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 Enquiry Phone: [REDACTED]  
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150 Wembley Road  
 Logan Central QLD 4114  
 PO Box 3226 Logan City DC QLD 4114

11 December 2015

Leanne Linard MP  
 Chair of Health & Ambulance Services Committee  
 Parliament House  
 Cnr George & Alice St  
 BRISBANE QLD 4000

Council enquiries **07 3412 3412**  
 Council fax **07 3412 3444**  
 Email [council@logan.qld.gov.au](mailto:council@logan.qld.gov.au)  
 Web [www.logan.qld.gov.au](http://www.logan.qld.gov.au)  
 ABN 21 627 796 435

Dear Minister

## **TOBACCO & OTHER SMOKING PRODUCT (SMOKE FREE PLACES) AMENDMENT BILL 2015**

Thankyou for the opportunity to respond to the "Tobacco & Other Smoking Product (Smoke Free Places) Amendment Bill 2015" as introduced into Parliament on 10 November 2015.

The following submission is provided by Logan City Council to the Health & Ambulance Services Committee.

### **A. The proposed reforms by the State**

- Logan City Council supports State strategies that reduce health costs resulting from hospitalisations and premature deaths attributed to smoking related illnesses.
- The State has not released other strategies for which to reduce the incidence of smoking in Queensland.
- Council's previous submission, (the August submission on the State Private Member's Bill), sought the State to release its holistic plan i.e. initiatives to reduce the incidence of smoking in Queensland other than the ad-hoc addition of no smoking areas.
- Such other initiatives may include direct actions or further research such as:
  - (i.) An increase in funding for "Quitline Services". The Queensland Government's "Self-Reported Health Status 2011-12" report for local government areas highlights where the State should prioritise "Quitline Services".
  - (ii.) Research into the New Zealand approach to a smoke-free New Zealand. In March 2011 the New Zealand Government adopted the Smoke-free 2025 goal for New Zealand. This was in response to the recommendations of a landmark Parliamentary inquiry by the Māori Affairs select committee. The Māori Affairs Committee's report was clear that the term 'smoke-free' was intended to communicate an aspirational goal and not a commitment to the banning of smoking altogether by 2025. On that basis, the Government agreed with the goal of reducing smoking prevalence and tobacco availability to minimal levels, thereby making New Zealand essentially a smoke-free nation by 2025.

### **B. Holistic comments on introducing new regulatory legislation**

- The State needs to recognise that, as with all regulatory legislation, the extension of no smoking areas will require –
  - Comprehensive and ongoing education and awareness programs by the State to promote compliance;





- Appropriate enforcement by the State's authorised officers as there will be an expectation in the community that the law will be enforced. In this respect the realistic constraints of "no smoking" enforcement must also be recognised. (See Section C)
- The State must release a comprehensive and ongoing education and awareness strategy and enforcement strategy as part of the evolution of its Bill and before becoming legislation for stakeholder feedback.

**C. Recognition of realistic constraints with no smoking area enforcement**

- Smoking is a transient behaviour and for short periods. It takes approximately 6 minutes or less to smoke a cigarette.
- Programmed attendance is warranted and collection of data for "hot spot" locations is critical to coincide with a reasonable education and awareness strategy. This is a resource intensive exercise.
- Identification of an offender for determination of an offence is problematic for local government authorised officers. Whilst information can be requested and is required to be provided under the Act, local government officers have no powers to detain persons where they are uncooperative. This situation has occurred whilst officers have conducted patrols pursuant to *Local Law No. 6 (Smoke-free Places) 2015* at Beenleigh Town Square. The majority of persons found smoking have stopped when directed by an officer. The minority, who continue to smoke, have an uncooperative demeanour and refuse to state their name and address. These offenders cannot be issued a fine as identification cannot be proven. Police assistance is required to assist with identification.
- Where an alleged offender is a minor, a parent or guardian would need to be present for the gathering of evidence.
- In these cases, without Police assistance, a Council officer may simply only ask the smoker to stop smoking or remove themselves from the area.
- If a smoker continues to smoke and not identify themselves this will not result in compliance.
- The State needs to require the Queensland Police Service (and appropriately resource the Queensland Police Service) to assist other State Agencies and local government in areas of no smoking enforcement.

