



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

Statutory Review of the Western Australian *Tobacco Products Control Act 2006*

Discussion Paper

September 2020

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Part 1: Introduction

Robust legislation is the cornerstone of tobacco control. Western Australia (WA) has had comprehensive tobacco legislation in place since 1990, and along with complementary Commonwealth legislation, it has played an important part in bringing down the prevalence of smoking among Western Australians.

A review of WA's tobacco control legislation is now being undertaken to ensure that it remains contemporary, relevant and responsive to new and emerging issues in tobacco control.

We are seeking your views on the operation and effectiveness of the *Tobacco Products Control Act 2006* and the *Tobacco Products Control Regulations 2006*. We would like to hear if you think this legislation is achieving its purposes, and how it could be improved. We are also seeking stakeholder views on other evidence-based legislative reforms that could update and strengthen WA's tobacco control legislation to ensure that it continues to meet its objectives.

The need for effective preventive measures to protect and support the health and wellbeing of Western Australians is a major focus for the WA Government. The Sustainable Health Review Final Report, released in April 2019, has elevated the priority for prevention, and recognises the need for a sustained and comprehensive approach that includes a range of policy levers, including legislation. In the national arena, a new National Tobacco Strategy and a National Preventive Health Strategy are due to be released in the course of this year. In November 2019, the Council of Australian Governments (COAG) Health Council referred the safety of non-nicotine vaping and e-cigarettes to Chief Medical Officers for urgent review.¹ It is anticipated that these matters are to be referred to the corresponding national committee structures established under the new National Federation Reform Council (NFRC) that will replace COAG. The priorities and recommendations of these strategic documents and reports will also be taken into account as part of the review process.

Part 2: Overview of the Act

The Western Australian *Tobacco Products Control Act 2006* (the Act) and its supporting regulations, the *Tobacco Products Control Regulations 2006* (the Regulations) are WA's primary pieces of tobacco legislation. The legislation was most recently amended with passage of *Tobacco Products Control Amendment Act 2018*, and most of the new provisions from that

¹ COAG Health Council. Communiqué 31 October – 1 November 2019. Canberra: Australian Government; 2019. Available from:

https://www.coaghealthcouncil.gov.au/Portals/0/CHC%20Communique_Final_31%20Oct%201%20Nov%20meeting_Issued%20011119.pdf

Act came into effect in March 2019.² An amendment to make it illegal for employees aged under 18 to sell tobacco products in retail outlets will commence on 18 September 2020.

The purposes of the Act are:

To reduce the incidence of illness and death related to the use of tobacco products –

- (a) *by prohibiting the supply of tobacco products and smoking implements to young persons; and*
- (b) *by discouraging the use of tobacco products, and*
- (c) *by restricting the promotion of tobacco products and smoking generally; and*
- (d) *by reducing the exposure of people to tobacco smoke from tobacco products that are smoked by other people.*

The Act and Regulations include provisions that cover how and where tobacco can be sold; advertising and promotion of tobacco products; requirements for tobacco retailers and wholesalers to obtain a licence; how compliance with the legislation is to be monitored and enforced; and where tobacco products cannot be used.

Section 127 of the Act requires that a review of the operation and effectiveness of the Act is conducted at four yearly intervals. The last review of the Act was undertaken in 2011, and the final report of that review was tabled in Parliament in 2012. A further review has not taken place before now due to the processes associated with passage and implementation of new provisions introduced by the 2018 Amendment Act.

Part 3: Consultation questions

Your views on any or all parts of the Act and Regulations are invited. The following questions are intended to guide you in making your submission. You may find it helpful to refer to the [Tobacco Products Control Act 2006](#) and the [Tobacco Products Control Regulations 2006](#).

These questions are also provided online at the Department of Health's [Consultation Hub](#).

Sale and supply (sections 6–30 of the Act, and Part 6 of the Regulations)

1. What is working well with this legislation?
2. Do you have suggestions on how it could be improved?
3. Are there any studies that would support the measures that you are suggesting?

Advertising and promotion (sections 31–35 of the Act)

4. What is working well with this legislation?
5. Do you have suggestions on how it could be improved?
6. Are there any studies that would support the measures that you are suggesting?

Licensing (sections 36–58 of the Act, and Part 5 of the Regulations)

7. What is working well with this legislation?
8. Do you have suggestions on how it could be improved?
9. Are there any studies that would support the measures that you are suggesting?

