



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Smoking in Western Australian prisons

September 2021

The Office of the Inspector of Custodial Services acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of this country, and their continuing connection to land, waters, and community throughout Australia. We pay our respects to them and their cultures, and to Elders, be they past, present, or emerging.

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This report is available on the Office's website and will be made available, upon request in alternate formats.

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Inspector's Overview

There is a compelling case for a smoking ban in all Western Australian prisons.

Smoking is the leading cause of preventable deaths in Australia. Research shows that the harmful effects of smoking impacts those who smoke and those who inhale second-hand smoke.

Our review identified that over 80 per cent of people sent to prison in Western Australia during the period between 2017 and 2020 were active smokers. The rates of smoking were higher for Aboriginal people and for women entering prison.

We found some alarming data on the rates of smoking in prisons compared to in the general community in Western Australia, for example: only 11 per cent of the general community are active smokers compared to 82 per cent of prisoners. We also identified that over \$10M was spent by prisoners on tobacco products in 2020, this was almost half of all canteen sales in Western Australian prisons.

Western Australia and the Australian Capital Territory are the only jurisdictions not to have implemented a smoking ban in prisons. Both jurisdictions have partial bans in place limiting smoking inside buildings and in cells. However, these restrictions appear ineffective in Western Australia, as we were told by staff and prisoners that they were regularly exposed to second-hand smoke, particularly for non-smokers overnight in cells and for staff at morning unlock.

The Department of Justice has over the years implemented various policies and initiatives aimed at limiting or reducing smoking. It is fair to say that these initiatives have had little overall impact on the level of smoking by prisoners in Western Australian prisons. It remains that the risks of smoking and exposure to second-hand smoke are well known but largely unmitigated.

There are many facets to the issue of smoking in prisons, including: the high rates of smoking amongst prisoners; the cost of tobacco; the risks to the health of prisoners and staff, including those exposed to second-hand smoke; and the financial impost on prisoners' families to provide funds. There are also risks of prisoner disturbances involved in implementing a smoking ban, particularly if it is not well planned and resourced. Our report recognises all these complexities and sets out a possible pathway towards a smoking ban.

Our report contains several recommendations to address immediate and long-term issues identified during our review. It was encouraging to see that the Department supported in principle our recommendation to develop a timeline to implement a smoke-free policy in its prisons.

Although the Department did not support recommendation 7, we were also pleased to see its response which advised us that the use of tobacco as a management tool was not recognised operational practice. Given the results in our staff survey, we urge the Department to reinforce this with staff, many of whom told us they engaged or witnessed this practice regularly.

While the review examined adults in custody, we know that many young people also come into custody addicted to nicotine. Future planning must also ensure they too have adequate supports when ceasing smoking.

We believe that there is now a compelling case for a smoking ban in Western Australian prisons. We recognise that it is not a simple matter of having a policy to ban smoking. There must be high level support and commitment. There needs to be a comprehensive plan with sufficient lead time and enough supports and resources. But it is not impossible, other jurisdictions have done it successfully with good results and without major incidents or disturbances.

It is important to acknowledge the contribution and assistance we received in undertaking this review from key personnel in the Department and at Acacia Prison, which is privately operated by Serco. Finally, I want to recognise and acknowledge the hard work and significant contribution of the team within our office in planning and undertaking this review. I would particularly acknowledge the work of Ryan Quinn in leading this review and as principal drafter of this report.

Eamon Ryan
Inspector

1 September 2021

Executive Summary

Background

Smoking remains one of the leading causes of preventable death and disease in Australia (AIHW, 2020). This is despite significant reductions in the number of daily smokers over the past three decades. Since 1991, the number of daily smokers has halved and the proportion of people who have never tried smoking has increased (up from 49% to 63% in 2019) (AIHW, 2020). Yet in 2015, tobacco smoking was responsible for one in 10 deaths and estimated to cost the Australian economy \$137 billion in healthcare, lost workplace productivity, and in pain and suffering (AIHW, 2020).

There is consensus across the scientific community that tobacco smoking is harmful to those who inhale smoke directly and those exposed to second-hand smoke. Since 1964, the United States Surgeon General has released 34 reports providing evidence to support the claims that tobacco smoking has causal links to a wide range of diseases. Its 2014 report reiterated that smoking harms almost every organ of the body and quitting can have immediate, as well as long-term benefits (US Department of Health and Human Services, 2014). Exposure to second-hand smoke has also been linked to cancer, respiratory, and cardiovascular diseases (Winstanley & Greenhalgh, 2019).

Smoking in prisons defy community trends

Research shows on average up to three quarters of prison entrants are smokers, compared to only 11 per cent in the community (AIHW, 2019). In Western Australia, 82 per cent of people in custody entered prison as active smokers between 2017 and 2020. They are permitted to continue smoking while in prisons, but only in designated outdoor areas.

Since 2017, between 83.5 and 85.7 per cent of Aboriginal prisoners in Western Australia were active smokers, in comparison to 82 per cent of the general prison population. In the community, the rate of smoking among First Nations peoples is declining, but they are still nearly three times more likely to smoke than non-Aboriginal people (AIHW, 2021). While this disparity is not as evident in prisons, the gap is widening. The rate of smoking among Aboriginal prisoners has been relatively steady, while the rate of smoking among non-Aboriginal prisoners has decreased from 80.4 per cent in 2017 to 76.5 per cent in the year-to-date for 2021.

Women are more likely to smoke than men in Western Australian prisons. Between 2017 and 2020, active smokers among female entrants ranged from 84–87 per cent compared to male entrants, which was steady at around 81 per cent.

The likelihood of a prisoner smoking appears to decrease as they age. Eighty-six per cent of 18–24 year olds were smokers in comparison to only 51 per cent of those aged above 55 years (as at March 2021). Younger males and older females were more likely to be smokers.

SMOKING TRENDS COMMUNITY VS. WA PRISONS

11%

active smokers

82%

active smokers

82%

active Aboriginal smokers

85.7%

active Aboriginal smokers

12.2%

active male smokers

81%

active male smokers

9.9%

active female smokers

84-87%

active female smokers

10%

active male smokers
aged 18-24

87%

active male smokers
aged 18-24

15%

active female smokers
aged 50-59

72%

active female smokers
aged 55+

A part of prison culture that brings considerable risks to staff, prisoners, and visitors

Smoking has a large role in the culture and daily routine of prison life. For prisoners, smoking is a social activity and a way to relieve stress and anxiety. Many feel the decision to smoke is their right and it is seen as a 'symbol of freedom in a group with few rights and privileges' (Naylor, 2013). However, the use of tobacco and cigarettes within prisons does not come without complications.

The expense of tobacco and its desirability mean the commodity has developed into a de facto currency. Smokers who cannot afford tobacco or have limited access will often trade other goods to obtain their supply (Mackay, 2016). It is also commonly used to pay off debts and do business, including as payment for protection (Richmond, et al., 2009). Black markets are common when smoke-free prison policies are implemented (Richmond, et al., 2009; Butler, Richmond, Belcher, Wilhelm, & Wodak, Should smoking be banned in prisons?, 2007).

Access to tobacco has also been associated with increased risk of aggression, harassment, bullying and stand overs inside prisons (Mackay, 2016; Richmond, et al., 2009). Staff have also been known to use cigarettes and smoking as a tool to manage the behaviour of disruptive or disorderly prisoners, creating a risk of staff being manipulated or coerced (Richmond, et al., 2009).

Annual tobacco sales to prisoners exceed \$10 million

Annual sales of tobacco products increased from \$6.8 million in 2016 to just over \$10.1 million in 2020 out of a total \$23 million in canteen sales across Western Australian prisons. This equates to 43 per cent of all canteen sales, and each prisoner spending on average \$1,489 on tobacco in 2020. This is up from \$1,109 per prisoner five years earlier. Despite this, the quantity of tobacco products sold has declined from 558,627 units in 2016 to 521,883 in 2020. The increase in expenditure is not related to demand but rather the price. The cost of a 25-gram pouch of the most popular tobacco product has more than doubled from a prison-average of \$27.44 in 2015 to \$57.60 in 2021. The increase has been driven by the Commonwealth Government's tobacco excise policy, which has risen 12.5 per cent annually since its introduction in 2013 to incentivise quitting (Department of Health, 2018).

Western Australia and the ACT are the only Australian jurisdictions without smoke-free prisons

Western Australia and the Australian Capital Territory (ACT) are the two remaining jurisdictions that have yet to implement a full smoking ban across their custodial facilities. In 2013, the Northern Territory (NT) was the first Australian state or territory to implement a smoke-free policy. This was followed by smoke-free prisons in Queensland in 2014; Tasmania, Victoria, and New South Wales in 2015; and South Australia throughout 2019.

Both the ACT and Western Australia have enacted partial smoking bans, that prohibit smoking inside cells and in all indoor buildings. In 2015, the ACT Government committed to a full prison smoking ban but have yet to develop a policy or implementation timeline. Similarly, in Western Australia the Department of Justice (the Department) and former Minister for Corrective Services considered a full ban on smoking, but the policy was never progressed. A partial ban was implemented in 2009 limiting smoking to designated outdoor areas, following a trial at Greenough Regional Prison in 2008.

Eastern Goldfields Regional Prison was also set to open as a trial site for a full ban in 2014 but did not progress at the direction of the Minister for Corrective Services at the time.

Smoke-free prisons across Australia have typically been justified on the following principles:

- to improve the health of prisoners who smoke, and reduce the risk of long-term health issues
- to provide non-smoking prisoners and visitors with a safe environment free of second-hand smoke exposure
- to meet workplace health and safety obligations to staff by providing smoke-free workplaces.

Key findings

Department needs to lead and not be led

The Department of Justice has not been proactive in leading smoking policy reforms. Key reforms were triggered by staff making formal complaints about the extent of second-hand smoke they were exposed to. Since 2015, there have been no further reforms and the Department has not undertaken any policy evaluations or monitoring of key smoking indicators. The Department has no clear plan to better understand the risks associated with the continuation of smoking within custodial facilities and how to most effectively manage these.

Exposure to smoke remains unmitigated

Despite smoking being restricted to designated outdoor areas, smoking inside cells and units is considered a common occurrence. Most staff and prisoners feel exposed to second-hand smoke daily, and staff told us they feel unsupported by various levels of management when seeking to enforce restrictions. Efforts to assist people in custody to quit or reduce their smoking behaviour are localised and do not appear to be working across the system. Cessation supports available to prisoners are perceived as unhelpful, and in some instances, have been inaccessible. There are also limited educational opportunities provided to people in custody and staff to enable more informed decision-making about their smoking behaviour.