**D. Specific comments to the proposed changes in the Act via the Current State Government's Bill**

**1. Outdoor public transport waiting points**

**1.1 Discussion**

- Council has previously deferred making a local law on this no smoking category.
- Education and awareness for this no smoking area would be a resource intensive exercise for any agency. There are approximately 1200 bus stops in Logan City alone.
- The enforcement of these no smoking areas, given their number and widespread locations, would be resource intensive.
- Outside public transport waiting points present realistic enforcement constraints with no smoking as detailed at Section C.
- The amendments make it clear that it is not an offence to smoke on residential premises or business premises that fall within five metres of a public transport waiting point. The offence also does not apply to a person travelling within five metres of a public transport waiting point in a motor vehicle. In its previous submission Council identified that the configuration of some public transport waiting

points have impracticalities themselves such as being immediately on the boundary of residential properties.

- Section 26ZU of the Bill clearly articulates that nothing in this provision imposes a duty for local government to enforce. This provides discretion to local government which is supported.

## **1.2 Position**

- No-smoking laws at all public transport waiting points is generally supported as it will create more smoke-free public places across Queensland which will benefit the health of our community, subject to the State clearly demonstrating a commitment to a comprehensive and ongoing education and awareness campaign as well as the resourcing of its State Agencies to enforce such no smoking areas.
- The Bill's current provisions at Section 26ZU ". . . nothing in the relevant provisions imposes a duty on local government to enforce the relevant provisions" is supported as it provides local government the discretion to enforce such relative to its community. The State Government needs to commit to this discretionary power remaining for local government for the future.

## **2. Outdoor pedestrian malls**

### **2.1 Discussion**

- Council has previously agreed with this proposal as part of the State Private Member's Bill on the basis it had already adopted the provision of Sections 26ZPB of the current Act to make a no smoking local law for its Beenleigh Town Square. This local law was gazetted on 8 August 2015.

### **2.2 Position**

- No-smoking laws at all outdoor pedestrian malls is generally supported as it will create more smoke-free public places across Queensland which will benefit the health of our community.
- The Bill's current provisions at Section 26ZU ". . . nothing in the relevant provisions imposes a duty on local government to enforce the relevant provisions" is supported as it provides local government the discretion to enforce such relative to its community.

## **3. Public swimming facilities**

### **3.1 Discussion**

- Council already achieves no smoking at its aquatic centres currently and also captures this in its current local laws.
- The Sport, Leisure & Facilities Branch are in support of the changes proposed by the Bill in this no smoking category and have advised they can easily implement such.

### **3.2 Position**

- That the proposed provision in the Bill is supported.

## **4. Skate parks**

### **4.1 Discussion**

- The enforcement of no smoking at skate parks is also a particularly challenging scenario. There will be an inherent community expectation that any law on no-smoking at skate parks will be enforced. Council's Parks Manager advises the challenges for Council's Park Rangers (only four staff) enforcing no smoking at skate parks are similar to those already identified at Section C.

## **4.2 Position**

- No-smoking laws at skate parks is generally supported as it will create more smoke-free public places across Queensland which will benefit the health of our community, particularly young people, subject to the State clearly demonstrating a commitment to a comprehensive and ongoing education and awareness campaign as well as the resourcing of its State Agencies to enforce such no smoking areas.
- The Bill's current provisions at Section 26ZU ". . . nothing in the relevant provisions imposes a duty on local government to enforce the relevant provisions" is supported as it provides local government the discretion to enforce such relative to its community.
- Given the proposed state-wide ban at these locations in the Bill, the State needs to ensure its Queensland Health Officers are resourced to administer such a state-wide ban and also ensure the implementation and ongoing roll-out of a comprehensive education and awareness campaign.

