

Report on Smoke-Free Policies in Australia

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Introduction

Tobacco use is the leading cause of death and disease in Australia. Each year nearly 20 000 Australians die and more than 150 000 are hospitalized due to tobacco-related illnesses (1). The economic and social costs of tobacco use in Australia are estimated at \$AU 12,736.2 million per annum (2).

In 2001, approximately 22% of Australian adults were smokers (3). Australian males (24.3%) are more likely to smoke than Australian females (19.9%), with adult smoking rates peaking in the 20–29-year age group (4). Young Australians are still taking up smoking at a disconcerting rate, with 260 000 students aged 12–17 estimated to be smokers (5). Around one-third of 17-year-old students smoke.

Smoking rates are significantly higher in some disadvantaged groups in the Australian community. People from lower socioeconomic brackets, people with mental illnesses and some ethnic communities such as Greek, Vietnamese and Eastern Mediterranean, all have substantially higher smoking rates than the general population (6,7,8). Of particular concern is the smoking rate among indigenous Australians, which is over double the rate of the overall Australian population: 53% of indigenous males and 43.6% of indigenous females are smokers (9). While smoking prevalence in the general Australian population is declining, there have not been corresponding decreases in smoking prevalence in these high-risk groups.

Smoke-free policies in Australia

Self regulation

As evidence has grown of the harmful impact of exposure to environmental tobacco smoke (ETS), smoke-free environments have become increasingly common in Australia. Prior to introducing smoke-free legislation throughout Australia's six states and two territories, self regulation was the predominant means of regulating ETS exposure in workplaces and public places, with employers and venue operators voluntarily implementing smoking restrictions at premises within their control. In some areas, self-regulation has been highly successful. For example, a smoke-free work environment policy was adopted throughout the Australian Public Service in 1988. This ban was the first of its type in Australia and similar policies were subsequently introduced in public services across the country. The smoking ban in

government buildings enjoys a high compliance rate, and a smoke-free work environment is now an expected condition of employment with the Government and, indeed, in many other professional settings.

However, smoking restrictions imposed by individual employers and venue operators have failed to protect staff and patrons in many enclosed environments, such as restaurants, pubs and casinos. A study conducted seven years prior to the introduction of smoke-free dining laws in New South Wales found that not only did restaurateurs underestimate patron demand for smoke-free areas, even those who did perceive the need to provide smoke-free areas offered few such areas (10).

Smoke-free legislation

The responsibility for tobacco control in Australia rests primarily with state and territory governments. However, the federal Government has played a leadership role, taking the country's first legislative step in this area by banning smoking on domestic airline flights in 1987. This was followed by smoking bans in other federally controlled areas, such as on interstate buses and coaches (1988), on domestic sectors of international flights (1990) and on all Australian airlines flights anywhere in the world and on all international airlines flights within Australia (1996).

As evidence mounted of the significant economic and social costs of tobacco use in Australia, tobacco use was identified as a major public health issue, requiring a coordinated national response. In 1994, the development of a National Tobacco Strategy was endorsed by the nation's peak ministerial drug policy group, comprising federal, state and territory health and law enforcement ministers. The goal of the National Tobacco Strategy 1999–2003 is to improve "the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms."² Reducing exposure to ETS is a critical part of the National Tobacco Strategy. The strategy is informed by a set of guiding principles to assist states and territories in implementing best practice smoke-free legislation. Principal components of the guidelines are:

² Commonwealth Department of Health and Aged Care. *National Tobacco Strategy 1999 to 2002-2003 A Framework for Action*. 1999, Canberra. Note that the operation of the National Tobacco Strategy has been extended by 12 months to 2003–2004.



- non-smoking environments should be regarded as normal practice in enclosed public places and workplaces;
- there is no “right to smoke” in an enclosed public place or workplace;
- smoking restrictions should apply equally to all premises within any particular industry;
- any exempted premises must meet health-based criteria for ETS; and
- compliance mechanisms should be based on education and community support (11).

