

For information on  
25 February 2005

## **Legislative Council Panel on Health Services**

### **Smokefree Workplace Legislation: Overseas Experience**

#### **INTRODUCTION**

At the meeting of the LegCo Panel on Health Services held on 10 January 2005, Members requested the Administration to provide information about smokefree workplace laws overseas and their economic impact on the food business industry. This paper presents the findings of studies conducted in response to Members' request.

2. Paragraphs 3-16 of this paper highlight the findings of a study on smokefree workplace laws of five jurisdictions with economic status comparable to that of Hong Kong, namely, California, State of New York, Ireland, Singapore and New Zealand. This study focuses on major legal provisions such as the scope of smoking ban, exemptions, transitional arrangements, smokers' and employers' legal obligations, penalties for violations and enforcement agencies. The latter part of this paper (paragraphs 17-22) summarises the findings of widely quoted overseas studies on the economic impact of smoking ban on the catering/hospitality industries.

#### **COMPARATIVE STUDY OF SMOKEFREE WORKPLACE LAWS**

##### California

3. California is one of the first jurisdictions to prohibit smoking in almost all indoor workplaces. The *Smoke-Free Workplace Law* (enacted as *Labor Code LC 6404.5*) seeks to restrict and prohibit the smoking of tobacco products in enclosed places of employment so as to reduce employee exposure to environmental tobacco smoke. The law took effect in restaurants and other workplaces on 1 January 1995 and in bars, taverns and gaming clubs on 1 January 1998.

4. Under the *Smoke-free Workplace Law*, smoking is prohibited in all enclosed places of employment, with the exception of tobacco shops, private smokers' lounges, private residences (when not used for child care), 65% of guest room accommodations and designated

areas of lobbies in hotels/motels, large warehouses, employee breakrooms meeting stringent ventilation conditions, small businesses under limited conditions, etc.

5. The ***Smoke-free Workplace Law*** provides that “*no employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment*”. Employers are obligated to prevent smoking in their enclosed workplaces by (i) posting clear and prominent signs at entrances and (ii) requesting smokers to refrain from smoking in the workplaces. The law is enforced by agencies (e.g. health and police departments) designated by local governing bodies. Business owners and patrons in violation of *LC 6404.5* are subject to fines of US\$100 for the first violation and up to US\$500 for the third violation within a year. After three violations within a year, cases may be referred to the Occupational Safety and Health Administration that can levy fines up to US\$70,000.

#### *New York State*

6. The ***Clean Indoor Air Act (Public Health Law, Article 13-E)*** of the State of New York prohibits smoking in public and work places to protect employees and the public from secondhand smoke. The Act went into effect statewide on 24 July 2003. Under the Act, smoking is not permitted in a wide range of indoor areas including places of employment, bars, food service establishments, establishments used for carrying on or exercising any trade, profession, vocation or charitable activity, bingo facilities, indoor arenas, etc. Smoking is also disallowed in separately ventilated rooms of business establishments.

7. There are a few organizations/businesses that the Act does not apply to. The major exempted premises are private residence, hotel or motel rooms rented to guests, retail tobacco businesses, membership associations where duties related to their operation are performed by volunteers, cigar bars, up to 25% of the seating in outdoor dining areas of food service establishments with no roof or ceiling enclosure.

8. Under the ***Clean Indoor Air Act***, it is unlawful for any person to smoke or to allow smoking in an area or establishment subject to the smoking ban. In addition, owners, operators or managers of no smoking areas are required to prominently post and properly maintain “No smoking” signs in the areas. Owners, operators or managers of hotels/motels that adopt a smoking policy for guest rooms must post a notice at the reception area as to the availability of rooms in which no

smoking is allowed. Breaches of any provisions under the Act are punishable by penalties of up to US\$2,000 per violation. The Act is enforced by owners, managers or operators of statutory no smoking areas and local health departments.

### Ireland

9. The ***Public Health (Tobacco)(Amendment) Act 2004*** of Ireland is a recent smoke-free initiative aimed to provide protection for employees across the board from toxic tobacco smoke. The Act prohibits the smoking of tobacco products in all places of work including restaurants and pubs, buildings to which the public has access, public entertainment places, licensed premises, registered clubs, etc. The smoking ban does not apply to outdoor or non-enclosed parts of places of work, dwellings, rooms in hotels or other premises that provide living/sleeping accommodation for the public, prisons, etc. The smokefree requirements in the Act commenced on 29 March 2004, i.e. 15 months after initial announcement of the legislative initiative.

