

Submission

No 63

**INQUIRY INTO TOBACCO SMOKING IN
NEW SOUTH WALES**

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Telephone:
Date Received: 2/05/2006

Theme:

Summary

3 April 2006

Mr Richard Torbay, Chairperson
Joint Select Committee
Tobacco Smoking in NSW
tobaccosmokingcommittee@parliament.nsw.gov.au

Dear Mr Torbay,

Attached is a submission for the inquiry into tobacco smoking in NSW. I am lodging it on behalf of my client, the Cricketers Arms Tavern (ABN: 61108042235).

The Cricketers Arms Tavern has taken this opportunity to object to the total ban of smoking in licensed venues which will take affect in July 2007. Part (d) of the inquiry, "factors affecting initiatives for smoke-free indoor areas" will be referred to, and recommendations will be made to address the concerns that are raised.

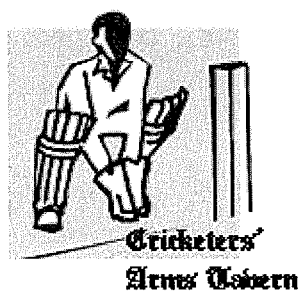
We would appreciate any information about the outcome of the inquiry's consideration of this submission.

Yours truly

Kate McGregor

Submission to NSW Parliamentary Select
Committee on Tobacco Smoking in NSW
April 2006

From: The Cricketers Arms Tavern



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Date of submission: 14/04/06

EXECUTIVE SUMMARY

The Cricketers Arms Tavern will address the Tobacco Smoking in NSW Inquiry Term of Reference –

d) “factors affecting initiatives for smoke-free indoor areas”.

The business is concerned with a number of issues involving the implementation of a total smoking ban as part of the Smoke Free Environment Act (2000) in licensed venues from July 2007.

Concerns

1. Loss of revenue and its effects on the hotel industry

1.1 Non-smoking customers are not replacing smoking customers

1.2 Venues with little or no outdoor space will be most affected

1.3 Loss of jobs

1.4 Al-fresco dining and outdoor bans

2. Social and cultural effects

2.1 Australian culture

2.2 Increase in domestic and street violence

3. Effects of smoking outside

3.1 Environmental impact

3.2 Outside disturbance

4. Infringement of individual's rights

4.1 Discrimination

Recommendations

- That the Committee will recommend legislation to be changed so that beyond 2006, one area of licensed premises remains smoker-friendly, as outlined in the July 2006 Amendment of Smoke Free Environment Act.
 - A smoking area not exceeding 25% of the total premise area
- That the Committee will recommend the NSW parliament to enact legislation to subsidise the Hotel industry and associated businesses to prevent the closing of pubs and loss of jobs which will follow the July 2007 total smoke ban

- That the Committee will recommend the NSW parliament to enact legislation to make outdoor areas which are sufficiently ventilated near al-fresco dining smoker-friendly
- That the Committee recommend the NSW parliament to advise local councils to increase security resources on streets surrounding pubs at night
- That the Committee recommend the NSW parliament to advise local councils to increase street cleaning resources around pubs
- That the Committee recommend the NSW parliament to advise licensed premises to provide wind-proof ash trays and bins outside of their venue

INTRODUCTION

The Cricketers Arms Tavern is a community-minded Newcastle hotel opposed to the total smoking ban which will be implemented in July 2007 as part of the Smoke Free Environment Act (2000). Although mindful of the negative impacts of tobacco smoking, the business is watching increasingly negative effects on stakeholders and the environment as the stages of the Smoke Free Environment Act progress. It has written many formal letters to local and state politicians without receiving legitimate answers to specific questions – only information about the adverse health effects of smoking.

It is understood that tobacco smoking is harmful to smokers and passive smokers; therefore it should be regulated to ensure that people are protected. However, the implications of the complete smoking ban in July 2007 for licensed business owners, the environment and individual's rights have not been addressed effectively.

This submission aims to clarify issues that have been overlooked by NSW parliament, and to recommend courses of action to address these problems.

Hotels welcomed the Responsible Service of Alcohol and Responsible Conduct of Gambling regulations because of the positive outcomes associated with them. Minor revenue loss for some hotels was not an issue because the legislation protected people from alcohol related domestic violence and other associated problems, and made the hotel a more enjoyable place for all stakeholders.

Many also welcome regulation in order to control tobacco smoking. The banning of smoking in parts of hotels as part of the "Share the Air" agreement has in many cases decreased profits in these areas of hotels. However, it is agreed that it is a good idea to implement a separate, designated smoking area so that non-smokers and employees can attend pubs without their health being harmed. This "sharing" of space welcomes both smokers and non-smokers alike to enjoy a social time in a pub whilst protecting the health of non-smokers and employees.