While no Australian jurisdiction has implemented smoking bans as comprehensive as those recommended by the guidelines, all states and territories have taken some legislative steps to reduce ETS exposure in public places and workplaces. South Australia and Victoria have adopted a piecemeal approach, legislating to provide limited smoke-free environments, such as restaurants, parts of licensed premises and, in Victoria, shopping centres and gaming and bingo venues.

Comprehensive legislation concerning smoke-free enclosed public places has been enacted in the Australian Capital Territory (ACT) (1994), Western Australia (1999), New South Wales (2000), Tasmania (2001), Queensland (2002) and the Northern Territory (2003). A public place is defined in similar terms in these jurisdictions. For example, in the ACT it is defined as: “a place which the public, or a section of the public, is entitled to use or which is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a body, or otherwise).”³ Places captured by this definition include enclosed restaurants, shopping centres, sporting facilities, libraries, universities and public transport. However, since many workplaces, such as factories are not open to the general public, and employees are not considered to be ‘a section of the public’, legislative bans on smoking in enclosed public places do not prohibit smoking in all workplaces.

The Queensland legislation prohibits smoking in ‘enclosed places’ and therefore covers workplaces as well as public places. Private places like residential premises, private vehicles and non-common areas of multi-unit residential accommodation are specifically excluded from the ban. Legislation in Tasmania (2001) and the Northern Territory (2003) creates ‘smoke-free areas’ that are defined in both jurisdictions to include enclosed public places and enclosed workplaces. However, regulations in the Northern Territory permit employers to designate smoking areas.

In the remaining jurisdictions, smoking in the workplace is dealt with mainly under occupational health and safety legislation. In Western Australia, occupational health and safety regulations prohibit smoking in the workplace, although there are many exemptions, such as the allowance of designated smoking areas. In the ACT, a Code of Practice for Smoke-free Workplaces, which falls under occupational health and safety legislation, recommends implementing full smoking bans in workplaces. Failure to comply with the Code of Practice may be used as evidence in proceedings under the Territory’s occupational health and safety legislation, but does not of itself constitute a breach of the legislation. In the remaining states, employee protection from ETS relies on general obligations in occupational health and safety legislation that require employers to provide a “working environment that is safe and without risks to health.”⁴ Attempts to use these general obligations to ensure smoke-free workplaces, particularly by workers and unions in the hospitality sector, have proven largely unsuccessful. The National Occupational Health and Safety Commission recently recommended that ETS exposure be excluded, without exception, in all Australian workplaces. However, state and territory Workplace Relations Ministers have not acted on this issue, intimating that workplace exposure to ETS should be dealt with by Health Ministers through smoke-free legislation.

With smoke-free workplace legislation in place in only three Australian jurisdictions, and even this legislation failing to cover all workplaces, many Australian workers remain at risk of ETS exposure. In the majority of workplaces, smoke-free policies are implemented at the discretion of employers. A study of Victorian workplaces found that around a quarter of workers had only partial or no smoking restrictions in their workplaces and that 9% of indoor workers in that state are potentially exposed to tobacco smoke in their immediate work area (12). Blue-collar workers and employees in the hospitality sector are at highest risk of ETS exposure in the workplace (13, 14). Imposing full smoking bans in all enclosed workplaces is an initiative that is relatively inexpensive for governments, while having significant public health benefits (15).

³ Section 2, *Smoke-free Areas (Enclosed Public Places) Act 1994 ACT*.

⁴ For example, section 21 of the *Occupational Health and Safety Act 1985 (Victoria)*.



Exemptions from smoke-free laws

Despite the existence of comprehensive smoke-free public places legislation in the majority of Australian jurisdictions, smoking is still generally permitted in licensed venues (that is, hotels, pubs, bars and clubs), casinos and gaming areas, with these venues either wholly or partially exempted from smoking bans. The application of smoking restrictions to licensed premises differs in each jurisdiction, and is invariably complex. Exemptions from smoking bans apply, for example, to single-room premises (Victoria), to bar areas (New South Wales, Tasmania and Queensland), to entertainment areas (South Australia), to places with adequate ventilation (Western Australia and ACT) and to places with ministerial exemptions (ACT and South Australia).

