

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Administration's response to issues raised
at the Bills Committee meeting on 6 October and 24 October 2005**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meeting on 6 October and 24 October 2005.

BACKGROUND

2. At the above meetings, Members requested the Administration to provide the following information -

(a) whether, and if so, which overseas jurisdictions implemented total smoking ban on betting premises;

ADMINISTRATION'S RESPONSE

Singapore

3 The Smoking (Prohibition in Certain Places) Act states that "smoking shall not be permitted in any amusement centre" whereas "amusement centre" is defined as any premises where jackpot machines, pin-ball machines, video game machines or any other similar game machines are provided for entertainment.

Rhode Island, USA

4 The law bans smoking in nearly all enclosed areas of places that are open to the public, including private businesses, restaurants, most bars, public restrooms, health care facilities, shopping malls, bingo facilities (when a bingo game is in progress), common areas of apartment buildings with more than four units.

New York, USA

5 The Clean Indoor Air Act states that smoking shall not be permitted and no person shall smoke in the commercial establishments used for the purposes of carrying on or exercising any trade, profession, vocation or charitable activity, as well as bingo facilities.

California, USA

6. Under the California Smokefree Workplace Law, smoking of tobacco products in enclosed places of employment is prohibited, in which gaming clubs and bingo facility that restricts access to minors under 18 years of age are included.

Nevada, USA

7. In this state where Las Vegas is situated, the only setting in which smoking is totally banned is a public elevator. Licensed gaming establishment may designate separate rooms or areas within the establishment which may or may not be used for smoking.

British Columbia, Canada

8. According to the Occupational Health and Safety Regulation, in a public entertainment facility (which includes a bar, bingo hall, bowling alley, cocktail lounge, restaurant, gambling casino, nightclub or pub), areas that are used by the public are exempt from the requirement of smoking ban if the employer provides a separate place for smoking in accordance with specific requirements (appropriate areas of smoking area and ventilation system).

Queensland, Australia

9. In accordance with the Tobacco and Other Smoking Products Amendment Act 2004, a smoking ban will apply in a progressive manner to the gaming table areas of a casino starting from 1 January 2005. Smoking will be prohibited at the bingo areas and gaming table areas

after 30 June 2006. However, the smoking ban in enclosed places does not apply to the premium gaming rooms in casinos.

Victoria, Australia

10. Its Tobacco Act amended in 2005 stipulates that “a person must not smoke in a casino, except in a declared smoking area”.

New South Wales, Australia

11. Under the Smoke-free Environment Amendment Act 2004, from 2 July 2007 onwards, all enclosed areas of hotels, clubs and nightclubs that are open to the general public must be completely non-smoking, and all areas of Star City Casino (the only casino in New South Wales) with the exception of private gaming rooms must also be non-smoking. Smoking will be permitted in the private gaming areas at Star City Casino, not including areas used substantially for gaming machines. This exception will be reviewed every 12 months to maintain parity with interstate casinos.

New Zealand

12. According to the Smokefree Environments (Enhanced Protection) Amendment Bill 2003 which was subsequently passed into law, the holder of the casino operator’s licence in respect of a casino must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the casino that is not an open area. The same Bill also stipulated that the holder of a class 4 gambling¹ venue licence in respect of a place must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the place that is not an open area.

(b) whether, and if so, which overseas jurisdictions provided power to employers and/or employees of statutory no smoking areas to use force to make offenders to stop smoking;

¹ “Class 4 gambling” is defined by the Department of Internal Affairs to mean “gaming machines in pubs and clubs (i.e. outside a casino).”

13. We are not aware that any other overseas jurisdiction has provided employers and/or employees of statutory no smoking areas with the power to use “reasonable force” in ensuring the compliance with the no smoking requirement. However, there is a plethora of jurisdictions penalizing the managers for inaction during a smoking act that happens in a designated no smoking area.

14. In Ireland for example, where there is a contravention of regulations under section 47 of its Public Health (Tobacco) Act, i.e. there being a smoking act in designated no smoking areas, the occupier, manager and any other person for the time being in charge of the place shall each be guilty of an offence. A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding Euro 3,000.

15. In Singapore, the manager of any specified place or the operator of any specified vehicle shall inform any person who smokes in a no smoking area to cease smoking immediately. If the person refuses, neglects or fails to cease smoking, he shall request the person to leave the area immediately. If there is any further non-cooperation, the manager or operator shall seek the assistance of any police officer or authorized officer.

16. If the manager fails or neglects to comply with the above-mentioned powers, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$1,000 and in the case of a second or subsequent conviction, to a fine not exceeding S\$2,000.

(c) whether the Administration has any plan to introduce a demerit point system for catering and entertainment premises which failed to stop smoking acts in statutory no smoking areas.

17. Different catering and entertainment premises are licensed under different Ordinances which are not related to the Smoking (Public Health) Ordinance (S(PH)O)(Cap. 371). Our legal advice is that any licensing condition to be imposed in respect of a type of licence must be reasonable, related to and for the purposes of the particular Ordinance under which the licence is granted. In this respect, enforcement of S(PH)O may not be

reasonably taken as for or in connection with the purposes of particular licensing Ordinance under which the licence is granted.

18. In view of this advice, we have no plan to consider any mechanism that links inaction of managers in face of a smoking act to any demerit point system which may lead to eventual loss of their respective premise's licence.