

## TOBACCO CONTROL ACT 1990 (WA)

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### WORLDWIDE CONTEXT

Smoking is recognised as the largest, single, preventable cause of disease and premature death in Western Society.<sup>1</sup> Strong medical evidence of the dangers of smoking emerged in 1950.<sup>2</sup> The expanding weight of evidence on the health consequences of smoking prompted the Royal College of Physicians to publish the report *Smoking or Health* in Britain in 1962.<sup>3</sup> This was followed in 1964 by a report of the United States Surgeon General's Advisory Committee on Smoking and Health, which stated "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action".<sup>4</sup>

Restrictions on cigarette advertising and the placement of warning labels on cigarette packets were some of the remedial actions initiated. Bans on cigarette advertisements on television and radio were enacted in Britain in

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1. National Health and Medical Research Council *Report of the Working Party on the Effects of Passive Smoking on Health* (Canberra: AGPS, 1987).
2. R Doll and A B Hill "Smoking and Carcinoma of the Lung" (1950) *British Medical Journal* 739; E L Wynder and E A Graham "Tobacco Smoking as a Possible Etiologic Factor in Bronchiogenic Carcinoma" (1950) 143 *Journal of the American Medical Association* 329.
3. Royal College of Physicians of London *Smoking or Health* (London: Pitman Publishing Ltd, 1977).
4. US Department of Health and Human Services *Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General* (Rockville Maryland: US Dept of Health and Human Services, 1989).

1966,<sup>5</sup> in the United States of America in 1970<sup>6</sup> and in Australia in 1973.<sup>7</sup> Legislation was enacted in the United States of America requiring that from 1966 cigarette packages were to carry a warning label.<sup>8</sup> In Britain, health warnings on cigarette packets were introduced in 1971 in an agreement between the government and tobacco manufacturers.<sup>9</sup> Legislation was adopted in all Australian states during 1972 and 1973, making the health warning "Smoking is a Health Hazard" compulsory on cigarette packages.<sup>10</sup>

The Singapore government brought in strict restrictions on the advertising of tobacco products in 1971. Legislation banning all tobacco promotion was passed in Norway in 1973 and implemented in July 1975. In Finland, the Tobacco Act 1977 also banned tobacco advertising.<sup>11</sup>

In the mid 1970s health authorities across the world adopted guidelines for smoking control which included a comprehensive range of strategies such as those proposed by the International Union Against Cancer: the cessation of all forms of tobacco promotion, health warnings on packets, manipulation of tobacco taxation, restrictions on smoking opportunities, encouragement of the rights of non-smokers, the encouragement of non-smokers to remain non-smokers, and public information programs.<sup>12</sup>

## WESTERN AUSTRALIA

### Smoking and Tobacco Products Advertising Bill

The first attempt to introduce a comprehensive range of smoking control measures through legislation in an English speaking country occurred in Western Australia. The Australian Council on Smoking and Health, based in Western Australia, initiated the Smoking and Tobacco Products Advertising

5. Royal College of Physicians of London *Health or Smoking: Follow up Report* (London: Pitman Publishing Ltd, 1983).
6. Supra n 4.
7. M Winstanley *Tobacco in Australia: Facts and Issues* (Surrey Hills, NSW: ASH, 1989). The 1973 bans were effective from 1976.
8. Supra n 4.
9. Supra n 3.
10. Australian Council on Smoking and Health *Fact Sheet: Australian Political Update* March 1991.
11. Toxic Substances Board *Health or Tobacco: An End to Tobacco Advertising and Promotion* (Wellington: Department of Health, 1989).
12. N Gray (ed) *Lung Cancer Prevention: Guidelines for Smoking Control* (Geneva: International Union Against Cancer, 1977) Technical Report Series 28.

Bill which was modelled on legislation in Singapore. The Bill was designed to prohibit all forms of advertising relating to smoking and tobacco products.

The Minister for Health in the Liberal Government was approached but declined to provide Government support for the Bill. It was therefore introduced as a private member's Bill by Doctor Tom Dadour (MLA) in 1982. The previous year the Western Australian branch of the Australian Labor Party had committed the Party to support measures to reduce smoking, a position already endorsed at Federal level. The Bill was passed by the Legislative Assembly by 30 votes to 24 but was defeated by 17 votes to 12 in the Legislative Council. Support for the Bill came from the Labor Party, while the Liberal and National Party members largely voted against it.<sup>13</sup>

### Tobacco Sale and Promotion Bill 1983

After the Labor Party victory in the 1983 state election the retail tobacco licence fees on cigarettes levied by the state government were raised from 12.5 per cent to 35 per cent and an allocation of 2 million dollars per year was made for community smoking education. The government introduced the Tobacco Sale Promotion Bill 1983 to restrict further both the sale of cigarettes to children and cigarette advertising. The Bill was passed in the Legislative Assembly but defeated in the Legislative Council.