The Tasmanian legislation provides that a 'reasonable area' of a bar area must be smoke-free and stipulates that the smoke-free area must not be of 'inferior amenity' to the smoking area. The legislation does not define 'reasonable area' or 'inferior amenity' and a current review of that legislation has identified this as a significant area of confusion for both patrons and venue operators (16). In the Northern Territory, occupiers of licensed venues may designate smoking areas, as long as a smoke-free area of 'equal amenity' is maintained. An attempt is being made to define 'equal amenity' through an industry code that is currently being drafted by the Australian Hotels Association (AHA) in consultation with the territory government (17).

While best-practice smoke-free legislation would cover all public places, including licensed premises, casinos and gaming venues, to date no Australian jurisdiction has committed to making these venues totally smoke-free. Hospitality industry groups, many of which have close ties to the tobacco industry, have played a significant role in ensuring the continuing exemption of licensed premises, gaming areas and casinos from smoke-free legislation across the country. For example, both Philip Morris and British American Tobacco Australasia provided funding to the Tasmanian branch of the AHA to assist in preparing materials to lobby Parliamentarians prior to introducing smoke-free laws in that state.⁵

⁵ Edwards C. *Hansard*, Parliament of Tasmania. 29 March 2001.

Hospitality industry groups have actively opposed implementing smoke-free laws on the basis of their negative economic impact on hospitality businesses, an argument that is contrary to both Australian and international research findings (18). The AHA has been particularly active in advocating an accommodation model using ventilation and segregation of smokers and non-smokers as an alternative to legislative bans. The AHA's draft accommodation code is modelled on the United Kingdom's AIR Initiative, which receives funding from the Tobacco Manufacturers Association (19). Also of concern is the claim by unions in New South Wales that the extension of smoking bans in that state has been slowed by political donations by members of the hospitality industry (20).

In jurisdictions where there is no comprehensive smoke-free legislation, or where gaps in the law exist, smoking policies voluntarily adopted by venues or organizations continue to play an important role. Often such policies are motivated by the threat of litigation as well as patron and staff demand. For example, while Western Australia's Burswood Casino is specifically exempted from the smoke-free regulations in that state, intense lobbying and union pressure led to the venue introducing a smoke-free policy. In New South Wales, a draft agreement between Government, publicans, the casino and workers provides that all licensed premises will be 'predominantly smoke-free' by 2005 (21). What this means and how it will be achieved is still being negotiated.

Implementation model: the introduction of smoke-free dining in Victoria

The effective implementation of smoke-free policies relies on a number of key elements such as consultation and education. The policy development and implementation process is discussed below in relation to introducing smoke-free dining laws in Victoria from 1 July 2001. Similar implementation models have been used when introducing smoke-free laws in other jurisdictions such as Queensland (2002) and the Northern Territory (2003).

In the late 1990s Victoria was lagging behind other Australian jurisdictions in providing smoke-free environments. In 1999, a new state government came to office with the expressed policy commitment of protecting the Victorian community from the harms of ETS exposure. In developing its smoke-free dining laws, the Victorian Department of Human Services undertook extensive



consultations with stakeholders, including other relevant government departments (for example, the Treasury and small business), regulatory authorities (for example, Liquor Licensing Victoria), industry groups, key employers, unions and health bodies. The input of these groups helped to inform policy development, in particular how the smoking bans would apply to licensed premises with a dining component, such as pubs.