Smoking creates unique risks in prisons

Smoking inside prisons creates a range of risks for both the prisoners and custodial facilities. As the price of tobacco continues to rise, many prisoners are unable to afford the cost without becoming indebted to other prisoners or relying on private cash contributions from outside family and friends. The expense of tobacco can also lead to humbugging and harassment from some prisoners, and bullying and stand overs by others. Gambling and trading debts can also lead to violence and aggression. The provision of cigarette lighters also greatly increases the risk of cell fires and other arson incidents.

Developing a case for a ban

With Western Australia and the Australian Capital Territory the only remaining Australian jurisdictions to allow smoking in custodial facilities, there is ample evidence to support the case for a smoking

ban. This includes mitigating the risk of legal challenges by staff and non-smoking prisoners impacted by second-hand smoke, and the health and safety benefits associated with smoke-free prisons. Other jurisdictions have also demonstrated that a transition to smoke-free prisons is possible with little disruption if it is planned well, with a lengthy lead-in time and implemented in consultation with prisoners and staff.

Existing practices to reduce the risks associated with smoking inside Western Australian prisons are simply not working. Local Orders are not effective at restricting smoking to designated outdoor areas and are not proactively enforced by staff and management. Voluntary quitting in prison is also simply too difficult for prisoners. The cost of tobacco will also likely continue to rise, further increasing the risks of financial and physical harm to prisoners.

Conclusion

We acknowledge that the issue of smoking in prisons is complex. Prisoners, staff, management, and the Department each have roles and responsibilities in reducing the risks presented by smoking. This includes ensuring there is compliance with regulations, appropriate enforcement and maintaining safe living and working environments.

However, complacency has set in. The Department has taken minimal steps to understand and address key issues and risks associated with smoking in Western Australian prisons. Now is the time to proactively develop a plan to address the risks presented in this report.

Recommendations

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1 Department needs to lead and not be led on smoking reform

The Department has not taken a hands-on role in understanding the risks of smoking within prisons and how to effectively mitigate these. While reforms to smoking regulations have effectively responded to the catalysts at the time, the Department does not appear to have undertaken any proactive work outside of key events. Monitoring, evaluating, and responding to the ongoing effectiveness of existing regulations have not been prioritised. And as it stands, the Department has no forward plan to develop a better understanding of the risks and policy solutions to address them.

1.1 Smoking reforms have been reactive

The most recent reforms to smoking regulations within Western Australian prisons have been driven by two key events:

- the Greenough Regional Prison smoking reduction trial (2008); and
- the Improvement Notices and air quality investigation by WorkSafe (2013-2015).

The staff complaints that triggered these two key events provided the introspection necessary to address the occupational safety and health risks smoking within prisons presents. The reforms that followed were responsive to these concerns. Outside of these events and the reactive reforms they provoked, there have been no proactive reforms to smoking regulations.

The Greenough trial limited tobacco smoking to designated outdoor areas to 'reduce the opportunities for smoking in the prison', rather than build a case for an outright ban (Highfield & Read, 2008, p. 13). Prior to this, smoking was still permitted inside buildings but not within cells.

The success of the trial led to the implementation of the current state-wide restrictions limiting smoking to outdoor designated areas only. By 2009 most prisons had implemented a smoke-free enclosed area policy. Acacia Prison, Casuarina Prison, and Hakea Prison followed suit by 2011 due to their larger populations (DCS, 2015A).

Greenough was chosen after the then Minister for Justice received a petition from its staff regarding passive smoking and demands for a smoke-free workplace (Highfield & Read, 2008). Despite the reforms that followed the Greenough trial, the issue of staff exposure to passive smoke continued and eventually led to WorkSafe issuing two Improvement Notices and conducting air quality monitoring.

The first Improvement Notice was issued in 2013. The Department initially responded by committing to a total cessation of smoking across all prisons in Western Australia. This was to be trialled at the new Eastern Goldfields Regional Prison. The Banksia Hill Detention Centre, where detainees were not permitted to smoke, would also be trialled as a smoke-free workplace. However, prior to these trials coming into effect, the Government changed its policy following a prison riot in Melbourne. While a review into the riot found the smoking ban was only the 'tip of the iceberg' after a period of increasing tensions, the Minister at the time maintained their position against a total smoking ban

(Walshe, 2015). After that time, references to a total cessation of smoking were replaced with smoking reduction strategies. Consecutive Ministers have since maintained this position.

After the second Improvement Notice in 2014, the Department developed a Smoking Reduction Strategy to identify and deliver the necessary actions to comply with WorkSafe (DCS, 2015B). The strategy sought to:

- implement and have facilities commit to the enforcement of a smoking policy in prisons
- educate and communicate with staff and prisoners
- promote health and wellness
- reduce the overall risk of second-hand smoke exposure to staff, prisoners, and visitors.

As part of the strategy, the Department developed the Responsible Prisoner Program. It sought to provide prisoners with a range of health promotion materials and quitting aids, increasing their awareness and understanding of the risks associated with smoking and the options available to them to quit (DCS, 2015A). Noting that without a total ban on smoking it could not force prisoners to quit, the Department used the Responsible Prisoner Program to encourage prisoners to reflect on their health and wellbeing, and voluntarily quit (DCS, 2015B).

The Responsible Prisoner Program has since evolved into the Healthy Prisons Framework (DOJ, 2019A). The framework does not specifically mention smoking but encourages prisoners to take responsibility for their health and wellbeing.

In 2014, the Department also implemented a policy notice to ensure there was some consistency to smoking policy across facilities. The notice advised all prisons of the requirement to enforce no smoking in cells and enclosed spaces, and provide disciplinary action as required (DCS, 2014). Specifications for the designation of outdoor smoking areas were also provided. The notice required orientation packages include information on smoking restrictions and the available cessation supports. The policy remains in place today continuing to guide prisons on smoking regulations.

Implementing the strategy, the program, and the notice ensured the Department achieved compliance with the second WorkSafe Improvement Notice.

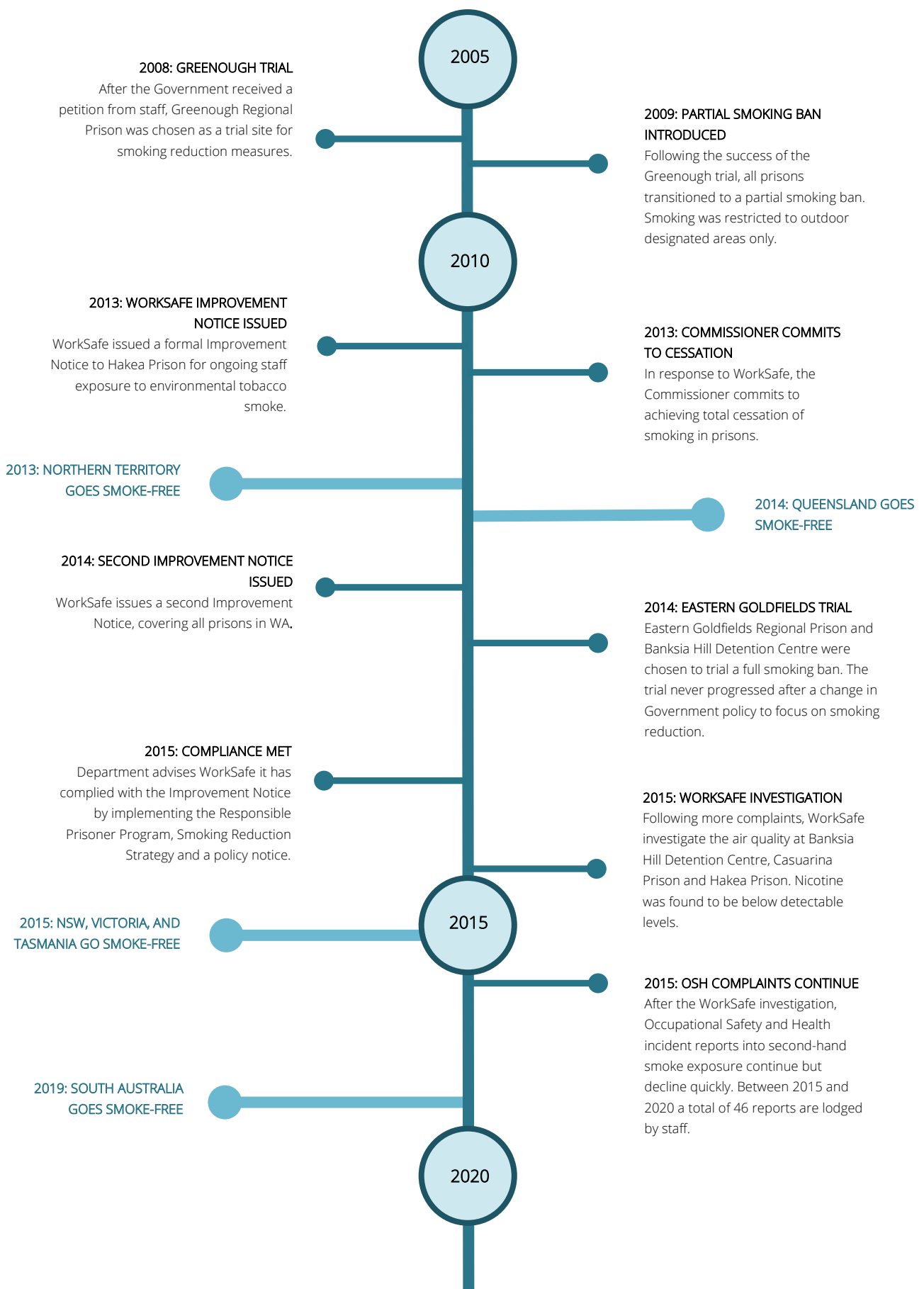


Figure 1: Timeline of key events and smoking reforms in Western Australia.

1.2 Demonstrating a limited understanding of the risks associated with smoking

Inconsistent enforcement of Local Orders has led to a lack of measurable data being available and the Department having a limited understanding of the risks associated with smoking in prisons. Data could have the potential to provide prison-specific insights into risks, enabling a nuanced understanding of the issues at hand and potential policy solutions. However, we found there are a range of smoking-related risks that are not accurately reflected in data and, therefore, are not thoroughly understood by the Department.

For instance, we heard prisoners continue to smoke in their cells overnight and regularly smoke in non-designated areas. However, the number of Loss of Privileges (LOPs) issued for such offences has steadily declined over the last five years. Staff also told us that smoking leads to bullying, violence, and the creation of debts through trading and gambling. Prisoners with cognitive impairments or those with no access to funds are particularly susceptible. These incidents often occur out of sight of officers and are therefore not often recorded on the Department's database. The lack of useable data prevents the Department from being informed on these risks.

The Department has also not sought to develop a better understanding of the risks by proactively investigating smoking indicators. The Smoking Reduction Strategy provides measurable indicators of success to be monitored, including:

- the number of LOPs issued in relation to non-compliant smoking
- sales data from prison canteens
- the number of prisoners who quit smoking.

