



LEGISLATIVE COUNCIL

REPORT
OF
STANDING COMMITTEE
ON
LEGISLATION
IN RELATION TO THE
TOBACCO BILL 1990

Presented by the Hon Garry KELLY (CHAIRMAN)

NOVEMBER 1990

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A. PRELIMINARY STATEMENT

The Committee acknowledges the compelling clinical evidence of a direct causal relationship between tobacco and various diseases, particularly of the cardio-vascular system. The contribution of smoking to ill-health and premature deaths in our community is of such known magnitude that the extreme measure of banning the manufacture and sale of tobacco products might well be justified. Such a ban would be impossible to enforce, however, in part because of the large numbers of addicted users, but in large because tobacco products have a long history of social legitimacy and cigarette smoking is an accepted behaviour, in spite of the widespread knowledge of its deleterious effects upon health.

The Committee acknowledges also that the evidence of a direct causal relationship between advertising and the taking-up of smoking is, at best equivocal. This is because much of the evidence is epidemiological. Many of the statistical procedures used in various studies are totally inappropriate. In some cases contradictory interpretations are evinced from a single set of data when different procedures are applied. For every piece of evidence presented to the Committee, which attempted to show a direct relationship between cigarette smoking and advertising, there were others which refuted it.

After receiving evidence from people eminent in relevant fields of research, the Committee is forced to the conclusion that no compelling evidence has been presented that advertising causes people, and in particular young people, to begin smoking. The strongest case presented to the Committee suggests that a mix of personal and social factors acting together causes young people to experiment with smoking. Among young people at risk, advertising might well be influential in their decision, particularly regarding the brands they choose. However, advertising in isolation from all other factors shaping young people's lives has not been shown to be a primary cause in their decision to begin smoking.

The Committee's conclusion is that any decision to ban all forms of tobacco advertising, including sports sponsorship is purely a political decision. It is not based upon irrefutable empirical evidence, but upon prevailing values which suggest that the societal and financial costs to individuals and the community are so great as to justify measures which minimize the legitimacy of tobacco products. That belief is central to policy decisions contained in this Bill.

Community attitudes to smoking are indeed changing. A previous acceptability of smoking as a habit is being replaced by a tolerance by non-smokers reflected in the almost apologetic attitude of many smokers about their habit. Many smokers freely admit that they would prefer not to smoke if only they could. The Committee accepts that ultimately it will be changes in community attitudes that will solve the problem of smoking.

B. RECOMMENDATIONS

The recommendations of the Committee are :

That the short title of the Bill be changed to - "Tobacco Control Bill 1990".

That the definition of "tobacco advertisement" be amended to remove the reference to brand names and trade marks, the definition broadened so as to refer to promotion of the product generally and a rebuttable presumption provision be added to Clause 5.

That the term "cultural" where it appears throughout the Bill be deleted and the word "arts" substituted.

That the "Minister for Racing and Gaming" be identified and consulted by the Minister on exemptions for the horse and dog racing industries.

That the offence of distributing free samples be restricted to the distribution of free samples of "a tobacco product".

That the offence of selling and supplying tobacco to minors be tightened to bring it into line with the stronger provisions of the 1916 Sale of Tobacco Act and other penalties in this Bill.

That the exceptions to the prohibition of the placement of vending machines on premises for the sale of tobacco products to the public be removed.

That the sale of confectionery and toy cigarettes not be banned.

That at the statutory time of review the Health Promotion Foundation be placed under its own legislation.

That a new definition of trademark and brand name be included to reduce the complexity of the use of these terms in the Bill.

That the buy out of contracts and in particular sponsorships will have priority up to a maximum of five years subject to conditions imposed by the Health Promotion Foundation and also subject to adjustments for moneys received under exempted contracts.

That Clause 4 be amended to include definitions of "banned contract", "banned sponsorship" and "benefit".

That the Health Promotion Foundation be required to establish Committees to give advice to the Foundation on the following

- (i) the arts;*
- (ii) sport; and*
- (iii) racing.*

Each of these committees shall include a reasonable number of country representatives.

That the representation of the Bureau of Youth Affairs on the Foundation be withdrawn and replaced with the representation by the Office of the Family.

That the Foundation not distribute any moneys during the period from the issue of the writs to the close of voting at a State or Federal General Election.

That the Foundation be given a period of four months grace after the end of the financial year or funding period before unexpended State funds are returned to Consolidated Revenue.

That a provision equivalent to Section 229 of the Companies Code be included in the Schedule.

That the non-disclosure of information provision be restricted to that information declared, in writing, by the Foundation to be confidential.

C. MEETINGS AND WITNESSES

1. Before deliberating on the bill, the Committee advertised twice in the "West Australian" seeking submissions from the public.
2. Fifty submissions were received and these are detailed in Appendix 2 to this Report.
3. As the Committee expected, submissions ranged from parties strongly in favour of the total ban of tobacco products to those concerned at the effect that the legislation would have on their commercial and sporting activities.

4. The Committee met on 15 occasions for approximately 35 hours including full day and half day sittings for public hearings. Extracts from evidence taken at these hearings are included as part of this Report. Full transcripts of these hearings have not been included as an Annexure to this Report because of the volume of pages involved.

5. The Committee heard evidence from:-

Peter Alexander, Director of Industry Affairs, Rothmans of Pall Mall (Australia) Ltd and **John Gonczi**, Company Solicitor

David Bacon, Manager Corporate Affairs, WD & HO Wills (Aust) Ltd

William Bevan, Secretary/Manager, Bunbury Race Club

Jack Busch, Executive Director, Ministry of Sport and Recreation

Assoc Professor William Castleden, Professor of Surgery, University of WA

Michael Daube, Acting Commissioner for Public Health, **Maurice Swanson**, Director of Health Promotion, **Nigel McBride**, Acting Senior Legal Policy Officer, Health Department of WA

Dr Bruce Elliott, Chairman, and **Walter Foreman**, Director, Western Australian Institute of Sport

Mr Kingsley Faulkner, Surgeon

Dr Michael Jones, National Vice President, Australian Medical Association

Norman McNamara, Chairman, West Australian Rugby League Association

Cornellus Migro, Managing Director, Winfield Claremont Speedway

Richard Mulcahy, Chief Executive Officer, Tobacco Institute of Australia, **Michael Apps**, State Manager Western Australian Tobacco Institute and **Gary Berson**, Solicitor, Robinson Cox

Dr Arthur Musk, Physician Thoracic Society of Australia and New Zealand

Terence Pearson, Acting Chief Executive, WA Turf Club, and **Robert Bovell**, General Manager, WA Trotting Association

Michael Robinson, State Chairman, Advertising Federation of Australia

Brian Rourke, Executive Director, Western Australian Sports Federation and **Dr David Neesham**, Chairman, WA Sports Council

Dr Warwick Ruse, President, Australian Medical Association WA Branch

Ruth Shean, Chief Executive Officer, Spastic Welfare Association of WA

Trevor Smith, Chief Executive, Western Australian Greyhound Racing Association

Dr Fiona Stanley Director Medical Research WA Research Institute for Child Health Princess Margaret Hospital

Ian Wall, Corporate Affairs Manager and **David Steer**, State Manager, Philip Morris (Australia) Ltd

The Committee recalled both Ms Shean and Mr Daube to elaborate on aspects of their evidence to the Committee.

Consideration of Submissions

6. In reviewing all submissions received by the Committee, two clear subjects of comment emerged:
 - (i) the proposed ban on cigarette sponsorship and advertising; and
 - (ii) the establishment and activities of the proposed Health Promotion Foundation.

The deliberations of the Committee as set out in this report will address these two matters.

7. Medical professionals who wrote to individual members of the Committee, presented written submissions, or who met with the Committee, identified as their primary concern the adverse impact of smoking on health. Their arguments reinforced the view that there is a strong causal link between smoking and some forms of disease. While they had unshakable commitment on the issue of smoking and health, none of them was able to demonstrate with equal conviction that advertising initiated the smoking habit. Rather, they identified smoking as the single most important preventable cause of disease and supported a ban on tobacco advertising as part of a comprehensive strategy to reduce the incidence of smoking and, hence, of smoking related diseases.
8. Representatives of the tobacco industry avoided giving evidence on the health issue. Rather, they focused their arguments on the purposes of advertising, and sports sponsorship, and the value of the proposed Health Promotion Foundation. They contended that a ban on advertising tobacco represented censorship of lawful products in a free market. The tobacco industry preferred self-regulation as a means of controlling the appeal of tobacco advertising to young people. Their strong conviction was that the tobacco industry operated in a highly competitive mature market. In that context, the purpose of tobacco advertising was to maximise market share. It was their opinion that tobacco advertising played only a minor role in influencing young people to smoke.
9. With reference to specific medical evidence, the Committee was particularly concerned by the presentation by Dr Fiona Stanley of the adverse effects of maternal and passive smoking on the unborn and the newborn. Dr Stanley indicated that many female smokers drop the habit during pregnancy only to take it up again immediately after the birth of their children. However Dr Stanley said that recent research in Western Australia and elsewhere indicated that there is a serious risk to the health of a newborn child who is regularly exposed to cigarette smoke.
10. The Committee sees Dr Stanley's evidence as most disturbing and has decided to enable the public access to her evidence by publishing the transcript of her presentation to the Committee in full as Appendices 1a and 1b to this Report.
11. Submissions from the three animal racing codes, motor racing and other sporting bodies identified a potential source of mischief in the operation of the Health Promotion Foundation. Representatives from those activities which may be described as "people competitive" argued that the racing codes were not "sports" as they defined them. Rather, they contended that racing was an "industry" and should not qualify for funding under the Health Promotion Foundation. In the case of horse-racing, ineligibility was compounded by gambling and access to TAB revenues.

12. The racing codes, and in particular country racing clubs, argued the opposite case. They proposed that tobacco company sponsorship was essential to their commercial viability. Without that sponsorship important events on the racing calendar in this State would either be discontinued or downgraded with a significant loss of jobs. As to the concerns expressed in submissions from country racing clubs, the Committee feels that such organizations will be adequately represented on the Foundation by the member representing the Country Shire Councils Association (CSCA) on the Racing Advisory Committee as recommended by the Committee. CSCA representation on the Foundation is the result of an amendment to the bill in the Legislative Assembly.

D. DELIBERATIONS OF THE COMMITTEE

Scheme of the Bill

1. What the Bill seeks to achieve

1.1 This Bill sets out three objectives

- (a) Restrict the advertising of tobacco products
- (b) Regulate the supply of tobacco products
- (c) Set up an incorporated Health Promotion Foundation to operate a fund established with 10% revenue allocated from the fees paid under the *Business Franchise (Tobacco) Act 1975* and which is intended to reduce the consumption of tobacco by:
 - buying out current tobacco sponsorships
 - providing sponsorship to what are seen to be healthy activities
 - funding health promotion
 - funding health research

- 1.2 It is for political reasons that the third of these objects is contained in the same bill as the first two. The establishment of the Health Promotion Foundation was offered as a trade off and justification for the imposition of the restrictions in advertising. Many of the controls concerning the supply of tobacco products are contained in other related legislation (eg *Poisons Act*).

2. Severance into two bills

- 2.1 During Committee deliberations it was proposed that a direction be sought from the House to sever the Bill. This would have resulted in there being a Bill to control the advertising and promotion of tobacco products and a second Bill to establish a Health Promotion Foundation. The majority of the members of the Standing Committee on Legislation opposed the move on the following grounds -

- (a) a direction from the House would delay the passage of the Bill unnecessarily;
- (b) consequential redrafting would cause even further delay; and
- (c) it may have led to political resistance.

It was agreed that any reference to the House at this time would be futile since the balance of numbers was opposed and the motion to refer did not proceed.

- 2.2 The Committee did agree however that under ideal circumstances it would prefer to sever the provisions relating to the Health Promotion Foundation from the rest of the Bill. While there is some linkage between the provisions, the two parts of the Bill deal with disparate issues. Hence, the Committee recommends that at the statutory time set out for review under the bill, the Foundation be brought under its own legislation.

3. Control of tobacco advertising

- 3.1 Our first question was why there should be any control on tobacco advertising at all. Although bound by the principle that there should be controls, it was important to the Committee to enunciate at least to its own satisfaction what it saw were the House's reasons for that control so that we could better assess the merits of the particular provisions.
- 3.2 The Committee recognized from the outset that the controls proposed in the present Bill related to a limited range of activities. Advertising cigarettes and cigarette tobacco through the medium of television has been prohibited since September 1976 under the Commonwealth's *Broadcasting and Television Amendment Act 1976*. Similarly, under the *Smoking and Tobacco Products Advertisements (Prohibition) Act 1989* advertisements for cigarettes, tobacco and other tobacco products will be prohibited in print media as from December 29 1990. In effect from the beginning of 1991 the advertising of tobacco and tobacco products through electronic and print media will be unlawful throughout the Commonwealth of Australia.
- 3.3 Given the operation of Commonwealth Laws the Committee's questions related to only four principal forms of advertising and promotion, namely billboards and posters, competitions promoting tobacco products, the distribution of free samples and sponsorship by tobacco companies of sports, arts and other community activities. Of these four the most controversial are the first and the last.
- 3.4 It is argued that because billboards and posters displayed at sporting events and elsewhere enable incidental television advertising, they frustrate the intentions of the *Broadcasting and Television Amendment Act 1976*.
- 3.5 The opponents of advertising contend that sponsorship of sporting events gives to cigarette smoking a legitimacy that it does not deserve. They argue sponsorship of events such as an international cricket series, State rugby league competition or motor racing enhances the image of cigarette smoking for young people and encourages them to smoke to enhance their own image.
- 3.6 The tobacco companies on the other hand argue that sponsorship is merely good public relations on their part. It is their contention that sponsorship makes possible sporting and cultural activities which might not otherwise be financially viable, but does not sell a single cigarette.

