abetz

Mr I.C. Blayney

Mr J.A. McGinty

Mr P.B. Watson

Hearing commenced at 10.18 am

O'CALLAGHAN, DR KARL JOSEPH
Commissioner of Police, Western Australia Police,
examined:

The CHAIRMAN: On behalf of the Education and Health Standing Committee, I thank you for your interest and your appearance before us today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into the Tobacco Products Control Amendment Bill 2008. You have been provided with a copy of the committee's specific terms of reference. At this stage I will introduce myself and the other members of the committee present today. I am Dr Janet Woollard and next to me are Mr Peter Abetz, Mr Ian Blayney, Mr Peter Watson and Hon Jim McGinty.

The Education and Health Standing Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament.

This is a public hearing and Hansard will make a transcript of the proceeding for the public record. If you refer to any document or documents during your evidence it would assist Hansard if you could provide the full title for the record.

Before we proceed to the questions we have for you today, I need to ask you a series of questions. Have you completed the "Details of Witness" form?

Dr O'Callaghan: Yes, I have.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Dr O'Callaghan: Yes, I do.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

Dr O'Callaghan: Yes.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

Dr O'Callaghan: No, I do not.

The CHAIRMAN: Commissioner, I again thank you for coming. The committee has received a number of submissions on a wide range of issues associated with restrictions on the sale and use of tobacco and tobacco products. The number and quality of the submissions both for and against the bill stand to prove the interest shown by the government, by non-government organisations and by society as a whole. I am also pleased that the amendments that have been put forward by you and others to improve the bill seem to be largely technical in nature and easy to implement. I am looking forward, as we all are, to listening to your concerns and the opinions of all the people who have made submissions and who are coming to the committee. Would you like to make any opening statements?

Dr O'Callaghan: I will make a brief opening statement. For the purposes of Hansard, I am happy to refer to the letter I sent to you, which is entitled "Inquiry into the Tobacco Products Control

Amendment Bill 2008". Very briefly, I would like to reiterate my support for any measures that will protect people, particularly children, from the effects of passive smoking. I applaud the intent of any bill—including this bill—that seeks to achieve this. I guess that I am on record publicly as saying that the enforcement of such a bill by police could be problematic, and I am very happy to work through those issues with the committee this morning, based on the questions you might ask me and the responses I might give. I will leave it at that at this stage.

The CHAIRMAN: Thank you. I will start the ball rolling.

I am very pleased that you are in agreement with the intent of the bill. Do you agree that an opportunistic approach to policing a ban on smoking in cars would be a cost-effective measure not requiring a disproportionate commitment of police resources to the detriment of other police duties, such as combating violent crime?

Dr O'Callaghan: I think the problem for WA Police is largely practical and it is also largely one of perception. It seems to me that on the surface there will not be an enormous commitment of resources. The concern I have is that in effect what will happen at ground level is very little attention will be given to the effects of the bill, and that will happen for a number of reasons. I think if you look at the primary role of police, it is maintenance of public order and peace. In achieving these aims, the government has a number of agreed KPIs that it works on with police, and police divert their resources and target their resources to deliver on those KPIs and outcomes that are required by government; so, necessarily, people are tasked to move in those directions and deliver those sorts of outcomes.

One of the issues with the way in which police powers are constructed under the Police Act is that all police constables are autonomous and they necessarily make decisions and prioritise their approaches to any particular offences, so very often police officers travelling around the metropolitan area or regional Western Australia will see offences that they take no action on. A good example of that is they may be following a car with a brake light, tail-light or numberplate light that does not work and they may choose, because of other priorities, not to take any action on those things. They might also choose to pull people over and give them a caution or give them an infringement notice.

