Issues Paper

#1 Smoking in Prison | MAY 2008

Office of The Inspector of Custodial Services

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The Issue

Smoking nicotine products has not been totally prohibited in the general community, despite its known health risks. Prisoners go to prison as punishment and not for punishment. Is it fair and appropriate to prohibit smoking altogether in prisons when this has not been done in the community? Or does the notoriously poor health profile of the prisoner population justify such a move in the interests of public health policy?

Background

Smoking is the single greatest cause of death and disease in Australia. In 2003, approximately 15,500 deaths were attributable to tobacco use. The majority of these deaths were from lung cancer (6,309), followed by chronic obstructive pulmonary disease (4,175) and ischaemic heart disease (1,962). In total, smoking-related deaths made up 11.7 per cent of all deaths in Australia in 2003.[1] Tobacco use has also been linked to a variety of other conditions, such as diabetes, peptic ulcers, some vision problems, and back pain.[2] In a recent study on the burden of injury and disease in Australia, it is estimated that tobacco was responsible for eight per cent of the burden of disease, putting it above any other single cause.[3]

In 1985, the smoking rate amongst the general population of Australia was 29 per cent.[4] Since then, a range of public health tobacco control strategies have succeeded in lowering daily tobacco use to 17.4 per cent. Western Australia has the lowest rate of smoking prevalence in the country at 15.5 per cent, however, within the Western Australian prison population, smoking prevalence is around 80 per cent.[5] It has also been found that Aboriginal Australians smoke at a significantly higher rate than the general population. In 2004–2005, 50 per cent of the adult Aboriginal population were current daily smokers.[6] Smoking patterns within the prison system also extend beyond the prisoner population. Among prison staff, smoking rates are known to be as high as 40 per cent.[7]

Staff – Occupational health and safety risk

The health risks of passive smoking are now well-documented. A growing body of evidence indicates that exposure to second-hand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer. In the community there is also increasing objection to the unhygienic and unpleasant aspects of an environment which smells of tobacco smoke. Remediation efforts such as separating smokers from non-smokers, cleaning the air, and ventilating buildings have been found to be ineffective in entirely eliminating second-hand smoke. This is important as the evidence indicates that there is no risk-free level of exposure to second-hand smoke.[8] In the general community these factors have led to widespread legal limitations on smoking in enclosed and open public spaces, as well as to strong social constraints against smoking in the presence of others.

Environmental tobacco smoke has the potential to be especially potent in prisons. High rates of smoking coupled with poor ventilation and enforced confinement in enclosed spaces can lead to elevated levels of environmental smoke. For example, ambient air nicotine levels taken in a United States prison were found to be 10 times above the suggested acceptable level of environmental tobacco smoke.[9]

In this respect, environmental tobacco smoke presents a significant occupational health and safety risk to prison staff. Prison staff have the same right to a safe workplace as any employee, and in other industries it is now generally accepted that a high level of second-hand smoke poses an unacceptable risk to staff. For example, in Western Australia occupational health and safety concerns have been cited as the major reason for banning smoking in restaurants and bars.

Government of Western Australia

Prisoners – Duty of care and public health imperative

Studies have found that prisoners are at substantially greater risk of death and illness (particularly respiratory problems and cardiovascular disease) than members of the general population.[10] Indigenous prisoners in particular have higher rates of hospital admission for a wide range of chronic diseases, indicating poorer general standards of health. Given the poor general health profile of prisoners, the negative effects of smoking may have a greater impact. At the same time, this poor prisoner health profile may in part reflect the impact of their higher smoking rates.

Within the wider community, there has evolved a strong standard that aims to protect non-smokers from the adverse health and social impacts of smoking. In this regard, prisoners who are compelled to share social space with others in a confined environment are entitled to at least a community standard of protection. Indeed, in the United States it has already been held by the Supreme Court that exposing a prisoner to environmental tobacco smoke could constitute 'cruel and unusual punishment' and create a course of action against prison administrators.[11]

It can be argued that prisoners have the right to smoke, even though it may lead to their own poor health or death. It can also be argued that imprisonment offers an opportunity to impact on the health profile of this particularly vulnerable population and that the state has a duty of care to do so. Some studies have indicated that up to 75 per cent of prisoners who smoke would like to quit. At the very least though, as the vast majority of prisoners will return to the community at some point, it is important to the overall health of the community that their health needs be addressed while in prison.

Smoking policies within the Department

In Western Australian prisons, smoking is permitted in outdoor areas and inside cells, but not in shared indoor living spaces. If prisoners are required to share cells, a cell-sharing risk assessment is carried out. One of the purposes of this assessment is to ensure, as far as possible, that smokers and non-smokers are not forced to share cells. However, in the context of acute overcrowding, cell-sharing becomes more and more common and the ability of each prison to keep smokers and non-smokers separated is diminished. Some prisons have introduced additional strategies to address smoking issues. A number of prisons have smoke-free units in which prisoners and staff are not permitted to smoke. At Boronia Pre-release Centre, smoking is only permitted in one area on the site: an outdoor gazebo. The supermarket at Boronia also limits the amount of cigarettes that prisoners can buy each week. At Greenough, where a trial smoking ban is proposed, all shared cells are considered to be non-smoking areas unless both occupants agree otherwise. Within the state's juvenile detention centres, total smoking bans are enforced in line with wider legal restrictions on juvenile tobacco use.