When we enquired about this monitoring, we were advised the strategy had been shelved and not reviewed, and the indicators were not being monitored. And due to system limitations, the Department was also unable to provide data on the number of prisoners who had successfully quit.

Without useable data or proactive analysis of smoking indicators, the Department is unable to fully understand the extent of the risks smoking presents to staff, prisoners, and visitors on a regular basis. Without this understanding, the Department cannot effectively mitigate risks.

1.3 The Department has no forward plan

It is not clear that the Department has a forward plan to better understand and mitigate the risks associated with smoking inside prisons. Since 2015, there have been no triggers for further reform. The Department has not prepared any reports, studies, or evaluations into the efficacy of a full smoking ban to assist in developing a business case for Government. Nor has the Smoking Reduction Strategy from 2015 been reviewed. Since this time, New South Wales, Victoria, South Australia and Tasmania have joined Queensland and the Northern Territory in transitioning to smoke-free prisons. The policies have been successfully implemented using an evidence-based approach that incorporates key learnings from earlier jurisdictions. As one of the last jurisdictions, Western Australia can reap the benefit of these learnings.

There is support from a range of stakeholders on a state-wide ban. In our meetings with the Department, there remains interest and a general level of support for pursuing a total smoking ban. The Department's Health Services were strongly in favour. Over two thirds of prison staff surveyed by us supported a full ban. The Western Australian Prison Officers Union (WAPOU) have supported this approach since 2011. WAPOU remains ready to assist the Department in the planning and implementation of a smoke-free policy, along with not-for-profit organisations such as the Australian Council on Smoking and Health, the Cancer Council, and Smoke Free WA.

Most prisoners surveyed do not support a ban. There remains a level of anxiety among prisoners about the impact a ban will have on their personal wellbeing, as well as the broader wellbeing of their fellow inmates. We are cognisant of this anxiety and their concerns must be considered in any future smoking reforms.

Acknowledging these concerns, a ban on smoking can be successful in Western Australia if it is planned and resourced well, with a lengthy lead-in time and co-developed alongside prisoners and staff. With most Australian prisons now smoke-free, the Government and Department need to lead on this issue, rather than wait for further trigger events.

There is a compelling case for a smoking ban in Western Australian prisons.

Recommendation 1 – The Government and Department should commit to a timeline to implement a smoke-free prisons policy within Western Australia's prisons

2 Exposure to smoke remains unmitigated

Second-hand smoke exposure remains a relatively unmitigated risk within Western Australian prisons. The mitigations that are in place are largely ineffective in reducing risks. Most staff feel exposed daily and feel prisons should be doing more to control smoking. Most prisoners also feel exposed daily. However, many feel reliant on smoking as a mood management tool and overwhelmingly prisoners surveyed did not support a ban. Prisoners also do not feel supported or incentivised to quit. Despite evidence of non-compliant smoking occurring regularly, reporting of prisoners is not consistent and Local Orders are proving ineffective.

2.1 Most staff feel exposed to smoke daily

Over two thirds of staff feel exposed to smoke daily. While 53 per cent felt the prisons have attempted to minimise their exposure, 73 per cent felt prisons should be doing more to control non-compliant prisoners. Staff said they felt exposed walking through units, inside prisoner cells, in recreation areas, near designated smoking areas, and when walking around prison grounds. Staff exposure to second-hand smoke is evident at every facility. And while the level of exposure has not been assessed since the 2015 WorkSafe investigation, staff are aware of its unmitigated presence, illustrating a clear failure of policy.

Despite the prevalence of staff exposure to smoke, the reporting of smoking-related occupational safety and health (OSH) incidents has declined. Between 2015 and 2020, there were 46 smoking-related OSH incidents reported by staff. Nearly half of these occurred in 2015 and 2016 at Hakea Prison (24), which was the primary subject of the WorkSafe investigation. The remaining incidents were spread across the years and prisons. No further reports have been lodged by staff at Hakea since 2016. More than half of the incidents (25) referred to staff being exposed to smoke in enclosed areas. Another 19 referred to inhaling smoke after entering a prisoner's cell. On two occasions, an officer had tobacco smoke blown directly onto their face by a prisoner.

There has been no attempt to my knowledge within the last year to reduce the amount of smoke that staff are exposed to in my area of the prison. It seems as though we are just expected to deal with it as a regular daily occurrence and it is quite frankly a disgrace and a risk to all of our health.

Comment from a staff member

In response, a few prisons have made substantive changes to better protect staff. Some prisons have made minor adjustments to local policy or designated smoking areas. More commonly, staff were reminded of their responsibility to enforce Local Orders. While staff must accept some level of personal responsibility for their safety, this response is dismissive of the Department's broader responsibility to provide a safe working environment. The response also fails to acknowledge the difficulties staff have with enforcing compliance with Local Orders. Indeed, a few prisons noted the only true solution was to ban smoking in prisons.

With no evaluations or reviews into the Department's Smoking Reduction Strategy, and no monitoring of compliance with Local Orders, the Department is not able to fully understand the

effectiveness of current policy and the daily risks staff face. To a large extent, the Department is operating blind. Without this knowledge, it is inherently unfair to deflect the onus of responsibility back to prison staff.

It remains the Department's responsibility to ensure that its staff are provided with a safe working environment. Local Orders have proven relatively ineffective in mitigating the risk of staff exposure to second-hand smoke. If the Department cannot effectively mitigate this risk through smoking reduction policies and disciplinary actions, then emphasis should be placed on progressing a smoke-free prisons policy. In the interim, reviewing all smoking-related policies and strategies will go to informing short-term actions that can protect staff from second-hand smoke exposure. These actions should be monitored and evaluated for their effectiveness.

Recommendation 2 – Review the effectiveness of smoking-related policies and strategies to inform immediate actions that can better protect staff from exposure to second-hand smoke

Recommendation 3 – Develop and implement a monitoring framework to measure the ongoing success and effectiveness of actions taken under Recommendation 2

2.2 Local Orders are not being enforced consistently

Each prison¹ has a Local Order that outlines designated smoking areas and disciplinary actions for non-compliance. The specific designated smoking sites are generally listed or shown on maps. Most outline the requirement for staff to explain the regulation to prisoners during the reception or induction processes, and during orientation. However, the Local Orders are not consistently enforced. We found smoking inside cells and in non-designated areas was common in all prisons. Nearly 58 per cent of staff surveyed observed prisoners smoking in non-designated areas daily.

However, this finding is not visible in departmental data on smoking-related incidents.

We evaluated a sample of 172 smoking-related incidents from 2020. Of these, 35 per cent related to the discovery of smoking related instruments and 34 per cent related to smoking in non-designated areas. Acacia Prison reported a disproportionately high number of incidents relating to the discovery of smoking instruments. Removing that data, smoking in non-designated areas becomes the most prominent incident type recorded state-wide (53%). This is despite seven out of the 17 Western Australian prisons not recording a single incident in this category. Smoking inside cells, which is known to be common in most prisons, only represented 19 per cent of the incidents. This suggests inconsistencies in reporting across sites or in the ability to extract accurate data, or both.

Identifying the responsible person in a double occupancy cell may, in part, explain why so few smoking in cell incidents are recorded. The Local Orders at Hakea Prison, Pardelup Prison Farm, and Wooroloo Prison Farm make it clear that evidence of smoking in non-designated areas must be attributable to a single prisoner. Referring to the 'Balance of Probability' principle, the Local Orders say if an officer finds a cell filled with tobacco smoke but did not see who was smoking, they are

¹ Except Melaleuca Women's Prison, which has yet to develop a Local Order on smoking since returning to public management in 2020.

unable to report the incident and take disciplinary action (DCS, 2015C; DCS, 2015D; DOJ, 2019B). If this principle is applied across all prisons where smoking is detected in a shared cell, it may explain why there are so few recorded incidences of smoking in cells and in non-designated areas.

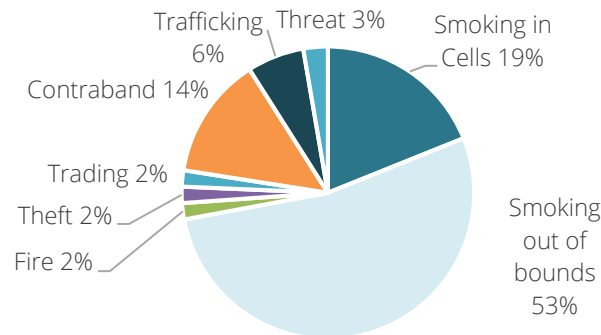


Figure 2: Prevalence of smoking-related incidents across all prisons (2020).

Of the 172 incidents sampled, 21 related to prisoners being caught smoking inside their cell. Of these, 20 involved the officer clearly identifying the perpetrator. Nearly half (46.4%) of staff surveyed said they never reported smoking incidents if they were not clear which prisoner was responsible. Arguably, this is the procedurally fair approach to take. With most prisoners now residing in shared cells, on most occasions it will be difficult for staff to identify a culprit and enforce smoking regulations. Only one incident involved two prisoners charged for smoking, despite the officer not being able to identify which prisoner was responsible. Both prisoners denied responsibility.

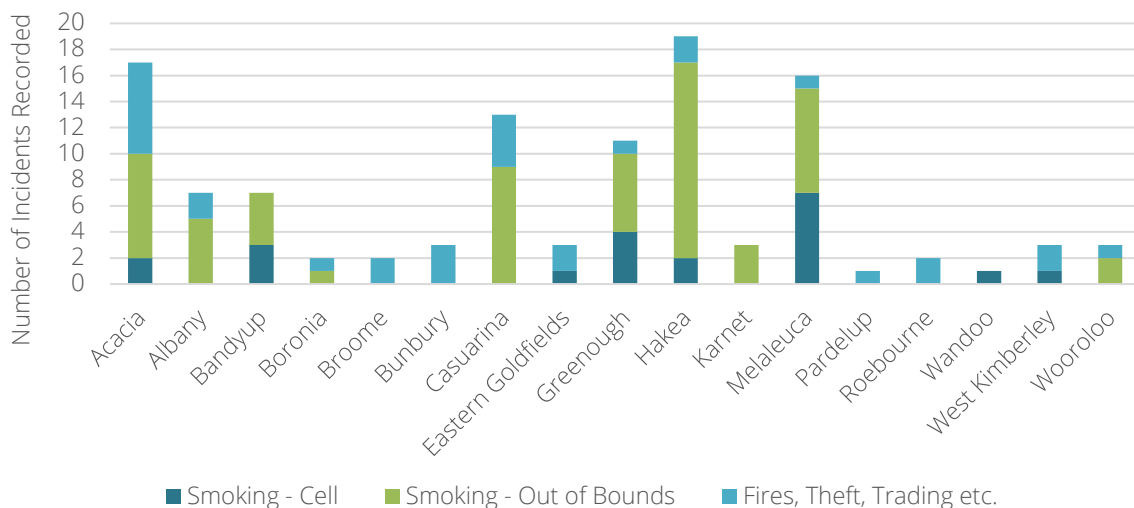


Figure 3: Breakdown of smoking-related incidents across each facility (2020).