It was these competing arguments which the Committee had to address.

4. Suggested reasons in favour of tobacco advertising

The proponents of tobacco advertising offered the following reasons in support of their case:

- (a) smoking is an adult action taken after an informed decision to do so has been made - advertising merely provides information to help consumer choice;

- (b) in an advertising or marketing sense, tobacco is a mature product and the effect of advertising is brand selection or brand preference - it does not induce the use of it if a need or wish does not exist;
- (c) bans on advertising do not reduce the incidence of smoking - since television advertising was banned the proportion of the population who smoke has remained fairly constant at about 30 per cent;
- (d) a ban on advertising a legal product in a free market is punitive and will adversely affect the print media and advertising industry;
- (e) sports sponsorship is a means by which tobacco companies promote goodwill by putting something back into the community - it is good corporate citizenship rather than advertising which induces people to smoke; and
- (f) the tobacco industry favours a voluntary code, an industry-Government agreement which addresses perceived concerns in regard to advertising and juvenile smoking.

5. Suggested grounds for controlling tobacco advertising

A number of reasons for controlling or banning tobacco advertising were suggested to us:

- (a) that tobacco advertising causes people, particularly young people, to take up smoking;
- (b) in response to the argument that the State should not ban the advertising of legitimately sold products, tobacco is legitimate only by default and had it been introduced only now it probably would be banned. In any event other legitimate products such as pharmaceuticals are restricted from advertising in the interests of public health;
- (c) tobacco is an immorally sold product and it is therefore immoral to advertise it - mere circumstances for the time being prevented its total ban;
- (d) although tobacco advertising does not directly cause the taking up of smoking, it does affect the general social attitude to smoking which is an important factor in such a take-up and an advertising ban would ultimately lead to a decrease in smoking;
- (e) smoking is bad for you and this is sufficient justification to ban anything associated with it; and
- (f) tobacco is a highly dangerous and toxic product and it should be increasingly restricted.

6. The effect on advertising on the taking up of smoking

In order to review these competing claims, the Committee proceeded to an examination of the effect that advertising may have on the taking up of smoking.

- 6.1 There is little objective evidence to indicate that there is a direct relationship between particular advertising and the taking up of smoking.
- 6.2 In her evidence to the Committee, Ms Ruth Shean explained that ethical constraints inhibit clinical trials which might test relationships between advertising and cigarette smoking. For example, it is not possible to expose an experimental group to cigarette advertising and a control group to no cigarette advertising and measure differences in the taking up of smoking. Hence, clinical data about advertising and smoking are not available.

- 6.3 Ms Shean suggested that the usual alternative procedure is to employ statistical interventions in a random population and measure differences in chosen behaviours. In her own research she identified four groups, high risk smokers and non-smokers and low risk smokers and non-smokers. She then attempted to measure the power of factors which might cause young people to begin smoking.
- 6.4 In this way Ms Shean established two sets of factors, "adult discrepancy" and "peer stability" which she used to isolate adolescents susceptible to tobacco advertising. Her research would seem to indicate that those most likely to take up smoking were those who were insecure in their peer group and who felt that there was a greater need to conform by the acquisition of attributes of adult behaviour which they saw as being consistent with adulthood. These attributes were most likely to include smoking irrespective of whether the parents of the child had smoked.
- 6.5 The lack of realism in expectations of adulthood seemed to centre around fast cars, alcohol, fame, money and sexual success - all those things which are associated with cigarette advertising, even now that people have been removed pursuant to a voluntary code.
- 6.6 It was pointed out to the Committee that smoking is very high in a number of countries where there has been no cigarette advertising for a number of generations - eastern bloc countries and China being the examples cited.
- 6.7 The Committee has no doubt that cigarette smoking can prosper in the absence of advertising and decline in the presence of advertising. However, we are also convinced that advertising takes advantage of role model images that appear to be influential in young people's decisions to smoke.

7. Is there a role for voluntary codes?

- 7.1 There are advertisements which on the face of them appear to be more abstract in image than lifestyle orientated.
- 7.2 On further examination however, they really do not avoid the problems that are suffered by those advertisements that clearly indicate that highly sophisticated and successful people have just stepped out of the picture. They indicate an adult sophistication which is particularly attractive to young people and reinforces the adult discrepancy theory which has previously been mentioned in Item 6.4.
- 7.3 We consider that voluntary codes could be made to work if limited advertising were to be allowed, but they would have to be so restrictive that they would enjoy few, if any, advantages over legislation.
- 7.4 Irrespective of the workability of such voluntary codes, those who argue that it is immoral to advertise cigarettes or permit such advertising would not be interested in nor satisfied by the introduction of voluntary codes.

8. Is the fact that smoking is bad for you a good enough reason?

- 8.1 Parliament is frequently called upon to ban some activity because some do not approve of it or because it is deemed to be bad for you.
- 8.2 We do not accept that because something is bad for you a sufficient reason exists for its banning. Infringements on personal freedom also are bad for the health and stability of society. It is accepted that if people want to do something that is not good for them, then in general their decision with its associated consequences is their own.

- 8.3 The introduction of medical evidence, however damning, does not add any greater force to the argument. Education and persuasion are the remedies here.
- 8.4 Society has considered it reasonable to interfere where there has been deception involved in the taking up of an activity - so that it is not a free choice - but then only to remove the deception; and where the persons who make the choice are persons incapable of making a mature decision - usually children. Even then, society should not always interfere. Parents have a role to play and it is not desirable for the State to take over the educational and admonitory role of parents.
- 8.5 A further reason for interfering with personal freedom is where the conduct concerned impinges on the rights and well-being of others.
- 8.6 It is clear that many adult smokers took up smoking at an age at which either they did not fully appreciate the serious consequences of what they were doing or did not believe that it would ever affect them or other people. When at a later stage they have sought to give it up the addictive effect of nicotine has prevented them from doing so.
- 8.7 Smoking has remained at a fairly consistent percentage within the community even though people in their 30's and 40's are giving it up. The age and gender balance in smoking appears to be changing; older men are breaking the habit and younger women are taking their places.

9. Our conclusions

- 9.1 We have decided that, assuming the principle that tobacco advertising should be banned, the most appropriate of these reasons for supporting the limitation on tobacco advertising are as follows :
 - (a) tobacco smoking is a serious health problem in our community which justifies the legislative intervention to reduce its incidence;
 - (b) it is difficult to reduce the incidence of tobacco smoking because of the addictive effect on current users and the number of young persons taking up the habit; and
 - (c) by projecting idealized lifestyles and values, cigarette advertising makes smoking attractive to susceptible adolescents and concern for the health and well-being of these young people justifies the legislative intervention.
- 9.2 The argument that we should not prevent that advertising of what is a legitimate product is not acceptable because :
 - (a) there can be no particular principle that says that what can be used legally should be capable of being advertised - the legitimacy of any activity should be separately judged;
 - (b) the inability to control the actual consumption of tobacco arises from one of its undesirable aspects - its addictive quality - and this is hardly a reason for continuing to advertise smoking;
 - (c) although the doubtful morality of selling tobacco is not a ground for banning its advertising it does disentitle the tobacco industry from complaining when there are legitimate other grounds for restricting the advertising; and

- (d) the ban will have a further effect on the public image of cigarette smoking which should also ultimately assist in the reduction in smoking.

10. The extent of any ban

- 10.1 The Committee has identified the following areas of promotion of tobacco products - film, television, radio, newspapers, magazines, leaflets, billboards, sponsorships, competitions, samples and gimmicks, point of sale, on product and incidental (ie by inclusion of the act of smoking in literature or film etc).
- 10.2 The current restrictions or those about to come into effect by Commonwealth law are set out in paragraph 3.2.
- 10.3 As a consequence of the application of the Commonwealth legislation, it has been queried whether there is any point in proceeding with this legislation.
- 10.4 We accept that it is worth doing so because as will be seen from paragraph 3.2 there will still be substantial areas of advertisement left and merely to try to deal with the remainder would lead to unnecessarily narrowly drawn wording.

11. The limitation on advertising

- 11.1 This is contained in Clause 5 of the Bill.
- 11.2 The definition Clause 4 is also important in determining the scope of what is banned.
- 11.3 The ordinary meaning of a tobacco advertisement contains two concepts - the message that promotes the sale or use of the object and the message that promotes the particular image of the manufacturer or vendor.
- 11.4 The definition of what is a "tobacco advertisement" seeks to pick up both these aspects in paragraphs (a) and (b) respectively.
- 11.5 The particular wording used appears to us to go beyond what we see as image advertising in that in paragraph (b) it refers to something which is designed to promote the trade mark or brand name of a tobacco product.
- 11.6 Such a trademark or brand name may very well also be that of a totally different product. It doesn't seem to be necessary that the promotion actually be in connection with that product just so long that it can be said objectively to be the trade mark or brand name of a tobacco product. This poses problems with brand names such as Yves Saint Laurent, Cartier, Dunhill and Vogue, all of which have substantial reputations in other fields of luxury goods.
- 11.7 This would be seen as an unfair limitation upon non-tobacco products, but it is a consequence of their decision to allow their brand names to be used. If there is not some limitation then tobacco manufacturers could still promote their product without ostensibly doing so.
- 11.8 Objection has also been taken to the use of the word "designed" in the definition because it was suggested by the tobacco industry that this contained an element of intention and such elements should not be contained in definitions because they are substantive measures.

- 11.9 We do not consider that mental elements should always be left out of definitions but in any case we do not agree as to the consequence of the use of the word "designed". We see this as a subjective/objective word. That is, it is somewhat akin to the phrase "likely to". Even though there is an element of intention it is not necessary actually to prove the intent of the person publishing the advertisement - it is enough if objectively it can be seen to have that intent.
- 11.10 We did consider the alternatives of actually requiring intent to be proved and keeping it completely objective and judged on its effect but decided that "designed" gave the best formula.
- 11.11 The committee accordingly decided that the effect it intended could best be achieved by referring to the promotion of the tobacco product (rather than just its sale) and inserting a rebuttable presumption regarding the use of trade marks and brand names. If in fact the promotion of the non-tobacco product promotes the tobacco product there will still be an offence.

12. Exemptions

- 12.1 The Committee when considering the concept of exemptions under the Bill was faced with the moral question of whether allowing exemptions to the legislation could be deemed hypocritical.
- 12.2 There was concern that the granting of exemptions may lead to a concentration of cigarette advertising in the exempted areas and the question was raised as to whether this in itself would be counter-productive to the purpose of the Bill.
- 12.3 The Committee was of the view that the granting of exemptions would ensure that there was no loss to the State of Western Australia of sporting events of national and international significance. It was not the Committee's intention that the granting of exemptions should be seen as a revenue gathering exercise.
- 12.4 Finally, the questions regarding the relationship between the granting of an exemption and the financial benefits to that sport/event can be answered by indicating that if a sport or event obtains an exemption then no make-up in funding will flow to that sport or event from the Health Promotion Foundation.

13. Supply of tobacco products

- 13.1 The exceptions to the prohibition of the placement of vending machines on premises for the sale of tobacco products to the public be removed.
- 13.2 It is doubtful that staff amenity areas fall within the prohibition but in any event the Committee considers it inappropriate to encourage smoking in the workplace in view of occupational health consequences.
- 13.3 In licensed premises it would be impossible to police under-age provisions (and minors are found on such premises) and in any event it is known that many people who have given up smoking succumb once more to their addiction when under the influence of alcohol therefore a licensed premises seems to be the least appropriate place to have a vending machine.

14. Supply of confectionery and toy cigarettes

The majority of the Committee made the following observations on this subject:

- 14.1 The Committee was offered no credible evidence that sweets or toys representing cigarettes influence the taking-up of smoking. A proposal put to us that children who eat a confection known as "Fags" might be conditioned to smoking behaviour has little to commend it. The justification that a ban on these things will modify some children's chances of experimenting with smoking probably is a small hope.
- 14.2 Children play-act all manner of activities, some of them illegitimate. Even the banning of toys by a parent can be futile. Children will construct in their imagination a gun out of a piece of wood or a finger, and cigarettes out of straws or pencils. It is a parental responsibility to ensure that correct lessons are learned from such play.
- 14.3 We believe that the proposed ban on the sale of confectionery and toy cigarettes detracts from the credibility of this legislation. It makes nanny-state allegations more believable. Usually in our society we prevent the real ill but allow children to play at it. It seems extraordinary that this legislation shies away from banning smoking but would ban playing at smoking.
- 14.4 To add to this the legislation provides the same fine for selling sweets to people of any age as it does for selling real cigarettes to children under 18. That appears to be nanny-state interference gone wild.