## **5. Sporting grounds and spectator areas during organised under-age sporting events**

### **5.1 Discussion**

- The basic practicalities to enforcing no smoking by individuals and minors, as mentioned at Section C, are reinforced at these locations.
- Council's Sport, Leisure and Facilities Branch have noted that the definition of 'organised under-age sporting event' appears to be broad enough to cover the activities of Council's sporting lessees. This includes training, practice and games at sporting fields and courts, as well as seating, umpires boxes and warm-up areas. The definition does not extend to recreational groups, i.e. Scouts, Guides.
- The Bill is seen as a positive step in supporting Council's clubs ban smoking at their under-age events however the practicality of enforcing no-smoking bans is an issue.
- In the event this category included junior club sports, such events occur over 7 days per week, during and after business hours, and there would be practicalities in any enforcement agency attending such reasonably. State education and awareness is therefore paramount.

### **5.2 Position**

- No-smoking laws at skate parks is generally supported as it will create more smoke-free public places across Queensland which will benefit the health of our community, particularly young people, subject to the State clearly demonstrating a commitment to a comprehensive and ongoing education and awareness campaign as well as the resourcing of its State Agencies to enforce such no smoking areas.
- The Bill's current provisions at Section 26ZU ". . . nothing in the relevant provisions imposes a duty on local government to enforce the relevant provisions" is supported as it provides local government the discretion to enforce such relative to its community.

## **6. National parks**

### **6.1 Discussion**

- This proposal appears reasonable given the land is controlled by the State.
- There should be no discretionary power for local government in this respect.

### **6.2 Position**

- This no smoking area provision is supported subject to enforcement by respective State agencies and not local government.

## **7. Early childhood and education care facilities**

### **7.1 Discussion**

- This appears a logical extension to the current Division 2A provisions of the Act in respect to Schools.
- The administration & all education facilities is clearly State Queensland Health's responsibility.

### **7.2 Position**

- This proposed no smoking provision is supported subject to the enforcement by State agencies.
- There should be no discretionary power for local government in this respect.
- The provisions should include all "associated/dedicated" school parking areas for the education centre. Some school car parks are currently covered by no-smoking laws and some are not covered creating an anomaly in the intent of the legislation (within and outside of the 5 metre buffer). This should also be an amendment for school precinct no smoking areas.

## **8. Government Precincts**

### **8.1 Discussion**

- This appears to be a logical extension to the current provision in the Act "no- smoking on land within five metres of a government building."
- There is no role referenced for local government for this no smoking area.

### **8.2 Position**

- This no-smoking area provision is supported subject to reasonable and appropriate enforcement by State agencies.

## **9. Private and public residential aged care facilities**

### **9.1 Discussion**

- The administration and enforcement of this no smoking area provision is a clear State responsibility.

### **9.2 Position**

- This no smoking area proposal is supported subject to reasonable enforcement by State agencies.
- There should be no discretionary power for local government in this respect.

## **10. Local Laws prohibiting smoking in public places**

### **10.1 Discussion**

- This category provides discretion to local government, to ban smoking at outdoor places in its local government area, provided it does not conflict with an existing no smoking provision.

### **10.2 Position**

- This amendment is supported in principle on the basis it provides discretion for local governments to determine its priorities.

## **11. Prohibit the sale of smoking products from temporary retail outlets**

### **11.1 Discussion**

- Council agreed to the proposal as part of its August submission.

**11.2 Position**

- This restriction on the sale of smoking products is supported subject to enforcement by State agencies.

**12. Within Five metres (from four metres) of any part of an entrance of an enclosed place**

## Position

- This amendment is supported subject to enforcement by State agencies being retained.


**13. Hookahs**

## Position

- This provision is supported subject to enforcement by State agencies.

Thankyou for the opportunity to respond. I look forward to any opportunity to speak of the Bill further.

Yours faithfully



Shane Mansfield  
City Standards Manager  
(on behalf of Chris Rose, Chief Executive Officer)