We also received advice that staff feel unsupported when reporting smoking related incidents. Throughout the staff survey there were a range of comments suggesting prison management, at various levels, inconsistently enforce disciplinary actions. A culture of lax enforcement also appears to emanate from all levels of management. As a result, some staff appear disinterested in reporting incidents.

Got smoking huts but rarely enforce as management don't seem to care. We don't really bother now as it is pointless, we charge them and superintendent throws it out at supers parade or give "another" verbal reprimand [sic]...

- *Comment from a Prison Officer*

Nothing, Management lacks the will to enforce rules as it is unpopular. Staff don't want conflict.

- *Comment from a Prison Officer*

Rules are in place but not encouraged or enforced by management.

- *Comment from a Prison Officer*

Management at the Prison are only interested keeping the prisoners happy by letting them smoke. I have witnessed our superintendent rolling a cigarette for a prisoner whom had made threats to harm and even kill staff as a bribe to control the prisoner.

- *Comment from a Prison Officer*

I think management are scared of rioting and changes that may cause issues.

- *Comment from a staff member*

Prisoners pretty much smoke everywhere, rules aren't enforced because if you try to punish them there isn't much backing from management.

- *Comment from a Prison Officer*

Some Officers feel that smoking in a non-designated areas is looked at as a minor issue by management and enforcing it will be viewed negatively by management so are reluctant to enforce rules related to it.

- *Comment from a Prison Officer*

Enforcement is also not always a high priority for staff. Many respondents stated they either do not have the time or have other more pressing issues to deal with. This was also raised as an issue by WorkSafe following the completion of their investigation in 2015 (Fry, 2015). Some staff have expressed that other staff often turn a blind eye to prisoners seen smoking, and only act if there is a blatantly public or deliberate offence. One staff member noted in their survey,

The current smoking reduction policy relies on applying LOPs [Loss of Privileges] to prisoners who contravene the policy, this in turn is added workload and responsibility on already stressed and busy staff to apply and monitor. The punishment is also a punishment toward staff in that it creates extra workload for them thus a reluctance to enact the policy rather reserving it for only Blanca [sic] the extreme circumstances.

When surveyed, 23.5 per cent of staff said they never report prisoners found smoking, 19.8 per cent rarely reported these incidents and 21 per cent reported them sometimes. Only 12.6 per cent said they always report.

We also found a noticeable decline in the number of LOPs given to prisoners for smoking-related offences between 2013 and 2020. In 2015, LOPs for smoking incidents peaked at 416. Almost two thirds (63%) of these were issued at Hakea, the primary subject of the WorkSafe Improvement Notice and air quality investigation. Since 2015, LOPs have dropped to as low as 133 in 2019, with Hakea reporting only 22. With a relatively steady population of active smokers during this time, it is unlikely that prisoners have become more compliant. Rather, this decline is more likely explained by the anecdotal evidence we received, and the comments made by WorkSafe in 2015, that staff find reporting such incidents too time consuming, not a high priority, and difficult to enforce.

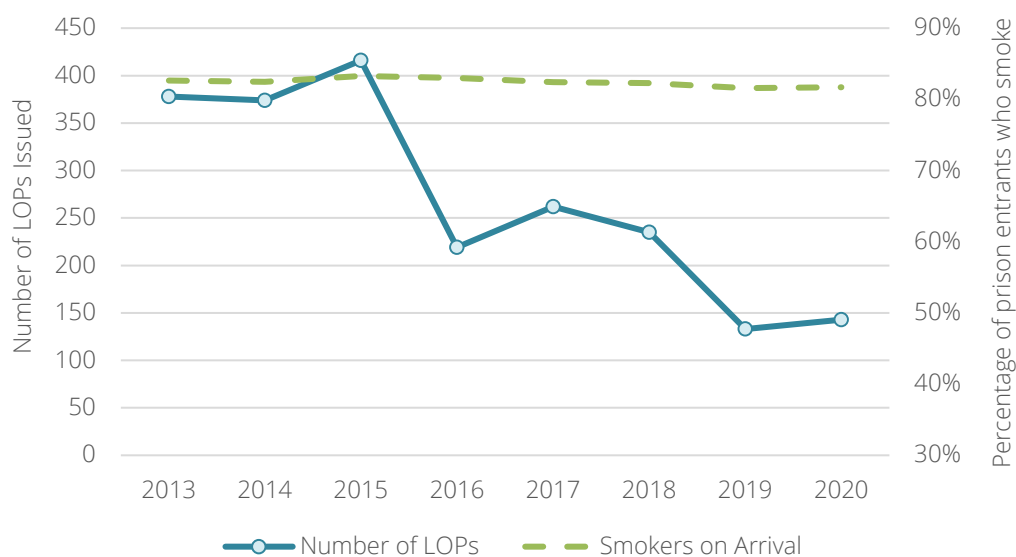


Figure 4: Annual figures for LOPs issued to prisoners caught smoking in non-designated areas (2013–2020).

Failure to report smoking-related incidents and provide appropriate disciplinary action could have the effect of such behaviour appearing to be tolerated. This comes at the expense of the health and safety of other prisoners and staff, who claim to be regularly exposed to unregulated second-hand smoke. Without accurate data on non-compliant smoking activity, the Department is unable to

ascertain the extent of the risk presently faced by staff and other prisoners, and the efforts required to mitigate that risk.

Additionally, most Local Orders stipulate that first offences against smoking restrictions result in a verbal warning and a written note on the departmental database. This data cannot be extracted for analysis further limiting our understanding, and the Department's, of this issue.

2.3 Prisoners feel exposed, but do not support a ban

Prisoners are being exposed to second-hand smoke daily. Seventy-six per cent of prisoners surveyed stated they were very frequently or frequently exposed to other prisoners' tobacco smoke. Non-smokers were more aware of their exposure than smokers:

- 83 per cent claimed to be exposed very frequently or frequently compared to 64 per cent of smokers
- 73 per cent had also been paired with a cell mate that smoked in their cell after hours
- Of these, a third had requested a cell change but only 10 per cent were moved.

Despite this awareness of second-hand smoke exposure, most prisoners surveyed did not support a ban on smoking:

- 63 per cent did not support a ban, including 48 per cent who were outright opposed
- 53.4 per cent of non-smokers were very supportive or supportive of a ban
- only 15.5 per cent of smokers were in support
- 40 per cent of women were very supportive or supportive compared to only 20 per cent of men.

These results do not come as a surprise. For many prisoners, smoking provides perceived stress relief benefits, is a social activity, and a symbol of freedom in a tightly regimented environment. Exposure to second-hand smoke is not likely to be a significant concern for most. Indeed, most respondents opposed to a ban commented that removing tobacco would significantly disrupt prison life, creating additional tension among prisoners and staff, and increased aggression. Some prisoners even expressed concern they, or others, would self-harm if tobacco were removed. We acknowledge these concerns and the potential impact a ban would have on prisoners reliant on smoking as a coping mechanism.

Those who supported a ban were more aware of the issues smoking brings to prisons, and the difficulties prisoners face when trying to voluntarily quit.

It would cause an uproar. There would be a risk in violence and less tolerance of people. Most use smoking to keep their feelings in check.

Riots will occur. I don't do drugs, I smoke to relax. It is my one last freedom I have in prison.

Don't do it. Run quit campaigns and make nicotine products more available.

I would feel angry like most people would and I wouldn't know how to keep calm.

Highly support it. Would decrease crime in prison involving tobacco trade.

Comments from prisoners

2.4 Smoking reduction efforts are failing

Pharmacological supports are either underutilised or inaccessible

Should a prisoner wish to quit, the nurse will typically recommend they use nicotine replacement therapy (NRT) patches. For a period after the WorkSafe investigation, patches were provided for free and managed by each prison's Health Services. But prisoners were found to be hoarding and misusing patches, and so this program was discontinued. To mirror over-the-counter NRT available in the community, prisoners now purchase patches from the canteen.

Patches are available as part of a three-step program, where the nicotine is reduced from 21 mg per patch, to 14 mg and then 7 mg over several weeks. The products are available at a lower price than in the general community. If being supported by Health Services, follow-up appointments are scheduled to track the progress of the prisoner's quit attempt and to provide ongoing support and guidance. However, this support is not guaranteed and can often depend on the capacity of health staff. Prisoners can also choose to quit without Health Services support.

None at all, was told to read a book "How to quit smoking". It was pathetic.

Comment from a Hakea prisoner

Most prisoners told us they did not feel there was enough support for them to quit. Half of prisoners surveyed felt that supports were unhelpful while 54 per cent felt there were not enough support options. Of those who had attempted to quit while in prison, the majority went cold turkey. Sales of patches have been stagnant over the past three years, with 4,457 units sold in 2018 and 4,503 in 2020. The NRT available does not appear to be incentivising prisoners to quit.

The Cancer Council WA has recommended to the Department that, while smoking is still permitted in designated areas, nicotine lozenges be made available to enable prisoners to manage acute cravings. They note lozenges are approved for prison use in other Australian jurisdictions and formed a key part of New Zealand's successful smoke-free prisons policy. Where lozenges have been misused, this has occurred in smoke-free prisons where there is a heightened demand for nicotine. Mitchell et al. (2019) also argues lozenges are an important NRT tool in prisons that create fewer risks than smoking traditional cigarettes.

Gum, lozenges, and sprays are not available to purchase within Western Australian prisons. This is despite research suggesting combination NRT that includes sustained longer-acting (e.g. patches) and shorter-acting forms (e.g. gum, lozenges and spray) are more effective than simply using one form on its own (U.S. Department of Health and Human Services, 2020). The Department has determined shorter-acting forms have a greater risk of misuse and they are difficult to monitor. However, shorter-acting NRT can manage acute withdrawal symptoms and warrants re-investigation to give prisoners the best opportunity of success at quitting or reducing smoking habits.

Recommendation 4 - Introduce nicotine lozenges into prison canteens across Western Australia

Champix was considered cost prohibitive by prisoners, but it is now much cheaper

Varenicline, known commercially as Champix (or Chantix overseas), is available to prisoners but was inaccessible for most due to cost. The medication is an alternative pharmacological cessation tool in the form of a pill that blocks the effects of nicotine in the body. Unlike NRT patches, Champix requires a prescription and authorisation from the Director Medical Services.