[10.20 am]

For some years, we have had the power, for arguments sake, to issue littering infringement notices to people who litter or throw cigarette butts out of a car. In effect, if you look at what the police actually do in that regard, it is almost zero. One of my concerns about the practical application of police having the power to issue infringement notices to adults smoking in cars when children are present is that that power will transfer, at ground level, to police officers largely ignoring the problem because they are dealing with, what they consider in the list of priorities, to be more important and pressing issues. In retrospect—that is, when we look back—one of the things we would have to consider is whether giving to the police the power and the responsibility to prosecute that aspect of the problem will result in any changes in police behaviour and the way police deliver that service. I think that is the first thing that I would like to say about the matter. I am happy to just delve into the topic in response to questions.

Mr J.A. McGINTY: By way of analogy, I ask about the use of mobile phones: do you have any instruction to your officers at the moment to enforce or not enforce that law?

Dr O'Callaghan: No, we do not. The only instruction that we have in terms of infringeable Road Traffic Code laws in Western Australia is in regard to seatbelts. We have given clear instructions that police officers are, in every instance, to issue infringement notices for people not wearing seatbelts because of the problem with 25 per cent of people being killed on the road not wearing seatbelts. However, in regard to mobile phones, we do not issue any instructions as to how police will approach the matter.

Mr J.A. McGINTY: If this legislation is passed, would you envisage handling the smoking issue on the same basis; that is, leaving it up to individual officers? The reason I ask that question is I think I saw you some months ago in the media saying that you may not even facilitate your officers by printing the charge forms—that is, the infringement notices. Hopefully that was not correct; but it is what I recollect you saying.

Dr O'Callaghan: No. We would—like any other traffic code or infringeable issue of this nature—probably not issue any directions to officers about how they handle the situation. Now, for arguments sake—I was talking about littering infringements—littering infringement books have been available for police officers to take and use for some years now. But, if you look at the average kit that a police officer carries, it probably does not contain any littering infringement books. They end up not being used. They end up being left in police stations and not being part of the daily kit taken by police officers. The issue would be if you were to come back and ask what police have done in Western Australia about littering from cars, we would probably have to say that we have done very little. The issue might be the same with any powers that you give us under the Tobacco Products Control Amendment Bill 2008. Consequently, I flagged that as a potential issue in terms of reviewing the bill in six or 12 months' time.

Mr J.A. McGINTY: Okay. Can I ask then: is it administratively something which is capable of being picked up under the general traffic infringement form that your officers use at the moment; that is, in the same way that mobile phone use is, I presume, covered by that form?

Dr O'Callaghan: I think that particular offence would then need to be covered by the Road Traffic Code or the Road Traffic (Infringements) Regulations for it to be part of that form; otherwise, as I understand—I would need to get advice on this—it would need to be a separate infringement notice.

Mr J.A. McGINTY: Right. Can I ask: what advice have you got from the other states? Most other states have now enacted legislation comparable to what we are talking about here. What advice have you got from police in other states?

Dr O'Callaghan: In the other states, some police have accepted the powers. Generally, the information that I am getting from the other states is that the take-up in terms of infringement notices is quite low. I would expect to see something similar in Western Australia.

The CHAIRMAN: Before we move on and in response to the question just put to you by Hon Jim McGinty, would you be able to provide the committee, perhaps within the next two weeks, you said you would need to get further clarification—

Dr O'Callaghan: Yes; on the number of infringements issued by the states—is that what you are asking for, or —

Mr J.A. McGINTY: It is really a bit broader than that: it is about what the practice has been, and what the police view is, in each of the other states, in terms of the law about smoking in cars when children are present. Often, what happens in the other states is a useful guide as to what should happen here. I would not put it any higher than a guide. If each of the other states is accepting of the legislation, progressing it along and some infringement notices are being issued, then that would indicate to me that that is most probably the sort of approach that could be adopted here.

Dr O'Callaghan: Sure, I can certainly get those details for the committee.

The CHAIRMAN: Would you be agreeable to maybe provide that to the committee within the next two weeks?

Dr O'Callaghan: Yes; no problem.

The CHAIRMAN: Thank you; shall we move round?