10. According to the ***Public Health (Tobacco)(Amendment) Act 2004***, a person who smokes in a premises to which the smoking prohibition applies as well as the occupier, manager and any other person in charge of the premises are each liable to a fine of €3,000 upon conviction. The Act also requires the occupier/person in charge of the premises to display at all times a sign indicating clearly that smoking is prohibited on those premises. The smokefree workplace legislation in Ireland is enforced by officers authorised by the Office of Tobacco Control and the health boards under the National Inspection Programme.

### Singapore

11. The ***Smoking (Prohibition in Certain Places) Act*** of Singapore provides that the National Environmental Agency (NEA) may, with the approval of the Minister, by notification in the Gazette specify any premises or building or such part thereof as a place in which smoking shall not be permitted. The smoking ban was first introduced in 1970 in cinemas and theatres and this was progressively extended to more public places over the years. Currently, there are 26 categories of public places where smoking is prohibited. These include amusement centres, air-conditioned barber shops/hair-dressing salons, air-conditioned food shop, air conditioned halls, ballrooms or function rooms in hotels, banks, air-conditioned office premises, air-conditioned factories, enclosed or air-conditioned common areas of private residential buildings,

air-conditioned shops and shopping malls/complexes, underground pedestrian walkways, air-conditioned facilities in private clubs, etc.

12. To better protect the health of non-smokers from environmental tobacco smoke, the NEA and the Health Promotion Board are reviewing the list of smoke-free public areas with a view to extending the smoking ban to entertainment venues (pubs, bars, discos, nightclubs & karaoke lounges), hawker centres and coffee shops. A public consultation exercise on the proposed extension has just been completed and the proposal is expected to be implemented within 2005.

13. Under the *Smoking (Prohibition in Certain Places) Act*, any person who smokes in any specified place where smoking is disallowed shall be liable on conviction to a fine not exceeding S\$1,000. The manager of a specified no smoking place has a legal duty to take reasonable steps to investigate complaints involving alleged smoking offences in the place and to take rectification actions against the smokers. Failure to take such actions will render the manager liable 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. The Act is enforced by police officers or authorised officers appointed by the Director-General of Public Health.

### New Zealand

14. The *Smokefree Environments Amendment Bill* was passed by the New Zealand Parliament on 3 December 2003 and was signed into law by the Governor-General six days later. The principal aims of this smokefree law are to protect all workers and the public from secondhand smoke, to reduce the harm caused to individuals by their smoking, to restrict minors' access to smoking products and to promote a smokefree lifestyle as the norm. The legislative intent is not to target smokers, but to encourage public health protections against secondhand smoke with public support and voluntary compliance.

15. The smokefree law requires all indoor workplaces including offices, warehouses, factories and licensed premises/hospitality venues (e.g. bars, taverns, restaurants, cafes, clubs, casinos, gaming venues) to become smokefree by 10 December 2004, i.e. one year after law enactment. Separate smoking areas or ventilated smoking rooms in indoor workplaces or hospitality venues are disallowed. The smokefree requirement does not apply to outdoor areas except school grounds, private homes, temporary private premises, hotel rooms, home-like environment such as individual prison cells, etc.

16. An individual who smokes in a smokefree area commits an offence and is liable to a maximum fine of NZ\$400. Employers or proprietors are liable to a fine of up to NZ\$400 (individual) or \$4,000 (body corporate) if they allow someone to smoke in a smokefree area. They will not be prosecuted if they have taken all reasonably practicable steps to prevent unlawful smoking (e.g. display of no-smoking signs, removal of ashtrays, oral warnings having been given to smokers). Enforcement officers appointed by the Director-General of Health are empowered to enter and inspect premises, to take photographs and to seek identifying information. Obstructing an enforcement officer to exercise his/her powers or failing to provide the information required is punishable by a maximum fine of NZ\$1,000.

