

GUIDE

WORKCOVER NSW HEALTH AND SAFETY GUIDE

Passive Smoking Policy and Control

2000



Passive smoking in the workplace

Policy and control

A guide to achieving a smoke-free workplace

WorkCover NSW

The Cancer Council New South Wales

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Introduction

Smoking trends

What is passive smoking?

Employers who allow smoking in their workplace are at risk of being sued by either employees or members of the public who suffer ill health as a result of passive smoking. This guide has been developed to raise awareness among employers and employees of their legal obligations regarding smoking in the workplace. It is also intended to assist with the introduction of a smoke-free workplace.

Since the early 1950s the percentage of adult smokers has been in decline. By the mid-1990s a growing awareness that passive smoking could harm the health of non-smokers led to the widespread adoption of smoke-free policies in workplaces and public places.

Smoke-free policies have now been adopted by the majority of workplaces in NSW including all Federal and NSW Government departments and most private companies. Public places so designated and public places that are also workplaces have been subject to the provisions of the Smoke-free Environment Act 2000. This embraces shopping centres, malls and hospitality venues. All commercial airlines operating within Australia have banned smoking on their flights. (Further information on the Smoke-free Environment Act 2000 can be obtained from the Department of Health, Tobacco and Health Unit Ph: 02 9391 9111.)

Passive smoking means to breathe in environmental tobacco smoke (ETS).

ETS contains over 4,000 chemical compounds including 43 known carcinogens.

ETS is a combination of exhaled mainstream smoke and sidestream smoke:

- Mainstream smoke is the smoke that smokers inhale directly from their cigarette. Exhaled mainstream is the smoke that smokers exhale.
- Sidestream smoke comes from the end of a lit cigarette and contains much higher levels of many of the carcinogens and other toxic substances than exhaled mainstream smoke. 85 per cent of ETS in an average room is sidestream.

The degree of exposure to ETS by non-smokers is determined by factors such as proximity to a smoker, the tar level of the cigarettes, the number of cigarettes smoked, the size of the room and length of exposure.

What's your poison?

Tobacco smoke contains up to 4000 chemicals including these poisons

Hydrogen Cyanide (Poison in Gas Chambers)	Acetone (Paint Stripper)
Ammonia (Floor Cleaner)	Carbon Monoxide (Car Exhaust)
Napthalene (Mothballs)	Methanol (Rocket Fuel)
Phenol (Paints)	Butane (Lighter Fuel)
Benzo(a)pyrene*	Toluene (Industrial Solvent)
Cadmium* (Car Batteries)	
Urethane*	
Vinyl Chloride*	
Naphthylamine*	
Polonium-210*	

It's enough to make you sick. Very sick.

* Known cancer causing substances

Health effects

During the past two decades a number of major scientific reports have been conducted on the health effects of passive smoking. These reports have concluded that passive smoking is a significant health hazard.

ETS is an irritant to the eyes and respiratory tract and to many people has an offensive odour. It increases the chance of contracting or aggravating a range of illnesses including:

- Cardio-vascular disease
- Lung cancer
- Asthma (particularly in children)
- Acute irritation of the respiratory tract
- Bronchitis, pneumonia and other chest illnesses in children.

The higher the level of exposure to ETS the greater the risk of contracting these illnesses.

Legislative requirements and legal liability

...It could be argued that injury from passive smoking is reasonably foreseeable and that consequently such an injury could give rise to action at common law.

Federal Attorney General, House of Representatives, 13 Nov 1986

ETS is a major indoor airborne contaminant and employers who continue to allow smoking in their workplace may be liable for prosecution under the Occupational Health and Safety Act 1983.

The Act requires:

- Employers to ensure the health, safety and welfare at work of all their employees and any others in their place of work
- Employers to take all practical measures to protect workers in relation to their health, safety and welfare
- Employees to take reasonable care for the health and safety of persons at their place of work who may be affected by their acts.

The maximum penalties that can be imposed for breaches of the Act are \$550,000 for corporations (\$825,000 and two years imprisonment for repeat offenders), \$55,000 for individual employers and up to \$3,300 for employees. Employers may also be liable under common law.

Under the Workers Compensation Act 1987 workers may be entitled to compensation if it is found that passive smoking has contributed to the development of a disease or aggravated an existing disease.



Passive smoking case files

Liesel Scholem v NSW Dept of Health

Since 1985 there have been over twenty cases where employers have been successfully sued in relation to passive smoking. The two cases below are an indication of the risk of legal liability that employers run if they allow smoking in the workplace.

NSW District Court, Sydney, 27 May 1992
Claim: Exacerbation of asthma and emphysema
Compensation: \$85,000

Liesel Scholem worked for the NSW Department of Health between 1974-86 as a psychologist in a community health centre. Most of the staff and patients where she worked were smokers. Mrs Scholem was often exposed to ETS in her work environment until 1984 when the Department implemented a smoke-free workplace policy.

Mrs Scholem claimed that passive smoking had made her asthma irreversible causing her a disability.

This was the first case in the world where a jury found an employer negligent in a passive smoking case.

Sean Carroll v Melbourne Transit Authority

Workcare Claim, July 1998
Victorian Accident Compensation Tribunal
Claim: Lung cancer
Compensation: \$65,000 (out of court settlement)

Sean Carroll had spent 35 years as a bus driver exposed to tobacco smoke from passengers on his bus and from co-workers in the tea room.