Mr P.B. WATSON: When seatbelts were first introduced, a lot of people did not use them; I do not think they were enforced all that much. Now you are saying that 25 per cent of the people who die on roads were not wearing seatbelts. Do you think that, in the future, if this legislation is passed,

people will realise that we are killing our kids in cars—or not killing them, but if you said to an adult, “You are doing something that is harming your child”, they would be horrified that they drive around in cars, smoking? There are individual campaigns for seatbelts. Would you look at that down the track? I know that when you drive into Albany, there are signs saying that this week’s campaign is around seatbelts, drink-driving or whatever. A simple way that you could do it is to maybe have that sort of campaign in the future.

Dr O’Callaghan: The basic philosophical position that I take on this is that police have always had primary responsibility for enforcing the traffic laws in Western Australia—the implementation of seatbelts, mobile phone laws and all that sort of thing. The basis of introducing a law that prohibits the use of your mobile phone while you are driving is that it is inherently a dangerous thing to do. This is a little different. This is not to do with road safety, and it has never been, up until 2009, a core function for police to act on what is broadly a health issue. We are moving police now into a new territory for which they have never before had responsibility, and we are saying, “We are going to make you responsible now for issuing infringements in that regard.” You are talking about the potential for an education campaign. I do not have any problem with that, except that philosophically we are moving the goalposts quite significantly from where they have been. We have never had responsibility for what might broadly be called health issues. Certainly we have responsibility under the Liquor Control Act and the Misuse of Drugs Act. We are talking about something that the police have never before really had primary responsibility for. I think before we get to that stage we have to deal with the philosophical position of what the police are there for in the first place. I think this is moving police outside of what they have always done. I am not saying it cannot be done, but it is a discussion to be had.

Mr P.B. WATSON: If someone lights a cigarette, is puffing on a cigarette and takes his hands off the wheel and his attention off the road, is that not a danger?

Dr O’Callaghan: Absolutely. In that case, if it was made an offence under the Road Traffic Act or the Road Traffic Code, it would certainly be a role for police to play. To take it a step further, my concern is that mobile phone usage is dangerous, trying to manipulate your iPod when you are driving is dangerous, trying to activate your TomTom or Navman when you are driving is dangerous, and taking your hands off the wheel to have a smoke is dangerous. If you can make that nexus, if you can make that tie, and it becomes part of the Road Traffic Code, then it becomes a police problem and a police response issue.

The CHAIRMAN: Are you aware of the research that has been conducted by the Monash University Accident Research Centre? In fact, their research has found that, regardless of the exact cause of smokers’ increased risk of being involved in a crash, it is clear that smoking while driving is a hazard. Are you aware of the research that has been done at Monash?

Dr O’Callaghan: I am not exactly aware, but I am not surprised about that. I think that is exactly what the situation is. The intent of the legislation that is being proposed here is to protect children from passive smoking. What we are talking about now, potentially, is a piece of legislation that says it is actually dangerous to do other things while you are driving, and if you do that, the police will give you an infringement notice, or they will pull you up and talk to you about it. That is squarely a police responsibility, and we would accept our response to that entirely, but I think that that then would have to become part of a piece of legislation that says, “We are doing this because we think it is dangerous to drive whilst someone is smoking”, because it does not then cover the passenger.

Mr P. ABETZ: Would you agree, Commissioner, that law also has an educative function and that therefore, just by virtue of having it on the statute books, even though it may not be very actively enforced in that sense, it will still have a useful function?

Dr O’Callaghan: Certainly, yes, absolutely. Law is there as a deterrent and it is also there as an education—a range of things. I think one of the potential outcomes of making it illegal is that

simply making it illegal will stop some people from doing it without it having to be policed. We do not have to police everything that is made illegal to do.