### Tobacco Bill 1989

Following the state election at which the Labor government was re-elected, health organisations re-introduced tobacco control legislation to the political agenda. The National Party voted at their State Conference to support the restriction on tobacco advertising. In October 1989 the Tobacco Bill was introduced in Parliament by the Government and passed through the Legislative Assembly in December.

Parliament resumed in May 1990. Soon after, a motion was put to the Legislative Council that all uncompleted Bills which were before the Council were to be referred back to the Legislative Assembly. The motion was carried. The Bill, now the Tobacco Bill 1990, was reintroduced into the Legislative Assembly. The second reading was given in June, and further

13. A W Musk, R Shean and S Woodward "Legislation for Smoking Control in Western Australia" (1985) 290 *British Medical Journal* 1562.

debate took place in the Legislative Assembly in July. In August the Tobacco Bill 1990 was debated in the Legislative Council, but debate was adjourned after the Bill was referred to the Legislative Council's Standing Committee on Legislation.

The Report of the Standing Committee on Legislation in relation to the Tobacco Bill 1990 was tabled in the Upper House in November. The report and a number of proposed amendments were debated and the Bill was passed in the Upper House with no opposition. The Bill, now named the Tobacco Control Bill 1990, made its final passage through the Lower and Upper Houses of Parliament in December 1990.

The Tobacco Control Act 1990 (WA) ("Tobacco Control Act") was proclaimed in February 1991.

## PROVISIONS OF THE ACT

The Tobacco Control Act is stated to be: "AN ACT to regulate the sale and promotion of tobacco products, [and] to establish the Western Australian Health Promotion Foundation...."<sup>14</sup>

### Advertisements

The Act introduces a phased-in ban on tobacco advertising. As a result:

- \* The display of tobacco advertisements in public places (for example billboards, cinemas, and other places of entertainment) will be phased out by July 1994.
- \* Distribution to the public of publications, leaflets and other documents containing tobacco advertising is prohibited from 8 August 1991.
- \* The sale, hire or supply of objects (such as t-shirts, cigarette lighters and coasters) that constitute or contain cigarette advertising is also prohibited from 8 August 1991.

The Act does not prohibit tobacco advertising inside shops or retail outlets directly adjacent to where tobacco products are sold, but regulations, gazetted on 26 July 1991, prescribe the size, colour, style, position, nature and the health warnings required for such advertising.

14. Tobacco Control Act 1990 (WA), long title.

## Western Australian Health Promotion Foundation

To further the health promotion aspects of the legislation the Western Australian Health Promotion Foundation, “Healthway”, was established by the Act.<sup>15</sup> The Foundation has the discretion and sufficient funds to make up for the loss of tobacco sponsorship in. It may make grants to sporting, arts, racing, health, community, research and youth organisations which encourage healthy lifestyles and advance health promotion.<sup>16</sup>

## Other Provisions

The Act also prohibits the distribution of free samples of tobacco, competitions involving tobacco, the sale of smokeless tobacco, and the sale of cigarettes in packets of less than 20, which are particularly attractive to young people. The penalties for sale or supply of tobacco products to a person under the age of 18 years were increased by the Act from four dollars to a maximum of 20 000 dollars. Controls on cigarette vending machines and the health warnings on packages are also included in the Act.

## WHY THE TOBACCO CONTROL ACT?

The Report of the World Health Organisation Expert Committee on Smoking Control in 1979 made the following comment in support of legislation:

Allowing tobacco promotion to continue is permitting an experiment which, in the view of the Committee, has already had the most serious health consequences and will maintain if not increase those ill effects. The experiment of banning such promotion cannot be harmful to health. The only serious objections arise from the vested interests of manufacturers and advertisers.<sup>17</sup>

A broad range of organisations supported the Tobacco Control Act 1990. The most active were health organisations including the Australian Council on Smoking and Health, the Australian Medical Association, the Public Health Association and the Thoracic Society of Australia and New Zealand. Educational groups such as the Association of Independent Schools, and community organisations, in particular, the Non-Smokers’ Movement, were also active in campaigns to support the legislation.

15. Ibid, s 15.

16. Health Department of Western Australia, Smoking and Health Program 1991 *Tobacco Control Act 1990: An Overview*.

17. World Health Organisation Expert Committee on Smoking Control *Controlling The Smoking Epidemic* (1979) 62-63.

The Act was opposed by, amongst others, the Tobacco Institute of Australia, Philip Morris Pty Ltd, Rothmans Holding Ltd, W D & H O Wills, sections of the advertising industry and some sporting bodies who receive tobacco sponsorships.