15. Health promotion

- 15.1 The Committee had concerns about whether the Health Promotion Foundation was the best vehicle for the distribution of the moneys under the Bill. It was discussed whether government departments would be a better vehicle subject to Parliamentary scrutiny. However, the Committee resolved that the Foundation would be adequate for this purpose.
- 15.2 As to the concept of the Foundation being able to make a profit which they are entitled to keep, the Committee resolved it is not the objective of the Foundation to make a profit by engaging in production or marketing, but any surplus of revenue over expenditure arising as a result of that engagement shall be paid to the credit of the Foundation's Fund.
- 15.3 The Committee agreed that with respect to staffing of the Foundation mention be made that they were concerned by events which have occurred in South Australia. Indeed, the Committee would like to see that some sort of overall establishment control be in place to avoid similar situations.
- 15.4 The Committee also wanted to express concern at the tendency towards the hypothecation (or ear-marking) of funds to a particular purpose. This was in general considered an undesirable tendency because it removes from Government the opportunity to decide funding priorities. It can also lead to unpredictable fluctuations in the amounts available for the stated purpose.
- 15.5 The practice of setting up dedicated funds is also undesirable because it removes these from the full annual scrutiny of Parliament.
- 15.6 The other major matter for concern regarding funds of the Foundation considered by the Committee was the status of funds which have not been disbursed within the year which they have been received. It is recommended that the Foundation be given 4 months from the end of the

financial year or 4 months from date of receipt of the funds if the funds are received outside the financial year to allocate such funds. If the funds are not allocated within this period, then they are to be returned to Consolidated Revenue.

- 15.7 The Committee was concerned about the extent of immunity given to members of the Foundation acting in the capacity of agents of the Crown. The concern was that as the Foundation would be managing \$11m this financial year, then members of the Foundation should have the same responsibilities to act properly as those placed on company directors. The Committee has therefore recommended that members/officers of the Foundation be required to at all times act honestly and exercise a reasonable degree of care and diligence in the performance of their duties/powers similar to that requirement found in s.229 Companies Code.

STANLEY, DR FIONA JULIET
Director, Medical Research,
WA Research Institute for Child Health,
Princess Margaret Hospital
Subiaco, examined:

The CHAIRMAN: The way the Committee has been getting through this is that the witness makes a statement about the Tobacco Bill and then we throw it open to questions either on what you have said or what might be exercising the minds of the members. So do you want to start your statement?

Dr STANLEY: I have a paper which I would like to leave with the Committee. It concerns the area of smoking and prenatal problems, and it is a summary of the less well known effects of smoking on the unborn child. I gave this paper to the World Conference on Tobacco and Health which was in Perth earlier this year, so I put that in just for interest. I shall talk to it later if you want those sorts of details.

The reason I felt it was important to come was because I would like to speak for the unborn child and the child who is too young to get a reasoned debate to you, and also because the effects of smoking on adults are very well known. I am sure you are all aware of that; you have been told by everybody else.

Hon DERRICK TOMLINSON: You said the effects of smoking on adults are well known.

Dr STANLEY: Yes. I do not have to tell you about lung cancer, I might not have to tell you about emphysema, but I might have to remind you about peripheral vascular disease and how important that is, because that is very important and costly and probably much more common than lung cancer.

I think a lot of the public are not aware of the effects of smoking on the child, and that is probably our fault - the fact that we have not publicised it as well as the other effects of smoking. It is terribly important to understand the effects of passive smoking in pregnancy, since the foetus actually gets a whacking great dose of it. We should understand the effects of that sort of smoking on the unborn child, the effects of passive as well as household direct smoking in infancy, childhood and adolescence.

I do not know how much detail you want me to go into, but the things that I want to raise I have summarised in this paper in terms of smoking in pregnancy. The most important one is, without a doubt, low birth ^{weight} ~~rate~~; and I am talking about pathological low birth ~~rate~~, not just babies being little and okay; I am talking about babies being little and sick. I am talking about the fact that nicotine and anoxia from smoking affects the placentas of women in the same way that it does

with peripheral vascular disease. It is probably a very similar effect; it has the same effect on blood vessels in the placenta as it does on blood vessels that make your fingers and toes drop off and give you those terrible ulcers that do not heal when you are older. The same thing happens to the placenta. It is extremely vascular and very, very responsive to a lot of tobacco smoke. So there are two effects: Anoxia from the lack of oxygen in the blood, and the direct effect of nicotine on the blood vessels, constricting them.

Hon DERRICK TOMLINSON: Could I just interrupt? Is that anoxia?

Dr STANLEY: Yes, it is lack of oxygen in the blood. You do not have as much oxygen in the blood because the carboxy molecule attaches to the haemoglobin instead of the oxygen molecule when you have more carbon dioxide in the air in your lungs. The problem, therefore, is that the baby does not grow. That is okay if it is only a little bit of not growing and the baby is okay, but the children of smokers who are small are sicker. So there is a higher rate now - well-documented - of stillbirth - that is death before birth - of babies of smokers as opposed to non-smokers. That is consistent in almost every study that has been done.

It is not always associated with low birth weight. There may be another mechanism which we do not know about in smokers. Bleeding from the placenta also causes early birth, and that is another reason why there is an increased risk to the low birth weight babies of smokers. These babies, when they are born, suffer the effects of being growth-retarded, which probably overall affects the brain, the growth retardation of the brain, growth retardation of the rest of the body and so on. So that effect during pregnancy is the best documented effect, and we are very happy about the scientific facts concerning that low birth weight; it is in every single study in the world that has ever been done.

The other effects of smoking in pregnancy, while not as well documented because it is difficult to do longitudinal studies, are important to be known, too. These are the things which affect the child when it is in the first year of life. It is very difficult to work out whether the cause is smoking in pregnancy or the child inhaling smoke in a smoky household, because the majority of mothers who smoke in pregnancy, of course, smoke after pregnancy, and many women smokers are married to men smokers. In a recent study we have done of mothers who have a low birth weight baby, a non-smoking mother married to a smoking father has an increased risk of low birth weight in her baby, and of repeatedly having low birth weight babies. That is a study finding that we have just published; it is about to be published this year.

Passive smoking can also effect growth retardation, but the problem I want to stress now is the effect of smoke in the household after birth. I do not know if you have had any of

the other respiratory physicians come and talk to you, particularly the paediatric ones, about the effect on the development of asthma and respiratory infections in the first year of life. That is not well enough known and it makes me very angry that it is not well enough known. The thing about smoke is that it triggers asthma in a prone child, and it somehow also stimulates - because of smoke in the respiratory tree in a smoky household - inefficient breathing. The cilia which line the lung are very important in terms of getting rid of infection before it gets lower down into the lungs. What you have when you smoke is inefficient cilia lining in that respiratory tree, and your upper respiratory tract infection becomes a pneumonia. These children will be at much higher risk in smoking households of having pneumonia. It is not well enough known, and we must get this message through, that smoking households have this risk.

Hon DERRICK TOMLINSON: Is it your proposition that smoking is a cause of asthma, or is it that it triggers asthma?

Dr STANLEY: It is not absolutely clear. The data show very clearly that in smoking households there is a higher proportion of asthma in the first year of life, of wheezing illness, and of infection. I am talking about pneumonia, not just upper respiratory infection, which is what I have now, but of lower respiratory infection - one that would put you into hospital, put you on antibiotics.

Hon DERRICK TOMLINSON: A significant difference?

Dr STANLEY: Oh, a highly significant difference. In fact that child may well have eventually gone on to get asthma from another trigger. If I had a child who was going to get asthma, I would rather it got it when it was three, not when it was three months.

Hon DERRICK TOMLINSON: There is a relationship, is there?

Dr STANLEY: I guess the first papers pointing to this association were coming up even 10 years ago, and that has been confirmed again in every cohort study of respiratory disease. It was found in a 1958 British cohort study; it has been found in all the American studies and the work that is being done here by Lou Landau and Peter le Souef is confirming the same thing.

Hon DERRICK TOMLINSON: These are epidemiological studies?

Dr STANLEY: And clinical research. These are clinical respiratory physicians examining children in the first year of life and definitely classifying them into wheeze infection. I have just been in London, and studies from Great Ormond Street - which will not be published for another 18 months - show an enormously high rate, well over 60 per cent, of smokers' children get into hospital in the first year of life with respiratory illness.

Hon DERRICK TOMLINSON: Compared with the normal population?

Dr STANLEY: Compared with the normal population, it is about 10 to 20 per cent. It is really that big.

Hon DERRICK TOMLINSON: It is really significant.

Dr STANLEY: I feel that it is a terribly important thing to get through to people, not just this Committee but the public, because a mother might not give up smoking because of her own lung cancer 20 years down the track. She does not know about emphysema, she does not know about peripheral vascular disease, she does not even know about strokes, which are higher, of course, in smokers -

Hon DERRICK TOMLINSON: She may do it -

Dr STANLEY: - but she may do it for her child. I know women who do give up smoking in pregnancy. We start off with about 40 per cent of women smoking at the beginning of pregnancy, and about 15 per cent give up and then start again the minute the baby is born, thinking, "Well I have done the best for my child", not realising that in fact they may tip that child into significant respiratory illness.

What is coming out of longitudinal studies is that a significant respiratory illness in the first year of life is bad news for your whole life, and those studies are now coming out. The reason it has taken so long for these studies to come out is that we have not done these longitudinal studies until recently. A significant risk factor for adult respiratory illness is illness in the first year of life - from whatever reason.

The CHAIRMAN: Over how long a period are these studies? Do you follow individuals for a given period?

Dr STANLEY: These are studies that are now following children from infancy into adult life, particularly the British cohorts and the American cohorts. I am trying to think of an Australian cohort; the best is probably the one from Melbourne, and now that study is looking at asthmatics and children who have had respiratory disease in infancy who are now 21. So it is that long.

The CHAIRMAN: How big is that Melbourne sample?

Dr STANLEY: I think it is something like 7 000, so it is sizable. The British cohort was 11 000 - 11 000 11 year olds, 11 000 21 year olds.

The CHAIRMAN: They cannot complain about sample size, can they?

Dr STANLEY: Not with those. I am a strict, rigorous methodologist. I am very critical of methodology; I think it is terribly important from the point of view of selection bias into cohorts. It has to be a total population cohort unless there is a specific reason for not being so. It has to be large enough.

I think you raised the point about statistical significance, but in addition to that, a lot of other things cause asthma, a lot of other things cause respiratory disease, a lot of other things cause low birth weight. So you have to start stratifying your sample by a lot of other different factors, and you have to be sure that smoking comes out significantly in every single stratification so that the result is not due to being confounded in association with something else. It is terribly important to realise that the data I am talking about is very solid data and it is consistent. That means that the same pattern of smoking has been found in England, America, Australia and other countries. We are now going to see it in Eastern Europe because they are marching in there with all their cigarettes.

Dr STANLEY (continuing)

We have no studies in the developing world but we do have studies in Aboriginal populations who smoke much more. Of course their rates of respiratory disease again are higher, for a multitude of reasons. However, we believe smoking is an important factor in the onset of respiratory disease in early life in Aboriginal children. The other thing that I do not think is well enough known - and it is not a very large numerical group - is the connection between smoking and the pill in young women and stroke. The reason why that is so catastrophic is that it occurs at a relatively young age and a woman will end up with haemiplegia or something else. Another less well known factor is the incidence of spontaneous abortions - miscarriages - and infertility. It is interesting how chain-smoking women will come to me and ask me what is the best way they can become pregnant, and whether they can go into a hi-tech IVF program, when really the most important step they can take is to give up smoking at least as a first step.

Hon J.N. CALDWELL: Smoking takes your mind off the job!

Dr STANLEY: I can understand that they get very anxious about it.

I will mention another factor - because you may query it - is cleft lip and palate which at the moment is the only birth defect which has been linked to smoking. A couple of studies are coming out on that. We did an analysis on the literature - we have not done our own study on cleft lip and palate in relation to smoking. I am now veering towards the opinion that there is a subgroup of women who cannot switch on a placental enzyme which normally detoxifies some of the products in tobacco smoke. They are a genetically different group of women and if those women smoke that toxic product may well cause cleft in the palate. That is the hypothesis; it has not been proved but it is a very interesting one. It has been tested by Stephen Spielberg - not the film director! - in Toronto and by Jean Golding in Bristol.

Hon DERRICK TOMLINSON: If we follow through the argument on passive smoking, it would not only have to be the woman who smoked. You can have a woman nonsmoker whose husband smokes and you might get the same link.

Dr STANLEY: Oh, yes.

Hon DERRICK TOMLINSON: Probably less strong.

Dr STANLEY: Yes, with low birth weight, much less strong, but with something where you only need any of the toxin that is the case. There are two effects in medicine or biology; one is just yes/no - and usually with something like a teratogen, a chemical which causes a birth defect - you must have it yes/no and you will get the defect or you will not. Usually you have to be genetically susceptible for there to be a birth defect. We think that cleft lip and palate is a

yes/no thing. Low birth weight and smoking is an above the threshold dose response; that is, the more you smoke the lower the birth weight will be. It is a dose response effect. Smoking one cigarette a day is negligible in terms of birth weight reduction and smoking 20 a day is measurable and obviously present; smoking 60 a day is severely growth retarding. However, we believe there will be subgroups of women in whom smoking and birth defects is a likely combination which could be an important preventable factor. It is unproven, but important to mention and important for our research in terms of where we will start looking for causes of birth defects.

Those are the sorts of worries I have about the effects of smoking on children and on women. I am especially concerned about the way in which children, particularly girls, are susceptible, sexy, vogue-type of cigarette advertising targeted particularly at women over the last 15 years. I am concerned also about things like subliminal advertising in films where smoking still looks very trendy and elegant. That is what tipped me into doing the smoking advertisement, which was very interesting. I was reluctant to do it; I had never done anything quite like that before and the public response to that advertisement has overwhelmed me. It has been one of the most popular things, possibly one of the most worthwhile things publicly, that I have ever done. I have been rung up, written to, given awards and congratulated by almost every person. I have been stopped by people in the street - politicians get that all the time, of course! Last week I was given a free loaf of bread by the baker who delivers to our supermarket. He smoked 60 a day and last year he gave up because of my advertisement.