The CHAIRMAN: Commissioner, the committee has been advised that a memorandum of understanding was signed in Tasmania between the health department and the police force stipulating that enforcement of the ban on smoking in cars carrying children under the state legislation would be opportunistic and not through routine compliance checks. The Tasmanian acting health minister has advised the committee that the ban was supported by the Tasmanian police. Would you agree to a similar solution to the one implemented in Tasmania, whereby a memorandum of understanding could be made between Western Australia Police and the Department of Health providing that policing the ban on smoking in cars would be opportunistic, and that any prosecution costs following the enforcement of the ban would be borne by the Department of Health? Personally, from looking through your submission to the committee, I believe that that would address the major concern you have expressed about this bill. Could you elaborate on that?

Dr O'Callaghan: Yes, I can. Just for the information of the committee—I know some of you are aware of this—I met with Professor Mike Daube and Professor Gary Geelhoed in December about this issue, because they were naturally concerned about how police would respond to this bill, and they were keen for us to assist. Apart from a lot of other things, one of the concerns I have is a public perception that police resources would be diverted to something that is not necessarily, or never has been, a police core function. One way around that, so that police capacity is not diminished, is to recover from the Department of Health any costs that might be incurred by the police doing this piece of work. There would obviously be a minimal cost involved in stopping and infringing a vehicle. The amount of officer time involved in that is quite small. There are more significant costs involved with prosecutions of matters that are defended. I have outlined this in my letter to you, which is based on advice from our legal services division. There are issues about whether it would be necessary to prove the product is a tobacco product, whether it would need to be retained, or whether it would need to be analysed. All of those things incur a cost. My concern as Commissioner of Police is that the community of Western Australia would not want to see police resources going into that. However, I said to Mike Daube and Gary Geelhoed that if that cost were to be fully recoverable from the Department of Health, I would be much more amenable to signing a memorandum of understanding with the Department of Health to allow that to occur, because the money could be reinvested in police overtime, and you would not lose police capacity in any way. It would mean that the criticism that could be levelled at police and government would go away because the money would be recoverable.

The CHAIRMAN: Personally, I think that if one or two enforcements by the police were reported in the media, this ban would be self-enforcing, once the community knew about it. However, what you are saying is that, even though it would probably be self-enforcing legislation, the police would be much happier with that type of memorandum of understanding between the two departments.

Dr O'Callaghan: It would enable me to say as Commissioner of Police to the community of Western Australia that this legislation is not affecting the capacity of police in any way, because any costs incurred are recovered from the Department of Health, or from whoever. We will just have to identify in the memorandum of understanding what sort of costs would be recoverable, and how that would occur.

Mr J.A. McGINTY: I am interested in the practicalities of enforcement. You are saying that if this were a provision of the Road Traffic Act it would sit far more comfortably with your existing enforcement arrangements. What is not clear to me at the moment, however, is whether you are saying that you would still maintain an objection to it even if the provision were in the Road Traffic Act on the basis that it has little to do with road safety but everything to do with health. I am trying to reconcile those two conflicting concepts.

Dr O'Callaghan: I think that this piece of legislation could only end up in the Road Traffic Act or the Road Traffic Code if the legislation were based on the fact that smoking in cars was dangerous while driving. Monash University has made this nexus between smoking and driving behaviour. There clearly is a police responsibility, and the police have a core function responsibility to respond to road safety and traffic enforcement. If this were to be simply dropped into the Road Traffic Code as a health issue, not connected to the driving of vehicles, to make it convenient to issue infringement notices, it would not resolve my concerns.

[10.40 am]

Mr J.A. McGINTY: I thought that was the case.

On a different issue, you were talking about the philosophical underpinning of what is core police business. I would have thought that taking illicit drugs from kids at rock concerts was very much more a health matter than a law enforcement matter. You can see the obvious analogy with smoking in cars, which has a proven detrimental effect on kids' health. Where do you reconcile that argument?