The total ban to be introduced in July 2007 will devastate the hotel community, the environment and the smoking community as it will force smokers outside and away from pubs. It is argued by some that in two or three years hotels will face no adverse affects - yet the industry must survive the initial impact without assistance. The environment will suffer as cigarette butts will be increasingly poured down our drains. Smokers will be made a minority, discriminated against without having done anything illegal.

CONCERNS

Relevant term of reference:

d) “factors affecting initiatives for smoke-free indoor areas”.

1. Loss of revenue and its effects on the hotel industry:

1.1 Non-smoking customers are not replacing smoking customers:

As more areas have been made smoke-free within hotels, smokers have been forced into other parts of venues, outside, or away from the venue altogether.

In the case of the Cricketers Arms Tavern, the area which has been made “smoke free” as of 1 July 2004 is a saloon bar area with a reputation for fine wines and cocktails. The customer base for this “classic” part of the hotel is not interested in relocating to the Public Bar as the unique “saloon” experience would be lost. Smokers who frequented this bar no longer come to the Cricketers Arms, and non-smokers have not replaced the custom lost in that area.

The tavern lost one staff member due to diminished revenue in the saloon bar. It once was staffed at all times during the hours of operation, but now is staffed three evenings a week.

The Our Hotel magazine (Spring 2004, pg.20 “Overseas Smoking Bans – The real truth”) quoted these figures soon after a total smoking ban in Ireland was introduced:

- 61% of bars in Dublin are experiencing unsustainable losses
- Takings are down 15-25% in rural areas such as Limerick, Cork and Waterford
- Accommodation hotels have lost 29% in morning tea and coffee sales. Liquor sales at functions and weddings have dropped 14%
- 19% of staff in city pubs have gone
- Pubs are opening later because the day-time customers have stopped coming
- Tourism is suffering

Industry experts predicted that after two years, hotels would have recovered from the initial effects of the ban. According to Tadg O’Sullivan, CEO of the Vintners Federation of Ireland (Hotel News Feb 06 Vol. 20 No.1, pg. 5 – “Where there’s smoke there’s fire”), hotels have not recovered as predicted:

- 400 pubs have closed
- immediate decline (20%) in “across the bar” sales was partially redeemed later due to take-away sales and decreased competition from the closing of rival hotels

Similar results were found in New York by Hotel's Association researcher, David Cass.

“General bar take in New York had dropped by 20 per cent and in Ireland by between 15 and 25 per cent. It says the figures used by the NSW Government were comparing post-ban takings in New York with the period after the September 11 terrorist attacks.” (SMH Nick O'Malley, 13 October 2004 – “Pubs rocked by total ban on smokers”).

According to a Scottish current affairs program, “Scotland's new smoking ban has wiped out more than 10% of trade in some bars. One week on, publicans are reporting a slump in takings as drinkers who smoke are choosing to stay away rather than do without cigarettes.”

(http://scotlandtoday.scottishtv.co.uk/content/default.asp?page=s1_1_1&newsid=11062, 2 April 2006 “Bars' profits "down 10%" due to smoking ban”).

The total ban will have a negative effect on Australian hotels, for a period of at least two years, in accordance with evidence from other countries.

The hotel industry is already one of the most highly regulated and taxed industries in Australia. The addition of significant revenue loss for at least two years threatens to bankrupt many hotels, as it has done in other countries.

1.2 Venues with little or no outdoor space will be most affected

The July 2007 total smoking ban will affect most those licensed premises with no alternative outdoor space for smokers.

As can be seen in Ireland, Scotland and New York where the ban has been implemented, revenue for the hotel industry is significantly down, and particularly for those venues with little outdoor space.

“The largest revenue losses have been suffered by pubs that are ‘landlocked’ – where there is no space for an outdoor area” (O’Sullivan, Hotel News Feb 06 Vol. 20 No.1, pg. 5 – “Where there’s smoke there’s fire”).

1.3 Loss of jobs

Irish, Scottish and American hotels have sacked hundreds of employees due to revenue loss.

O’Sullivan states that there were originally over 50 000 people working in Irish hotels and there is now 23 200. (Hotel News Feb 06 Vol. 20 No.1 Pg. 5 – “Where there’s smoke there’s fire”).

The Cricketers Arms Tavern has already lost one staff member since 2004.

Many ancillary businesses that are affected by hotels will also lose revenue.

1.4 Al-fresco dining and outdoor bans

Mosman Municipal Council passed a motion in 2004 to ban smoking within 20 metres of al fresco dining areas.