Hon J.N. CALDWELL: What was the advertisement?

Dr STANLEY: It was a smoking advertisement targeted at women. It was very traditional and basically said that the rate of lung cancer in women would overtake breast cancer as a cause of death, there was a smoking epidemic, and then there was this rather terrible picture of a woman on a respirator with the family around her; she was dying. Then I came back and said, "Give up now before it's too late." It was targeted at women but the response of the schoolchildren in the state was terrific. I had not realised what a popular crest of a wave I was riding. It was on all the commercial stations but I confess that I do not have television and I did not actually see it.

The CHAIRMAN: Young children have received the message. My eldest child is six now but when he was between three and four years he said to people who were smoking, "That will make you sick, or that will kill you." I do not know where children pick up the message; I guess from the home or television.

Dr STANLEY: They get it from school. There are lot of school programs based around -

The CHAIRMAN: He was not at school at the time, but the children at school also get the message.

Dr STANLEY: Yes - "Cough up an ad" and all these sorts of things. The reason I am so supportive of the legislation and think it is so important is because of my very strong desire to improve the health of children. However, in improving the health of children, of course, my sincere hope is that by investing in the health of children in this State - and all States - that we will be making the best investment for the future of the nation and our society. We are so keen about stopping smoking because it is one thing we know about. There are so many unknown causes of problems I am researching that are so difficult and complex; but here is one we know about. We want to do something about it - linked, of course, to the banning of advertising which I think will have a very important, significant impact on people taking up smoking. People who smoke are getting the message and are trying to give up. I have no doubt about that.

The CHAIRMAN: The cigarette companies deny their advertising is aimed at recruiting people.

Dr STANLEY: I know they do. They certainly put a lot of money into advertising and then are terribly anxious when you try to ban it. The aim is to prevent people from starting to smoke. Considering the incidence of women who smoke in pregnancy, the women who give up smoking are the ones who smoke less, are less addicted, and usually have low risk factors for the poor outcomes of pregnancy. They are rather well off, tall, and well fed. The people who keep smoking in pregnancy are the women who are smoking 60 cigarettes a day; they are poor, Aboriginal, and will have a high rate of all the outcomes anyway. So the best thing for them would be not to start. For those people, banning smoking advertising would be a very important activity.

Another important aspect of the legislation is the Health Promotion Foundation, the spirit of the legislation being to improve the health of our community - particularly young people. The spirit of that legislation, with sponsorship of sport by organisations other than tobacco companies, arts sponsorship, and the funding of health promoting activities in the community, is a very elegant solution to the way in which that money should be spent. I really do support the spirit of this legislation. I reiterate that it involves the health of children to which I am so committed, and I am very happy to answer any questions.

Hon CHERYL DAVENPORT: One of our major problems is trying to link the statistical evidence with advertising and the effect that it has on children. Have you seen any research that actually shows - particularly in young women - that the subliminal advertising and so forth does encourage women to take up smoking?

Dr STANLEY: The tobacco companies have the best data on that actually. They have incredibly good market research on the success of that advertising on young women taking up smoking. What you really need and what you cannot get is a randomised control trial, where there are areas where you have that sort of advertising and areas where you do not, which looks at the rate of uptake of smoking in young women. That trial has not been done. This is not my area so I am going on to rather thin ice here and I cannot help you as much as some of the other people whom you should have had before you to talk about that issue, and I am sure you have. But from what I know about the Scandinavian countries and some parts of the UK, there is evidence that once you stop this sort of advertising the rates do go down. That is also observational evidence; it is not the randomised trial evidence that you would want, it is not as rigorous, but I think you should get very good evidence on that from the people who are able to give it to you. It is not my area of expertise.

My feeling - and it is not based on the strong facts that I would like - is that it is incredibly effective. I see those Alpine advertisements with this glorious woman with her beautiful body and her glorious white something or other, getting out her Alpine, and there is a gorgeous bloke who is all over her like a rash; you know, "If I smoke an Alpine I'll be like that." Did you ever smoke as a young person?

Hon CHERYL DAVENPORT: No.

Dr STANLEY: I did. I went like this in front of the mirror. I could see myself looking gorgeous. It is that sort of feeling that a cigarette is giving those girls. They are getting confidence and sexiness; and it is very clever. The week after my advertisement came out they marketed Vogue cigarettes, the long ones with the gold band. I was furious that they came out just a week after my advertisement; this is competition I cannot cope with. You can see how clever they are, with this long, thin cigarette. Virginia Slims - "You've come a long way baby" - they are so elegant, slim, gorgeous; everything you want to be. That type of advertising is very seductive. I am sure you can get better data on it than I have given you but I just cannot imagine that they do not do it just to get people in.

The CHAIRMAN: It is done to encourage brand swapping, that is all.

Dr STANLEY: When you are 14 and you see that advertisement you might go for Alpine. It is interesting that Alpine really has targeted women, and if you look at the people smoking Alpine it is young women.

The CHAIRMAN: It is mentholated - fresh air!

Dr STANLEY: That is right.

Hon DERRICK TOMLINSON: Four or five years ago you and Max Angus were having discussions about low birth weight and poor

performance in the initial years of schooling. Did you ever follow that through?

Dr STANLEY: Yes, we did.

Hon DERRICK TOMLINSON: What was the outcome?

Dr STANLEY: Steve Zubrick, Helen McCartney and I have published one paper on that, called "Developmental Medicine Child [Inaudible]" which showed impaired performance, particularly in mathematics and language development, which we called the "hidden handicap", in low birth weight babies, because when you actually examine the child neurologically you would not pick up that quite significant disability. Lots of other studies are now coming out on the low birth weight infant, where that has been substantiated, and they follow them up for a longer period. It has been found that logical, abstract thought is very difficult and almost missing in some of these children. For example, quite a lot of low birth weight children have retinal prematurity and are blind. You cannot actually teach those children to use a white cane and a map; they are unable to do it. They do not have the cognitive ability to do that. So these children are failing not so much in their first year of school, which is when our study finished, but when they are eight, nine and 10 years of age.

Hon DERRICK TOMLINSON: It would an interesting study to relate that to your proposition about smoking.

Dr STANLEY: That has been done. The 1970 British birth cohort has now followed the children well into school, and a Paula Rautakallio study from Sweden has followed them to age 14 - a smoking cohort and a non-smoking cohort. This is actually smoking in pregnancy, and of course you cannot always separate that from smoking in the first year of life, but I believe that smoking in pregnancy causes growth retardation. The children of smokers were controlled for social class, which of course can be confirmed, so that in every social class you get the same effect of smoking, and those children are a significant number of IQ points down on the normal.

Hon DERRICK TOMLINSON: Are you talking about standard deviation?

Dr STANLEY: I am talking about a significant difference down from the normal. It does not sound very much when you actually look at the mean average. It may be 105 in non-smokers and 101 in smokers, but if you look at the two distributions and the standard deviations it is quite a significant difference. That is evidence from two very large groups; 14 000 in the Finnish study and 11 000 11-year olds in the British birth cohort.

Hon DERRICK TOMLINSON: You have confirmed what has already been demonstrated to this Committee; that is, that the link between smoking and disease is irrefutable. You have

extended the study to infancy and earlier. We now have a situation where the advertising of tobacco and tobacco products on the electronic media has been banned since 1976. From 1 January 1991, as a result of Commonwealth legislation, the advertising of tobacco and tobacco products in the print media will be banned. So in effect, in terms of advertising, this Bill will affect only billboard advertising and sponsorship.

Dr STANLEY: It will do one more thing - it will increase the price of cigarettes. It already has. Increasing the price of cigarettes has a major impact on sales.

Hon DERRICK TOMLINSON: It increased the price of cigarettes 12 months ago.

Dr STANLEY: There has been quite a lot of data on that. Joy Townsend from the UK has done that.

Hon DERRICK TOMLINSON: The most significant drop in cigarette sales in Western Australia followed the 1984 increase in prices, but do you really think abolishing those things and leaving only billboard advertising and sponsorship will save the health of these kids?

Dr STANLEY: Can I add that you are also trying to increase the policing of sales of cigarettes to minors, and I hope that will come in because it is very important. By doing this, you, the responsible representatives of the people, are implementing legislation, the spirit of which is to cast into the dungeons the curse of smoking, and that will have a major effect on the population as well.

Hon DERRICK TOMLINSON: That is an unintended consequence of the legislation though, is it not?

Dr STANLEY: The message that "Western Australians have now followed the world" - or at least two other Australian States, and everyone else in the world would like to be there - "and put one more nail in the coffin of the cigarette companies" is a very strong message, probably better than umpteen cigarette advertisements in many ways. I am thinking of other areas, such as the effect on vaccination of people and the Government's agreeing to compensate for things. That fact alone reduced vaccination rates in the UK significantly, so things do get through to the public in a very direct way.

The CHAIRMAN: What was the compensation for?

Dr STANLEY: Vaccination rates in the UK dropped after brain damaged children were ostensibly shown to have been affected by a whooping cough vaccination. Vaccination rates dropped again when the Government compensated the parents for the brain damage, even though the brain damaged children were subsequently found not to have been associated with vaccination, so the statement by the Government that they were compensating was further proof to the population. So Governments coming out and doing things in a certain spirit can have a major effect on the population.

Dr STANLEY (continuing)

But I do think that the advertising issue is an important one. I think that, even though you say it may be minor, this will have an effect in getting the message through to young people, coupled with all the other aspects of the legislation - coupled with the fact that there will be money for health promotion and for keeping on telling people about how to improve their lifestyle and nonsmoking being an important component of that. So it is not just those two things, it is the whole spirit of this legislation which I think will have an impact.

Hon DERRICK TOMLINSON: If we were honest about outlawing or illegitimising tobacco and tobacco products we would ban them. What you are suggesting is that we go about it through the back door by discrediting the cigarette companies.

Dr STANLEY: Would you be able to ban it?

Hon DERRICK TOMLINSON: It is simply a matter of legislation. We could treat it the same way as we do other addictive drugs.

The CHAIRMAN: With all the problems that entails.

Hon DERRICK TOMLINSON: We need to bite the bullet for the health of these kids that you are concerned about.

Dr STANLEY: Apparently I have been quoted as saying that I would like to ban it. Of course, I would love to see the manufacture of cigarettes banned, but it seems to me that the way we are going now is the next best way. People are not going to bite the bullet and ban it. That is the way the legislation has been drawn up and I support that fully. I do not know that anyone has actually gone as far as trying to ban it.

The CHAIRMAN: I assume Hon Derrick Tomlinson is being a devil's advocate.

Hon DERRICK TOMLINSON: I am not being a devil's advocate. I am following through Dr Stanley's line of argument, which is a most important line of argument, that part of the consequence of the legislation - and I see it as an unintended consequence of the legislation - is to discredit smoking within the community. By simply making advertising illegal you diminish the attractiveness of smoking - you illegitimise smoking, if there is such a word. If we are going to go to those extremes, then we should not be hypocritical about it. We should say that smoking is lethal, that it is a major community health hazard and, like other lethal addictive drugs, it should be banned.

Dr STANLEY: But none of us is being hypocritical about it. We come out and say those things all the time.

Hon DERRICK TOMLINSON: I think the legislation is hypocritical, that is the -

Dr STANLEY: I do not know how to answer that. I am here to discuss this legislation. I think it would have been great if you could have banned cigarettes, but I do not really want to debate that. I feel this legislation is an incredibly important first step. I think the removal of all advertising is terribly important and I think that you must get evidence to show that it is having an impact, particularly on women and children. I think that coupled with trying to stop selling cigarettes to minors and fining people more if they do it, a very strong Health Promotion Foundation which is going to really try to take over the role of cigarette companies in sponsorship and promote health is laudable, and that is where you have to be.

The CHAIRMAN: I would like to comment on what Hon Derrick Tomlinson said about prohibition. Prohibition of alcoholic beverages was tried in the United States between 1919 and 1933. That was designed to cure a social ill, which was the drinking of alcohol, but it created many more social catastrophes and calamities which were far worse.

Dr STANLEY: The difference with alcohol is that a little bit is fine.

The CHAIRMAN: Yes, it is not the substance which is the problem. However, the legacy of the prohibition era is the number of very highly organised crime cartels. Prohibition in relation to heroin and other drugs is causing us enormous problems in terms of collateral crime and drug related crime. Just imagine, if we banned tobacco tomorrow we would be outlawing at least 30 per cent of the adult population immediately. They would not stop smoking straight away, and the damage to society would be far worse, in many ways, than even the health problems that Dr Stanley has been talking about today.

Dr STANLEY: Life is a compromise. You cannot bring a total ban because it is impractical and not pragmatic. You should do the best you can, given that you have this problem about which you feel very strongly.

The CHAIRMAN: In your opening remarks you mentioned the significant difference in the number of stillbirths as between smoking and nonsmoking mothers. Do you have any figures on that?