Dr O'Callaghan: I guess that the police view is that we are simply enforcing the Misuse of Drugs Act. Whether it is a health issue is a matter for broader policy. It is illegal to carry drugs in Western Australia. Drugs are illicit substances. Tobacco is not an illicit substance, so we respond to that by taking away the drugs. On a broader scale, I think the intent of the legislation, at least in enforcing it at a rock concert, is to provide protection or safety for people going to that concert, so it has a health outcome. In its original intention of being constructed for police to be involved in preventing health harm, we are simply responding to the fact that possession of cannabis and ecstasy is illegal so we will take it from people and charge them with an offence.

Mr J.A. McGINTY: Would it not be the same thing if we passed a law in Parliament that smoking in a car when a kid is there is an illegal activity? I cannot see the difference between the two situations, because it then becomes an illicit substance if it is used in that context.

Dr O'Callaghan: It would become a lot clearer if we made tobacco an illicit substance.

Mr J.A. McGINTY: I agree with that, but we are not going that far.

Dr O'Callaghan: Maybe that is a good consideration.

I wrote a letter to the paper, which you may have read and which was probably a little mischievous in some respects, but it said that we also know if we walk our child down the road in broad sunshine without sunscreen on, we are potentially exposing that child to getting cancer later on, so why not make police responsible for making sure that people put sunscreen on their kids? My concern is how legislation of this type spreads out and police incur more and more responsibility. That probably will never happen, but that is the philosophical position I take as commissioner. As I said, I would be much more comfortable if this legislation was constructed as part of my road safety responsibilities rather than as broad health responsibilities. However, if it remains the same, I am happy to assist, providing I can cost recover on that aspect because I still consider that to fall outside our core function.

Mr J.A. McGINTY: If the Parliament says that it is part of your core function, where does that leave you?

Dr O'Callaghan: If Parliament says it is part of our core function, we will have to police it. That is part of being in a democracy. However, I am making the point that I do not think it is; I think it is moving police away from what they are there to do in the first place. However, if Parliament enacts it, I have no choice but to enforce it.

Mr J.A. McGINTY: I can understand perfectly the prioritisation argument. However, it seems to me to be fairly clear at the moment that not much priority is given to the use of mobile phones in cars; it may be given occasionally, but it is not the same as the issue of seatbelts or armed robberies

or things like that, nor should it be. I have no argument with you when it comes to you saying it may not receive the same priority as some of those more serious offences. I do not quite understand where you stop short of that in a way of saying that it will be enforced, but not as a matter of priority. Is that what you are saying, or are you saying it will not be enforced?

Dr O'Callaghan: I have put my position to the committee, so you know my thoughts on the matter. If Parliament seeks to enact the legislation and makes police responsible, we will have no choice but to police it. As I said, police officers make choices on a daily basis about what they issue infringements for, what they deal with and what they do not deal with, and that will continue to happen. We will certainly not say that we refuse to enforce a law made by Parliament; we will enforce the law and people will receive infringement notices. The question for the practicality of the committee and the application of the legislation is: how much policing of it will there be at ground level?

The CHAIRMAN: Maybe if there were to be a memorandum of understanding and police realised that it was not coming from their budget, they may be more likely to enforce these bans.

Dr O'Callaghan: Also, the public can see that the law is not diverting police resources away from something else. We place a lot of stock, as I am sure government does, in community attitudes and confidence in policing and law and order. One of my jobs is to try to increase that, preserve it and maintain it. This goes a long way towards being able to maintain that confidence, by my being able to say, "Yes, we are going to administer this law, and yes, we are going to police it, but it will not affect our capacity to do other things because we will be cost recovering from another government department."

Mr J.A. McGINTY: The only law I can think of that you positively do not enforce is the prostitution law, and that has its own unique history of containment policy and things of that nature. Are there any other laws that you positively do not enforce? I do not regard littering as one of those; it is a low-priority issue.

Dr O'Callaghan: Do you mean laws that we have primary responsibility for?

Mr J.A. McGINTY: Yes.

