



Your Ref:

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Brook Hastie  
Research Director  
Health & Ambulance Services Committee  
Queensland Parliamentary Service  
Parliament House  
Cnr George & Alice Streets  
BRISBANE QLD 4000

150 Wembley Road  
Logan Central QLD 4114  
PO Box 3226 Logan City DC QLD 4114

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 Brook

## **LOGAN CITY COUNCIL SUBMISSION TO THE TOBACCO & OTHER SMOKING PRODUCTS (EXTENSION OF SMOKING BANS) AMENDMENT BILL 2015**

Thank you for the opportunity to respond to the Tobacco & Other Smoking Products (Extension of Smoking Bans) Amendment Bill 2015.

The endorsed position of Logan City Council in respect to the Bill is now provided:

### **Preliminary**

Logan City Council supports State strategies that reduce health costs resulting from hospitalisations and premature deaths attributed to smoking related illnesses.

The Bill highlights that strong tobacco legislation is one element of a multi-strategy approach to reducing smoking rates.

It is unclear what the holistic strategy of the State is to reduce the incidence of smoking in Queensland and therefore reduce hospitalisation, loss of productivity and premature deaths in Queensland from smoking related illnesses.

The State Government needs to detail its overarching strategy to reduce the incidence of smoking Queensland.

The State also needs to recognise that, as with all regulatory legislation, the extension of no smoking in areas will require –

- a comprehensive education and education program to secure awareness and 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 with no smoking enforcement must also be recognised.

The specific proposed extension of smoking bans will now be discussed.

### **Ban proposed smoking within 5 metres of all State Government Buildings.**

The amendment to the Bill to introduce no smoking within 5 metres of all State Government Buildings is generally supported. It is considered this is generally in alignment with current smoking bans outside buildings. For instance in the current Act at section 26ZJ, "person must not smoke within 4 m of any part of an entrance to an enclosed place, unless the person has a reasonable excuse."





**Ban smoking at all transport waiting areas and pedestrian malls.**

Currently the *Tobacco and Other Smoking Products Act 1998 (The Act)* provides local governments the express power to enact local laws banning smoking in pedestrian malls and at public transport waiting points such as bus stops, through the development and enactment of a local law.

**(i.) Public Transport Waiting Points**

Council has recently been considering making a local law prohibiting smoking at public transport waiting points (not enclosed and under the control of Council) and at this point in time has resolved to defer its position and review such within 12 months or after the outcome of the Bill by the Queensland Parliament.

The Bill proposes a new section 26ZKB "Person must not smoke at a public transport waiting point". This new Section proposed by the Bill would be under Division 3 "Other outdoor places". In respect to Division 3, at section 26ZM (2) the current legislation clearly articulates "nothing in this division imposes a duty on a local government to enforce this division." That is, neither the current Act nor the Bill's proposed amendment imposes a compulsory responsibility on local government to administer such. However, the explanatory notes references that local government already has the ability to introduce a local law for no smoking at public transport waiting points (in areas of its jurisdiction and in particular that are not enclosed).

Whilst the explanatory notes make the statement about the Bill imposing a state wide ban without qualification in the Bill regarding enforcement jurisdictions, there is a risk that the community expectation will be that local government will enforce these provisions.

As such, the State needs to provide clear and consistent messaging before the progression of the Bill, regarding who will be responsible for the enforcement of the new section 26ZKB "Person must not smoke at a public transport waiting point".

It is important for the Committee also to appreciate the enforcement of no smoking at public transport waiting points, is particularly a challenging scenario. As stated earlier, there will be an inherent community expectation that any law on no smoking at public transport waiting points will be enforced. The challenges for no smoking at transport waiting points are:

- 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.
- Identification of an offender for determination of an offence is problematic for local government authorised officers. Whilst information can be requested, local government officers have no powers to detain persons where they are uncooperative. Also, 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 would simply only be able to ask the smoker to stop smoking or remove themselves from the area. However, this would not necessarily result in compliance.
- Council has undertaken preliminary costings as part of the consideration of accepting the provisions of the current Act at section 26ZPB and these are considerable. A recent exercise for Logan City Council illustrates that costs are significant and would involve approximately the following for Logan City Council to take up section 26ZPB:
  - \$270,000 to \$320,000 in no smoking signage at some 1156 bus stops.
  - \$130,000 in education and awareness for the community on the no smoking requirement for public transport waiting points; and

- \$155,000 in officer resources as part of programmed attendance at public transport waiting points for the first twelve months.

On the basis of the current Bill and explanatory notes, it is submitted that:

- There is no clear responsibility regarding enforcement jurisdiction in the Bill;
- There are practical issues in administering no smoking at public transport waiting points,
- The State must align any policy position on no smoking to a comprehensive education and awareness campaign including continued 'shock' media campaigns on the effects of smoking. This is not clear in the Bill's explanatory notes.
- The Bill's explanatory notes also does not detail any consideration to any alternative to achieving no smoking areas at public transport waiting points.
- If it became mandatory of local government to administer no smoking at public transport waiting points there are the extensive costs in this exercise for signage, education and awareness and enforcement.

**(ii.) Pedestrian Malls**

As at 7 August 2015 *Local Law No. 6 (Smoke Free Places) 2015* was gazetted. This local law provides for a no smoking area at the Beenleigh Town Square. This Local Law was made under 26ZPB(1) of the Act which provides Council the capability of delivering a Local Law that prohibits smoking in an outdoor pedestrian mall.

The Bill proposes a new Section 26ZKA "Person must not smoke at an outdoor pedestrian mall". This new section proposed by the Bill would be under Division 3 "Other outdoor places". In respect to Division 3, at section 26ZM(2) the current legislation clearly articulates "nothing in this division imposes a duty on a local government to enforce this division. That is, neither the current Act nor the Bill's proposed amendment impose the compulsory responsibility on local government to administer such. However the explanatory notes references that local government already has the ability to introduce a local law for no smoking at pedestrian malls.