Dr STANLEY: It is quoted in this paper and I have sent you the latest Swedish paper on that, which stunned me, because we have always thought that late foetal death - stillbirth - was much more common in smokers who were from a low social class and had other risk factors for stillbirth as well. I will send the latest Swedish paper to Ms Paniperis if you would like me to. Sweden has a more homogeneous population than elsewhere and, on the whole, high social class mothers and I think there was a two or threefold difference in

stillbirths of so-called unknown cause between smokers and non smokers which, when they adjusted for all the other factors, did not go away. That is coming out in every study but this was one where really the only risk factor in those women was that they smoked. They said it was the most important preventable cause of stillbirth now in Sweden, because all the other causes of stillbirth have gone right down. That is an important paper I could send you in addition to the one I have here, and I would be pleased to do that.

Hon DERRICK TOMLINSON: Do you think some of the Health Promotion Foundation funds should be directed to research into the effects of tobacco smoking on health?

Dr STANLEY: I think that is up to the foundation's scientific board, or whatever they are going to set up, to do. I think that generally the overall aims of the research in the foundation should be in the spirit of the legislation; that is, to improve the health of children and young people. At least, that is what I call the spirit of the legislation. What we are trying to do is to improve the health of our society.

Hon DERRICK TOMLINSON: So you would see that as a legitimate use of the funds?

Dr STANLEY: Oh, yes. We know so little about many of the really common causes of childhood illness and death that we need a lot of really good, sometimes even basic, research to ascertain what they may be. I think that is a very important use of such money, and if that meant we were looking at effects of smoking, that is important. In particular, this enzyme which may be switched on in the placenta is a very important one to follow up in terms of birth defects, because it may give us a clue to the cause of other birth defects that are not attributable to smoking. So many of these things do interdigitate, and it is very exciting sometimes. Often a research project will give a result which does not immediately affect people's health but gives you umpteen other hypotheses to test straight away. It is like opening a door, and the new methodology may do that. If that is the result of some of this tobacco money it would be a terrific result, not just for us but for other people around the world who benefit from that.

The CHAIRMAN: Thank you for coming. You will receive a copy of the transcript, and if you wish to make any corrections please do so and send it back.

[The witness retired]

THE COMMITTEE ADJOURNED

TALK TO WORLD CONFERENCE ON SMOKING AND HEALTH

1-5 April 1990, Perth, Australia

SMOKING AND PERINATAL PROBLEMS

Fiona J Stanley

In this short paper I would like to summarise the most important associations of maternal smoking of tobacco in pregnancy and various pregnancy complications and deleterious fetal outcomes. Whilst these are now very well known to those in the field of perinatal epidemiology, they are less well known amongst the wider groups of medical researchers, and much less known amongst the general public, than the well publicised effects of smoking on lung and cardiovascular diseases. This knowledge gap is important for several reasons. Firstly, pregnant women are a very accessible and often highly motivated audience in whom preventive programs should be tried. And secondly the rate of smoking in young girls has risen in most countries where data are available, and the harmful effects of smoking on the fetus could increase as these cohorts of young women are now entering the child-bearing age. There is additional suggestive evidence that certain subgroups of women may be more susceptible to cigarette smoke than others. These include poor, small, malnourished and young mothers, whose children are already disadvantaged, and smoking may well compound the risk. Part of the excess perinatal risk documented in teenage mothers may well be due to their high levels of smoking.

It is also of interest to speculate on the large and varied amount of pathology ostensibly due to smoking and the various mechanisms which could be involved. These varied effects are well illustrated by the smoking in pregnancy story.

The known associations of smoking in pregnancy and disease/poor outcome include low birth weight, perinatal mortality, spontaneous abortion, isolated cleft lip and palate, the pregnancy complications of preeclampsia and antepartum haemorrhage.

Low Birth Weight

In smokers' infants, the whole birth weight distribution is shifted downwards by 150 to 250 grams, and the percent of infants weighing less than 2500 grams is doubled for smokers. The pooled estimates from many studies show a dose response effect with the relative risk (smokers compared to non-smokers) rising from 1.5 in light smokers to over 3 fold in heavy smokers.

The reduced birthweight in smokers is due mainly to intrauterine growth retardation and not preterm birth. All women seem susceptible to this: you just have to smoke enough and your baby will weigh less than it would have if you hadn't smoked.

The consistency of the association, the strong effect and the dose response all point to smoking being a cause of poor fetal growth.

The general population aetiologic fraction, ie that proportion of low birth weight in the total population which could be prevented by stopping women from smoking, is 18%; and 61% of the low birth weight in heavy smokers is possibly due to their habit.

The postulated mechanisms for the growth retarding effect of smoking include vasoconstriction from nicotine, chronic low oxygen tension and increased carboxyhaemoglobin in maternal blood going to the placenta, with resulting fetal hypoxia, or direct effects of thiocyanate on the fetus. It does not seem to be due to smokers eating less with poor weight gain in pregnancy, as the effect of growth retardation is seen in women across the whole weight gain spectrum. There is also recent evidence that paternal smoking may also reduce infant birth weight in non-smoking mothers.

Perinatal Mortality

There is a 33% increase in perinatal mortality in smokers which seems independent of their increased risk of low birth weight. This is not seen as consistently as the reduced birthweight effect, possibly due to the heterogeneity of other risk factors for perinatal mortality in the populations studied.

In a recent study in a homogeneous population of low risk Swedish women there was an increased risk of late fetal death (>28 weeks) in smokers compared with non-smokers.. Most of the excess in mortality associated with smoking seems to involve babies without obvious pathology dying in utero (stillbirths of unknown cause). The possible sequence of events in stillbirths in smokers is - prolonged hypoxia, placental inefficiency, intrauterine growth retardation, late fetal death at term. This risk was particularly increased among older Swedish women.

There is also an increase in smokers' infants dying in the neonatal period following premature delivery, particularly following placental haemorrhage, both of which occur more frequently in smokers than non-smokers. This increased mortality risk seems to be due to a small group of mothers at particularly high risk - those who deliver early. This was shown by Mary

Meyer in the Ontario data and has not been observed as consistently as other effects of smoking.

The possible sequence of events in neonatal deaths are placental haemorrhage, preterm birth, complications of extreme immaturity.

In the Swedish study, with a more homogeneous population of fairly low risk mothers, smoking increased the risk of late fetal death (stillbirth) by 40%, and smoking is probably the most important preventable factor in that population to reduce perinatal mortality.

Spontaneous Abortions

There is a fairly consistent increase in the relative risk of spontaneous abortion in smokers compared with non smokers. This association is less well known than those for low birth weight and mortality. Pooled data from New York, London and from well done studies give an estimate of a 34% increase in spontaneous fetal loss in smokers over non-smokers. The mechanisms may be similar to those seen in antepartum haemorrhage.

Pregnancy Complications

The two most important pregnancy complications in developed countries in terms of fetal mortality and morbidity and maternal morbidity are pregnancy hypertension and placental haemorrhage.

The protective effect of smoking on the occurrence of pregnancy hypertension is consistently found: but before obstetricians recommend that smoking should be encouraged to reduce this disease, they should realise that there is evidence from several studies that perinatal mortality associated with hypertension is higher for smokers than non-smokers.

Placental haemorrhage has a similar increased risk in smokers to that of spontaneous abortion, which is interesting and consistent with smoking having a similar effect on placental pathology in these two closely related conditions.

It is thought that increased placental haemorrhage is one of the mechanisms of the increased preterm birth and neonatal death in smokers' infants.

Thus consistent and well proven effects of smoking include low birth weight, perinatal mortality, placental bleeding and a protective effect on hypertensive disease of pregnancy.

Cleft Lip and Palate

I wanted to include this less well known association for three reasons. One is that people make the blanket statement that smoking is not associated with an excess of human birth defects; the second is that the study of this relationship illustrates the importance of careful epidemiological investigation of birth defects and the third is that this may be yet another example of a different mechanism. The literature is not consistent in demonstrating an association, but many studies grouped all cleft defects together, when there is well known aetiological heterogeneity. The best and most recent study which I would like to present in some detail is from Atlanta.

The study is a case-control study and shows that the association is significant only among isolated cleft defects, not those occurring with other defects - the multiple group. Known syndromes were excluded and the odds ratios were adjusted for all possible confounding factors. Confounding could still be present, but the association is interesting because it suggests that smoking may be pathogenetic for a specific subgroup of clefts, which need to be defined further.

The other important suggestion is that a small fraction of the population at large may be biologically susceptible to a teratogenic effect of smoking. One clue to a differential susceptibility to birth defects comes from recent studies on an enzyme-cytochrome P-450 which plays a major role in the detoxification of chemicals and drugs. Maternal smoking seems to induce a P-450 enzyme in the placenta. But low placental levels of P-450 among smokers was significantly associated with birth defects in their offspring. So certain people may be more sensitive to teratogenic effects of cigarettes depending on their ability to detoxify chemicals in the smoke. Thus what we may be seeing in these data is a relatively modest effect of smoking in an aetiologically heterogeneous group of defects and differential biological susceptibility to the teratogenic effects of smoking. More studies are needed before we can say that smoking does not cause birth defects.

Conclusion

Most studies in Australia, USA and UK suggest that 30% or more of pregnant women are smokers: many smokers (20%) give up before becoming pregnant or very early in pregnancy. Those who do give up are light smokers and probably at lower risk for perinatal problems. Most studies show that the proportion of women who stay smoking falls after the diagnosis of pregnancy: women are trying to give up and we are probably left with the most

addicted group of heavy smokers in lower social classes with those who continue to smoke throughout pregnancy.

This conference is providing evidence of the high proportions of young women and girls taking up smoking which seems to be a world wide trend. Data from Australia show the peak to be in the mid 1980s - no doubt a response to smoking advertisements aimed specifically at young women.

The concern which we all share is that this cohort of young smoking women is now starting to enter the child bearing age and the adverse affects on the fetus from smoking will become an even greater public health problem of the 1990s. Many adverse outcomes may go unrecognised as due to smoking as we have not worked out all the possible effects. And of course these women continuing to smoke will be at higher risk of complications to their own health.

In addition there is now evidence that those who are poor, small, malnourished, have low pregnancy weight gain, and are very young, (ie those from underprivileged groups) are more adversely affected by smoking than more well fed and wealthy women. And it is the well off low risk woman who is stopping smoking in spite of this advertising!

Though the main reason for discouraging women from smoking in pregnancy has been concern for fetal wellbeing, the potential long term effects of improved maternal health may prove to be of equal importance.

Faced with the evidence presented and with the high prevalence of smoking in pregnancy, I believe this is a major public health issue. Many pregnant women want to give up smoking and we must develop better methods of helping them.

And, on behalf of the world's future children those of us committed to improving perinatal health applaud those of you who are educating and legislating for population strategies to discourage smoking in the whole community.

LIST OF SUBMISSIONS

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WA Research Institute for Child Health Ltd
Princess Margaret Hospital**

**Dr E Olszewski
Foothills Medical Group**

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**Mr N McNamara - Chairman
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Cancer Foundation of WA Inc

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**Mr G Kendrick
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Mr G O'Connor

Mr N J Sontley
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Confederation of Australian Motor Sport
Camberwell - VIC

Mr R D Barnard
Barnard Project Management Ltd
Norwood - SA

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Mr P J Daly - Secretary
Newman Turf Club Inc

Mr I H Rowe
Managing Director
JMA Ogilvy & Mather

Mr G G Brabazon
Secretary/Manager
Kalgoorlie Boulder Racing Club

Hon. Peter Collins
Minister for Health
Sydney - NSW

Mr M F Bennett - Chairman
York Jockey Club Committee

Professor Peter D Finch
Clayton - VIC

Dr Jan Bradford

W J Bevan - Chief Executive
Country TAB Clubs' Racing Association

WESTERN AUSTRALIA

TOBACCO CONTROL BILL 1990

(No. of 1990)

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THE SCHEDULE

(Section 22)

FURTHER PROVISIONS RELATING TO WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION

- 1. Interpretation
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LEGISLATIVE COUNCIL

As reported from the Legislation Committee
November 1990

(Words struck out are shown with a line through each character;
words inserted are shown with a single underline.)

A BILL

FOR

AN ACT to regulate the sale and promotion of tobacco products, to establish the Western Australian Health Promotion Foundation, to amend the *Constitution Acts Amendment Act 1899*, the *Financial Administration and Audit Act 1985*, the *Government Employees Superannuation Act 1987*, the *Health Act 1911*, and the *Parliamentary Commissioner Act 1971* and to repeal the *Sale of Tobacco Act 1916* and to provide for matters incidental to or connected with the foregoing.

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Tobacco Control Act 1990*.

Commencement

2. (1) Subject to this section, this Act shall come into operation on such day as is fixed by proclamation.

(2) Sections 5 (2), 6 (1), 11 (1) and (2), ~~12 and 14~~ and 12 shall come into operation 6 months after the appointed day.

(3) Section 5 (1) shall come into operation 12 months after the appointed day.

Purposes of Act

3. The purposes of this Act are—

- 10 (a) the active discouragement of the smoking of tobacco by—
- (i) encouraging non-smokers, particularly young people, not to start smoking;
 - (ii) limiting exposure of children and young people to persuasion to smoke; and
 - 15 (iii) encouraging and assisting smokers to give up smoking;
- and
- (b) the promotion of good health and the prevention of illness.