Dr O'Callaghan: I do not think so. It is a complicated question because the police have powers under many acts for which we do not have primary responsibility, such as the Fish Resources Management Act. Police can respond to situations in which people are taking under-sized crayfish, but in fact we do not because another agency takes primary responsibility for its administration. That is the only situation I can think of in which it might occur that police do not actually enforce a law that they have the power to enforce.

Mr P.B. WATSON: You said that the priority for smoking in cars would be low. How low is the priority for seatbelts and mobile phones? I often see people driving while they are using their mobile phones or not wearing seatbelts. Do you say to your officers or your district inspectors that you are going to target this now or keep an eye on it? What is the priority? Are they out looking for crime?

Dr O'Callaghan: Let us talk about traffic. Crime and traffic are usually two different arms of response from WA Police. These days we want to target our traffic enforcement to reduce road trauma. That is what the community is most concerned about—the number of people who die on the road every year and the number of people seriously injured on our roads every year. The primary drivers of that are people driving without wearing seatbelts—25 per cent of people—speed and alcohol. Most of our traffic effort goes to those things. Although we can issue infringements for mobile phones—and we do—as a daily priority, it is further down the order than the issues of seatbelts, drink-driving and speeding. That is because they are the primary causes of death on our roads. Police cannot do everything all the time, so you will see people driving while talking on mobile phones and people committing other offences. If a police officer is there, he or she may

choose to respond. Often, of course, they are focusing on the big three or big four that are causing most of the trauma on our roads. My view, as Commissioner of Police, is that that is what the community expects us to do. You might know that we recently changed our policy on the placement of speed cameras to make sure they are placed only in proximity to certain road trauma criteria, rather than in places where there is high traffic flow and people are driving faster than the speed limit.

Mr P.B. WATSON: Sometimes a person might make a mistake in a particular area so the speed cameras are placed in that area, but it might not necessarily be a bad area?

Dr O'Callaghan: Our speed cameras are deployed on five criteria; proximity to a traffic crash or a black spot, for example. That has narrowed the way they will be used because we are trying to target the issue of road trauma and death.

Mr I.C. BLAYNEY: Your definition of a child is someone under the age of 18?

Dr O'Callaghan: That is the legal definition of a child, is it not?

Mr I.C. BLAYNEY: Okay. In this case would you suggest that it be a lower age? It is illogical if you think about two 17-year-olds in a car, one driving and the other a passenger, and the driver gets in strife for smoking while the other 17-year-old is in the car. At what age do you think that should be brought back to?

Dr O'Callaghan: We have suggested the following in our letter to the committee —

Accordingly, for the offence of using tobacco products in a passenger car whilst a young person is present, it may be more appropriate to define a young person as one who has not reached the age of 17 years

That is because a 17-year-old can drive a car.

The CHAIRMAN: When you get the information for the committee from the other states, could you also provide us with information that possibly backs up that statement to see what they do?

Dr O'Callaghan: Sure.

The CHAIRMAN: Thank you.

[10.50 am]

Mr P. ABETZ: I have perhaps a mischievous question: are police officers actually allowed to smoke in police cars with other police officers present?

Dr O'Callaghan: Definitely not.

The CHAIRMAN: Having looked at your response to smoking with children in cars, which I certainly would support a memorandum if that is going to enable you to feel safe or feel that the police are doing what they should be doing —

Dr O'Callaghan: It is not affecting capacity, which is the point I want to make.

The CHAIRMAN: In relation to the other measures in the bill—alfresco, beaches, and things—I think all of your comments were really technicalities in how we could improve the bill. I see them as very positive and supportive. Am I misreading, or would you agree?

