Contemporary Themes

Legislation for smoking control in Western Australia

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Abstract

This historical analysis of public issues relating to smoking control in Western Australia examines relevant Western Australian state and Australian federal laws, their introduction, and their consequences. Public and political support and opinion led by the health professions resulted in two attempts to legislate against all forms of cigarette advertising in 1982 and 1983. Both attempts failed, and public support for such measures has been seen to be affected by the campaigns mounted in opposition by the tobacco and advertising industries. Other smoking control measures which have been successfully introduced in 1983 and 1984 are higher tobacco taxes and a comprehensive coordinated public education and information programme. The activities associated with the legislative initiatives resulted in a greatly increased level of community awareness of the dangers of smoking and acceptance of the need for some action on this major health problem.

Introduction

The battle between concerned health professionals and the tobacco industry over tobacco advertising in Australia has been compared with the biblical story of David and Goliath, referring to the relative financial strengths of the two adversaries.¹ David has triumphed over Goliath once in the past, when in New South Wales in 1980 a small group of health workers was instrumental in obtaining a court injunction against a mammoth tobacco advertising campaign. In Western Australia in 1982 and 1983, however, attempts to prohibit promotion of tobacco products have had what might be considered a more predictable outcome for David, who has been soundly beaten by the influence of the tobacco and advertising industries. The experience has highlighted the difficulties of introducing legislative measures aimed at reducing smoking rates in the community, and as such has lessons for other Western democratic societies. The events that have taken place support the contention that smoking control in the community must go beyond simply disseminating information on health effects to the public.²

To effect a significant downward turn in smoking trends in the community a comprehensive multifaceted approach has been

advocated.^{3,4} This includes measures such as increased tobacco taxes, health warnings on cigarette packets, prohibition of the supply of cigarettes to children, and prohibition of cigarette advertising and other forms of promotion. Recognising this, members of the medical and allied professions in Western Australia have initiated and promoted a series of actions in an attempt to reduce the harmful effects of cigarettes on the Australian community. These efforts have included restrictive legislation against smoking in public places, the sale of tobacco products to children, and the various forms of promotion of cigarettes and other tobacco products. Other action which has been advocated and supported has been increased state taxes on cigarettes and allocation of government funding for public information and education programmes. Despite 11 federal excise increases since 1949, and the introduction of state licence fees during the 1970s, the inflation adjusted price of cigarettes in Australia had fallen substantially by 1981. In 1984, however, Western Australia had the highest smoking and health budget in the world, devoting about A\$1.54 per head annually to education and public information programmes on smoking.

Advertising controls

In Australia the tobacco industry repeatedly claims that its advertising is directed only towards adult smokers and is intended only to effect a change of the brand of cigarettes smoked. A 10 point voluntary advertising code, administered by an advertising industry council, seems to regulate cigarette advertisements.⁵ The four major cigarette manufacturers are cosignatories to the agreement, which is registered with the Trade Practices Commission so that it does not contravene monopoly provisions in the Trade Practices Act. The tobacco industry claims that this code ensures that cigarette advertising does not recruit juvenile smokers. Complaints regarding breaches have usually been dismissed by the Advertising Standards Council, against whose decisions there is no appeal in the conventional legal system. Between 1981 and 1983 13 such complaints to the council were dismissed while only two were upheld. This result and the time taken by the council to process the complaints have greatly discouraged the filing of complaints by concerned individuals and groups. In addition, the procedures required for their presentation are inhibiting in their formality.