² The provisions that came into effect in March 2019 were not enforced until September 2019, allowing a six-month period for an educational approach to support the regulatory changes, and for retailers to make adjustments as needed.

Administration (sections 74-75 of the Act)

Including provisions enabling the CEO to delegate, and for the CEO to carry out research, including a compliance survey.

10. What is working well with this legislation?
11. Do you have suggestions on how it could be improved?
12. Are there any studies that would support the measures that you are suggesting?

Investigations (sections 76–97 of the Act)

13. What is working well with this legislation?
14. Do you have suggestions on how it could be improved?
15. Are there any studies that would support the measures that you are suggesting?

Enforcement (Sections 98–120 of the Act)

Related provisions concerning smoking in enclosed public places and smoking in outdoor public places are included in Parts 3 and 4a of the Regulations.

16. What is working well with this legislation?
17. Do you have suggestions on how it could be improved?
18. Are there any studies that would support the measures that you are suggesting?

Miscellaneous (sections 121–127 of the Act)

Including provisions that provide protection from liability for wrongdoing and ensure confidentiality; that set out how a police officer may report alleged offences of smoking near children; that provide for the power to make regulations; and for review of the Act.

19. What is working well with this legislation?
20. Do you have suggestions on how it could be improved?
21. Are there any studies that would support the measures that you are suggesting?

Other measures for consideration

22. Are there any other measures to improve the operation and effectiveness of Western Australian tobacco control regulation that should be considered and prioritised?
23. Are there any studies that would support the measures that you are suggesting?

Part 4: How to participate in the consultation

You can participate in this consultation by visiting the Department of Health's [Consultation Hub](#). The online questionnaire is set out in the same way as above. If you prefer, you can respond to the consultation questions in an email or letter.

You do not have to respond to all questions.

Your submission should indicate whether it is being made by an individual or on behalf of an organisation, and include your contact details including name, telephone number and/or email address.

Because your submission will be part of a public consultation process, it may be quoted from in the final report or made available online after the consultation process. Individuals or organisations who wish their comments to be treated confidentially should indicate this on their

response. However please note that submissions may be subject to release under the *Freedom of Information Act 1992*.

In the interests of transparency, respondents are asked to disclose whether they have any direct or indirect links to, or conflicts of interest, or receive funding from the tobacco and/or e-cigarette industry. The reasons for this are explained in Part 5.

Anonymous submissions will not be accepted.

Online	Consultation Hub
Email	Download the consultation template from the Consultation Hub and email it to: TobaccoReview@health.wa.gov.au
Post	Respond to the consultation questions and post to: WA Tobacco Review Chronic Disease Prevention Directorate Public and Aboriginal Health Division Department of Health PO Box 8172 Perth Business Centre WA 6849

The closing date for submissions is **6 November 2020 at 5pm (WST)**

Part 5: Protection from commercial and other vested interests of the tobacco industry

Australia is a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control (FCTC). Australia has an obligation under Article 5.3 of the FCTC when 'setting and implementing public health policies with respect to tobacco control...to protect these policies from the commercial and other vested interests of the tobacco industry'. The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

In line with these obligations, consultation with the tobacco industry and organisations and individuals that may be working to further the interests of the tobacco industry will be undertaken to the extent required consistent with Article 5.3.

The Australian Government has noted that Australia's obligations under Article 5.3 extend to new and emerging products, such as e-cigarettes and heated tobacco products, due to the increasing integration between their manufacturers and the tobacco industry.³

³ Department of Health. Guidance for Public Officials on Interacting with the Tobacco Industry. Canberra: Australian Government; 2019. Available from: https://www.health.gov.au/sites/default/files/documents/2019/11/guidance-for-public-officials-on-interacting-with-the-tobacco-industry_1.pdf

The Guidelines for Implementation of Article 5.3 also include an overarching principle of transparency when governments are dealing with the tobacco industry or those working to further its interests. To help meet this obligation all respondents are required to disclose whether they have any direct or indirect links to, or conflicts of interest, or receive funding from the tobacco and/or e-cigarette industry.

Part 6: What happens next?

Information gathered from this stage of the review will assist in identifying possible areas for further investigation to strengthen the operation and effectiveness of the *WA Tobacco Products Control Act 2006* and the Regulations. A report summarising the findings from the consultation and taking into account the current policy context including the Sustainable Health Review, the National Tobacco Strategy and the proposed National Preventive Health Strategy will be prepared by the Department of Health for consideration by the Minister for Health.

This document can be made available in alternative formats on request for a person with disability.

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