Dr O'Callaghan: I do not think you are misreading at all. That is the legal service division's advice. What we are trying to do is suggest to you that the bill could be made more practical, easier to deal with than its original draft which went to legal services. To make the whole process of this thing a little bit easier, there are a couple of issues that I think the committee might want to consider, and that is around whether it was necessary to prove botanically, or forensically, that someone is actually smoking a tobacco product, or whether the person who actually intervenes is capable of going to court and saying, "It looked like a cigarette, it was lit up; it is reasonable to assume," so there is an averment in the complaint to say "it is a tobacco product" unless the

offender can prove otherwise. Otherwise we get into this difficulty of having to seize the exhibit, having to maintain the exhibit for every infringement notice in case it is not paid. You can imagine every infringement notice that is issued, we would have to take the cigarette from the person, we would have to preserve it, and, if there is a plea of not guilty, we would have to get it analysed by the chem centre or something like that. That incurs quite significant costs and is impractical really, I think, for the intent of the legislation.

The CHAIRMAN: I would like to thank you for those suggestions. I think they are very good and we will certainly look at those to see how we can introduce them into the bill.

Mr J.A. McGINTY: One final question: your minister is a smoker—has he discussed this bill with you at all?

Dr O'Callaghan: No. And I did not actually know he was!

Mr J.A. McGINTY: I am only saying that light-heartedly.

Dr O'Callaghan: I am not, by the way. I could not think of anything worse. Can I put to the committee, just to clarify a few points—firstly, I am very supportive of the legislation. I think the intent of the legislation is fantastic. I could not think of anything worse than subjecting kids to passive smoking in cars. We are happy to help out in a practical way, providing I can prove to government and the community of Western Australia that it does not impact on police resources. If that can be achieved by MOU, we are very happy to assist with the process. I know that we are the only agency really capable of intercepting someone in a vehicle; there is nobody else —

The CHAIRMAN: I believe in both Tasmania and New South Wales they have some form of memorandum. As you will be writing to the police commissioners in the other states, it would be nice to see what they have written.

Dr O'Callaghan: Okay.

The CHAIRMAN: Sorry, please continue.

Dr O'Callaghan: I know that we are practically the only organisation that can intercept vehicles, so to create another structure where people were doing that is very complicated and difficult, and an expensive thing to do, so I accept that as well. I think that provided we can get to that stage, there is a way we can work together on this and come out with a practical outcome for all. I would also point out that if you were, as a committee, to make recommendations on the Monash report and say that this is actually a dangerous thing to do, to drive with a lit-up cigarette in your hand, and make it part of the Road Traffic Code, a lot of the debate and argument about this goes away.

The CHAIRMAN: We may pursue that with the Minister for Police because he should really be looking at that research. We are focussing on the tobacco legislation.

Mr P.B. WATSON: Commissioner, how would you work out what you would need to get back from the health department? Would you work it out on the amount of people you had approached or picked up? That would be a pretty big project to work out what your costs would be before you start.

Dr O'Callaghan: I think the bottom line is that there would be a cost of printing infringement books, there would be a cost to any prosecution or management of exhibits, if there was a plea of not guilty. I think the actual officer time spent at the side of the road would be very difficult to cost because it would only add up to, I would think, minutes. That is an issue, so I am not sure that we could actually cost that in any practical way. It would be “beyond costs” associated with the infrastructure; any pleas of not guilty or defended actions that we would seek to be recovering from the health department. I do of course go back to the point that I think the actual number of infringements issued in a practical sense, in the absence of any clear direction, will be quite low anyway.

Mr J.A. McGINTY: I, for one, would not support a transfer of resources from keeping people healthy and caring for the sick and injured, to law enforcement, along the lines you have raised in that submission. I do not think that would be a wise decision.

Mr P.B. WATSON: It is prevention though, is it not?

Mr J.A. McGINTY: Maybe.

The CHAIRMAN: I would.

In South Australia I believe that motorists who are driving with children and smoking in the car have an option of either being issued with an infringement notice or paying an on-the-spot fine of \$75. What do you think in relation to having those two options?

