

Submission to NSW Parliamentary Select Committee on Tobacco Smoking March 2006



From: **SmokeFree Australia**

coalition for safe clean workplaces (see weblink: www.ashaust.org.au/SF'03)

Liquor, Hospitality and Miscellaneous Workers' Union; Musicians' Union of Australia; Media, Entertainment and Arts Alliance; Australian Council of Trade Unions; Action on Smoking and Health Australia; The Cancer Council Australia; National Heart Foundation of Australia; Australian Council on Smoking and Health; Non-Smokers' Movement of Australia; Australian Medical Association; Asthma and Allergy Research Institute

RELEVANT TERM OF REFERENCE:

(d) "factors affecting initiatives for smoke-free indoor areas".

OUR COALITION

Formed in November 2002, SmokeFree Australia consists of eleven major national health organisations and employee groups – including trade unions representing hospitality industry workers: barworkers, musicians and entertainers. We have been making written and other representations to the NSW government since 2003. Despite repeated requests, we have never been granted a face-to-face meeting with any NSW minister - meaning some of our members (the musicians and entertainers' unions) have never been directly consulted by the government, though their members' health is seriously threatened by enclosed and partly-enclosed smoky workplaces.

OUR CONCERNS:

We are concerned at long delays and proposed serious loopholes in the Smoke Free Environment Act which will leave hospitality workers and patrons seriously exposed to significant levels of secondhand smoke exposure even beyond the "total" indoor smoke ban deadline of July 2007. The regulation currently before parliament proposes that licensed venue areas with combined wall and roof space up to just under 75% enclosed will continue to allow smoking indefinitely. This would:

- fail to protect workers or patrons (including gamblers) from the known seriously harmful effects of secondhand smoke;
- create a complicated, confusing and unenforceable set of exemptions depending on complex calculations of wall and ceiling areas and ratios;
- deny the public what it wants and expects: smokefree pubs and clubs, with anyone wanting to smoke having to go outside to smoke – as they do in all other workplaces;
- betray the expectations of NSW workers who have already made considerable compromises at risk to their health to work with the long deadline (to July 2007 – twelve months later than the total bans in Queensland and WA and eighteen months after Tasmania);
- increase the likelihood of expensive legal actions by hospitality employees and others harmed by secondhand smoke in workplaces;
- undermine the Occupational Health and Safety Act 2000 NSW (which places a legal duty on employers to keep workplaces safe) and put WorkCover NSW in a position of being unable to do its job of consistently enforcing the OHS Act. See *summary of the OHS Act, p.1 General Duties at www.workcover.nsw.gov.au/NR/rdonlyres/9C6778F2-852E-4C66-BCAF-67BBB962AE01/0/act_summary_ohs_2000_1001.pdf*;
- conflict with the federal Disability Discrimination Act by allowing venues to continue to discriminate in both employment and access against people with disabilities including heart conditions, emphysema, asthma and diabetes - by effectively denying them access to venues which would seriously and immediately endanger their health; and
- adversely affect the health of workers throughout Australia by influencing the actions of other jurisdictions who may look to the NSW example.

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OUR REQUEST:

We urge the NSW Parliament to ensure that as a matter of urgency:

- The proposed regulation permitting up to 75% enclosure of smoking areas be disallowed;
- No worker (including entertainer), whether staff, contract or casual, be required to work in any area while smoking is happening - however enclosed or unenclosed it is; and
- Further policy on smokefree areas be determined by independent scientific research, legal requirements under the Occupational Health and Safety Act 2000, and public health considerations.

NSW LAGS BEHIND OTHER JURISDICTIONS

We note that other states have introduced smokefree deadlines to come into effect before NSW – including Tasmania (January 2006), Queensland and WA (both July 2006), and ACT (December 2006). Only South Australia (October 2007) is narrowly behind NSW's deadline; Northern Territory is yet to set an end-date.