Thus it has been said that the voluntary advertising code exists to protect the tobacco industry against alternative forms of regulation rather than to protect the public against unethical advertising. Opponents of the code point out that the consequences do not reflect the tobacco industry's often stated intention to influence only adult smokers. Substantial indirect evidence suggests that advertising plays a major part in the generation of peer pressure and the start of smoking in children.^{6,8} Unfortunately, this evidence is inferential and does not satisfy the rigorous criteria necessary for acceptance of the truth of a causal hypothesis.⁹ By necessity studies investigating the effects of

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advertising on children have usually been confined to an analysis of relations between smoking behaviour and people's perceptions of cigarette advertisements. A New South Wales study of over 5200 Australian children reported: "Children who approved of cigarette advertising were twice as likely to become smokers as children who disapproved. The smoking behaviour of those who were ambivalent about advertising fell between that of the other two groups."⁸

Western Australian school children asked to write down the cigarette advertisement that first came to mind responded with the most heavily advertised brands.⁶ A similar relation emerged between advertisement recalled and brand preferences among child smokers. Furthermore, an educational programme in schools aimed at the prevention of smoking focused on the factors which influence people to smoke and provided training on ways to resist cigarettes.¹⁰ This study concluded that the effect of cigarette advertising in boys was as strong, or stronger, in promoting the uptake of smoking as was the programme in reducing it.

Opinion polls in Australia have indicated that adult opinion on this issue has been supportive. A representative national survey, undertaken for the standing committee of Australian health ministers in September 1982, indicated that two thirds of Australians believed that any advertisements for tobacco products which could be seen by children should be banned. There was also a high level of support for bans on advertising in the printed media. A breakdown of responses for each state in Australia showed that Western Australian opinion was even more in favour of advertising bans than was indicated by national figures (table I) (Anderson, survey for Australian health ministers conference).

TABLE I—Public opinion (%) supporting a ban on cigarette advertising (September 1982)

	Western Australia (n=1007)	Rest of Australia (n=11 526)
Newspapers	58	56
Magazines	59	56
Cinemas	67	67
Outdoor posters	70	66

(McNair Anderson. Survey for Australian Health Ministers Conference. Canberra: November 1982.)

Hence in Western Australia the issue of cigarette advertising has received considerable attention. Research results, professionals' attitudes, public comment, and political debate have motivated two attempts to legislate against the promotion of tobacco products.

Positive public attitude in Western Australia was also apparent in the professional and community groups which supported active smoking control. A council on smoking and health—initially representing the Australian Medical Association; the Royal Australasian colleges of general practitioners, physicians, pathologists, and surgeons; the National Heart Foundation; the government Department of Health; the Asthma Foundation; the Cancer Foundation; the Thoracic Society of Australia; and the Tuberculosis and Chest Association, and with later membership from other professional medical, educational, and allied professions—was founded in 1971. This council sought to liaise among these associations to maximise the effectiveness of initiatives on smoking control. It initiated its own smoking control programme, which included research and public information programmes and prepared and promoted legislation to prohibit the promotion of tobacco products in the state. A community based group was also formed which had the rights of the non-smoker as its central principle. A rather more radical and reactionary approach to antismoking was taken by a group of serious minded health professionals, including members of the medical profession, frustrated by the absence of regulatory action on cigarette advertising: Billboard Utilising Graffitiists Against Unhealthy Products, appropriately abbreviated to BUGA-UP,¹¹ astutely modified cigarette advertisements on billboards to portray health

warnings. Other groups concentrating on public education have also appeared.¹² The formation of these groups reflected the effects of information about the health effects of smoking on better educated members of the community.

The interest of members of parliament in the smoking issue also increased during the 1970s. In 1981 the Western Australian Branch of the Australian Labor Party, in parliamentary opposition, committed the party to support measures to reduce smoking. In fact, the Labor Party had endorsed such measures at a federal level for some years previously. The Liberal Party, too, had shown some support for smoking control initiatives. The Australian Senate's committee on social welfare, led by a physician, Dr Peter Baume, recommended in 1977 that federal, state, and local government authorities should be encouraged to ban advertising tobacco products and that the commonwealth government should consider refusing tax deductibility for expenses incurred in the promotion of tobacco products. In 1976 the commonwealth government introduced an advertising ban for cigarettes on the federally controlled electronic media through an amendment to the Australian Broadcasting and Television Act of 1942. After this cigarette consumption per head fell but then stabilised, albeit at an unacceptably high level (table II).¹³ Concerned professionals interpreted the initial fall as evidence of the effects of advertising on consumption and used it to support the need for more comprehensive antismoking measures. The tobacco industry used the subsequent stabilisation of consumption to support the opposite viewpoint.