Smoking policy beyond the Department

In the state's primary closed psychiatric institution, the Frankland Centre, smoking was banned throughout the centre from 1 July 2007. By all accounts the policy has been successful and caused minimal disruption. It is important to note that the ban was implemented with fully funded and supported nicotine replacement therapy (NRT) arrangements and counselling services. Importantly, the centre made a concerted effort to increase activities and therapeutic interventions for patients. Education, training and support was also delivered to staff, both to assist them in their own cessation and to prepare them for elevated patient needs. The success of the Frankland Centre's smoking ban appears to be due in no small part to these comprehensive support arrangements. Any such ban should be similarly supported if implemented within the prisons system.

Internationally, there are a number of precedents for banning smoking in prisons. In Singapore, a total ban was implemented within twelve months of the announcement of a no smoking policy. In the US, as a result of the aforementioned Supreme Court decision, an increasing number of jurisdictions are introducing smoking bans. In July 2004, the US Federal Bureau of Prisons made all its facilities 100 per cent smoke-free. As of 1 January 2008, 24 US states have 100 per cent smoke-free indoor areas, including three mandating that the entire prison be smoke-free (Arkansas, Nebraska and South Carolina).[12]

Correctional Service Canada also has plans to introduce a total prohibition on tobacco in federal

prisons on 30 April 2008, and almost all Canadian provinces have already introduced total bans in provincial prisons. The notable exception is Quebec, where a smoking ban implemented in February 2008 was reversed days later following a riot by prisoners. Prior to implementation, the Quebec ban had been strongly opposed by a number of groups including the prison officers' union, illustrating perhaps that a smoking ban is unlikely to succeed without the backing of those who must enforce it.

Success of Quit Programs

Importantly, any consideration of prohibiting or limiting smoking in prison must take into account just how difficult it is to quit smoking, and how low the success rates are. Approximately three to five per cent of quit attempts succeed using will power alone.[13] Clinical trials have shown that NRT can double this rate to approximately six to ten per cent.[14] Psychological support from a trained counsellor, whether in a group or one-on-one setting, has been shown to lift success rates as high as 28 per cent depending on the intensity and frequency of treatment sessions.[15]

Furthermore, in terms of long-term abstinence, it is clear that forced cessation is not the same as choosing to quit. A 2002 study in the United States found that 97 per cent of inmates released following forced smoking cessation had relapsed within six months.[16] The evidence suggests that motivational factors are crucial to long-term abstinence, and forced cessation rarely results in quitting successfully. Prisoners are therefore much more likely to quit successfully if they are adequately supported and have made the decision to stop smoking themselves.[17]

Practical implications of a smoking ban

There are also a number of side-effects associated with smoking cessation, several of which may have significant implications for prisoner management and control within a custodial environment. Some of the known symptoms of nicotine withdrawal include:

- Urges to smoke
- Depressed mood
- Difficulty sleeping or sleep disturbances
- Irritability, frustration or anger
- Anxiety
- Difficulty concentrating
- Restlessness
- Decreased heart rate
- Increased appetite or weight gain
- Decreased adrenaline and cortisol (brain chemicals)[18]

The changes to mood and disposition in particular may have an impact upon day-to-day management of prisoners, and staff would need to be prepared and supported to deal with this. In addition, staff may need assistance to deal with their own withdrawal symptoms should any smoking ban also apply to them.

Cigarettes also play a number of roles in prison that go beyond their practical use. They are used as currency by prisoners, and in many cases represent the common ground that draws prisoners together to socialise. Indeed, it is argued that smoking is one of the few social pleasures not denied to prisoners. Perhaps most significantly, cigarette smoking helps to alleviate the inherent boredom of imprisonment. Boredom is seen as one of the most significant obstacles to smoking cessation in prison and so increased availability of activities such as recreation, employment and education may assist prisoners who are required to quit smoking.

There are a number of other practicalities that need to be considered before contemplating a prohibition on smoking in prisons. Firstly, any such ban would immediately make cigarettes a contraband item within prisons and various controls and policies would need to be put in place to account for this. At the most fundamental level, legislative amendments may be required in order to allow prisoners to be charged for being in possession of cigarettes.

There will be a financial cost associated with the necessary support arrangements, and there will inevitably be differences of opinion about who should bear that cost. There is an inherent injustice in charging people who are quitting involuntarily for support services. Many prisoners also have little money available to spend on such services. On the other hand, the state does not pay for these services when members of the general community attempt to quit smoking.

Human rights implications

It should be noted that a total ban on smoking in prison may in fact go beyond the community standard. At present ordinary citizens can still purchase tobacco products and can smoke them in prescribed situations or where there is minimal potential for adverse impact on others. Denying prisoners this freedom of choice represents a further loss of liberty. Furthermore, any smoking restrictions may disproportionately affect Aboriginal prisoners because of their higher smoking participation rates. On the other hand, staff and prisoners who are non-smokers have the right to expect a community standard of protection from exposure to environmental tobacco smoke.

Conclusion

This paper raises a number of issues around smoking in prisons. These include:

- Human rights
- Occupational health and safety
- Prison management
- Practicalities of implementation

How the balance of all these issues is determined has a significant bearing on whether smoking should be controlled or banned in Western Australian prisons and how that could occur. The purpose of this paper is to stimulate debate on this matter and hopefully come to some reasoned position. Therefore, this Office is seeking comment on this Issue Paper from various agencies, departments and individuals.

Comments should be forwarded to the Director of Strategic Operations by **28 June 2008**. Alternatively, comments can be made by visiting the OICS website at http://www.custodialinspector.wa.gov.au/go/publications-and-resources.

This paper and a précis of comments received will be posted on the Office's website in due course.

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