Restaurateurs voiced concerns about the potential negative impact of smoke-free dining and were particularly critical of the fact that the bans singled out the restaurant industry, with smoking still permitted in other venues such as bars and gaming venues, a distinction that is not justifiable on health grounds (22,23,24). As has been the experience in other jurisdictions, the tobacco industry was active in rallying restaurant industry opposition to the ban. Tobacco industry documents show that Philip Morris was heavily involved in a lengthy campaign run by 50 of the state's top restaurants to win community support for an accommodation model, rather than a legislated smoking ban (25). However, as will be discussed in more detail later in this report, several other Australian jurisdictions had already introduced smoke-free dining without negative consequences for business and surveys showed that the Victorian public was highly supportive of the proposed new laws (26). This, coupled with strong support from key health and union groups, ensured the successful passage of smoke-free dining legislation through the Victorian Parliament in 1999 with bipartisan support.

The Victorian state government conducted an AU\$ 500,000 communications campaign to inform both industry members and the community about the new laws (27). A key component of the laws' successful implementation was the input and support of industry groups and members. An advisory committee comprising key employers, industry groups, health bodies, unions, enforcement officers and other key government departments was established to advise on the communication needs of stakeholders. As well as providing advice on the advertising campaign and signage, the members of this group also played an important role in disseminating information on the laws through industry seminars and newsletters. One vital function of this group was to provide feedback on potential implementation issues, enabling these to be addressed at an early stage.

Other key communications campaign elements included:

- the publication of a comprehensive booklet explaining the laws and how to comply with them (28). The booklet and free signage was mailed to Victoria's 16 400 eating establishments. It was printed in seven community languages to meet the diverse language needs of Victoria's multicultural community.
- education seminars for restaurateurs conducted throughout the state, including in rural areas. A total of 650 people attended 18 seminars held at 9 different locations.
- community and industry radio and press advertising campaign (in both mainstream and multicultural media).
- workshops to educate enforcement officers about the new laws. A total of 245 enforcement officers from the state's 78 local councils attended these workshops. The government of Victoria provided \$AU 1.3 million to councils to undertake education visits to eating establishments to ensure awareness and compliance with the new laws.
- telephone information line and web site (29). Both the web site and phone line were well utilized. There were 1 475 hits to the web site in June 2001, the month prior to the introduction of smoke-free dining, and 2 075 hits in July 2001. Nearly 1 000 calls were made to the phone line in both June and July 2001.

The success of the communications campaign was demonstrated by pre- and post campaign surveys, which were conducted to assess awareness of smoke-free dining among eating establishment proprietors (30,31). Of the eating establishment proprietors surveyed three weeks after the introduction of smoke-free dining, 100% were aware of the laws, compared with 80% of those in the pre-campaign survey. The relatively high rate of pre-campaign awareness can be attributed to heavy media coverage of the smoke-free dining laws and the active role played by industry groups in providing information on the laws to members. Importantly, the communications campaign was shown to have been significant in increasing proprietors' understanding of the details of the law, such as the requirements to display signage and not to provide ashtrays as well as the offences under the legislation. Awareness of such details increased by an average of 87% among restaurant proprietors and 77% among hotel and club proprietors between the pre- and post campaign surveys. Over three-quarters of proprietors surveyed rated



the mailed government information as helpful or very helpful in assisting them to implement smoke-free dining.

It should be noted that while the major costs of implementing smoke-free laws are associated with the initial public awareness campaign, there are some ongoing costs to the Government, including the maintenance of a web site and telephone information line, provision of signs as well as continuing education and possible low-level funding of enforcement officers.

Measuring the success of Australia's smoke-free policies

The success of smoke-free laws across Australia is demonstrated by widespread compliance, high levels of community support and a decrease in tobacco consumption.

Compliance

The experience in all Australian jurisdictions has been that smoke-free laws are generally self-enforcing, with smokers refraining from smoking in smoke-free areas once they become aware of the laws. Following the introduction of smoke-free dining in South Australia, venue owners and managers were surveyed in relation to customer compliance with the laws (32). Five months after the commencement of the laws, 93.8% reported observing either no or few customer breaches of the smoking ban. This reported compliance rate increased to 95.5% after 18 months. Where a breach of the legislation was observed, most proprietors reported asking the smoker to cease smoking, with only 4.4% of customers refusing to comply with this request. These findings are consistent with a survey of diners in that State in which only 1.8% of smokers reported smoking in a non-smoking dining area (33). Similar high-customer compliance rates have been reported in other jurisdictions (34).