Dr O'Callaghan: My understanding is that an infringement notice is technically an on-the-spot fine. It is a notice which says you have been fined \$100 or \$150. Police do not have, and certainly do not want the capacity, to take money from anybody at the side of the road. That creates a whole bundle of problems we don't want to be involved in. The infringement notice is what we would class as an on-the-spot fine. One of the things you might consider is whether you would want to offer the person at the side of the road an infringement notice or a notice directing them to some sort of education process or seminar. That is another option, rather than saying in every instance the only option is an infringement notice or caution, I suppose. We have a caution system under the Road Traffic Code—I do not know about this. But there could be an alternative to direct someone to education, I suppose, or advice.

Mr P. ABETZ: Just to clarify about the cost recovery, to make sure I understood correctly—if the infringement notice is issued at the side of the road and the person pays it, there is actually no transfer of funds from the health department, it is just part of the routine, but if there is a —

Dr O'Callaghan: Except I do not understand what the infrastructure is behind the infringement notice to process it and pay it. If it requires processing, extra people to put it on computers, put it on systems and things like that, there is a cost associated with that. I certainly would not want the police directed to be doing that in the background. I do not know how the infringement notice gets handled or processed or entered into systems.

Mr P. ABETZ: I am not sure exactly how, say, if I get booked for speeding, who actually processes that infringement notice? Do police actually do that, or is that some other department that handles that?

Dr O'Callaghan: It is done by police initially. The funding comes out of the road trauma trust fund, STEP funding it is called, separate funding; it is not in the main police budget. They process the infringements behind the scenes. By the way, that is all becoming streamlined and automated with the introduction of digital cameras and things like that, so there will be a lot less human processing in about a year's time. So that is what happens. Other infringements, like liquor infringements, have to be processed manually because there is no automated system for it. These would have to go into a system where someone would physically be responsible for entering data and making sure the infringements are paid and following up if it is not. There is that sort of infrastructure. The actual police officer time on the side of the road, I would think amounts to three or four minutes. It is very impractical to try and recover that. The other costs beyond that, I would seek to put an MOU to recover

The CHAIRMAN: When you are writing to the other police commissioners to find out how it is done in the other states, could you give us advice in relation to the infringement system and how it is handled there in terms of the cost?

Dr O'Callaghan: Sure.

Mr P.B. WATSON: Commissioner, is there anything so far in this legislation that could be added which would assist the police?

Dr O'Callaghan: Assist the police to?

Mr P.B. WATSON: Do it. If this legislation came through, to make it easier for police, are there any ways you think we can streamline it, apart from what you have got in your letter.

[11.00 am]

Dr O'Callaghan: We have made suggestions about the actual technicalities of prosecutions in here and I think if you take those on board and streamline that, it would make it easier for anybody, police or anybody else that is involved in the prosecution and presentation of evidence.

At least at the front end of this, I do not think there are any changes that could be made. If it is the committee's intent to make this an infringeable offence under the Tobacco Products Control Amendment Bill, I do not think there is anything we can do at the front end. An infringement notice seems to be quite a simple thing to do. If you want to add this idea about an education notice, that is probably also a simple thing to do, provided that the only thing the police have to do with that is issue the notice.

The CHAIRMAN: So it would be a case of the police choosing to issue either an infringement notice or an education notice—an either/or?

Dr O'Callaghan: Yes.

Mr J.A. McGINTY: I have no objection to health undertaking the responsibility for providing the education. That is purely a health preventative matter.

Dr O'Callaghan: What we used to do some years ago—it does not occur any more—is that when we pulled someone over for a traffic offence, we had the option of sending the person to a lecture on driving, or some presentation on driving, around the type of offence they had committed. That was quite a popular thing to do in the 1970s and 1980s. That is not done by the police any more, but that is not to say that that is not a useful process.

The CHAIRMAN: Thank you very much for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript. I look toward to the additional information that you have agreed to provide to the committee, and once again I thank you for your time.

Dr O'Callaghan: Thank you.

Hearing concluded at 11.01 am