TABLE II—Australian cigarette consumption 15 years and over (kg per head per annum)

Year:	1975	1976	1977	1978	1979	1980	1981	1982
Consumption:	2.88	2.77	2.73	2.68	2.53	2.55	2.53	2.54

(Australian Council on Smoking and Health. Submission to the Parliament of Tasmania and the Legislative Council Select Committee on the Smoking and Tobacco Products Advertisements Bill 1983.¹³)

Two more noticeable long term effects of the Australian television ban have appeared. The first has been exploitation of an exemption in the legislation permitting cigarette advertising on the electronic media if it occurs "incidentally" or "accidentally." Thus the tobacco industry has turned to sports sponsorship with televised sporting events carrying arena advertising for cigarettes. The second effect has been a dramatic increase in the volume of advertising matter in the printed media, which is regulated by the state governments.

Incidental advertising through sports sponsorship was an especially unfortunate consequence of the well meant attempt to reduce exposure to cigarette advertisements, because of the appeal of sportsmen to children. Corporate advertising by tobacco companies, exempt from the requirement of health warnings, also provided a comparatively cheap means of portraying a clean and healthy image for a potentially lethal product. In Australia the tobacco industry currently spends between A\$13m and A\$20m on the sponsorship of sport, compared with A\$60m-A\$70m in direct advertising.¹⁴ During television coverage of a 1982 national sporting final the name of a cigarette company was visible for 68 minutes, one third of the total broadcast time.¹⁵ In addition to the direct benefits of advertising, sporting sponsorship provides the tobacco companies with a wide range of credible lobbyists in the person of the sports people who benefit from the sponsorship. In the minds of most of the concerned members of the public undoubtedly the advertising which results from sponsorship is neither incidental nor accidental. Nevertheless, under the terms of the Broadcasting and Television Act breaches of the intention of the law are insufficient. Although a tribunal enforces compliance with the Broadcasting and Television Act, complaints lodged regarding breaches of the cigarette advertising ban are handled slowly and no penalties are imposed against proved offenders. Consequently it is not surprising that the age at which children start smoking has continued to fall—and community cigarette consumption continues at a high level.¹⁶

It was the large increase in the volume of advertising matter in the printed media at which state legislation against tobacco advertising eventually was to be aimed in Western Australia. The initiators of the legislation were mindful of the cost of implementing public education campaigns and the dubious value of these campaigns while an active programme of promotion of cigarettes continued.

The Smoking and Tobacco Products Advertisements Bill, 1982

In addition to apparently favourable public, professional, and political opinion in Western Australia another factor suggested that it may be appropriate to introduce antitobacco legislation in Western Australia. Perth, with about one million inhabitants, is geographically isolated from other Australian capital cities, being 2750 km by road and 2120 km by air from the nearest major city—Adelaide. Thus it was seen as being protected from protobacco industry activities concentrated in the larger capital cities of the eastern states. In contrast with its counterparts in eastern Australia, the antitobacco lobby in Western Australia had a greater opportunity to be effective against the wealthy tobacco industry. It was thought important that there is no tobacco growing industry in the state.

The first attempt at legislation was made with the Smoking and Tobacco Products Advertising Bill, which was an initiative of the Australian Council on Smoking and Health. Modelled on effective antitobacco legislation from Singapore, this Bill was designed to prohibit all forms of advertisements relating to smoking and tobacco products. In preparing the Bill care was taken to avoid possible exemptions such as those which occurred with the Australian Broadcasting and Television Act ban on cigarette advertising. The Minister for Health was approached to support it but would not, and ultimately Dr Tom Dadour, a suburban general practitioner and a member of the then governing conservative Liberal Party, introduced it as a private member's Bill. The public debate was limited in the newspapers and did not reflect the publicity polls. Newspaper editorials claimed that the move to legislate against cigarette advertising contravened democratic rights, and the "legal to sell, legal to advertise" argument became the basis of acrimonious debate led by the press, many of which depend heavily on revenue from tobacco companies.