Interpretation

20 4. In this Act, unless the contrary intention appears—

“banned contract” means—

- (a) a contract or arrangement entered into before the appointed day and which pursuant to Part 2 is unlawful in whole or part; or

- (b) a contract or arrangement which the Foundation considers there to have been a reasonable likelihood would have been entered into after the appointed day but for the passing of this Act and which pursuant to Part 2 would have been unlawful in whole or part but only where the potential parties to such contract or arrangement have prior to 24 August, 1989 been parties to a contract or arrangement which if it continued beyond the appointed day would pursuant to Part 2 be unlawful in whole or part; 5 10

"banned sponsorship" means a banned contract which pursuant to section 8 would be unlawful in whole or part;

"benefit" with respect to a banned contract or banned sponsorship means any benefit that would have flowed to a person other than a manufacturer or wholesaler of a tobacco product under or in connection with or as a result of a banned contract or banned sponsorship as the case may be; 15

"book" includes any printed material in any language;

"brand name" includes any part of a brand name; 20

"Chairperson" means Chairperson of the Foundation appointed under section 18 17 (1);

"function" has the meaning given by section 5 of the *Interpretation Act 1984*;

"member" means member of the Foundation appointed under or referred to in section 18 17 (1); 25

"newspaper" includes copy of any magazine, journal or periodical, or any other publication copies of which contain—

- (a) news, intelligence, information or reports of occurrences; 30

or

- (b) remarks, observations or comments in relation to any news, intelligence, information or occurrences or to any other matter of interest to the public or any section of the public, 35

which are printed in any language and published at regular or irregular intervals;

"objective" means objective of the Foundation set out in section ~~23~~ 22;

5 "package", in relation to a tobacco product, means package—

(a) in which the tobacco product is packed by the manufacturer of; and

(b) which immediately contains,

the tobacco product;

10 "public place" includes place to which the public or a section thereof ordinarily has access, whether by payment or not or by invitation or not;

"racing" means horse racing and pacing, dog racing and motor car and motorcycle racing;

15 "sell" includes—

(a) barter or exchange;

(b) offer or expose for sale, barter or exchange;

(c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and

20

(d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom or otherwise with a view to commercial gain;

"sponsorship" includes—

25 (a) scholarship, prize, gift or other like benefit; and

- (b) financial arrangement (other than *bona fide* contract of employment or *bona fide* contract for services) for the direct promotion or publicization of one or more of the matters referred to in section 8 (1) (a) and (b) through the medium of sporting, ~~cultural~~ arts, youth, 5 educational or other like activities;

"sporting" includes recreational and other such activities but does not include racing;

"the appointed day" means the day referred to in section 2 (1);

"the Commissioner of Health" has the meaning given by the 10 *Health Act 1911*;

"the Foundation" means the Western Australian Health Promotion Foundation established by section ~~16~~ 15 (1);

"the Fund" means the Western Australian Health Promotion Fund referred to in section ~~27~~ 26 (3); 15

"the Minister for Racing and Gaming" means the Minister to whom the administration of the *Casino Control Act 1984* is for the time being committed by the Governor;

"the Minister for Sport and Recreation" means the Minister to whom the administration of the *Western Australian Sports 20 Centre Trust Act 1986* is for the time being committed by the Governor;

"the Minister for the Arts" means the Minister to whom the administration of the *Art Gallery Act 1959* is for the time being committed by the Governor; 25

"tobacco advertisement" means writing, still or moving picture, sign, symbol or other visual image or message, or audible message, designed to promote or publicize—

~~(a) the purchase or use; or~~

~~(b) a trademark or brand name, or part of a trademark or brand name,~~

of a tobacco product;

5 "tobacco product" means tobacco, cigarette or cigar or any other product the main, or a substantial, ingredient of which is tobacco and which is designed for human consumption or use, but excludes nicotine or a product containing nicotine insofar as the *Poisons Act 1964* applies to or in relation to nicotine or a product containing nicotine;

10 "trademark" includes part of a trademark;

"vending machine" means machine, device or contrivance that is constructed to contain tobacco products that can be obtained from it by an operation which involves—

- 15 (a) the insertion in that machine, device or contrivance of a coin, token or similar object; or
- (b) any other action taken without the assistance of the vendor or his or her employee or agent.

PART 2—CONTROLS RELATING TO TOBACCO PRODUCTS

Certain advertising prohibited

20 5. (1) A person who in Western Australia for any direct or indirect benefit displays a tobacco advertisement in, or so that it can be seen or heard from, a public place commits an offence.

(2) A person who in Western Australia—

- (a) distributes to the public any unsolicited object; or
- 25 (b) sells, hires or supplies for any direct or indirect benefit any object,

that constitutes or contains a tobacco advertisement commits an offence.

30 ~~(3) A person who in Western Australia includes in a newspaper or book printed or published inside Western Australia for sale or supply for any direct or indirect benefit a newspaper or book—~~

~~(a) printed or published outside Western Australia; and~~
~~(b) constituting or containing a tobacco advertisement,~~
 commits an offence.

(3) This section does not apply in relation to—

- (a) anything done by means of a radio or television broadcast; 5
- (b) a tobacco advertisement ~~(other than a tobacco advertisement referred to in subsection (3))~~ in or on—
 - (i) a newspaper or book printed or published outside Western Australia, the sole or main purpose of which newspaper or book is a purpose other than 10 the promotion or publicization of—
 - (A) the purchase or use; or
 - (B) a trademark or brand name, ~~or part of a trademark or brand name,~~
 - of a tobacco product; or 15
 - (ii) a package or carton containing a tobacco product;
- (c) a tobacco advertisement that is an incidental accompaniment to the subject of a film or video tape (not being a film or video tape which is wholly or mainly concerned with the promotion of tobacco products); 20
- (d) a tobacco advertisement that is displayed inside a shop or other retail outlet where tobacco products are offered or exposed for sale, that is directly adjacent to a place where all or any of those tobacco products are offered or exposed for sale and that complies with any regulations made under 25 section ~~34~~ 33(1) (c);
- (e) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of business; or
- (f) anything to which this section does not apply by virtue of an 30 exemption granted under section ~~15~~ 14.

(4) In any proceedings for an offence under subsection (1), it shall be presumed that, if there is present in the relevant tobacco advertisement—

(a) the name of a person who manufactures or distributes any tobacco product;

(b) a trademark, ~~or part of a trademark~~, of which a person who manufactures or distributes any tobacco product is the registered proprietor or the registered user within the meaning of the *Trade Marks Act 1955* of the Commonwealth; or

(c) a brand name, ~~or part of a brand name~~, used by a person who manufactures or distributes any tobacco product,

that person displayed that tobacco advertisement for a direct or indirect benefit, until the contrary is proved.

(5) In any proceedings for an offence under this section where the thing that is alleged to constitute a tobacco advertisement contains the trademark or brand name of a tobacco product it shall be presumed to be designed to promote or publicize the tobacco product to which it relates until the contrary is proved.

20 Competitions

6. (1) A person who, in connection with the sale of a tobacco product or for the purpose of promoting the sale of a tobacco product—

(a) supplies (whether from inside or outside Western Australia) to the purchaser, or any other person, in Western Australia—

(i) a prize, gift or other benefit; or

(ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional);

or

(b) conducts (whether from inside or outside Western Australia) a scheme—

- (i) prescribed to be a scheme to promote the sale of a tobacco product or to promote smoking generally; and
- (ii) the whole or any part of which is implemented in Western Australia,

5

commits an offence.

(2) It is a defence in proceedings for an offence under subsection (1) to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy products other than tobacco products, was afforded generally to persons who purchased products, whether or not they were tobacco products.

15

Free samples

7. A person who, for the purpose of inducing or promoting the sale of a tobacco product, offers, gives or distributes (whether from inside or outside Western Australia) to a member of the public within Western Australia a free sample of a tobacco product ~~or a product~~ which ~~advertises a tobacco product~~ commits an offence.

20

Prohibition of sponsorships

8. (1) A person who promotes or publicizes, or agrees to promote or publicize, in Western Australia—

- (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product,

25

under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person commits an offence.

(2) A person (whether inside or outside Western Australia) who provides, or agrees to provide, in Western Australia a sponsorship under a contract or arrangement of a kind referred to in subsection (1) commits an offence.

(3) For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of a tobacco product shall be deemed to be in association directly or indirectly with the tobacco product if that name or those interests are commonly associated by members of the public in Western Australia with the tobacco product.

(4) This section does not apply in relation to—

- (a) a contract or arrangement of a kind referred to in subsection (1), which contract or arrangement was entered into before the appointed day, during the period of 12 months commencing on the appointed day; or
- (b) anything to which this section does not apply by virtue of an exemption granted under section ~~15~~ 14.

20 Labelling of packaged tobacco

9. A person who sells in Western Australia any tobacco prepared for smoking that is in a package that is not labelled—

- (a) in accordance with any regulations made under section ~~34~~ 33 with a prescribed statement and warning (if any) applicable to packages of the class to which that package belongs;
- (b) with the prescribed statement (if any) applicable to packages of the class to which that package belongs and giving the tar content of that tobacco; or
- (c) with any other prescribed information applicable to packages of the class to which that package belongs,

commits an offence.

Supplying tobacco to persons under 18 years

10. (1) A person who sells or supplies in Western Australia a tobacco product to a person under the age of 18 years commits an offence.

~~(2) A person who purchases (whether inside or outside Western Australia) a tobacco product for the use of a person under the age of 18 years in Western Australia commits an offence.~~ 5

(2) A person who permits, or whose employee or agent permits, a person under the age of 18 years to obtain a tobacco product from a vending machine situated on premises in Western Australia occupied 10 by the firstmentioned person commits an offence.

~~(4) A person who commits an offence under subsection (1), (2) or (3) is liable to a penalty of \$1 000.~~

(3) It is a defence in proceedings for an offence under subsection (1) to prove that the defendant— 15

(a) had honest and reasonable cause to believe that the person to whom the tobacco product concerned was sold or supplied was not under the age of 18 years; or

(b) had taken all precautions that were reasonably required to ensure that the tobacco product concerned was not sold or 20 supplied to a person under the age of 18 years.

~~(5) It is a defence in proceedings for an offence under subsection (1) or (2) to prove that the defendant—~~

~~(a) had honest and reasonable cause to believe that the person—~~ 25

~~(i) who purchased the tobacco product concerned; or~~

~~(ii) for whose use the tobacco product concerned was purchased,~~

~~was not under the age of 18 years; or~~

(b) ~~had taken all precautions that were reasonably required to ensure that the tobacco product concerned was not sold to or for the use of a person under the age of 18 years.~~

(4) It is a defence in proceedings for an offence under subsection (2) to prove that—

(a) in the case of proceedings against the person occupying the premises concerned for himself or herself having permitted a person under the age of 18 years to obtain a tobacco product from a vending machine situated on those premises, the firstmentioned person—

(i) had honest and reasonable cause to believe that the secondmentioned person was not under the age of 18 years; or

(ii) had taken all precautions that were reasonably required to ensure that the tobacco product was not so obtained by a person under the age of 18 years;

or

(b) in the case of proceedings against the person occupying the premises concerned for his or her employee or agent having permitted a person under the age of 18 years to obtain a tobacco product from a vending machine situated on those premises, that employee or agent—

(i) had honest and reasonable cause to believe that the secondmentioned person was not under the age of 18 years; or

(ii) had taken all precautions that were reasonably required to ensure that the tobacco product was not so obtained by a person under the age of 18 years.

Vending machines

11. (1) A person who places, or causes or permits to be placed, in any premises in Western Australia a vending machine for operation by members of the public commits an offence ~~unless the premises are—~~

~~(a) licensed premises within the meaning of the *Liquor Licensing Act 1988*; or~~

~~(b) premises set aside by an employer as a staff amenity area.~~

(2) A person who—

(a) owns or is the lessee of a vending machine in Western 5
Australia; and

(b) does not ensure that a statement in the prescribed form is
kept conspicuously displayed on the front of the vending
machine referred to in paragraph (a),

commits an offence.

10

Packages of cigarettes

12. A person who sells in Western Australia cigarettes—

(a) in a package containing less than 20 cigarettes; or

(b) otherwise than in a package,

commits an offence.

15

Smokeless tobacco

13. (1) A person who manufactures or sells in Western Australia
a tobacco product other than a tobacco product prepared for smoking
commits an offence.

(2) Subsection (1) does not apply in relation to the manufacture or 20
sale of prescribed tobacco products in prescribed circumstances.

~~Confectionery and toys~~

~~14. A person who sells in Western Australia—~~

~~(a) any confectionery or toy that is designed to resemble a
tobacco product; or~~

25

~~(b) any confectionery or toy in a package that is designed to
resemble—~~

~~(i) a tobacco product; or~~

~~(ii) a package containing a tobacco product,
commits an offence and is liable to a penalty of \$1 000.~~

Exemptions

14. (1) Subject to this section, the Minister may, by notice
5 published in the *Gazette*—

(a) exempt a person or class of persons either wholly or in part
from the operation of section 5 or 8 subject to such
conditions (if any) as are set out in that notice or prescribed
for the purposes of this paragraph; or

10 (b) amend or repeal an exemption granted under this section.

(2) An exemption may only be granted under this section—

(a) after consultation between the Minister and the appropriate
Minister, and having regard to the nature and background of
the event, function or series concerned and to the purposes
15 of this Act, to facilitate the promotion and conduct of—

(i) a sporting or ~~cultural~~ arts event or function; or

(ii) a series of sporting or ~~cultural~~ arts events or
functions,

of national or international significance;

20 (b) in the case of the operation of section 5, to allow the
performance during the period of 12 months commencing on
the appointed day of a contract entered into before that day
if significant hardship to persons other than manufacturers
or wholesalers of tobacco might result if the exemption is not
25 granted; or

(c) in any other case of significant hardship to persons other
than manufacturers or wholesalers of tobacco.