When conducting surveys, many prisoners knew of Champix and mentioned they would like to try it, but the cost was too expensive. The initiation pack cost \$74.51 and the maintenance pack was a further \$87.85. Prisoners cannot access subsidised medications under the Pharmaceutical Benefits Scheme (PBS). Medications prescribed for chronic disease, infections and illicit substance withdrawals are all subsidised by the Department to ensure prisoners have access. Champix remained one of a few medications not subsidised.

When we queried why this was the case, the Department argued that offering the medication for free was too dangerous and would create an unwanted precedent for its use. Champix has been linked to a range of psychiatric side-effects including depression, agitation, aggression, thoughts of and actual self-harm and suicide. In 2017, a Queensland Coroner found the medication had contributed to the suicide of a young man with pre-existing mental health conditions, soon after he commenced taking the medication (McMillen, 2017). However, studies investigating such claims have found the medication does not significantly increase psychiatric symptoms in people with or without pre-existing psychiatric disorders (Greenhalgh, Dean, Stillman, & Ford, 2021).

In May 2021, the Department's Drug and Therapeutic Committee agreed to subsidise Champix and its alternative, bupropion, to align with community subsidisation under the PBS. This meant the price reduced to \$41.30. We commend this decision.

Recommendation 5 – Ensure all prisoners are informed on the suite of nicotine replacement therapies and pharmacological supports available to them while in prison

Limited delivery of education and quit campaigns

Education and awareness on the health impacts of smoking and the most effective ways to quit can prompt people into taking the initial steps to quit. However, throughout the prison estate, prisoners and staff are provided with few opportunities to learn about the risks of smoking and how to help themselves, and others, break free from the habit.

Since approximately 2014, the Department's Health Services Division has taken a less proactive approach at providing education and awareness on the risks of smoking. Information available to prisoners is now generally limited to any one-on-one discussions with health staff, brochures and posters, or if they choose, Quitline. There are no known education or awareness raising supports available specifically for staff.

In lieu of Department-led initiatives, Smoke Free WA and the Cancer Council WA are helping. Together they have provided information sessions and developed prison-specific booklets and posters to encourage prisoners to quit. Cancer Council WA has also developed and run programs at

West Kimberley Regional Prison, specifically targeting First Nations peoples. The Derby Aboriginal Health Service also runs the 'Nuff to the Puff' and Tackling Indigenous Smoking programs at West Kimberley. The Mawarnkarra Health Service Aboriginal Corporation also runs this four-week program at Roebourne Regional Prison. However, the delivery of the program has been limited due to staffing issues and COVID-19.



Figure 5: Quit smoking poster outlining the financial benefits of quitting (Make Smoking History, 2021A)



Figure 6: Pages from the Cancer Council's 'Trash the Ash' booklet for WA prisons (Make Smoking History, 2021B).

Cancer Council WA has also worked with Acacia Prison, Boronia Pre-Release Centre, and Wooroloo Prison Farm after staff requested further assistance. Custodial staff at these prisons have been supported to implement a range of measures and campaigns, including 'Stoptober' at Wooroloo and the quit program 'Yarn it up, don't smoke it up!' at Boronia. These programs provide prisoners the knowledge and support to take the steps required to quit and give staff the confidence to speak to prisoners about quit options. This relationship between custodial staff and the Cancer Council reflects the diminishing role of Health Services in providing smoking cessation services and suggests that managing smoking, and the issues it brings within prisons, has become a custodial issue.

However, this piecemeal approach is detrimental to the health and wellbeing of prisoners and staff. We were advised Health Services' decision to no longer proactively arrange quit smoking information sessions and campaigns within prisons was due to limitations on staffing capacity. Access to NRT was de-medicalised around the same time, becoming directly available through the canteen rather than prison health clinics. This shift has led to outside organisations filling the void, providing awareness raising initiatives on an ad hoc basis and with even limited resources than the Department.

Case study: Wooroloo

Officers at Wooroloo have taken a proactive role in increasing the range of smoking cessation supports and quit smoking campaigns at the facility. An officer reached out to the Cancer Council for assistance and became the policy champion that drove a range of initiatives, including 'Stoptober' – the first stop-smoking event in a Western Australian prison. Prisoners designed posters advertising the event, with some including information about what other products they could purchase from the canteen at the same value as tobacco. At the event, prisoners were given information and support about quitting. Their carbon monoxide and lung function capacity were measured, and their weight and blood pressure recorded for later comparison. Prisoners could sign up for a smoking support group, get-fit programs, and other activities to distract from cravings. Those who signed up received a positive note on their file.

A range of follow-up initiatives were also implemented. This included converting half of the smoking huts to 'fresh air huts' to give non-smokers and those seeking to quit an outdoor covered area that was free from exposure to smoke. Peer support prisoners and up to 55 staff received training from the Cancer Council, giving them the knowledge and skills to help others quit.

The impact of this work can be seen in canteen sales data that shows a reduction in the number of tobacco products purchased from 37,416 in 2018 to 31,016 in 2020, despite the prison population remaining steady. Sales of NRT patches increased from 451 units in 2018 to 676 units in 2020.

Policy champions within prisons, such as Wooroloo, have also led to the development of some very effective awareness raising initiatives and quit smoking campaigns. These staff should be commended for proactively assisting prisoners. However, the long-term prospects of these programs are vulnerable to changes in staff or commitment from local management. In lieu of systemic policy changes, the Department's Health Services should regain responsibility for the provision of quit smoking information and awareness raising initiatives. This will ensure all prisons have access to a baseline level of support to be built on and customised by local policy champions and third-party organisations.

Recommendation 6 – Introduce a suite of new smoking awareness initiatives across the prison estate to enable prisoners and staff to make informed decisions about their smoking behaviours

3 Smoking creates unique risks in prisons

With the presence of tobacco in prisons come a range of unique risks. The demand for tobacco is known to increase the risk of harassment, violence and bullying among prisoners. Ongoing increases to the price of tobacco have, and will continue, to cause difficulties for prisoners and place further financial pressures on outside family and contacts. The risk of these physical and financial harms will only be exacerbated as prices increase, and more prisoners take on tobacco debts. Further, arson and cell fires will continue while tobacco and cigarette lighters are permitted, placing other prisoners and staff at considerable risk. Staff who use tobacco as a management tool also place themselves at risk of manipulation and coercion. These risks, and potentially others, will continue to present themselves while smoking is allowed inside Western Australian prisons.

3.1 Smoking causes financial harm to prisoners and their families

Currently, tobacco is not affordable for prisoners on Level 2 gratuities or below. This equates to 82 per cent of the prison population. The average cost of a 25-gram pouch of the most popular tobacco product across all prisons is \$56.80 (as at 15 March 2021), which is slightly higher than the Level 2 gratuity rate of \$55.44 a week. This also does not consider the cost of lighters, papers, and filters. The weekly rate of a Level 5 prisoner does not cover half the cost of a 25-gram pouch of tobacco. On top of funding their tobacco supply, prisoners are also required to use their gratuity payments to purchase additional sanitary and hygiene products adding pressure to their weekly budget. As such, most prisoners simply cannot afford tobacco using gratuities alone.

Gratuities rates per week

| | |
|----------|-----------|
| Level 1 | – \$72.45 |
| Level 2 | – \$55.44 |
| Level 3 | – \$43.47 |
| Level 4 | – \$30.80 |
| Level 5 | – \$22.75 |
| Level 23 | – \$92.47 |

Many prisoners rely on private cash deposits to afford their tobacco, which may place financial pressure on relatives and outside contacts. Over the past five years the amount of private cash deposited has increased at a similar pace to increases in tobacco-related expenditure across prison canteens. Private cash deposits have risen from \$10.3 million in 2016 to \$13 million in 2020. Similarly, tobacco-related expenditure has risen from \$6.8 million in 2016 to \$10.1 million in 2020. These increases are despite the average daily prison population remaining stagnant for the past three years, and despite the volume of tobacco products decreasing from 558,000 units in 2016 to 521,000 units in 2020. In the absence of a contrary explanation, it is reasonable to assume that the increased expenditure reflects Government-led pricing increases to tobacco products. Accordingly, as the price of tobacco increases, so does the potential for financial stress on outside relatives depositing private cash. It follows then, that those prisoners without access to private funds may instead rely on trading, gambling or taking on debts to fulfil their tobacco needs or harassing and humbugging off other prisoners.

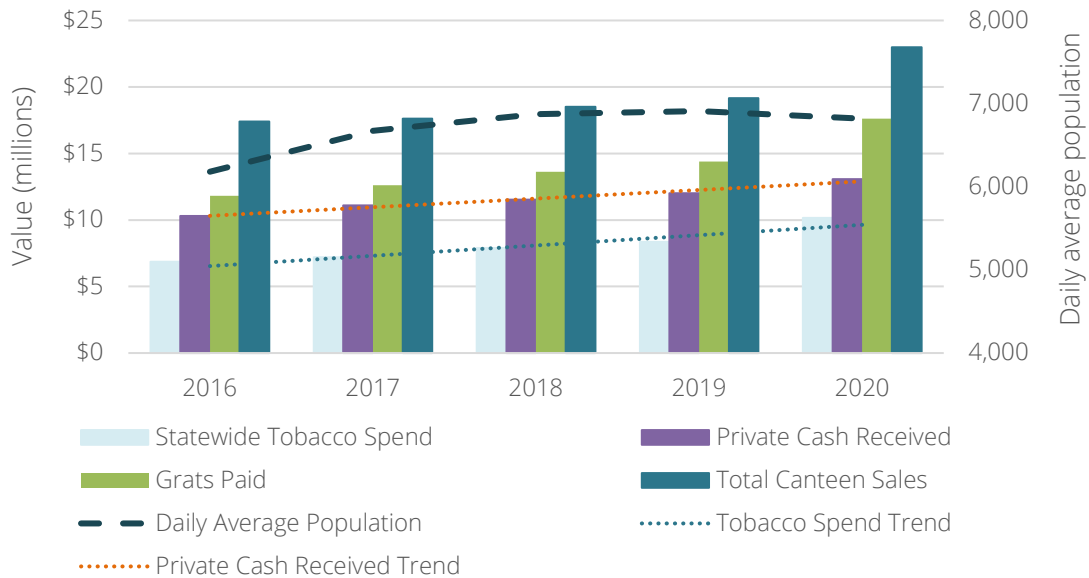


Figure 7: Comparison of annual increases in state-wide canteen sales, tobacco sales, gratuities paid, and private cash received (2016-2020).