NSW Legislation states that outdoor areas which meet relevant guidelines for sufficient ventilation will be smoker-friendly areas.

Recommendations:

- That the Committee will recommend legislation to be changed so that beyond 2006, one area of licensed premises remains smoker-friendly, as outlined in the July 2006 Amendment of Smoke Free Environment Act.
 - A smoking area not exceeding 25% of the total premise area
- That the Committee will recommend the NSW parliament to enact legislation to subsidise the Hotel industry and associated businesses to prevent the closing of pubs and loss of jobs which will follow the July 2007 total smoke ban
- That the Committee will recommend the NSW parliament to enact legislation to make outdoor areas which are sufficiently ventilated near al-fresco dining smoker-friendly

2. Social and cultural effects

2.1 Australian culture

Over 400 pubs have closed in Ireland since the total ban two years ago, according to Tadg O'Sullivan, CEO of the Vintner's Federation of Ireland.

Pub culture helps to define Ireland as a nation, as it does in Australia. Smaller country pubs in particular are often community hubs of the town that support local sports groups and communities. The loss of these community hubs will affect Australian culture negatively.

2.2 Increase in domestic and street violence

Domestic violence and street violence have increased in Ireland since the total smoking ban according to O'Sullivan (Hotel News Feb 06 Vol. 20 No.1 Pg. 5 – "Where there's smoke there's fire"). The factors causing this include increased numbers of people socialising on the street and footpaths outside of venues, and intoxicated people leaving pubs earlier than usual to take their frustration out on their families.

Recommendations

- That the Committee will recommend legislation to be changed so that beyond 2006, one area of licensed premises remains smoker-friendly, as outlined in the July 2006 Amendment of Smoke Free Environment Act.
 - A smoking area not exceeding 25% of the total premise area
- That the Committee recommend the NSW parliament to advise local councils to increase security resources on streets surrounding pubs at night
- That the Committee will recommend the NSW parliament to enact legislation to subsidise the Hotel industry and associated businesses to prevent the closing of pubs and loss of jobs which will follow the July 2007 total smoke ban

3. Effects of smoking outside

3.1 Environmental impact

Cigarette Butts

- 57% of storm water drain litter consists of cigarette butts
- cigarettes are the most littered item in the world
- the toxic residue in cigarette filters is damaging to the environment
- littered butts can take decades to degrade
- littered butts cause numerous fires every year

Litter will increase outside of licensed venues due to smokers being forced outside.

“The problem of cigarette butt pollution has increased sharply since smoking was banned in restaurants, cafes and bars forcing all smokers outside”
 (<http://www.nobutts.com.au/nobutts/default.asp>, accessed 9/4/06).

The Cricketers Arms Tavern must employ someone to sweep and clean cigarette butts from the path and gutter outside of the pub every morning. This was less of a problem prior to 2004.

3.2 Outside disturbance

Noise complaints from residents near hotels have increased in Ireland and New York since the ban (Our Hotel Spring 2004, pg.20 - “Overseas Smoking Bans – The real truth”).

The Cricketers Arms has received a number of complaints, and therefore has implemented signage to prevent disturbance outside. However these measures may not be enough for many hotels to control crowds.

Recommendations

- That the Committee recommend the NSW parliament to advise local councils to increase street cleaning resources around pubs
- That the Committee recommend the NSW parliament to advise licensed premises to provide wind-proof ash trays and bins outside of their venue

4. Infringement of individual's rights

4.1 Discrimination

The “Share the Air” Agreement was first articulated to promote fairness to all stakeholders involved. However, each stage of anti-smoking legislation that has taken place has made smokers a minority. Many Smokers Rights groups have formed in retaliation to new regulation. Whilst smoking is legal, smokers should not be discriminated against.

In Quebec, Canada, several Montreal bar owners are in court seeking to invalidate the province-wide smoking restrictions that are to go into effect May 31.

“Demopoulos, Sergakis and two other bar owners argue the ban violates freedoms of expression and association, and infringes on the right to life, liberty and security of the person, as guaranteed under the federal and provincial charters of rights.

The plaintiffs don't question the government's right to regulate or even prohibit tobacco use, said constitutional lawyer Julius Grey, who represents the bar owners. But as long as smoking remains legal, there is a limit to how far the province can go in restricting it, he contended.” (Kazi Stastna, The Gazette, 31 March 2006 – “Smoking ban challenged - Bar owners fight back. Restrictions called unconstitutional”).

Australia may face court challenges and backlash from concerned parties if this issue is not addressed.