Campaigning strategies gave some indication of the relative financial strengths of each side. The opponents of the Bill had mounted a massive lobbying campaign to oppose it. Many full page advertisements were lodged in the daily newspapers and a specialist team of seven executives was flown to Western Australia to coordinate the campaign. In contrast, the proponents of the Bill ran a campaign based almost entirely on voluntary help, most of their media coverage being that which focused on the efforts of the medical profession. The parliamentary debate on the Bill in the state's lower house of parliament—the Legislative Assembly—was lengthy and contentious, although consensus was achieved on some issues which related to the health and economic effects of smoking, and also on the particular vulnerability of children as potential smokers. Opposition to the Bill generated discussion on the effects of such legislation on cigarette revenue, the detrimental effects of the withdrawal of tobacco advertising on sport and employment, and the infringement of civil liberties by prohibiting the advertisement of a product that is legally sold. Debate during the Bill was not limited to dialogue between political parties. Dr Dadour introduced the Bill against opposition from within his own party. The state premier, who had previously expressed guarded support both personally and on behalf of the party, became a vehement opponent.

This Bill passed in the lower house, the Legislative Assembly, by 30 votes to 24. The Australian Labor Party voted en bloc and received support from principled individuals in the governing Liberal and National Party coalition, but it was defeated by 17 votes to 12 in the state's upper house, the Legislative Council. Before the defeat widespread endorsement of the Bill was apparent from responsible members of the community. Public support,

largely silent until this time, became vocal. A historic unprecedented demonstration by the medical profession was staged on the steps of Parliament House on the night of the final debate, when over 150 doctors gathered to sanction the need for such legislation. The fact that the medical profession was seen to be active in this issue without regard to its financial implication was not conceded by the press. Thus a vital health issue was perceived as being political, and as such failed to attract united parliamentary support.

The Tobacco Sale and Promotion Bill 1983

Political polarisation on the antismoking issue continued beyond the 1982 attempt at legislation. The Australian Labor Party retained opposition to tobacco advertising as part of its electoral platform, although this was not an issue in the campaign for the subsequent general state election. After the Labor Party's electoral victory in February 1983 state taxes on cigarettes were raised from 12.5% to 35%, giving the government expected additional revenue of A\$24m, of which A\$2m would be appropriated annually to community smoking education. Tobacco companies complained initially that these taxes had a depressing effect on the market. For the six months after the rise in taxes a drop in consumption of 6% was reported.¹⁸ This compares with the 12% drop predicted by the government when the raised taxes were introduced. The longer term effects remain to be seen. One result has been the development of a market for mail order cigarettes from other states.

The new government also announced that it planned another attempt at legislation to prohibit tobacco advertisements. This Bill, the Tobacco Sale and Promotion Bill, drawn up by parliamentary draftsmen, contained legislation relating to the sale of cigarettes to children, as well as proscribing advertising of cigarettes. The state premier appointed an adviser to run a media campaign to explain why cigarette advertising should be controlled. This centred on discouraging children from starting to smoke. "Give kids a chance" became the central theme of the government's campaign. The tobacco industry, on the other hand, pursued several issues, including supposed erosion of fundamental human rights, the unemployment that would occur in the tobacco and advertising industries (while denying that tobacco sales were dependent on advertising), the collapse of major sport from loss of sponsorship, and creeping socialism represented by government intervention in private enterprise. In neither argument was the health issue featured—the 1600 smoking related deaths annually in Western Australia being dismissed by the advertising and tobacco industries as being only "statistical deaths."

The government Bill continued to receive wide support from the public but much of this was overshadowed by lobbyists who presented cases on behalf of the tobacco industry. Advertisements against the Bill fell into four categories, being those placed by the Australian Publishers Bureau, by organisations with a well defined interest in continued tobacco promotion, by sports organisations which received money for sponsorship of their sports, and by the Tobacco Institute of Australia. One tobacco industry advertisement was open to criticism as sexist. The government's campaign was also criticised. An advertisement which featured a photograph of West Australian schoolchildren appeared without their parents' permission and the incident created negative publicity for the government as well as for its campaign.

