

**Bills Committee on  
Smoking (Public Health) (Amendment) Bill 2005  
Administration's response to issues raised  
at the Bills Committee meeting on 24 November 2005**

**PURPOSE**

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

**BACKGROUND**

2. At the above meeting, Members discussed LC Paper No. CB(2)448/05-06(01) and raised the following issues. The Administration was requested to provide a response in writing -

*(a) What were the meanings of "most bars" and "when a bingo game is in progress" in paragraph 4;*

**ADMINISTRATION'S RESPONSE**

3. According to the "Rules and Regulations Pertaining to Smoke-free Public Places and Workplaces " of Rhode Island, "most bar" means all bars except smoking bars, while "smoking bars" is defined as "an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than 50% of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of such tobacco products."

4. As regards "when a bingo game is in progress", its definition is not found in the mentioned document or other General Laws of Rhode Island.

*(b) what was the meaning of "enclosed places of employment" in paragraph 6;*

5. The California Smokefree Workplace Law has not given a definition to the term "enclosed places". However, reference could be made to an answer given by some City Attorneys found on the website of The California Smoke-free Bars,

Workplaces and Communities Program<sup>1</sup>. Please see question and answer number 7 at **Annex A**.

- (c) *whether the “separate place for smoking” in paragraph 8 was a self-service area;*
- (d) *the provision(s) on protecting employees from second-hand smoke under the Occupational Health and Safety Regulation in British Columbia, Canada; and*

6. According to Part 4 of the Occupational Health and Safety Regulation, the “separate place for smoking” in public entertainment facility may not necessarily be a self-service area. However, there are stipulated conditions protecting the health of employees under the law. These conditions include -

An employer must ensure that a worker does not work in an indoor area where smoking is permitted except if -

- (a) a worker must enter the indoor area to respond to an emergency endangering life, health or property;
- (b) the worker must enter the indoor area to investigate for illegal activity;
- (c) the workplace is a public entertainment facility<sup>2</sup> and no worker must be required to enter a designated room unless the followings are fulfilled:
  - (i) the entries are on an intermittent basis to perform the worker’s functions;
  - (ii) for the worker’s work period in a 24 hour day, the total of all times that worker spends in the designated room to perform the worker’s functions do not exceed 20% of that work period; and
  - (iii) the employer allows the worker to choose
    - (1) never, except for emergency situations and for investigation of illegal activity, to enter the designated room to perform the worker’s functions, or
    - (2) for the worker’s work period in a 24 hour day, to enter the

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<sup>1</sup> The California Smoke-free Bars, Workplaces and Communities Program is a statewide project of the American Lung Association of the East Bay that is funded through tobacco tax revenues. It is tasked to carry out the goals and objectives of the Tobacco Control Section of the California Department of Health Services. ([http://www.breath-ala.org/html/work\\_legal\\_params.html](http://www.breath-ala.org/html/work_legal_params.html))

<sup>2</sup> “Public entertainment facility” includes a bar, bingo hall, bowling alley, cocktail lounge, restaurant, gambling casino, nightclub or pub.

designated room to perform the worker's functions for a total of all times spent there that is less than 20% of that work period.

(d) the tobacco smoking has been effectively removed.

***(e) what was the meaning of "premium gaming rooms in casinos" in paragraph 9;***

7. Section 26R of the Tobacco and Other Smoking Products Act 1998 defines "premium gaming room" as a room of a casino where –

(a) minimum or maximum bets are generally higher than elsewhere in the casino; and

(b) food or drink are generally provided free to casino patrons.

***(f) what was the meaning of "declared smoking area" in paragraph 10;***

8. According to the Tobacco Act 1987 sections 5I (4), (5) and (6), "declared smoking area" in a casino is defined as an area in the Health Minister's opinion a bar area, a TAB area or a high roller room and having declared by the Minister by notice published in the Government Gazette.