The motives of the tobacco companies are self-evident. Rothmans, with an approximate market share of 36 per cent, reported a consolidated operating profit for the 12 months to 31 March 1991 after extraordinary items and income tax, and after deducting minority interests, of 106.9 million dollars.<sup>18</sup>

The issue of sporting sponsorships was considered by the Federal Court of Australia in *Rothmans of Pall Mall (Aust) Ltd v Australian Broadcasting Tribunal*.<sup>19</sup> In considering a sponsorship agreement covering the 1982, 1983 and 1984 football seasons between Rothmans and the New South Wales Rugby Football League, the court found that the sponsorship arrangement was intended as an advertising opportunity rather than an act of sporting philanthropy.<sup>20</sup> Clause 15 of the agreement made it subject to termination, with a pro rata abatement of the sponsorship fee, in the event of any requirement by a government or by a local or public authority "to remove and cease exhibition of any advertising and/or to cease conducting the promotional activities contemplated by this agreement."<sup>21</sup>

A small number of sports holding current sponsorship agreements with tobacco companies made submissions to the Western Australian parliament in favour of the continuation of such sponsorship. But the majority of sporting bodies in Western Australia recognise the hypocrisy of the association of the healthy pursuit of sport, with a product such as tobacco, which causes the deaths of more than 18 000 Australians each year.<sup>22</sup>

18. Rothmans Holding Limited Annual Report 1991.

19. *Rothmans of Pall Mall (Aust) Ltd v Australian Broadcasting Tribunal* (1985) 5 FCR 330.

20. *Ibid*, 349.

21. *Ibid*, 349.

22. Department of Community Services and Health *The Quantification of Drug Caused Morbidity and Mortality in Australia 1988* (Canberra: AGPS, 1990).

## TOBACCO CONTROL LEGISLATION IN OTHER AUSTRALIAN STATES

### Victoria

The legislative experience of Western Australia in 1982 and 1983 was applied by health groups in other states lobbying for tobacco control legislation. In Victoria a key addition was the proposal to replace tobacco sponsorship of sport with money raised from increases in the state tobacco licence fees. This led to the concept of the Victorian Health Promotion Foundation funded by revenue hypothecated from the increased fees.<sup>23</sup> In 1987 Victoria enacted the Tobacco Act 1987 which contains similar provisions to those of the Tobacco Control Act 1990 (WA).

### South Australia

In South Australia the Tobacco Products Control Act 1986 prohibited sales of packs of cigarettes containing less than 20, required retailers to display a sign listing the tar, nicotine and carbon monoxide content of all brands on sale, increased the fines for sales to minors and banned smokeless tobacco.<sup>24</sup> The Act was amended in 1988 with the inclusion of provisions to prohibit certain tobacco advertisements, competitions involving tobacco, and tobacco sponsorships of sport in the Tobacco Products Control Act Amendment Act 1988 (SA).

The Act limited exemptions for specific tobacco sponsorships to the Australian Formula One Grand Prix, the Sheffield Shield and international cricket matches, in contrast to the exemptions which are considered case by case in the Victorian and Western Australian Acts.<sup>25</sup> This has provided some security for the running of the Grand Prix, although legal challenges to the tobacco advertising broadcast during the race have been launched.

23. M Winstanley *Overview of the Lobbying for the Victorian Tobacco Act 1987* (unpublished).

24. *Supra* n 22.

25. Tobacco Products Control Amendments Act 1988 (SA).

## Australian Capital Territory

The Tobacco (Amendment) Act 1990 (ACT) was passed in the ACT Legislative Assembly restricting tobacco advertising and sponsorship of events by tobacco companies, increasing the legal age for purchasing tobacco from 16 to 18 years and increasing the penalties for supplying tobacco to children.<sup>26</sup>

## TOBACCO CONTROL LEGISLATION IN OTHER COUNTRIES

Norway, Finland and Singapore have been mentioned previously in relation to legislative controls on tobacco. Canada and New Zealand have more recently introduced legislation as part of a comprehensive approach to smoking control. Legislative restrictions are part of the range of strategies designed to reduce the prevalence of smoking and thus the disease and premature deaths which result. Public information programs, youth education, price policies for tobacco, policies creating smoke-free zones which protect the rights of non-smokers and promote non-smoking as the social norm, controls on tobacco packaging and sales are all important components in smoking control.<sup>27</sup>

## CONCLUSION

Further legislative action in Australia was foreshadowed in the 'National Health Policy on Tobacco in Australia' which was adopted on 27 March 1991 by the Ministerial Council on Drugs Strategy, which comprises Commonwealth, State and Territory Ministers responsible for health and law enforcement. This policy states: "the overall goal of the National Health Strategy on Tobacco is to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms".<sup>28</sup> The Tobacco Control Act 1990 is an important step in this direction.

26. G Humphries MLA, Act Alliance Government, News Release, 23 October 1990.

27. *Supra* n 17.

28. National Campaign Against Drug Abuse *National Health Policy on Tobacco in Australia and Examples of Strategies for Implementation* (Canberra: AGPS, 1991) 5.