(3) For the purposes of subsection (2) (a), the appropriate Minister
is—

30 (a) in relation to an exemption to facilitate the promotion and
conduct of a sporting or racing event or function or a series
of such events or functions—

(i) which is a racing event or function not involving motor car or motorcycle racing the Minister for Racing and Gaming;

or

(ii) which is a sporting event or function or a motor car or motorcycle racing event or function, the Minister for Sport and Recreation; 5

or

~~in relation to an exemption to facilitate the promotion and conduct of a sporting event or function or a series of such events or functions, the Minister for Sport and Recreation;~~ 10

or

(b) in relation to an exemption to facilitate the promotion and conduct of a cultural arts event or function or a series of such events or functions, the Minister for the Arts. 15

(4) The Minister shall, when deciding whether or not to grant an exemption under this section for the purpose referred to in subsection (2) (a), have regard to—

- (a) any substantial connection between the relevant event or function or series of events or functions and other significant events or functions outside the State; and 20
- (b) any reasonable efforts that have been made to obtain sufficient financial or other support for the relevant event or function or series of events or functions from sources other than the advertising of tobacco products to render the exemption unnecessary. 25

(5) An exemption granted under this section for the purpose referred to in subsection (2) (c) shall not have effect after 30 June 1994.

PART 3—WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION

30

Establishment of Foundation

15. (1) The Western Australian Health Promotion Foundation is established.

(2) The Foundation is—

- (a) a body corporate with perpetual succession and shall have a common seal;
- 5 (b) capable of suing and being sued in its corporate name and of acquiring, holding, dealing with and disposing of real and personal property;
- (c) capable of acquiring or incurring any other rights or liabilities and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer; and
- 10 (d) an agency of, and holds its property on behalf of, the Crown ~~and enjoys the status, immunities and privileges of the Crown.~~

(3) The common seal of the Foundation shall be in a form determined by the Foundation, shall be kept in such custody as the
15 Foundation directs and shall not, subject to subsection (4), be used except as authorized by the Foundation.

(4) A document is duly executed by the Foundation if it is sealed with the common seal of the Foundation and signed by 2 members.

(5) A document apparently executed by the Foundation shall be
20 presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed.

(6) For the purposes of this Act, the Foundation may make use of a facsimile of the common seal of the Foundation and a document purporting to create or evidence an obligation on the part of the
25 Foundation and to be endorsed with such a facsimile seal shall, until the contrary is proved, be deemed to have been sealed by the Foundation.

Provision of information to Minister

16. The Foundation shall provide the Minister with such
30 information and reports concerning the activities of the Foundation as the Minister may from time to time require.

Constitution of Foundation

- 17.** (1) The Foundation shall consist of 11 members, of whom—
- (a) one shall be appointed by the Minister on the nomination of the Premier and shall be the Chairperson of the Foundation;
 - (b) one shall be appointed by the Minister on the nomination of the body known as the Australian Medical Association Western Australian Branch; 5
 - (c) one shall be appointed by the Minister on the nomination of the body known as the Western Australian Sports Federation; 10
 - (d) one shall be appointed by the Minister on the nomination of the body known as the Western Australian Sports Council;
 - (e) one shall be appointed by the Minister on the nomination of the body known as the Country Shire Councils' Association to represent country sporting interests; 15
 - (f) one shall be appointed by the Minister on the nomination of the body known as the WA Association of Professional Performing Arts;
 - (g) one shall be appointed by the Minister on the nomination of the body known as the Australian Council on Smoking and Health; 20
 - (h) one shall be the person for the time being holding or acting in the office of the Commissioner of Health or the nominee of that person;
 - (i) one shall be the chief executive officer of the department principally assisting the Minister for Sport and Recreation or the nominee of that chief executive officer; 25
 - (j) one shall be the chief executive officer of the department principally assisting the Minister for the Arts or the nominee of that chief executive officer; and 30
 - (k) one shall be the principal employee for the time being of the body known as the Office of the Family Bureau of Youth Affairs or the nominee of that principal employee.

(2) The Premier shall, before making a nomination for the purposes of subsection (1) (a), consult with the parliamentary leader of each party in the Parliament.

(3) A nomination referred to in subsection (1) (a), (b), (c), (d), (e), (f) or (g) shall—

- (a) be submitted in writing to the Minister at his or her request; and
- (b) be in respect of a person who is willing to accept appointment as a member.

10 (4) If at any time—

- (a) the Premier; or
- (b) the body referred to in subsection (1) (b), (c), (d), (e), (f) or (g),

15 does not submit a nomination within 30 days after the making of the relevant request referred to in subsection (3) (a), the Minister may, without the submission of that nomination, appoint a person to be the member concerned to represent the interests of the Premier or body or organizations in default until—

- 20 (c) the relevant nomination is submitted and a member is appointed on that nomination; or
- (d) the expiry of the period (being a period not exceeding 3 years) specified in the instrument of the appointment under this subsection,

whichever is the sooner.

25 (5) A person appointed, and holding office as a member, under subsection (4) shall for all purposes be deemed to be duly appointed a member and to be the representative of the Premier or body in default.

30 (6) The Minister shall, before making an appointment under subsection (4) representative of the interests of the Premier, consult with the parliamentary leader of each party in the Parliament.

(7) The members shall, at the first meeting of the Foundation after the appointed day and thereafter at the first meeting of the Foundation after a Deputy Chairperson ceases to be a member, elect a Deputy Chairperson from among their number to preside, whilst he or she remains a member, over any meeting, or part of a meeting, of the Foundation from which the Chairperson is absent. 5

(8) A member, other than the member referred to in subsection (1) (a), may nominate by writing served on the person concerned and on the Chairperson a person—

(a) to be his or her deputy and to attend; and 10

(b) to represent the interests of the relevant body or of the Commissioner of Health or of the relevant department at,

any meeting, or part of a meeting, of the Foundation from which that member is absent.

(9) A deputy nominated under subsection (8) has, while attending a meeting, or part of a meeting, of the Foundation from which the member who nominated him or her is absent, all the functions of a member. 15

Term of appointment or nomination

18. (1) A member referred to in section ~~18~~ **17** (1) (a), (b), (c), (d), (e), (f) or (g) shall, subject to section 52 of the *Interpretation Act 1984*, hold office for such period not exceeding 3 years as is specified in the instrument of his or her appointment and is eligible for reappointment. 20

(2) A deputy nominated under section ~~18~~ **17** (8) shall, unless his or her nomination is earlier withdrawn by writing served on that deputy and on the Chairperson by the member who made that nomination, hold office for such period ending on or before the end of the period for which that member holds office as is specified in the relevant instrument of nomination. 25 30

Remuneration and allowances of members and deputies

19. A member and his or her deputy are each of them entitled to such remuneration and allowances (if any) as the Minister from time to time determines in his or her case on the recommendation of the Public Service Commissioner.

Resignation of members

20. A member referred to in section 18 ~~17~~ (1) (a), (b), (c), (d), (e), (f) or (g) may resign his or her office by notice in writing signed by the member and delivered to the Minister.

Further provisions relating to constitution, etc., of Foundation

21. Further provisions governing the constitution, proceedings and operations of the Foundation are set out in the Schedule.

15 Objectives of Foundation

22. (1) The objectives of the Foundation are—

- (a) to fund activities related to the promotion of good health in general, with particular emphasis on young people;
- 20 (b) to offer an alternative source of funds for sporting and ~~cultural~~ arts activities currently supported by manufacturers or wholesalers of tobacco products;
- (c) to support sporting and arts ~~cultural and recreational~~ activities which encourage healthy lifestyles and advance health promotion programmes;
- 25 (d) to provide funds to replace tobacco advertising with health promotion advertising;
- (e) to provide grants to organizations engaged in health promotion programmes;

- (f) to fund research relevant to health promotion;
- (g) to raise funds by soliciting donations and grants and, subject to subsection (2), engaging in the production or marketing or both referred to in section 24 23 (2) (d) in order to support the work of the Foundation; 5
- (h) to evaluate and report on the effectiveness of the performance of the Foundation in achieving health promotion activities; and
- (i) generally to fulfil the purposes set out in section 3.

~~(2) In seeking to achieve the objectives referred to in subsection (1) 10 (b) and (d), the Foundation shall, in considering whether or not to grant an application for funds, give preference to such an application in a case in which the relevant contract or agreement—~~

~~(a) relating to any tobacco advertisement; or~~

~~(b) referred to in section 8,~~ 15

~~was entered into before 24 August 1989.~~

(2) It is not an objective of the Foundation to make a profit by engaging in the production or marketing or both referred to in section 24 23 (2) (d), but any surplus of revenue over expenditure arising as a result of that engagement shall be paid into and to the credit of the 20 Fund.

(3) In providing funds or grants under this Act, the Foundation may impose such conditions as it considers desirable to fulfil the purposes set out in section 3.

Powers of Foundation

25

23. (1) The Foundation has power to do all things necessary or convenient to be done for or in connection with the achievement of its objectives.

(2) Without limiting the generality of subsection (1), the Foundation may, in its absolute discretion— 30

- (a) after consultation with the Minister, make grants from the Fund to persons other than manufacturers or wholesalers of tobacco products who have suffered hardship as a result of the loss of benefits under a banned contract entered into before the appointed day; or 35

- (b) make grants for the purpose of providing support to persons who have lost or who will lose benefits under a banned sponsorship;

~~(2) Without limiting the generality of subsection (1), the~~
 5 ~~Foundation may, in its absolute discretion—~~

- ~~(a) after consultation with the Minister, make grants from the Fund to persons other than manufacturers or wholesalers of tobacco products for the relief of loss suffered as a result of the application of this Act to any matter or thing existing at or before the appointed day;~~

- ~~(b) make grants for the purpose of providing financial support—~~

- ~~(i) to persons other than manufacturers or wholesalers of tobacco products who have before 24 August 1980 entered into contracts or agreements which give rise to, or are likely to give rise to, the commission of an offence under Part 2; or~~

- ~~(ii) to persons other than manufacturers or wholesalers of tobacco products who might in the absence of such support enter into, or have already entered into, contracts or agreements the carrying out of which gives rise to, or is likely to give rise to, the commission of an offence under Part 2 or to the carrying on of any activity relating to the promotion, consumption or use of tobacco products;~~

~~and shall if it decides to exercise the power conferred by this paragraph give preference to applications for grants from persons referred to in subparagraph (i);~~

- (c) make grants to—

- (i) sporting organizations;
- (ii) cultural arts organizations;
- (iii) health organizations;

- (iv) community organizations;
- (v) research organizations; ~~and~~
- (vi) youth organizations; and
- (vii) racing organizations;

(d) engage in the production or marketing or both of goods and 5
services which themselves constitute or form part of health
promotion activities in order—

- (i) to promote the purposes of this Act and the
objectives of the Foundation; and
- (ii) by generating revenue to cover the cost of that 10
production or marketing or both;

~~by generating revenue, not only to cover the cost of
that production or marketing or both, but also to
raise moneys for payment into and to the credit of
the Fund;~~

15

and

(e) do anything necessary or desirable for implementing the
capacity conferred on it by section ~~16~~ 15 (2).

(3) For the period of five years from the appointed day the
Foundation shall give priority to applicants for grants—

20

(a) firstly pursuant to subsection (2) (a); and

(b) secondly pursuant to subsection (2) (b)

up to the full amount of any loss of benefit.

Ministerial directions

24. (1) The Minister may give directions in writing to the Foundation with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and
5 the Foundation shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Foundation under section 66 of the *Financial Administration and Audit Act 1985* and shall also be tabled in both Houses of
10 Parliament within 6 sitting days.

Staff of Foundation

25. (1) The Foundation may, subject to any relevant industrial agreement or award, appoint and employ, either on a permanent full time basis or otherwise and on such terms and conditions as the
15 Foundation determines, a Director of the Foundation and such other persons as the Foundation considers necessary to assist that Director and to enable the Foundation to achieve its objectives.

(2) The Foundation shall not appoint or employ any person except in accordance with an establishment scheme from time to time
20 approved by the Minister which shall set out—

(a) the numbers of staff which may be employed and the general functions each is intended to perform; and

(b) the salary range for each such person.

(3) With the consent of the Minister or within a budget approved
25 by the Minister, the Foundation may engage under a contract for services or other arrangement any consultant or person to provide such administrative, professional, technical or other assistance as the Foundation considers necessary to enable it to achieve its objectives.

(4) The Foundation may, by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and, if appropriate, with the Public Service Commissioner, make use, either full time or part time, of—

5

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service of the 10 State or of a State agency or instrumentality.

(5) The appointment and employment or engagement of a person under subsection (1) or (2) does not—

- (a) render the provisions of the *Public Service Act 1978* or of any Act applying to persons as officers of the Public Service 15 of the State applicable to the person; or
- (b) affect or prejudice the application to the person of the provisions referred to in paragraph (a) if they applied to him or her at the time of his or her appointment or engagement.

Funds of Foundation

20

26. (1) The funds available for the purpose of enabling the Foundation to achieve its objectives and to exercise and perform its functions consist of—

- (a) moneys paid to the Foundation under subsection (2);
- (b) moneys from time to time appropriated by Parliament and 25 paid to the Foundation; and
- (c) any moneys, other than moneys referred to in paragraphs (a) and (b), lawfully received by, made available to or payable to the Foundation.