Financial impacts may be felt more by Aboriginal families. Prisons with a higher First Nations population generally had higher average tobacco spends per prisoner in 2020 compared to the state average and prisons with fewer First Nations peoples. West Kimberley Regional Prison (90% Aboriginal), Roebourne Regional Prison and Broome Regional Prison (both 85% Aboriginal) had an average tobacco spend per prisoner of \$1,504, \$1,646 and \$1,662, respectively, compared to an average of \$1,446 across the state. Conversely, Pardelup Prison Farm (10% Aboriginal), Wooroloo Prison Farm (12% Aboriginal), Karnet Prison Farm (14% Aboriginal) and Boronia Pre-Release Centre (19% Aboriginal) had lower average spends per prisoner at \$881, \$1,381, \$1,184, and \$1,103. With the pricing of tobacco products at these prisons relatively similar, the higher average spends at West Kimberley, Broome and Roebourne suggests greater usage and dependency for those placed there, whom are predominantly Aboriginal. This would have a flow on financial impact on Aboriginal families, who deposit private funds into prisoners' accounts to purchase tobacco products.

Culturally, First Nations peoples are more inclined to support the wellbeing of their family than grow their own personal wealth. Sharing resources is considered a cultural norm. Research has found three quarters of First Nations people give money to their family and friends, even if it puts them in a more difficult financial situation (Weier, Dolan, Powell, Muir, & Young, 2019). As such, the financial pressures of smoking in prison are also likely to be felt by families outside supporting them.

3.2 Tobacco increases risk of harassment, violence, and bullying

We consistently heard from staff that the supply and trade of tobacco regularly leads to prisoner aggression and bullying. However, we found relatively few recorded instances of violence, aggression, and bullying that were specifically in relation to tobacco or smoking.

We examined 172 smoking-related incidents from 2020 and found only seven relating to tobacco trafficking, three relating to threats being made to others or threats of self-harm, and two incidents relating to trading. In one case, two prisoners claimed they were fearful of violence from another prisoner because they had a tobacco debt with them. In another, a prisoner had demanded 'smokes' from another prisoner and vandalised their television after claiming they had none to give. The prisoner surrendered his tobacco to the other prisoner, and then reported the incident to an officer.

The lack of data likely reflects the elusive nature of trading and bullying inside prisons. Incidences may not always be visible to staff and prisoners may be reluctant to report for risk of retribution. It may also be difficult for officers to identify tobacco as the primary cause of violence or bullying.

Similarly, we were advised that trading and borrowing of tobacco was common. Several prisoners surveyed discussed how they traded lollies, chocolates, toiletries, and drink tokens for tobacco. One prisoner described trading their entire canteen spend for tobacco. Staff survey respondents noted prisoners regularly trade for canteen items, favours, and contraband. One staff member commented,

Never observed, but prisoners have told me it was happening. One big ticket item was paying "An ox" to get your parole plan written and typed up by a more literate prisoner.

Trading often leads to debt-related violence and bullying. Prisoners who borrow tobacco are often required to pay back double or triple that which was borrowed, leading to debt-related incidents. Prisoners with cognitive impairments incapable of rationing their supplies and those with no access to private cash may be more vulnerable to accruing insurmountable debts.

We found only 21 incidents between 2015 and 2020 involving debts relating to tobacco. These included prisoners stockpiling tobacco to trade and sell, prisoners keeping tobacco 'debt lists', tobacco gambling debts, and prisoners receiving threats or being assaulted for their outstanding debts. In several instances, prisoners requested to be placed in protection fearing assault for unpaid debts. These are the known incidents and shed some light on the types of tobacco-related incidents likely to be occurring but not being observed and reported.

However, the true extent of smoking-related violence and bullying remains hard to gauge. Therefore, it remains difficult for staff to pre-emptively mitigate or to protect vulnerable prisoners unless they come forward. One staff member noted they are often only aware of a prisoner being stood over when they are seen with a black eye. Similarly, with insufficient data the Department can only rely on anecdotal evidence to understand the risks associated with allowing tobacco within prisons.

3.3 Smoking creates an ongoing risk of arson

Smoking and cigarette lighters in prisons provide ongoing opportunities for fires, putting prisoners and staff at risk. Throughout 2020 there were 55 recorded arson incidents which included 46 deliberately lit fires and nine threats of arson. Of the 46 fires, 39 were inside cells where mattresses, doonas, paper, and other flammable material were lit. It was not always clear how the fire was started, but many report sighting a cigarette lighter. There are very few other ways a prisoner can light a fire in their cell other than tampering with electrical devices or power points, which was not mentioned in any of the 55 incidents. However, one incident noted a prisoner created a fire by using a lead pencil.

Forty-four per cent of arson incidents in 2020 occurred at Hakea Prison and 41 per cent of these were cell fires in Unit 1, the prison's management unit. Hakea is primarily a remand prison. As a result, there is a heightened level of distress and volatility among its prisoners. Those residing in Unit 1 typically require an increased level of supervision as a result of their behaviour. Some are confined in a cell for up to 23 hours, depending on their regime (OICS, 2019). Evaluating incidents in Unit 1, the prisoners were often disruptive, aggressive, and frequently used secreted lighters to start cell fires to act out and instigate disorder in the unit. Half of these incidents led to a code red being called, the involvement of a dozen or so officers, evacuations of other prisoners, power supplies being switched off, and fire authorities attending the site. These incidents not only put staff and prisoners at risk, they cause interruption and are a strain on prison resourcing.

Case Study: Cell fire and staff assault at Hakea Prison

At 2.05 pm staff observed bright orange flames in a prisoner's cell. The prisoner was residing in Hakea's Unit 1 and had lit a fire after internally secreting a cigarette lighter. A code red was called.

Staff secured prisoners from the other wings before evacuating themselves from the unit. After obtaining the relevant firefighting equipment and breathing apparatuses, staff returned to extinguish the fire. Other prisoners complained of breathing difficulties, and so were restrained and removed from the wing for a health check.

The prisoner responsible for the fire was removed from cell and escorted to a safe cell. During this time, he was non-compliant, threatening to harm staff, and tried to spit on them. During a struggle the prisoner head butted an officer to their head.

The incident concluded at 4.45 pm and involved 15 custodial and health staff.

The removal of cigarette lighters from prisons can mitigate the risk of future arson incidents. Jurisdictions that have implemented smoke-free prisons where lighters are banned have reported reduced rates of fire related incidents. At a youth prison in the United Kingdom, fire incidents decreased from 27 in the first 10 months of the previous year to a single incident following the introduction of a smoking ban (Kipping, Martin, & Barnes, 2006). In New Zealand, there were 18 arson incidents in the month before the policy was enacted, four in the month after and only one the following month (Collinson, Edwards, & Thornley, 2012).

Restricting access to lighters alone has not worked in Western Australian prisons. During the Greenough Regional Prison smoking reduction trial, smoking was banned inside cells and lighters became contraband items. Prisoners could only light their cigarettes using an external wall-mounted lighter, but they still had access to their tobacco at night in their cell. This led to the creation of homemade lighters and other unorthodox attempts to light cigarettes when locked in (Highfield & Read, 2008). Wicks made from mop head fibres and wound-up toilet paper were lit to create a slowly smouldering ember for use during the night. Metal objects were inserted into power points to create sparks, often causing Residual Current Devices to trip and interrupt the power supply to adjoining cells. Co-axial cables were also stripped and used to create a light.

The removal of cigarette lighters at Greenough did not remove the risk of fire. This risk will remain while smoking is permitted in any part of a prison, and prisoners have access to lighters or have a need to create a light.

3.4 Staff continue to use tobacco to manage disruptive and aggressive prisoners

Throughout the staff survey it became clear that some staff were continuing to use tobacco as a tool to manage disruptive and disorderly prisoners. When speaking directly with staff, many were aware of others using tobacco to manage the behaviour of some prisoners but felt the practice was no longer being used. Despite this, 26.7 per cent of staff surveyed claimed the practice was still occurring regularly, and nine per cent said they observed the practice daily. Survey respondents commented the practice was commonly used to help:

- manage the moods and disruptive behaviour of prisoners with severe mental ill-health
- negotiate outcomes, particularly with prisoners threatening self-harm or suicide
- those withdrawing from illicit substances
- prisoners with cognitive impairments better ration their supply of tobacco
- calm prisoners down when they receive bad news from court or families.

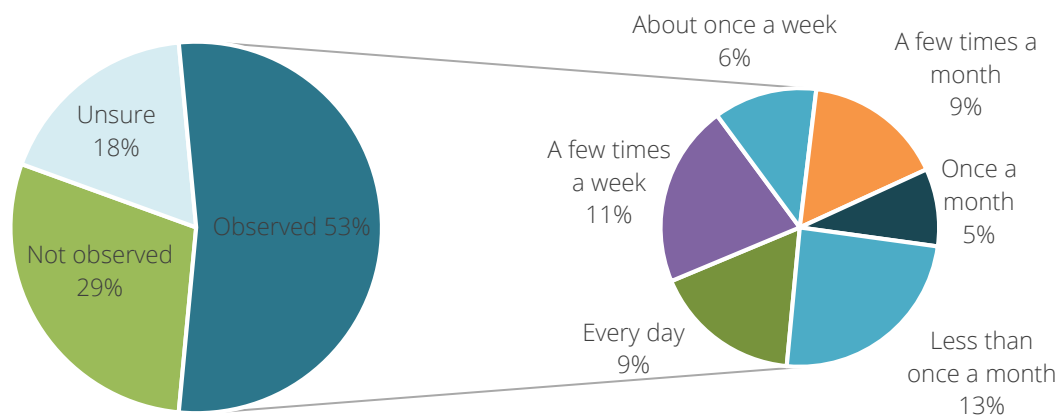


Figure 8: Proportion of staff respondents who viewed tobacco being used as a behaviour management tool

Cigarettes and tobacco were also reportedly used to build rapport with prisoners, and as an incentive to clean cells, share information, or complete other tasks. One staff member commented,

Unit Managers in maximum security units will have a packet of smokes in their drawer to give to new arrival prisoners who haven't had canteen or don't have money. Staff will control the spending of some prisoners canteen and grats [sic], to ensure they buy smokes, as bumming smokes off others increases the temperature of the unit. Some prisoners are so damaged, they have no control over their smoking, so unit Staff must also hold and control the rationing of their smokes. Many times have I seen tobacco or smokes used as a tool for managing an aggressive prisoner.

Using tobacco as a management tool is risky. Staff risk developing, or being accused of developing, relationships with prisoners where they may be coerced or manipulated. Prisoners may also intentionally act out to receive tobacco. Removing tobacco from prisons removes these risks. However, staff need to be adequately trained and feel suitably equipped to de-escalate situations without the use of tobacco as a management tool.

Recommendation 7 - Review de-escalation training and provide regular opportunities for staff to refresh their understanding of de-escalation techniques

4 Developing a case for a ban

There is a strong case for the consideration of a smoking ban in Western Australian prisons. As the price of tobacco continues to increase, so will the risks of bullying, aggression, and stand overs. Local Orders have proven to be an ineffective mechanism to control smoking and protect staff from second-hand smoke exposure. It is also unlikely that we will see a decline in the number of smokers, enough to mitigate the existing risks.