Once this Bill was introduced into Parliament media coverage increased. The public entered into the debate, with factions emerging to support both sides. Letters distributed to parliamentarians and published in the press were signed by sporting groups urging parliamentarians to oppose the Bill. Employees of the tobacco industry signed letters in the press under the guise of unaffiliated citizens. Many sporting groups cooperated with these moves despite the relatively small contribution to overall sporting revenue provided by the cigarette industry. Tobacco industry influence on sporting bodies went beyond lobbying. A prominent

professional footballer whose sport had received tobacco company sponsorship agreed to participate in the "Give kids a chance" campaign. Later he requested that release of the advertisement be withheld. As a final reminder of the powerful association between the tobacco industry and Australian sport, the industry argued that if the Bill was successful, an impending test cricket match between Pakistan and Australia would not proceed.

But perhaps the most successful tobacco industry ploy was the one which counterattacked the theme of the Government's media campaign "Give kids a chance." At a crucial stage of parliamentary debate, an expert from London was brought to Western Australia by the tobacco industry. Mr Glen Smith, from an institute called the Children's Research Unit, stated authoritatively that the advertising of cigarettes was not a factor in causing children to smoke. This last minute statement to those confused by the protracted debate contained a convincing message.

Media coverage of Mr Smith's statement was comprehensive and effusive, as all media coverage of the protobacco issues had been throughout the campaign. Positive comments about the tobacco industry's arguments flooded the local press. Many letters and press releases from eminent physicians and responsible citizens representing the other side of the debate remained unpublished. One letter in support of the ban on tobacco advertising which was published was signed by seventeen professors from the faculty of medicine at the University of Western Australia. Support was also provided by a diversity of community groups, including churches, the Pensioners' League, teacher organisations, the University of Western Australia's department of physical education, and some amateur sportspeople.

The parliamentary passage of the Bill was not straightforward. After three readings in the lower house, the Bill passed to the upper house, whence it returned to the lower house with crippling and unacceptable amendments. Disproportional electoral representation had hampered what might have been an otherwise smooth passage for the Bill. In the lower house, while metropolitan electorates have larger populations than country electorates, there is a majority of Labor politicians and the constitution of the house reflects overall political opinion as indicated by the last general election. Nevertheless, as a result of the colonial heritage of Western Australia and the perceived need in the past to protect the primary producers, a gross imbalance exists in the upper house. Though Labor politicians in this house represent an electoral majority, Liberal and National Country Party coalition politicians hold more seats. In the Legislative Assembly 37 parliamentarians representing 68% of the electorate voted for the Bill while 20 members representing 32% of the electorate voted against the Bill. In the Legislative Council 15 members representing 53% of the electorate voted for the Bill and 17 members representing only 41% of the electorate voted to defeat the Bill.

The financial motivation of the tobacco industry was evidenced by its expenditure. Assertions by Dr Dadour that parliamentarians' electoral campaigns had been financed by the tobacco industry led to his resignation from the conservative (Liberal) opposition party. As with the previous legislation attempt, the tobacco industry made a substantial financial investment in the campaign to defeat the Bill. The corporate relations and public affairs' manager of Amatil (BAT) asserted that "this very significant swing in public opinion was achieved at less than half the cost of the \$6m the Western Australian Government is spending over three years on its antismoking campaign."¹⁸ By comparison, the government estimated that it had spent \$300 000 in support of the Bills.

The future

Though these two attempts at legislation have been unsuccessful, the antismoking lobby has learnt from this experience. The government suffered humiliation over its defeat on this issue, and many of its members have since been reluctant to comment. Public criticism has been levelled at the amount of money the government invested in its advertising campaign, and the premier has since

suggested that the government "went overboard" in this respect. Thus not surprisingly, two subsequent community attitude surveys have shown a decrease in public support for cigarette advertising bans. Legislation attempts against an industry with such vast and diverse financial interests in the community invite a disproportionate volume of campaigning, whose consequences may be extensive and partly detrimental. In fact, the only discernible beneficial effect of all the political activity has been a greatly increased awareness of the health effects of smoking in the general population.

