

**ASIAN CONSULTANCY ON TOBACCO CONTROL**  
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**Smoking (Public Health) Ordinance**  
**Submission to Legislative Council Bills Committee**  
**on Fixed Penalties**  
Hearing: 3rd May 2008

27 April 2008

Dear Convenor and Members of the Bills Committee,

We support the introduction of the Fixed Penalty system as a good move by the Administration.

In other countries where a Fixed Penalty system was introduced, there has been no real need to argue the rationale for fixed penalties as:

- a) The health hazards of second-hand smoke are widely known.
- b) Countries that have legislation on second hand smoke enjoy high compliance rates.
- c) Fixed penalties are easy and straightforward to implement; and
- d) Hong Kong has other examples of fixed penalties, which work smoothly.

ASH Scotland (where fixed penalties are already in place) writes: "Fixed penalties are applied to other offences such as minor driving & parking offences or infringement of litter laws and are already widely accepted as a penalty measure and alternative to court proceedings. There is indeed an issue with capacity amongst enforcement officers and the fixed penalty system was viewed as quick and straightforward to implement, and fair since the law was well publicised."

World Health Organisation has pointed Hong Kong to Article 8 of WHO Framework Convention on Tobacco Control (to which Hong Kong, through China, is a party) on *Protection From Exposure to Second-Hand Tobacco Smoke*.

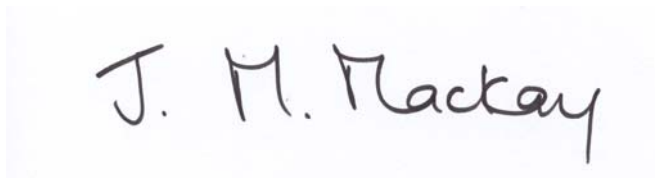
WHO has the following recommendations related to penalties:

- WHO encourages countries to use on-the-spot fines for breaches to save time and money in the prosecution process.
- The legislation should specify fines or other monetary penalties for violations.
- Penalties should be sufficiently large to deter violations or else they may be ignored by violators
- Penalties should increase for repeated violations and should be consistent with a country's treatment of other, equally serious offences
- Legislation should be simple, clear, enforceable and comprehensive

WHO will be submitting further to the Hong Kong Legislative Council on this issue.

I will be happy to answer any questions on 3 May 2008.

Yours sincerely,

A handwritten signature in black ink on a light blue background. The signature reads "J. M. Mackay" in a cursive, slightly slanted script.

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Director, Asian Consultancy on Tobacco Control



The Conference of the Parties to the WHO Framework Convention on Tobacco Control, the WHO International Agency for Research on Cancer, the US Surgeon General and the United Kingdom Scientific Committee on Tobacco and Health all concur that second-hand smoke exposure contributes to a range of lethal diseases, including heart disease and several cancers. For example, second-hand smoke exposure increases the risk of coronary heart disease by 25–30% and the risk of lung cancer in non-smokers by 20–30%<sup>1</sup> (*WHO, MPOWER, 2008*). Small children whose parents smoke at home have an increased risk of suffering lower tract respiratory infections and otitis media.<sup>2,3</sup> SHS has also been linked to an increase in the number and severity of asthma episodes in asthmatic children.<sup>4</sup> There is also evidence that SHS increases the risk of Sudden Infant Death Syndrome (SIDS).<sup>5</sup>

All people have the right to breathe clean air. Research clearly shows that there is no safe level of exposure to second-hand smoke. For that reason implement 100% smoke-free environments by law is the only scientifically proven way to protect people from SHS. In countries where strong smoke-free legislation has been enacted, the law must be implemented and enforced in a way that makes it a reality in daily life. To facilitate implementation the law should clearly identify offences, penalties and breaches (*WHO, Building Blocks for Tobacco Control: A Handbook, 2004*). The Conference of the Parties to the WHO FCTC also agrees that penalties should be plainly defined stating that, "legislation should specify fines or other monetary penalties for violations."<sup>6</sup>

Penalties should serve as a deterrent and should be greater than any direct financial benefit the offender realizes from the violation, and should be at least equal to the cost of enforcement. Generally, penalty levels must be determined in the context of the penalties a jurisdiction imposes under its other laws. It is important that these sanctions be

<sup>1</sup> U.S. Department of Health and Human Services. *The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General*. Atlanta, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006 (<http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf>, accessed 5 December 2007).

<sup>2</sup> Strachan DP, Cook DG. Parental smoking and lower respiratory illness in infancy and early childhood. *Thorax* 1997, 52:905–14.

<sup>3</sup> California Environmental Protection Agency and Office of Environmental Health Hazard Assessment. Health effects of exposure to environmental tobacco smoke. California Environmental Protection Agency, 1997.

<sup>4</sup> Cook DG, Strachan DP. Parental smoking and prevalence of respiratory symptoms and asthma in school age children. *Thorax* 1997, 52:1081–94

<sup>5</sup> Anderson HR, Cook DG. Passive smoking and sudden infant death syndrome: review of the epidemiologic evidence. *Thorax* 1997, 52(11): 1003–9

<sup>6</sup> World Health Organization. Conference of the Parties to the WHO Framework Convention on Tobacco Control ([http://www.who.int/gb/fctc/PDF/cop2/FCTC\\_COP2\\_17P-en.pdf](http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_17P-en.pdf), accessed 25 April 2008).

perceived by the effected parties and the public as proportionate to the offence. This purpose can best be achieved with a graduated penalty structure. Under many laws, for example, an offender's first violation results only in a warning notice. Penalties may increase for each subsequent offence (*WHO, Tobacco Control Legislation: an introductory guide, second edition, 2004*).

While a graduated penalty structure is an effective practice, WHO also encourages countries to use on-the-spot fines for breaches to save time and money in the prosecution process. In administering such fines, enforcement officers must have clearly defined powers of enforcement, including the authority to issue fines (*WHO, Building Blocks for Tobacco Control: A Handbook, 2004*).