Smoking bans have proven to be successful across Australia and internationally. The transition to smoke-free can be smooth when implemented with clear communication and support for prisoners and staff. There are also notable improvements in health and safety, which assist in mitigating legal risks for the Department.

4.1 Existing smoking regulations are ineffective

The use of Local Orders to regulate smoking and mitigate smoking-related risks is proving to be ineffective. As discussed earlier, staff inconsistently apply Local Orders and feel unsupported by management in enforcing disciplinary actions. Staff observe non-compliant smoking daily, and it is openly accepted that prisoners break Local Orders by smoking inside their cells.

Some prisons are also failing to maintain relevant and up to date Local Orders. For example:

- Acacia, Broome, Hakea, Pardelup, Roebourne and West Kimberley produced or updated their Local Orders more than five years ago.
- Roebourne refers to free NRT being issued by the Health Centre – a practice confirmed by the prison to no longer occur.
- Acacia and Roebourne are inconsistent with, or silent on, the policy notice detailing specific requirements for designated smoking areas.
- Acacia gives the Director, or their delegate, the authority to allow prisoners to smoke in cells if they are experiencing acute mental illness or extreme nicotine withdrawal (Serco, 2012). The evaluation of the Greenough trial found this practice unlawful (Highfield & Read, 2008).

A state-wide smoke-free prison policy would provide consistency across all facilities. In the interim, it is critical that Local Orders reflect contemporary practice and legislative requirements on smoking.

Recommendation 8 – Ensure all Local Orders regulating smoking within prisons are consistent with contemporary practices and current legislative requirements

4.2 Voluntary quitting in prison is too difficult

Prisoners find it very difficult to voluntarily quit smoking while in prison. Smoking is a key part of daily prison life and culture. It is perceived as a social activity, a mood management tool, and a coping strategy for those withdrawing from other substances. Any notion that voluntary quitting is an effective strategy to reduce staff exposure to smoke is inherently flawed.

Prison settings also present unique challenges for prisoners interested in quitting. The significantly higher proportion of smokers within the prison population means many find themselves regularly

surrounded by other smokers and exposed to other people’s smoke. This can trigger nicotine withdrawal symptoms. The stress of prison life also exacerbates a prisoner’s smoking behaviour. For some, this had led them to take up smoking while in prison simply to cope. One prisoner noted they quit for a year while in a smoke-free prison in South Australia, only to take up the habit again when entering Hakea Prison. Six per cent of respondents had taken up smoking while in prison and now smoke an average of almost 13 cigarettes per day.

Where smoke-free policies are implemented, prison can provide an opportunity to reset and focus on quitting in a controlled environment.

4.3 The cost of tobacco will continue to rise

It is likely that the cost of tobacco will continue to rise, placing further pressure on prisoners with nicotine addiction. The Commonwealth Government’s tobacco excise has increased annually by 12.5 per cent between 2013 and 2020 (Department of Health, 2018). With increased prices, come increased risk of the financial and physical harms. Tobacco will therefore create ongoing management issues for prisons and custodial staff as accessibility to tobacco is reduced, and demand is increased.

Prisons are also failing to keep up with changing prices and often charge lower than retail or cost prices. We found the 25-gram pouch of the most popular tobacco product currently being sold for less than the online price at Coles (\$60.95) and Woolworths (\$59.25) at each prison except two. Eastern Goldfields Regional Prison (\$51.61), Roebourne Regional Prison (\$49.55) and West Kimberley Regional Prison (\$52.65) were more than 10 per cent cheaper than the rate at Woolworths. Between 2015 and 2020, we also found 139 time periods where the sell price did not cover the cost plus GST and 19 periods where the sell price was at or below cost price. Conversely, Albany Regional Prison has, at times, charged up to 23 per cent above cost price plus GST.

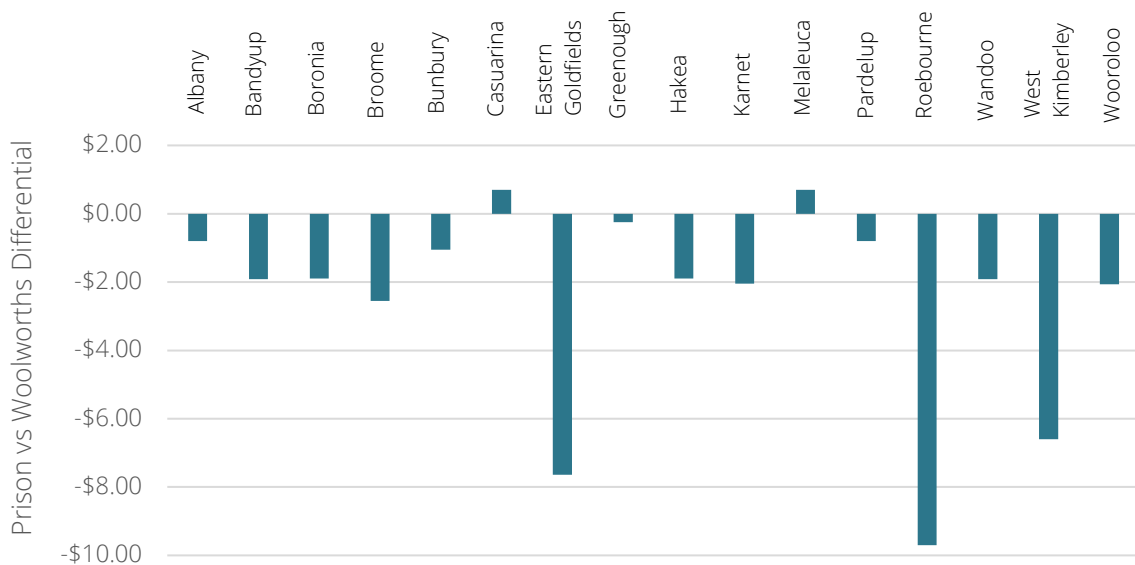


Figure 9: Difference in price of 25g pouch of the most popular tobacco product for each prison in comparison to Woolworths (as at 21 April 2021).

The Department's canteen pricing policy requires prisons to sell tobacco products at retail prices at a minimum (DCS, 2017). The policy provides prisons with a formula to calculate product prices, taking into consideration GST and a three to five per cent administrative mark-up. If the calculated price is below the local retail rate of Coles or Woolworths online, the prison must match the local retail rate (DCS, 2017). The policy warns that selling tobacco products below retail rate may be in contravention of the tobacco licences issued for each prison (DCS, 2017).

In lieu of smoke-free prisons, ensuring tobacco pricing is consistent across facilities is important as it has been proven as the most effective method to persuade smokers to quit (Thomas, et al., 2008). We acknowledge the impact increases in tobacco prices have had on prisoners to date. The cost is not only financial, but can be seen in increases to prisoner debts, and instances of aggression, humbugging, and stand overs. This has a flow on effect to staff and the mood of the prison. To this end, it is understandable that prisons may be sympathetic in their prices. At the same time, providing tobacco at prices cheaper than in the community undermines the Federal Government's pricing strategy and is fundamentally a disservice for prisoners who are addicted and rely on private cash from outside contacts to fund their smoking. A consistent approach is required across facilities.

Recommendation 9 – Ensure tobacco pricing is consistent across all facilities and remains at retail price, as a minimum

4.4 Legal risks remain without a full ban

Typically, jurisdictions have implemented smoke-free prison policies to reduce the risk of litigation from staff or prisoners impacted by exposure to second-hand smoke. Internationally, and to a lesser extent in Australia, there are examples of successful cases being brought on by staff and prisoners testing local laws and human rights arguments. The Department has not received any advice on the legal risks of second-hand exposure within Western Australian prisons. But the risk of litigation cannot be wholly mitigated without a full smoking ban in place.

In the United States, a 1993 case heard by the Supreme Court featured a non-smoking prisoner who shared a cell with a heavy smoker. Multiple requests to change cells had been denied. The Supreme Court found that the Eighth Amendment prohibited the prison's 'deliberate indifference' of the serious risk to the prisoner's future health as a result of continued exposure to second-hand smoke (Wilcox, 2007, p. 2087). This outcome was used in 2001 by an asthmatic prisoner in Wisconsin to successfully argue his continued exposure to second-hand smoke was a cruel and unusual punishment (Alvarado v. Litscher, et. al. 2001, summarised by Sweda, 2004). The court found that the prison acted with 'deliberate indifference' thereby endangering his health (Sweda, 2004).

There have also been a range of cases decided by the European Court of Human Rights finding in favour of prisoners who argued their long-term exposure to second-hand smoke was inhumane, degrading, and punishing (Mackay, 2016).

In Australia, there are two known cases where non-smoking prisoners have commenced legal action due to exposure to second-hand smoke. In 2006, a prisoner at Port Phillip Prison alleged that he was being discriminated against by being placed in a cell with a prisoner who smoked cigarettes (White v. GSL Custodial Services Pty Ltd, 2006). The case was dismissed on technical grounds. Similarly, in

2011 a prisoner from the Alexander Maconochie Centre alleged that his exposure to second-hand smoke contravened the *Corrections Management Act 2007 (ACT)* and the *Human Rights Act 2004 (ACT)* (Eastman v. Chief Executive of the Department of Justice and Community Safety, 2011). The court dismissed the claim due to insufficient evidence.

Staff exposure to smoke also creates a legal risk for prisons under OSH laws. An officer in Victoria was awarded workers compensation after successfully arguing his asthma had worsened due to second-hand smoke exposure at Mobilong Prison (*Detchon vs Department for Correctional Services*, 2005). The tribunal found that the applicant's exposure led to an ongoing incapacity for work and awarded weekly payments of income maintenance.

There are no known or publicly available workers compensation cases from officers exposed to second-hand smoke in Western Australian prisons.

4.5 Smoke-free prisons can improve health and safety

Studies have shown noticeable improvements in health and safety inside prisons following the implementation of smoke-free policies. In the United States and New Zealand, smoke particles and nicotine concentration levels have reduced by 50–80 per cent (Dugdale, et al., 2019; Hammond & Emmons, 2005). For New Zealand, this made the difference between having pollution levels above World Health Organisation standards, to falling below the standard. Similar results were recorded in Scotland, with an 81 per cent reduction in fine particulate matters in the air (NIHR, 2019).

Despite this reduction in exposure, the health benefits for prison staff remain inconclusive with insufficient research having been conducted. One American study suggested there had been positive benefits for staff (Binswanger, et al., 2014), while an earlier study suggested the policy had not improved the number of sick days taken by staff (Leone & Kinkade, 1994).