Both Tasmania and Queensland have specified that any remaining smoking areas must be outdoors, separated from other areas, and unserviced (including by entertainers) and will not allow eating or the serving of food or drinks. See www.legislation.qld.gov.au/LEGISLTN/ACTS/2004/04AC047.pdf Part 2C, pp.21-25 NSW, mindful of its national and even international impact (since this issue is being addressed by many neighbour countries), can and should follow adopt a similar model.

THE LEGAL CASE FOR SMOKING TO BE KEPT GENUINELY OUTDOORS

- Failure to eliminate secondhand smoke from workplaces will leave employers in conflict with the Occupational Health and Safety Act 2000. These employers will be open to expensive legal actions by workers whose health is harmed by secondhand smoke. We note the recent case of Phil Edge, a young non-smoking barworker who in 2006 won a major compensation claim after losing half his tongue to cancer caused by his smoky workplace. See relevant cases at www.ashaust.org.au/SF'03/law.htm
- We should act in accordance with the recommendations of the National Occupational Health and Safety Commission, whose Guidance Note on ETS [Secondhand Smoke] in the Workplace says (p.6) smoking should be permitted only in areas with "full open-air natural ventilation". See [www.nohsc.gov.au/PDF/Standards/GuidanceNotes/GN-NOHSC3019\(2003\).pdf](http://www.nohsc.gov.au/PDF/Standards/GuidanceNotes/GN-NOHSC3019(2003).pdf)
- Smoky workplaces contravene the federal Disability Discrimination Act in discriminating in access and employment against a wide range of people, such as those suffering from heart disease, asthma and diabetes. The Human Rights and Equal Opportunity Commission said in the Meeuwissen case that a smoky room is as much of a barrier to an asthmatic as is a flight of steps to a person in a wheelchair. Decision at www.austlii.edu.au/au/cases/cth/HREOCA/1997/56.html
- We should respect our international obligations under the recently-ratified Framework Convention on Tobacco Control (2004) and under International Labor Organisation convention no. 155 on Occupational Health and Safety. See www.ashaust.org.au/SF'03/law.htm

THE RESEARCH EVIDENCE *See www.ashaust.org.au/SF'03/partly.htm*

Secondhand smoke kills *See www.ashaust.org.au/SF'03/health.htm*

It can increase death risk by as much as 15%.

It causes various cancers, heart disease, emphysema, asthma, sexual/reproductive harm and more. It kills an estimated 70+ NSW bar workers every year – our biggest cause of workplace death.

Outdoor exposure significant: tobacco a "toxic air contaminant"

Exposure to secondhand smoke in crowded outdoor areas adjacent to smoking areas has been recorded at levels comparable to much-researched household exposure levels, says California's Air Resources Board report (2006). It lists outdoor tobacco smoke as a "toxic air contaminant." It cites other studies showing significant exposure in crowded outdoor areas adjacent to smoking areas.

The community wants quick and total indoor bans

Surveys of community attitude in NSW have consistently shown that people in this state want quick and loophole-free smoking bans in licensed venues. See www.ashaust.org.au/SF'03/support.htm

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LIKELY RESULTS OF EFFECTIVE, UNDILUTED SMOKEFREE LAWS

Almost weekly, the independent research evidence mounts that properly smokefree venues will save lives and health and lower smoking rates – without harming hospitality trade.

See www.ashaust.org.au/SF03/effective.htm

- **Smokefree venues popular, improve employee and public health, and encourage quitting – especially among youth**

See *Australian and worldwide research evidence at* www.ashaust.org.au/SF03/effective.htm

- **Smoking bans do no harm to businesses**

New York business and jobs have boomed; Ireland's hospitality trade has increased after its ban.

See www.ashaust.org.au/SF03/economic.htm

All these gains will be undermined by complicated exemptions that are unsupported by independent scientific evidence.

FURTHER INFORMATION:

Stafford Sanders, Co-ordinator

SmokeFree Australia coalition

C/- ASH Australia

153 Dowling St, Woolloomooloo NSW 2011

Ph. (02) 9334-1823 m. 0412-070-194 Email: staffords@ashaust.org.au