The State Insurance Office (insurers for the Melbourne Transit Authority) believed that Mr Carroll had a strong chance of winning his case and offered an out-of-court settlement of \$65,000. As Mr Carroll had a terminal illness he accepted the offer rather than go through a protracted court case.

Identifying and assessing passive smoking

Assessments of the risk of passive smoking should be made on the basis of whether the smoking is indoors or outdoors.

Passive smoking will occur where people smoke indoors. It may also occur in partly enclosed areas such as verandahs, terraces, shopping malls, sports stadiums and beer gardens. These areas must be assessed as to whether there is sufficient natural ventilation for them to be considered outdoors. For specialist advice contact WorkCover NSW on 13 10 50.

Controlling passive smoking

To control ETS, smoking should be eliminated from all indoor areas. To eliminate passive smoking from all indoor areas in the workplace employers should:

- Develop a written non-smoking policy in consultation with employees
- Designate the indoor areas as non-smoking
- Inform staff through meetings, memos and notice boards
- Post signs using the standard symbols clearly indicating to staff and the public that the indoor areas are non-smoking.

Are separate smoking areas a solution?

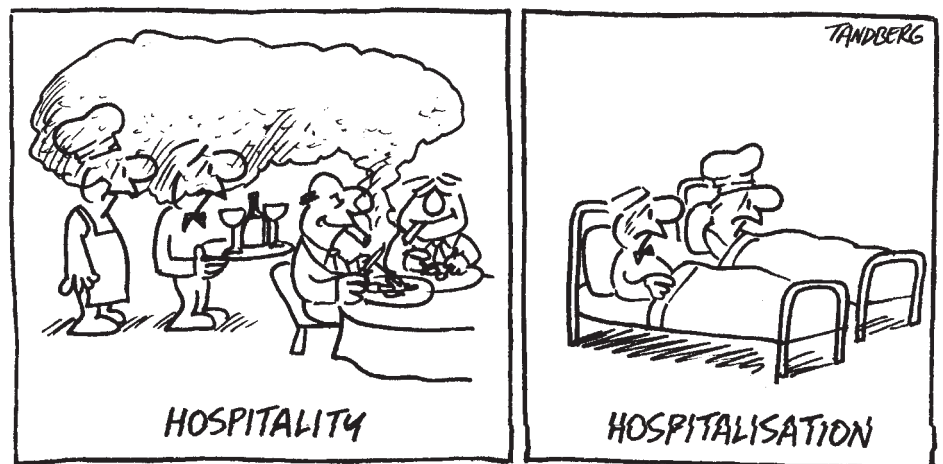
Workplaces that provide separate smoking areas for staff or clients are not fulfilling their obligation under the OHS Act to provide a safe place of work and these areas should be phased out.

Can ventilation prevent passive smoking?

Ventilation systems and air conditioning are not adequate to remove all ETS.

Even costly high quality ventilation with a high fresh air supply combined with an air cleaning system will not remove all of the:

- Tiny particles, including carcinogens, which are breathed deep into the lungs
- Gaseous components of ETS
- Sidestream smoke
- Odour
- Irritation to non-smokers.



Developing a smoke free workplace policy

A smoke free workplace policy should be a written document which is developed in consultation with employees and the health and safety committee and be posted on notice boards for all to see. It is recommended that the policy states:

- That the aim is to achieve a workplace which is free of ETS.
- When the smoking ban comes into force.
- The precise areas affected.
- That professional advice about coping without cigarettes and quitting smoking is available.
- That new employees will be told when applying for a job that the workplace has a non-smoking policy.
- That employees cannot be disciplined because they smoke away from the workplace, during their own time.
- That employees who fail to look after the safety of other people at work by not complying with the no smoking policy can be personally liable to a fine of up to \$3,300 under the OHS Act.
- That smokers are not entitled to smoke even if staff in a particular area all want to smoke. (This would contravene the obligation on an employer to provide a safe place of work and may affect people in other parts of the building.)
- That those who work in isolation are prohibited from smoking. (They are still likely to affect others who come into their area or through the air-conditioning system.)
- That designated smoking areas must be outdoors with no possibility of contamination of indoor areas.
- That the policy must be reviewed and when it will be reviewed.

More information

For advice about passive smoking contact the:

WorkCover NSW

Client Contact Centre 13 10 50
(Free call in NSW)

The Cancer Council

New South Wales

153 Dowling Street
Woolloomooloo 2011
Phone (02) 9334 1900

NSW Health Department

Tobacco and Health Unit
Phone (02) 9391 9111

The National Heart Foundation

343 Riley Street
Surry Hills 2010
Phone (02) 9219 2444

For information about how to give up smoking contact:

QUIT Line

Phone 131 848

WorkCover Publications Hotline

1800 658 134

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Fax: (02) 4353 2373

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Grafton

NSW Government Offices
49 - 51 Victoria Street
GRAFTON 2460
Phone: (02) 6641 5111
Fax: (02) 6641 5100

Griffith

NSW Government Offices
104 - 110 Banna Avenue
GRIFFITH 2680
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Narrabri

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