Recommendations

- That the Committee will recommend legislation to be changed so that beyond 2006, one area of licensed premises remains smoker-friendly, as outlined in the July 2006 Amendment of Smoke Free Environment Act.
 - A smoking area not exceeding 25% of the total premise area

CONCLUSION

It is important that tobacco smoking in NSW is regulated so that non-smokers are protected from passive smoke. However, a choice driven approach to regulation should be taken while tobacco smoking remains legal, not a “nanny-state” approach. However, given the existing legislation in NSW, further steps must be taken to prevent problems arising from the banning of smoking inside licensed venues. It is possible to protect the health of NSW as well as the health of the hotel industry and the environment.

RECOMMENDATIONS

- That the Committee will recommend legislation to be changed so that beyond 2006, one area of licensed premises remains smoker-friendly, as outlined in the July 2006 Amendment of Smoke Free Environment Act.
 - A smoking area not exceeding 25% of the total premise area
- That the Committee will recommend the NSW parliament to enact legislation to subsidise the Hotel industry and associated businesses to prevent the closing of pubs and loss of jobs which will follow the July 2007 total smoke ban
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APPENDICES

Media articles consulted

Smoking ban challenged. Bar owners fight back. Restrictions called unconstitutional

KAZI STASTNA, The Gazette

March 31, 2006

<http://www.smokersclubinc.com/modules.php?name=News&file=article&sid=2994>

A constitutional challenge of Quebec's plan to ban smoking in bars and other sites is motivated solely by economic interests and doesn't serve the public or justice, lawyers for the provincial government argued yesterday.

The lawyers were in Superior Court in Montreal yesterday, attempting to have the court refuse to hear a case mounted by several Montreal bar owners who seek to invalidate the province-wide smoking restrictions that are to go into effect May 31.

Amendments to the Tobacco Act passed in November 2005 ban smoking in bars, restaurants, cafes, bingo halls, offices and other establishments.

The main plaintiffs in the case are Voula Demopoulos, owner of seven Le Skcratch billiard parlours, and Peter Sergakis, owner of the Sky Bar complex in the Gay Village. They can argue on behalf of their own business interests, but they have not made their case that the restrictions violate the rights of the general public, the government argued.

"A law is not unconstitutional because it has negative economic effects," provincial lawyer Mario Normandin said.

Demopoulos, Sergakis and two other bar owners argue the ban violates freedoms of expression and association, and infringes on the right to life, liberty and security of the person, as guaranteed under the federal and provincial charters of rights.

The plaintiffs don't question the government's right to regulate or even prohibit tobacco use, said constitutional lawyer Julius Grey, who represents the bar owners. But as long as smoking remains legal, there is a limit to how far the province can go in restricting it, he contended.

"Expression is not merely when you want to get up and say, 'I oppose the law.' Expression is also chatting," Grey said. "It means all sorts of things that are not so strictly directed, and when you touch the way people amuse themselves and their social life, you're basically limiting their freedom of expression - and association."

The fact the ban will affect smoking in private offices and at events like weddings and receptions and won't allow club owners to set up smoking rooms for the public is evidence of the law's excessive paternalism and disproportionate restriction of rights, the owners allege.

The government argues the courts cannot hear a case before there is any evidence of the negative effects alleged by the plaintiffs. The effects are already evident in the law itself, Grey countered, adding it is important to establish the validity of the law before it goes into effect.

Justice Jean-Pierre Senecal is expected to render a decision within two weeks.

kstastna@thegazette.canwest.com

[Read](#)

Scotland Today

Bars' profits "down 10%" due to smoking ban

2/4/06

http://scotlandtoday.scottishtv.co.uk/content/default.asp?page=s1_1_1&newsid=11062

Scotland's new smoking ban has wiped out more than 10% of trade in some bars. One week on, publicans are reporting a slump in takings as drinkers who smoke are choosing to stay away rather than do without cigarettes.

Over the last seven days, the Doublet in Glasgow's west end has seen the same number of customers who smoke come through its doors, but after braving the cold to have a cigarette outside, the problem is they aren't staying as long as they used to - and that is already having an effect on profits.

The Doublet's publican, Alistair Don, said: "I think generally we're probably looking at a 10% reduction in trade. The customers have been very compliant with the law, we've had no problems in that respect. Smokers aren't staying as long as they normally would. It's been very difficult to try and explain to the customers that they are permitted to smoke on the outside pavement section up till 10 o'clock at night with their drinks, but at 10 that must be cleared, and there's a lot of confusion with it. Takings down 10% is a very worrying factor, there's lots of pubs in Scotland supporting loans. If you lose 10% turnover it means your loan has been stretched to the full. It's happened in Ireland, I think it's going to happen here, some pubs already stretching the limit to survive, and this might just be the final nail in the coffin."