However, most studies have shown positive health benefits for prisoners after a ban was introduced. A study comparing prisoner health data before entering prison and throughout their stay in a smoke-free facility showed symptoms of asthma, depression, and stress were relieved (Dugdale, et al., 2019). The mortality rates of prisoners from smoking-related causes have decreased by nine per cent in American prisons where a ban has been implemented, and there have been fewer instances of cancer mortality (Binswanger, et al., 2014). One study found no statistically significant impact on attempted or completed prisoner suicides (de Andrade & Kinner, 2017). In other studies where the health benefits to prisoners were less clear, the continued smoking of tobacco illicitly and a lack of compliance has likely been the cause (Butler, Richmond, Belcher, Wilhelm, & Wodak, 2007).

Bans have also reduced the uptake of smoking and reportedly reduced costs associated with liability insurance, facility maintenance, and healthcare across American prisons (Binswanger, et al., 2014).

4.6 Preparation, support and communication key to successful smoke-free prisons

Typically, Australian authorities have taken 12-18 months to prepare for the implementation of a full smoking ban. This gives authorities time to complete any practical requirements or iron-out any

governance issues, while allowing prisoners, visitors, and staff time to understand and prepare for the ban.

Careful planning, preparation, and communication are also critical in reducing the risk of unrest in facilities when a ban is implemented. Over the years there have been reports of increased prisoner anxiety and aggression coinciding with the lead-up and start of full smoking bans. In Australia, the most notable example is the riot at Melbourne's Metropolitan Remand Centre one day prior to its ban coming into effect. An independent investigation into the incident found the ban, and the inability for newly arrived prisoners to prepare for the ban, were the catalyst for the incident (Walshe, 2015). However, underlying factors, such as overcrowding, had led to increasing tensions for some time. The inability for remand prisoners to suitably prepare for the ban highlights the need for careful planning, preparation, and communication. A study of 52 correctional facilities in the United States suggested post-ban disturbances were greatly minimised in cases where attention was given to planning and preparation (Hammond & Emmons, 2005).

Case Study: Northern Territory

In the Northern Territory, the implementation and communication strategy were cited by prisoners and staff as a key factor in their smooth transition to smoke-free prisons (Hefler, Hopkins, & Thomas, 2016). The strategy was prepared in conjunction with staff and prisoners, ensuring a wide range of perspectives were accounted for. The use of 'policy champions' within prisons promoted the ban and encouraged engagement in the process. This led to the development of a prisoner committee, which assisted in developing additional activities and healthier food options to support prisoners with nicotine withdrawal. Communicating about the policy change and encouraging prisoners to talk openly about how to cope was also found to be integral to the strategy.

The provision of NRT for both prisoners and staff is also critical to success. Most often this is provided in the form of nicotine patches and lozenges. Facilities typically provide prisoners with access to free or highly subsidised NRT in the lead up to the full smoking ban, and generally for 6–12 weeks after the ban commenced. After this period, usually only new entrants were given access to NRT as part of their smoking cessation plan.

Other supports commonly offered to prisoners and staff to assist with smoking cessation include:

- quit training and information for staff
- quit groups, counselling, mentoring, and access to Quitline
- individualised smoking cessation and care plans for identified at-risk prisoners
- free or highly subsidised nicotine replacement therapies
- gradual phase-out of tobacco products and progressive reduction in designated smoking areas
- provision of additional recreational activities and healthier food options to manage withdrawals.

Appendix A The Department's response to recommendations

Response to Review:
Smoking in Western Australian Prisons

Response to Recommendations

1 The Government and Department should commit to a timeline to implement a smoke-free prisons policy within Western Australia's prisons.

Level of Acceptance: Supported in Principle, subject to funding
Responsible Division: Corrective Services
Responsible Directorate: Operational Support
Proposed Completion Date: 31 December 2022

Response:

The Department and Government have been in ongoing liaison with regards to smoking cessation and/or smoking reduction in WA Prisons over the years. Several local initiatives have been implemented to improve controls around smoking and exposure of smoke to others in prisons.

As acknowledged by the Inspector, a total ban on smoking in prisons requires significant planning, resourcing, and inter-agency collaboration to be successful. The Department will continue to liaise with relevant internal and external stakeholders to gain support for a smoking ban in WA Prisons and a program of works will be developed subject to approval and funding.

2 Review the effectiveness of smoking-related policies and strategies to inform immediate actions that can better protect staff from exposure to second-hand smoke.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Operational Support
Proposed Completion Date: Completed

Response:

Department's current policy position requires staff, prisoners, contractors, and visitors to smoke only in designated areas and to comply with the Designated Smoking Area instruction applicable to all employees, offenders, visitors, and contractors.

This instruction is further reinforced through new custodial operational policies and procedures e.g. COPP 6.1 Prisoner Access to Health Care and COPP 2.2 Orientation. During orientation, all prisoners are informed of the smoking restrictions within the prison and availability of cessation aids / educational material in relation to quitting.

The COPPs are operationalised through Standing Orders at each prison providing further information on the management of smoking in prisons, including the designated smoking areas, staff and prisoner supports available for those who wish to quit smoking, management of smoking breaches and the sanctions and disciplinary action that can be taken in the event of non-compliance with the smoking restrictions. COPP 10.1 Prisoner Behaviour Management (currently PD3) provides further guidance for staff on the expectations and management of prisoner non-compliance with smoking restrictions.

Implementation of COPPs and development of Standing Orders is an ongoing program of works, including periodic review.

3 Develop and implement a monitoring framework to measure the ongoing success and effectiveness of actions taken under Recommendation 2.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Operational Support
Proposed Completion Date: 30 June 2022

Response:

The requirement for all prisons to comply with relevant smoking instructions is captured within the Standing Orders and monitored through local OSH Committees at the prison level.

The Department will identify possible compliance tests that can form part of an Operational Compliance Framework that can be used to monitor the overall management of smoking in prisons. The level of monitoring will be subject to the level of resources available and compliance monitoring priorities.

4 Introduce nicotine lozenges into prison canteens across Western Australia.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Offender Services
Proposed Completion Date: 30 June 2022

Response:

The Department will explore the feasibility of introducing nicotine lozenges into prisons.

This will include consultation with custodial operations to determine the effectiveness of nicotine lozenges vs patches and a suitability and safety assessment for introduction into a custodial environment.

5 Ensure all prisoners are informed on the suite of nicotine replacement therapies and pharmacological supports available to them while in prison.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Offender Services
Proposed Completion Date: Completed

Response:

As part of the Orientation process, all prisoners are provided with information on smoking restrictions within the prison and detailed availability of smoking cessation aids and supports in relation to quitting. This is covered in COPP 2.2. Orientation and COPP 6.1 Prisoner Access to Health Care, which are operationalised through relevant Standing Orders.

Smoking cessation is also discussed routinely during prisoner consults and prisoners are offered promotional material to assist them with quitting e.g. cancer council promotional material as well as the Quitline phone number 13 78 48. The Quitline provides confidential telephone support for people who want to quit smoking. Trained

counsellors provide support and help plan and develop strategies to quit smoking as required. An Aboriginal counsellor can be requested to provide support to Aboriginal callers in a positive and respectful manner. The WA Department of Health funds Western Australia's Quitline service, which is delivered by the Cancer Council South Australia.

Changes to the availability of smoking cessation aids, smoking products and related costs are communicated via canteen processes and information available to prisoners within the units and during routine health appointments.

6 Introduce a suite of new smoking awareness initiatives across the prison estate to enable prisoners and staff to make informed decisions about their smoking behaviours.

| | |
|---------------------------|------------------------|
| Level of Acceptance: | Supported in Principle |
| Responsible Division: | Corrective Services |
| Responsible Directorate: | Offender Services |
| Proposed Completion Date: | Completed |

Response:

The Department currently has several smoking awareness initiatives for staff and prisoners.

For staff, information about smoking reduction/cessation and links to appropriate resources are available on the Department's OSH webpage. Confidential counselling and resources are also available to staff through the Employee Assistance Program. Issues related to smoking are discussed at local OSH Committees on a quarterly basis.

For prisoners, the Department's current instructions, policies and procedures and health care provision as mentioned above provide sufficient awareness initiatives to enable prisoners to make informed decisions about their smoking behaviours. The policies and procedures undergo periodic reviews as part of continuous improvement processes.

7 Review de-escalation training and provide regular opportunities for staff to refresh their understanding of de-escalation techniques.

| | |
|---------------------------|---------------------|
| Level of Acceptance: | Not Supported |
| Responsible Division: | Corrective Services |
| Responsible Directorate: | Operational Support |
| Proposed Completion Date: | N/A |

Response:

A review of de-escalation training is not required as the Department's Use of Force Theory Refresher Training is based on best practice and contains specific elements related to communication and the 5-step de-escalation process. This training is mandatory, and all officers are currently required to complete the training on an annual basis.

The use of tobacco as a management tool is not recognised as operational practice nor is it reflected in training syllabus as a management or de-escalation tool.

8 Ensure all Local Orders regulating smoking within prisons are consistent with contemporary practices and current legislative requirements.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Operational Support
Proposed Completion Date: Completed

Response:

The Department is phasing out the use of Local Orders as part of the COPP Project. All COPPs provide consistent and clear policy which is operationalised through Standing Orders at each facility. The COPPs / Standing Orders which include smoking related requirements regulate instruction and required compliance with smoking provisions and restrictions in prisons.

As previously stated, the Department will continue ongoing liaison with Government and key stakeholders regarding smoking cessation / reduction in WA Prisons.

9 Ensure tobacco pricing is consistent across all facilities and remains at retail price, as a minimum.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: 31 December 2022

Response:

The Department supports this finding and will review state-wide practices relating to tobacco pricing. An action plan will be developed with the view to working towards greater consistency, taking into consideration pricing rules and operational needs.

Appendix B Methodology

Data sets for this review were obtained from the Department of Justice's (the Department) offender database through a series of extractions using SQL Server Management Studio. We also used a series of pre-constructed reports from the Department's Reporting Framework and from the offender database. We examined data between 2013 and 2021.

We examined Western Australian legislation and departmental documentation including policy, strategy documents, and evaluations. As part of the review we also conducted site visits to Bandyup Women's Prison, Boronia Pre-Release Centre, Hakea Prison, Karnet Prison Farm, and Roebourne Regional Prison.

We conducted surveys with prison staff and prisoners. Staff surveys were anonymous and conducted electronically using Survey Monkey. Surveys were conducted with prisoners on-site at Bandyup Women's Prison, Boronia Pre-Release Centre, Broome Regional Prison, Greenough Regional Prison, Hakea Prison, Karnet Prison Farm, Roebourne Regional Prison and West Kimberley Regional Prison. There were 1,623 respondents to the staff survey and 408 respondents to the prisoner survey.

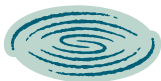
A preliminary findings briefing was presented to the Department in June 2021.

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