## **ECONOMIC IMPACT OF SMOKING BAN ON CATERING INDUSTRY**

17. The debate on the economic impact of smokefree workplace laws has centered around the effect they have on the catering and hospitality industries. While the tobacco industry has claimed that smokefree laws will lead to a decrease in business and employment, there has been no reliable scientific evidence to support these claims. According to quality reviews<sup>1</sup> of relevant economic impact studies, all the high-quality studies indicate no impact or a positive impact of smoke-free laws on sales or employment of restaurants and bars. The major findings of the more widely quoted studies are summarized in paragraphs 18 to 22.

18. Business was booming in New York City's bars and restaurants since the *Smoke-Free Air Act* went into effect on 30 March 2003. From 1 April 2003 through 31 January 2004, bar and restaurant tax receipts were up 8.7% from the same period in 2002/03. Employment in these catering premises had increased by about 10,600 jobs<sup>2</sup> nine months after law enactment.

19. According to the California Board of Equalization, the Golden State's hospitality sector continued to grow since California's

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<sup>1</sup> Scollo M., A. Lal, A. Hyland, and S. Glantz. "Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry". Tobacco Control 2003; 12:13-20.

<sup>2</sup> Department of Finance, Department of Health & Mental Hygiene, Department of Small Business Services, Economic Development Corporation of New York. "The State of Smoke-Free New York City: A One-Year Review". March 2004.

smokefree workplace law was enacted in 1994. Sales tax data showed an increase in annual sales from US\$7.16 billion in 1997 for establishments selling beer and wine to US\$9.6 billion in 2002. For establishments selling all kinds of alcohol, sales increased from US\$8.64 billion in 1997 to US\$11.3 billion in 2002. In 2003, the Employment Development Department under the Board reported that the number of individuals employed in California's bars and restaurants had about 200,500 more employees than they did in 1995, before the smokefree policy took effect<sup>3</sup>.

20. A survey conducted in Ireland in mid 2004 showed that visiting patterns to restaurants had been virtually unchanged since introduction of the legislation<sup>4</sup>.

21. According to an Australian study on the economic impact of smokefree dining, the introduction of smokefree dining laws in 1999 in South Australia did not adversely affect restaurants<sup>5</sup>. The monthly turnover for South Australian (SA) restaurants and cafes rose by 4.7% to A\$31.3 million after introduction of smokefree dining. In addition, the ratio of SA restaurant and café turnover in comparison to SA retail sector turnover remained the same before and after introduction of smoke-free dining.

22. Healthcare experts in California have recently conducted a study to examine the impact of smoke-free ordinances on the value and profitability of restaurants in the United States. The study estimated the value added to a restaurant by a smoke-free policy using regression analysis of the purchase price of restaurants. It reflected a median increase of 16% in the sale price of a restaurant in a jurisdiction with a smoke-free law compared to a comparable restaurant in a community without such a law.<sup>6</sup>

## CONCLUSION

23. Comprehensive tobacco control legislation is a crucial

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<sup>3</sup> California State Board of Equalization: California Department of Health Services, "*Tobacco Control Section*". November 2002; State of California, Employment Development Department, "*Labour Force Statistics*". November 2003.

<sup>4</sup> Office of Tobacco Control of the Republic of Ireland. "*Smoke-Free Workplace Legislation Implementation Progress Report, May 2004*". May 2004.

<sup>5</sup> Wakefield M et al. "*The Effect of a Smoke-free Law on Restaurant Business in South Australia*". Australian and New Zealand Journal of Public Health, 2002, 26:4 375-380

<sup>6</sup> Benjamin C. Alamar and Stanton A. Glantz. "*Smoke-Free Ordinances Increase Restaurant Profit and Value*". Contemporary Economic Policy. Vol 22, No. 4, October 2004, 520-525.

component of a successful tobacco control strategy. While there is as yet no universal formula for enacting effective tobacco control laws, there is increasing recognition among the international health community that best-practices smokefree legislations should cover all enclosed public places and provide equal protection to employees in all industries. Many jurisdictions in North America, Europe and the Asia-Pacific Region have successfully implemented all-embracing smokefree workplace laws to protect public health without causing adverse economic impact on the trades. We shall continue to draw on the experience of these and other jurisdictions and relevant overseas expertise in seeking to make indoor workplaces and public places in Hong Kong smokefree.

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