Alistair acknowledges that it will be many months before the true effect of the ban is known. The Scottish Executive say the health benefits outweigh any impact on the licensed trade. It stressed today that international evidence suggests that the ban will have a positive impact on Scotland's economy. After experiencing a slump, it claims, bar sales in Ireland are now back to pre-ban levels.

Statistics from Hotel News Feb 06 Vol. 20 No.1, Pg. 5 – “Where there’s smoke there’s fire”

- 400 pubs have closed in Southern Ireland
- Land-locked venues (without outdoor space) have had largest revenue losses
- immediate decline in “across the bar” sales which are now picking up due to take-away sales,
- “There were originally over 50, 000 people working in Irish hotels”, and there is now 23,200 which is a decline
- Reported domestic violence and house fires increased
- Numbers of people smoking has slightly increased

Statistics from Our Hotel Spring 2004, pg.20 - “Overseas Smoking Bans – The real truth”

IRELAND

- 61% of bars in Dublin are experiencing unsustainable losses
- Takings are down 15-25% in rural areas such as Limerick, Cork and Waterford
- Accommodation hotels have lost 29% in morning tea and coffee sales. Liquor sales at functions and weddings have dropped 14%
- 19% of staff in city pubs have gone
- Pubs are opening later because the day-time customers have stopped coming
- Noise complaints from adjacent residents have increased
- Tourism is suffering

NEW YORK

- Today’s sales figures have been compared with post-September 11 figures when business was slow
- Liquor sales in bars are down on average 15-20% and some by 40%
- Industry Associations predict that a third of NY bars will close within 2 years
- Noise complaints have increased
- Venues need to hire security to stop patrons smoking indoors and control those forced onto the street

SMH

Pubs rocked by total ban on smokers

By Nick O'Malley

October 13, 2004

But the Hotels Association claims a consultant it sent to New York and Ireland six weeks ago, David Cass, found the bans to be "devastating". General bar take in New York had dropped by 20 per cent and in Ireland by between 15 and 25 per cent. It says the figures used by the NSW Government were comparing post-ban takings in New York with the period after the September 11 terrorist attacks.

SMH: Mosman council bans al fresco smoking (AAP)

<http://www.smh.com.au/articles/2004/09/07/1094322754623.html?from=storyrhs>

September 7, 2004 - 11:04AM

“Mosman Municipal Council last night passed a motion to ban smoking within 20 metres of al fresco dining areas on public land.

Blanket smoking bans in public spaces have been introduced in New York, Los Angeles, Ireland and Norway, but are not believed to extend to outdoor areas.

The Queensland government yesterday introduced legislation to ban smoking near al fresco dining areas by 2006, as well as inside pubs and clubs.

Cr Brown did not believe the ban was too harsh.

"These days smokers aren't allowed to smoke inside restaurants, so the outdoor areas of restaurants have become the smoke zone," he said.

NoButts.com

<http://www.nobutts.com.au/nobutts/default.asp>

Cigarette butts make up over 57% of storm water drain litter. In fact, cigarettes are the most littered item in the world. Cigarette filters are made of cellulose acetate tow, NOT COTTON, and they can take decades to degrade. Not only does cigarette litter ruin even the most picturesque setting, and costs authorities millions of dollars a year to clean up, but the toxic residue in cigarette filters is damaging to the environment, and littered butts cause numerous fires every year, some of them fatal.

The problem of cigarette butt pollution has increased sharply since smoking was banned in restaurants, cafes and bars forcing all smokers outside. The growing popularity of curbside/ outside/ courtyard dining has and is adding to the problem because everyday millions of butts are being blown out of non-windproof ashtrays on outside tables and damaging our environment. It is for that very reason that authorities are increasingly requiring windproof ashtrays for trading permits on all outside tables.

SOURCES

Our Hotel magazine - Spring 2004, pg.20
“Overseas Smoking Bans – The real truth”

Tadg O’Sullivan, CEO of the Vintners Federation of Ireland
Hotel News - Feb 06, Vol. 20 No.1, pg. 5
“Where there’s smoke there’s fire”

David Cass, Hotels Association researcher
Nick O'Malley, Sydney Morning Herald, 13 October 2004
“Pubs rocked by total ban on smokers”

Scotland Today current affairs program, April 2006
http://scotlandtoday.scottishtv.co.uk/content/default.asp?page=s1_1_1&newsid=11062
“Bars' profits "down 10%" due to smoking ban”

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