A compliance inspection of South Australian eating establishments found that venue compliance with the legislation was between 88.2% and 92.3% five months after the introduction of smoke-free dining and between 95.7% and 99.6% after 18 months (35). While only 1% of premises were found to be breaching the laws by allowing smoking indoors, one-third of premises were not displaying the prescribed signage.

Reviews of smoke-free legislation currently underway in Tasmania and Western Australia, both identify proprietor confusion as a barrier to compliance with smoking restrictions (36, 37). Both reviews note that proprietors and, in

some cases, enforcement officers, have had difficulty in applying smoking restrictions, which are based on subjective criteria such as the 'predominant activity of an area', whether meals (as opposed 'snacks') are being served and whether an area is 'substantially enclosed'. The experience in these states demonstrates the importance of well-drafted, easy-to-apply legislation. It also highlights the necessity of providing ongoing assistance to proprietors, such as education visits by enforcement officers and the maintenance of a telephone information line.

As compliance with the smoke-free laws is high, enforcement officers primarily respond to complaints rather than conducting active compliance monitoring. Enforcement is undertaken by a range of personnel across the country, including local council officers (e.g. in Victoria), area health staff (e.g. in New South Wales), police (Northern Territory), licensing officers (Northern Territory) and volunteers (Tasmania). Some jurisdictions, such as the Northern Territory and Queensland, have on-the-spot fines (infringement notices) while in the majority of jurisdictions, enforcement is by way of prosecution. In all jurisdictions there are penalties for occupiers who fail to display prescribed signage (\$AU 75–100 infringement notice or \$AU 500–5,000 fine) or who allow smoking in a smoke-free area (\$AU 100–150 infringement notice or \$AU 500–11,000 fine). Occupiers are defined in similar terms in most jurisdictions as the person managing, controlling or in charge of an enclosed place or part of an enclosed place. Individuals who smoke in a smoke-free areas may also receive a \$AU 75–150 infringement notice or a \$AU 500–2,200 fine. In practice, however, most complaints result in the provision of education and the clarification of the law rather than any punitive enforcement action.

Community support

Smoke-free environments have been well received by the Australian community. A survey of community attitudes towards South Australia's smoke-free dining laws found that support for the laws was high, increasing from 81% four months after the laws' implementation, to 85% after 18 months (38). Smokers were less likely than non-smokers to support the laws, but smoker support also increased from 54.8% after four months to 61% after 18 months. Patrons reported increased enjoyment of dining out and were also found to be slightly more likely to dine out following the introduction of the smoke-free dining laws. Of the smokers, 80.7% reported that smoke-free dining laws had not affected their dining habits. These findings of high community



support for smoke-free dining are consistent with research undertaken in other Australian jurisdictions (39).

There is also evidence that introducing smoking restrictions in some public places may increase community demand for smoke-free environments (40). For example, following the successful introduction of smoke-free dining in Victoria, community support for bans in gaming venues also increased from 67% to 73%, with support for smoking bans in hotels rising from 52% to 58% (41). Smokers were also found to be increasingly supportive of smoke-free environments, for instance, support for smoke-free gaming among smokers increased from 36% to 50%. Worker support for workplace smoking bans has also been shown to increase following the implementation of these bans (42).

Impact on tobacco use

The impact of smoke-free policies and legislation on Australia's smoking rates is difficult to quantify. Comprehensive bans in public places are a relatively recent phenomena. In addition, over the period of time that smoke-free legislation was introduced, all jurisdictions have taken steps to address other tobacco control issues, such as point-of-sale advertising and cigarette sales to minors. In addition, there has been an increase in mass media activity, with the National Tobacco Campaign running graphic anti-smoking television commercials.