9. Then, "bar area" in relation to a casino, means an area in the casino that is used predominantly for the serving and consumption of alcoholic drinks; "TAB area", in relation to a casino, means an area in the casino in which wagering or approved betting competitions (within the meaning of the Gambling Regulation Act 2003) or both are conducted in accordance with the wagering licence granted under Part 3 of Chapter 4 of that Act. Meanwhile, "high roller room" means a room in a casino that is used substantially for gaming by international visitors to the casino.

***(g) what was the meaning of "private gaming areas" in paragraph 11;***

10. "Private gaming area" is not defined in the New South Wales (NSW) Smoke-Free Environment Act 2004. However, according to the website of the NSW Health, "smoking will be permitted in the private gaming areas at Star City Casino, not including areas used substantially for gaming machines"<sup>3</sup>.

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<sup>3</sup> <http://www.health.nsw.gov.au/public-health/health-promotion/tobacco/sfeaa2004.html>

11. The Administration was also requested to provide a response in writing on the following –

*(h) the question asked by Hon. Wong Ting-kwong in his letter to the Administration dated 27 June 2005 on whether employees who suffered bodily harm outside their workplaces for their action in asking clients not to smoke in statutory no smoking areas would be entitled to monetary compensation under the existing labour legislation.*

12. Pursuant to section 5 of the Employee's Compensation Ordinance (Cap. 282), unless any of the exceptions apply, if personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the Ordinance. Each specific case would have to be considered and determined on its particular facts and circumstances.

#### Supplementary Information

13. Separately, in LC Paper no. CB(2)2657/04-05(01), we agreed to provide further information on means that the Airport Authority (AA) has put in place to protect staff who are assigned to clean the smoking rooms at its airport passenger terminals.

14. According to AA, such cleaning works have been contracted out to outside parties. ISS Hong Kong Services Limited and Wai Hong Cleaning and Pest Control Company Limited are the janitorial service contractors for smoking lounges at the airport. Their working procedures and guidelines stipulate that workers should wear appropriate personal protective equipment including facemasks during the cleaning process.

Annex A

# BREATH

THE CALIFORNIA SMOKE-FREE BARS,  
WORKPLACES AND COMMUNITIES PROGRAM



*Smoke-Free Communities Are Good For Health AND Good For Business*



## LEGAL PARAMETERS OF THE CALIFORNIA SMOKE-FREE

WORKPLACE LAW (LABOR CODE 6404.5)

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### ***7. HOW OPEN DO PATIOS, DECKS AND OTHER AREAS OUTSIDE BARS AND RESTAURANTS HAVE TO BE TO FALL OUTSIDE THE DEFINITION OF "AN ENCLOSED SPACE AT A PLACE OF EMPLOYMENT?"***

The State of California has not yet put forth a definition of "enclosed space" but one is being developed by the Attorney General's office. Until the state defines "enclosed space" the local jurisdictions could do so. Such a definition would probably rely to a great extent on the policy decisions of local planners.

Section 6404.5 does not define "enclosed space" and there little contextual language in the statute from which to draw inferences. At present, the best definition we have is an informal one set forth in a memorandum dated December 1, 1997 sent to the San Francisco City Attorney's office by the CAL/OSHA Legal Office. This memorandum states:

"the term is generally understood to mean a space surrounded by four walls, a floor and a ceiling. Thus, bars, taverns or gaming clubs with patio areas which lack a roof or walls would not be an "enclosed space." Thus, relying on CAL/OSHA's definition until another is put forth by the state, if a patio or deck has one entire side open, or is missing a complete wall or a roof, it will not be considered an enclosed space, and smoking will be allowed. On the other hand, if a patio or porch simply has a few windows or doors that open, but no missing wall or roof, that area would be considered enclosed, and smoking is prohibited.

This issue may be revisited where for instance, an open-ended patio is so deep that smoke gets trapped inside the area, and for all practical purposes, the area is "enclosed." We must bear in mind the overall purpose of the statute, which is to reduce employee exposure to environmental tobacco smoke.