From the experiences of these attempts at legislation in Western Australia it may be observed that there must be not only overwhelming public support but also strong pressure applied to politicians. It appears that reform such as this is interpreted as being radical by the very fact that it is innovative. It also appears that political pragmatism prevails when political leadership is called for.

Scientific evidence on the health effects of smoking and the effects of advertising on tobacco consumption continues to accumulate. Other disciplines are becoming concerned in the debate, bringing clarity and intellectual honesty to the legal, ethical, and civil liberties arguments. Progress in understanding of these issues by antismoking protagonists and the public should help in future campaigns.

Overall cigarette consumption has fallen a little in Western Australia, and even the tobacco industry admits that it can now expect a steady decline in sales in the Western world.¹⁹ Each of the stones in David's sling holds potential disaster for Goliath. With careful aim, made keener by experience, the chances of success for the health lobby must surely improve.

References

- 1 Chapman S. A David and Goliath story: tobacco advertising and self-regulation in Australia. *Br Med J* 1980;281:1187-90.
- 2 Anonymous. Priority for action. *Br Med J* 1979;279:1377-8.
- 3 World Health Organisation Expert Committee on Smoking Control. *Controlling the smoking epidemic*. Technical Report Series 636. Geneva: WHO, 1979:40-1.
- 4 Gray N, Dauge M, eds. *Guide lines for smoking control*. 2nd ed. Geneva: International Union Against Cancer, 1980:14-5.
- 5 Australian Advertising Industry Council. *Self regulation in Australian advertising*. 3rd ed. New South Wales, 1982:28.
- 6 Fisher D, Magnus P. "Out of the mouths of babes . . ." The opinions of 10 and 11 year old children regarding the advertising of cigarettes. *Community Health Studies* 1981;5:22-6.
- 7 Chapman S. Does cigarette advertising motivate children? *World Smoking and Health* 1982 (Summer):35-41.
- 8 Alexander H, Callcott R, Dobson A, et al. Cigarette smoking and drug use in school children: IV. Factors associated with changes in smoking behaviour. *Int J Epidemiology* 1983;12:59-66.
- 9 US Surgeon General. *The health consequences of smoking—cancer*. Maryland: US Department of Health and Human Services, 1982:15-20.
- 10 Fisher DA, Armstrong BK, De Klerk NH. A randomised-controlled trial of education for prevention of smoking in 12 year old children. *Proceedings of 5th World Conference on Smoking and Health*. Winnipeg, 1983.
- 11 Chesterfield-Evans A. BUGA-UP (Billboard Utilizing Graffitiists Against Unhealthy Promotion): an Australian movement to end cigarette advertising. *New York State J Med* 1983;83:1333-4.
- 12 Dunn A, Dunn P. Puffability People: a new way to promote health. *Br Med J* 1983;287:960-2.
- 13 Australian Council on Smoking and Health. *Submission to the Parliament of Tasmania and the Legislative Council Select Committee on the Smoking and Tobacco Products Advertisements Bill* 1983. Perth, Western Australia, 1983:46.
- 14 Sutton C. The advertising question is just a smokescreen. *The Australian* 1984 March 30:9.
- 15 *Time Magazine* 1984 June 18:45.
- 16 Smoking Project Team. *Cigarette smoking among children in Western Australia*. Report for Health Education Unit, Public Health Department of Western Australia. Perth:1983.
- 17 Condon V. Smoking bonanza. *The Weekend News*. Perth, Western Australia, 1984:April 7:1-2.
- 18 Rogers P. TV return for cig? b & t. *Advertising, Marketing, and Media Weekly* 1983 November 11:1.
- 19 Burry RD. Is cigarette consumption decline to be temporary or continual? *Tobacco International* 1983 June 10:6-15.

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Is there any evidence that mouth ulcers may be caused by use of a microwave oven or by eating food cooked in one?

I know of no evidence that mouth ulcers may be caused by microwave oven or indeed by eating food cooked in one.—T LEHNER, professor of oral immunology and microbiology, London.