There is evidence that smoking restrictions in public places may reduce the probability of smoking uptake by teenagers (43). A recent Victorian study found that 70% of social smokers smoke more when they are in pubs and night-clubs (44). The study suggests that smoke-free licensed premises would encourage smokers to quit, help prevent ex-smokers from relapsing and discourage young people from taking up smoking. Further Australian-based research is required to ascertain the impact of smoking bans in public places on smoking prevalence and consumption.

Smoking bans in Australian workplaces are already having a significant impact on reducing tobacco consumption. It has been estimated that workplace smoke bans currently in force in Australia have reduced the nation's cigarette consumption by 1.8% per year. This represents about 22.3% of the recent decline in total cigarette consumption.(45) If all Australian workplaces became smoke free, it has been estimated that total annual cigarette consumption would fall by 3.4%. There is also evidence that smoking bans in workplaces may increase cessation (46).

Other effects of Australia's smoke-free legislation

Compliance costs

The smoke-free legislation in the various Australian states and territories has been designed to ensure that businesses have minimal compliance costs. All Australian jurisdictions require the display of signage in smoke-free areas. This signage is supplied to businesses free of charge. Two-thirds of restaurateurs surveyed following the introduction of smoke-free dining in South Australia reported that they had been able to comply with the law with little effort and 82% reported that they had spent no money to implement the law (47).

Where partial rather than full smoking bans have been imposed, for example, in licensed premises, smoking restrictions across Australia operate using existing venue layouts, and have not required venue operators to undertake renovations. However, in some jurisdictions, such as the ACT, the exemption of licensed premises from the smoking bans is dependent on installing ventilation equipment to maintain air quality in accordance with Australian Standard 1668.2. This standard is widely recognized as relating to comfort rather than health. A report commissioned by a New South Wales taskforce on passive smoking notes that 'Filters used in general ventilation applications are inefficient or ineffective in removing tobacco smoke particles ...[The Australian Standard] is not a health standard' (48).

Australian venue operators are, with the exception of those in the ACT and the Northern Territory, not required to prevent smoke drift from smoking areas into non-smoking areas or premises. While this minimizes compliance costs for business operators, the failure to address this issue reduces the public health benefits of smoke-free laws to some extent.

Effect on business

The experience across Australia is that any new smoking restrictions attract concern from businesses about potential revenue losses (49). This is despite a substantial body of research demonstrating that such laws do not affect business turnover negatively (50, 51). The most reliable studies on the economic impact of smoke-free policies on the hospitality industry are those based on objective measures, such as analysis of taxable sale receipts (52). Only one such study has been undertaken in Australia (53).



Based on the Australian Bureau of Statistics' Retail Trade restaurant sales data over the period 1991–2001, the study found that introducing smoke-free dining in South Australia in 1999 did not have an impact on the ratio of restaurant turnover to retail turnover in that State. In addition, the study found that there was no decline in the ratio of South Australian restaurant turnover to the restaurant turnover in the Australian states that had not introduced smoke-free dining at that time.

A number of subjective studies, based on proprietors' and patrons' impressions of the impact of smoke-free laws have also been undertaken (54). These studies have also overwhelmingly found that smoke-free policies do not negatively affect patronage. For example, 76% of restaurateurs surveyed in New South Wales shortly after introducing smoke-free dining reported normal patronage and 14% reported increased patronage (55).

Conclusion

Voluntary smoking bans imposed by Australian employers and venue operators have failed to protect many patrons and employees from ETS exposure. Therefore, the Australian experience demonstrates that comprehensive smoke-free legislation is essential to ensure that all members of the community are afforded smoke-free public places and workplaces. The smoke-free laws throughout Australia enjoy widespread compliance and support. Concerns that smoke-free laws may have a negative impact on businesses have proven to be unfounded.

Best-practice smoke-free legislation would cover all enclosed public places and provide equal protection to employees in all industries, including the hospitality sector. It is hoped that the governments throughout Australia continue to take steps to reduce ETS exposure for all members of the community, removing all existing exemptions and legislating to make all public places and workplaces in the country smoke-free.

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