

5 January 2008

RCP - passive smoking

Panel on Health Services

Dear Sir,

The recent release of Hong Kong Customs data on the numbers of legal cigarettes sold in Hong Kong during 2007 reveals that 12 million (600,000 packets of) cigarettes were sold here in 2007 more than were sold in 2006 prior to the implementation of the non-comprehensive smoking laws on January 1st 2007.

The policy is flawed and as demonstrated by the figures, a complete failure in weaning existing smokers off smoking and from preventing Hong Kong's youth from starting on the deadly slope. The smoking exemptions for bar and restaurant 'Qualified Establishments' are one major reason for this deadly increase in smoking as well as the lack of free medications linked to an effective Quitline counselling to help nicotine addicts stop smoking and lack of increased tobacco taxation.

The expert report information from the Royal College of Physicians is provided for your download and review.

<http://www.rcplondon.ac.uk/pubs/contents/fe4ab715-2689-4a4a-b8c7-53e80386c893.pdf>

The administration has a **duty of care** to ALL workers to provide smoke free workplaces, **without exception**. All employers have a legal duty of care under existing Occupational Health and Safety legislation to keep ALL workplaces **safe and free from risks to the health** of the workers.

The deadly dangers of passive cigarette smoke are proven beyond contest and even admitted on the Philip Morris (adjudicated racketeers) website.

The expert report states : 'There is an unanswerable moral case to protect all people from passive smoking at work. All employees have a right to work in a safe environment, and all employers have a duty to ensure that they do. '

The same is applicable to Hong Kong.

Furthermore Hong Kong is obliged under its membership of FCTC to apply without change, the binding agreements within the treaty.

At the Second Session of the Conference of the Parties to the WHO FCTC Bangkok, Thailand 30 June - 6 July 2007 was presented :

"JOINT BRIEFING PAPER: PROPOSED GUIDELINES FOR THE IMPLEMENTATION OF ARTICLE 8 OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL "

Contained within the paper are the following demands:

Key elements of guidelines for implementation of Article 8:

1: Acknowledge that Article 8 is grounded in fundamental human rights Guidelines should affirm that the right to effective protection from exposure to tobacco smoke is implicit in the fundamental right of all persons to life, a healthy environment and the enjoyment of the highest attainable standard of health.

2: Legal protection, not voluntary measures Guidelines should acknowledge that Article 8 requires affirmative legal measures, and that voluntary agreements are not acceptable alternatives.

3: Protection for all Guidelines should emphasize the duty to protect all persons, not just "special" or "vulnerable" populations.

4: Create 100% smoke-free environments Guidelines should underscore that effective protection of health requires the creation of 100% smoke-free environments, and that ventilation and designated smoking rooms are not acceptable approaches.

5: Ensure comprehensive coverage Guidelines should emphasize the need for smoke-free environments in all indoor public places, all indoor workplaces, and all public transport.

The proposed guidelines properly recognize that "[t]he duty to protect from tobacco smoke, embodied in the text of Article 8, is grounded in fundamental human rights and freedoms" (para 4). This acknowledgement is extremely important. By emphasizing this point, the guidelines not only underscore the importance of Article 8, but also clarify its

legal and conceptual underpinnings. Because breathing second-hand smoke endangers life, a duty to protect against this hazard is implicit in the right to life recognized by the Universal Declaration of Human Rights; in the fundamental right of all persons to enjoy the highest attainable standard of health, as recognized in the Constitution of the World Health Organization, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child, and other international legal instruments and custom; and as formally recognized in the Preamble to the FCTC itself. **Parties' obligations to protect** their citizens from exposure to tobacco smoke also flow from the universal right of all persons to a healthy environment, as recognized in numerous other international instruments.

2: Legal protection, not voluntary measures

The proposed guidelines emphasize that Article 8 requires affirmative legal measures, and that voluntary agreements and informal arrangements are not acceptable alternatives. Principle 3 of the proposed guidelines states that:⁶ **Legislation is necessary to protect people from exposure to tobacco smoke. Voluntary smoke free policies have repeatedly been shown to be ineffective and do not provide adequate protection.**

Protection from exposure to tobacco smoke requires the full backing of the law. While voluntary action by communities and businesses may serve to build support for smokefree places, **self-regulatory measures or voluntary agreements between governments and business cannot fulfill Parties' obligations under the FCTC.** The evidence shows that the objective of effective, universal protection for all requires the capacity for legal sanctions and meaningful enforcement. Where governments have substituted voluntary agreements for meaningful legal restrictions on smoking, progress has been slow. In Scotland, for example, after four years of a voluntary agreement, not one public house was smoke-free. Just one month after new smoke-free laws were implemented, inspections found 99% compliance with the law.⁵

3: Protection for all

The proposed guidelines correctly emphasize that the duty to protect individuals from tobacco smoke **"extends to all persons, and not merely to certain populations"** (para 4). The guidelines' key principles reiterate that **"[a]ll people should be protected from exposure to tobacco smoke"** (para 7).

This principle is important. **Certain jurisdictions have sought to focus on "special" or "vulnerable" populations — such as women and children — or to limit smoking in only certain venues or at certain times. However, tobacco smoke poses a real and substantial threat to the health of all, and policies must extend comprehensive protection to all.**

Article 8.2 must be read in the light of the FCTC' s Guiding Principles: Article 4.1 explicitly states that the FCTC is meant **"to protect all persons from exposure to tobacco smoke"** .

This is not to ignore the fact that some populations may be especially vulnerable to smoke exposure because they are less able to speak out or act independently, without legal norms in place. This vulnerability only reinforces the need for comprehensive and enforceable legal standards to provide protection on their behalf.

4: Create 100% smoke-free environments

Tobacco smoke has been classified by leading authorities as a human carcinogen and a cause of lung cancer in humans.⁶ This is not surprising, because tobacco smoke is a potent cocktail of more than 4000 chemicals, including at least 250 known toxins

We urge the Panel to pressure the administration to immediately rescind these ludicrous politically motivated smoking exemptions , to enact comprehensive anti smoking policy forthwith without any exemptions , to abide by its membership requirements of the FCTC and to double the tax on tobacco products to prevent our youth from starting smoking. To do otherwise is signing the death warrants of the staff working in the 'Qualified Establishments' and is encouraging our youth to smoke.

kind regards

James Middleton

Clear the Air

www.cleartheair.org.hk