(2) There shall in respect of the financial year commencing on—

(a) 1 July 1990 be paid to the Foundation an amount equal to 10 per cent; and

5 (b) 1 July 1991 and of each subsequent financial year be paid to the Foundation an amount equal to 10 per cent, or to such greater percentage as the Minister may determine by notice published in the *Gazette*,

10 of the total amount of fees paid under the *Business Franchise (Tobacco) Act 1975* to the Commissioner of State Taxation during that financial year, and the Consolidated Revenue Fund is hereby appropriated to the extent necessary for the making of each such payment.

(3) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at the Treasury to be called the 15 "Western Australian Health Promotion Fund".

(4) There shall be paid from the moneys from time to time in and standing to the credit of the Fund—

20 (a) the remuneration and allowances payable to members and their deputies and to persons employed under section 26 25 (1);

(b) expenditure incurred by the Foundation in achieving its objectives and exercising and performing its functions and in complying with subsection (8); and

25 (c) all expenditure, other than expenditure referred to in paragraphs (a) and (b), lawfully incurred by the Foundation for the purposes of, and in meeting the costs and expenses of the administration of, this Act.

30 (5) A publication, pamphlet or advertisement that is paid for, wholly or in part, from the moneys from time to time in and standing to the credit of the Fund shall not contain any picture of, statement by or reference to any Member of Parliament, other than any statement or reference of that kind—

- (a) required by law; or
- (b) necessary or desirable for a proper understanding of the subject matter of that publication, pamphlet or advertisement,

nor shall any such moneys be paid under subsection (4) in such a manner that any Member of Parliament is, or appears to be, associated with that payment.

(6) The Fund shall not decide nor announce any decision to disburse any part of the Fund, pursuant to section 23 (2) (c) of the Act during the period from the issue of the writs for a general election to be held within the State, whether State or Federal until the close of voting in that election.

~~The Fund shall be vested in, and managed by, the Foundation.~~

(7) All moneys in and standing to the credit of the Fund immediately before the commencement of a financial year shall, subject to subsection (4), remain in and standing to the credit of the Fund after that commencement.

(8) The Foundation shall endeavour to ensure that, in each financial year—

- (a) not less than 30% of the moneys paid under subsection (4) in any one financial year are disbursed to sporting organizations;
- (b) not less than 15% of the moneys paid under subsection (4) in any one financial year are disbursed to ~~cultural~~ arts organizations; and
- (c) not more than 50% of the moneys paid under subsection (4) in any one financial year are disbursed to any one of the following categories of organizations—
 - (i) sporting organizations;
 - (ii) ~~cultural~~ arts organizations;
 - (iii) health organizations;

25

30

(iv) community organizations; ~~or~~

(v) research organizations; or

(vi) racing organizations.

which the Foundation is satisfied are promoting, or will promote, the
5 objectives of the Foundation.

(9) The Foundation shall endeavour to disburse the funds received from the State by it for the objectives of the Foundation within the year they are received or reasonably soon thereafter and shall include in its annual report the reason for any accumulation beyond that
10 year.

(10) Any amount of funds received by the Foundation from the State which have not been disbursed within 4 months of the end of the financial year for which they have been allocated or 4 months of receipt if received outside the financial year shall be returned to
15 Consolidated Revenue.

Temporary investment of moneys in Fund

27. All moneys recorded as standing to the credit of the Fund may, until required by the Foundation for the purposes of this Act, be temporarily invested as the Treasurer directs in any securities in
20 which money standing to the credit of the Public Bank Account, as constituted under the *Financial Administration and Audit Act 1985*, may lawfully be invested and the Treasurer shall cause all interest derived from that investment to be paid to the credit of the Fund.

Application of *Financial Administration and Audit Act 1985* 25

28. Subject to this Part, the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Foundation and its operations.

PART 4—ENFORCEMENT

Consent required for prosecutions

29. Proceedings for an offence under this Act shall not be commenced without the consent in writing of the Commissioner of Health or a person authorized by him or her in writing for the purpose of this section. 5

Penalties

30. (1) A person who commits an offence under a provision of this Act specified in the Table to this subsection is liable—

- (a) in the case of an individual, to a penalty of— 10
 - (i) \$5 000 for a first offence; or
 - (ii) \$10 000 for a second or subsequent offence;
- or
- (b) in the case of a body corporate, to a penalty of—
 - (i) \$20 000 for a first offence; or 15
 - (ii) \$40 000 for a second or subsequent offence.

TABLE

Sections 5 (1), and (2), ~~(2) and (3)~~ 6 (1), 7, 8 (1) and (2), 9, 10 (1) and (2), 11 (1) and (2), 12 and 13 (1).

(2) If a continuing state of affairs is created by an offence referred 20 to in subsection (1), the offender is liable to a penalty of—

- (a) \$5 000 in the case of an individual; or
- (b) \$20 000 in the case of a body corporate,

in respect of each day on which that offence continues, in addition to the penalty specified in that subsection. 25

Offences by bodies corporate

31. (1) When a body corporate commits an offence under this Act, every officer of the body corporate commits the like offence unless he or she proves that—

- 5 (a) that offence was committed without his or her consent or connivance; and
- (b) he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions
- 10 in that capacity and to all the circumstances.

(2) In subsection (1)—

“officer”, in relation to a body corporate, means—

- (a) a director, secretary or executive officer of the body corporate;
- 15 (b) a receiver, or receiver and manager, of property of the body corporate, or any other authorized person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge;
- 20 (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body
- 25 corporate and another person or other persons,

and any other person, by whatever name called and whether or not a director of the body corporate, who is concerned, or takes part, in the management of the body corporate.

PART 5—GENERAL

Certain civil proceedings barred

32. An action does not lie against a person for—

- (a) the omission to do any thing the doing of which; or
- (b) the doing of any thing the omission to do which,

5

would constitute an offence under this Act.

Regulations

33. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the 10 purposes of this Act, and, in particular—

- (a) prescribing the labelling of packages containing tobacco, including the position of labels on packages and the size, colour, style and nature of labels or labelling;
- (b) prescribing statements or warnings for the purpose of 15 labelling packages;
- (c) prescribing the size, colour, style, position and nature of tobacco advertisements displayed inside shops and other retail outlets where tobacco products are offered or exposed for sale, and any statements or warnings to be included in 20 those tobacco advertisements;
- (d) prescribing the labelling of vending machines containing tobacco products;
- (e) prescribing the duty of persons packing, or causing other persons to pack, specified tobacco products prepared for 25 smoking to label those tobacco products in a specified manner;
- (f) prohibiting the sale of packages containing specified tobacco products prepared for smoking unless those packages are labelled in a specified manner; and 30
- (g) creating offences and providing in respect of any such offence a penalty not exceeding \$1 000.

(2) In subsection (1)—

“specified” means specified in regulations made under this section. 35

Review of Act

34. (1) Within a period of 12 months commencing on the third
fifth anniversary of the appointed day, the Minister shall cause an
investigation and review to be conducted, and a report prepared,
5 concerning—

- (a) the operation of this Act;
- (b) the operation of the Foundation; and
- (c) the need for this Act to continue in operation.

(2) The Minister shall cause a copy of the report referred to in
10 subsection (1) to be laid before each House of Parliament as soon as
is practicable after the completion of that report.

PART 6—AMENDMENTS, REPEAL AND TRANSITIONAL

Amendment and modification of *Constitution* *Acts Amendment Act 1899*

15 35. (1) Schedule V to the *Constitution Acts Amendment Act 1899**
is amended in Part 3 by inserting in the appropriate alphabetical
position the following item—

“ The Western Australian Health Promotion Foundation
established by the *Tobacco Act 1990*. ”.

20 (2) Section 37 (1) (b) of the *Constitution Acts Amendment Act 1899**
shall have effect in relation to the Foundation as if the reference to
“member” included a reference to a deputy of a member.

[*Reprinted as at 16 March 1989 and amended by Acts Nos. 75 of
1988 and 19 of 1989.]

Amendment of *Financial Administration and Audit Act 1985*

36. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by inserting in the appropriate alphabetical position the following—

5

“ Western Australian Health Promotion Foundation. ”.

[*Reprinted as at 4 March 1987 and amended by Acts Nos. 94 of 1986, 9, 32, 65, 88, 89, 91, 99 and 113 of 1987, 4, 19, 21 and 52 of 1988 and 5, 31 and 48 of 1989.]

Amendment of *Government Employees Superannuation Act 1987*

10

37. Schedule 1 to the *Government Employees Superannuation Act 1987** is amended by inserting in Part B in the appropriate alphabetical position the following—

“ Western Australian Health Promotion Foundation ”. 15

[*Act No. 25 of 1987 as amended by Acts Nos. 83 and 91 of 1987, 52 of 1988 and 5, 44 and 48 of 1989.]

Amendment of *Health Act 1911* and transitional

38. (1) Section 3 (1) of the *Health Act 1911** is amended in the definition of “Drug” by deleting “tobacco,”. 20

(2) The *Tobacco (Warning Labels) Regulations 1987* as in force under the *Health Act 1911** immediately before the appointed day shall be deemed to have been made and to be in force under section 34 and may be amended or repealed accordingly.

[*Reprinted as approved 14 May 1981 and amended by Acts Nos. 25 of 1981, 30 and 116 of 1982, 28 of 1984, 26, 53, 57, 98 and 109 of 1985, 93 of 1986 and 80 of 1987.]

Amendment of *Parliamentary Commissioner Act 1971*

39. The Schedule to the *Parliamentary Commissioner Act 1971** is amended by inserting in the appropriate alphabetical position the following—

“ Western Australian Health Promotion Foundation established by the *Tobacco Act 1990*. ”.

[*Reprinted as at 31 March 1989 and amended by Acts Nos. 75 of 1988 and 31 of 1989.]

10 Repeal of *Sale of Tobacco Act 1916*

40. The *Sale of Tobacco Act 1916** is repealed.

[*Reprinted as at 17 February 1987.]

THE SCHEDULE

(Section 22)

15 FURTHER PROVISIONS RELATING TO WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION

Interpretation

1. (1) In this Schedule—

“committee” means committee established under clause 5.

20 (2) A reference in this Schedule to a member includes, unless the contrary intention appears, a reference to the deputy of a member.

Meetings and procedure

2. (1) Five members constitute a quorum of the Foundation.

(2) A decision carried by the votes of a majority of the members present at a meeting of the Foundation is a decision of the Foundation.

(3) Each member present at a meeting of the Foundation is entitled to one vote on a matter arising for determination at that meeting and the presiding member has, in the event of an equality of votes, a second or casting vote.

(4) The Foundation shall cause accurate minutes to be kept of its proceedings.

(5) Subject to this Act, the business of the Foundation may be conducted in a manner determined by the Foundation. 5

Disclosure of interest

3. (1) A member who has a direct or indirect pecuniary or other personal interest in a matter under consideration by the Foundation—

- (a) shall disclose the nature of that interest to the Foundation; and 10
- (b) shall not take part in any deliberation or decision of the Foundation with respect to that matter.

Penalty: \$2 500.

(2) A disclosure under this clause shall be recorded in the minutes of the Foundation. 15

Delegation by Foundation

4. (1) Subject to this clause, the Foundation may, by instrument in writing, delegate any of its functions—

- (a) to a member or employee of the Foundation; or
- (b) to a committee. 20

(2) The Foundation shall not delegate its function of determining to whom or in what amounts financial support may be provided from the Fund.

(3) A function delegated under this clause may, if the instrument of delegation so provides, be subdelegated.

(4) When a delegation is made to a committee under this clause— 25

- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting under the delegation; and
- (b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(5) A person to whom, or a member of a committee to which, a function is delegated under this clause is disqualified from acting under the delegation in relation to any matter in which that person or member of a committee has a direct or indirect pecuniary interest or other personal interest.

5 Committees

5. (1) The Foundation may establish one or more Committees to advise or assist it in the exercise or performance of its functions. In any event, the Foundation shall establish three advisory Committees to advise on—

(1) the Arts;

10 (2) Sport; and

(3) Racing;

each of which shall include a reasonable number of country representatives.

~~The Foundation may establish one or more committees (which may consist of members or other persons or both members and other persons) to advise or assist it~~
15 ~~in the exercise or performance of its functions.~~

(2) A committee established under subclause (1) may act in relation to any matter referred or delegated to it by the Foundation and shall be governed in its proceedings by rules approved by the Foundation.

(3) A member of a committee established under subclause (1) is entitled to such
20 allowances and expenses (if any) as the Minister may determine.

Duty to act honestly

6. A member, or officer of the Foundation shall at all times act honestly and exercise a reasonable degree of care and diligence in the exercise of his or her powers or the performance of his or her duties.

25 Penalty—\$5 000.

Immunity from liability

~~6. (1) A member, member of a committee or employee of the Foundation incurs no liability for any act or omission by that person in good faith in the exercise or performance or purported exercise or performance of a function under this Act.~~

30 ~~(2) A liability that would, but for subclause (1), lie against a person referred to in that subclause lies instead against the Crown.~~

Non-disclosure of information

7. A member, member of a committee or employee of the Foundation shall not ~~disclose any confidential information to which he or she has had access in the course of official duties unless the disclosure is made~~ disclose any information declared in writing by the Foundation to be confidential, to which information he or she has had access in the course of official duties, unless that disclosure is made— 5

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act; or
- (c) for the purposes of any legal proceedings arising out of the administration of this Act. 10

Penalty: \$2 500.