The State needs to provide clear and consistent messaging before the progression of the Bill, regarding who will be responsible for the enforcement of the new section.

However, as stated however Logan City Council has already utilised section 26ZPB of the Act to make a local law prohibiting smoking at pedestrian malls and its local law was gazetted on 7 August 2015. The reasons for Council accepting this power was that:

- Logan City Council only has one (1) mall and current resources can provide a reasonable program of attendance to administer its local law
- The Beenleigh Town Square is new i.e. it was an opportune time to encourage no smoking behaviours at the commencement of the Town Square.

Accordingly there is no objection to this provision of the Bill with the proposed new Section 26ZKA "Person must not smoke at a pedestrian outdoor mall."

**No smoking at public swimming pool.**

The current Act at section 26ZI(1) prescribes a "Person must not smoke at a prescribed outdoor swimming area."

The Bill seeks to amend that by replacing the current provision with a new provision that a "Person must not smoke at public swimming pool or its associated area". In this respect the following definition in the Bill needs to be noted. A *public swimming pool means a pool other than a body of water that is open to the public for swimming whether or not on payment of money.*

Logan City Council currently has within its current *Local Law No. 12 (Council Property and other Public Places) 2003* which provides for no smoking at:

- Administrations centres;
- Community and Major Venues;
- Waste Management Facilities;
- Depots;
- Aquatic Centres;

Specifically at Section 10 of *Subordinate Local Law No 12.8 (Aquatic Centres)* the following is provided:

### **10 Smoking**

*A person must not smoke-*

- (a) *Within an enclosed part of an aquatic centre; or*
- (b) *Within 4 metres of an entrance to an aquatic centre.*

Council can confirm the direction in the Bill to include "and the associated area" can be accommodated reasonably and seamlessly as such is already well followed by patrons at Council's aquatic centres.

Accordingly there is no objection to the amendment in the Bill i.e. the proposed amended "26ZI Person must not smoke at a public swimming pool."

### **No smoking at skate parks.**

The current Act has no provision for no smoking at a skate park. The current Act does contain a provision at section 26ZK which provides that "a person must not smoke within 10 meters of any part of children's playground equipment situated at a place that is ordinarily open to the public."

The Bill proposes a new section 26ZKC "Person must not smoke at a skate park". The Bill defines a skate park to be - "*skate park means a part of a public place constructed for the purpose of riding a skateboard around or over obstacles and uneven surfaces.*"

Again, this new Section proposed by the Bill would be under Division 3 "Other outdoor places" as is the current section 26ZK. In respect to Division 3, at section 26ZM(2) the current legislation clearly articulates "nothing in this division imposes a duty on a local government to enforce this division." The Bill does not in itself impose the compulsory responsibility on local government by not proposing to amend section 26ZM(2).

Council has 23 skate parks distributed across the City that fall within the definition of the Bill. The enforcement of no smoking at skate parks is also a particularly challenging scenario. As stated earlier, there will be an inherent community expectation that any law on no smoking at skate parks will be enforced. The challenges for Council's Park Rangers (only four staff) enforcing no smoking at skate parks are similar to those already identified for public transport waiting points. No costs have been estimated to date for the purpose of informing this submission.

On this basis, Council would submit concerns with the inclusion of the proposed section on the basis that:

- The explanatory notes and Bill itself do not clearly articulate the responsible enforcement agency;
- The practicality in enforcement/administration of the proposed new section.

### **Ban of Sale of Cigarettes at "Pop-up Venues."**

The Bill proposes to ban the sale of cigarettes at pop up sales venues by new sections.

- *13C Supplier must not sell smoking products from vehicle*

**Vehicle** includes a trailer, caravan or trailer similar thing designed or modified to be easily attached to a vehicle for transport.

- *13D Supplier must not sell smoking products from a pop-up store*

**Pop-up store** means -

- (a) A temporary stall or counter; or
- (b) A retail outlet where smoking products are available for sale only during a public event.

**Public event** includes a concert, fete, festival, show or sporting event.

These sections are within the Part 2 (Supply of smoking products) of the Act which is administered by State agencies. These new sections are supported on the basis that the aim of the bill is to restrict the access of cigarettes to persons under the age of 18 and inherently therefore restricts them taking up smoking.

This proposed Section of the Bill is supported on this basis.

### Summary

The opportunity provided by the State's Health and Ambulance Services Committee in inviting submissions on the Private Members Bill has been accepted.

The State needs to determine other strategies to reduce the incidence of smoking other than the adhoc extension of no smoking zones and importantly release its holistic strategy for further comment by stakeholders.

The Bill proposes the following inclusions which are considered appropriate and would be administered by State agencies:

- *13C Supplier must not sell smoking products from vehicle*
- *13D Supplier must not sell smoking products from a pop-up store*

The following proposed extensions to no smoking areas in the Bill are supported on the basis that Council has local laws regulating no smoking in the local government area and the transition to a consistent state wide ban is considered appropriate with minimal impact:

- Section 26ZKA "Person must not smoke at an outdoor pedestrian mall"
- Amend section 26ZI "Person must not smoke at public swimming pool or its associated area "

In respect to the following proposed sections:

- new section 26ZKB "Person must not smoke at a public transport waiting point".
- new section 26ZKC "Person must not smoke at a skate park"

The State needs to understand that these proposed extensions of no smoking areas cannot easily be administered and local governments do not have a current capacity to undertake such if made compulsory. The State needs to recognise that, as with all regulatory legislation, the adoption of a requirement for no smoking in such cases will require –

- a comprehensive education program and actions to secure awareness and compliance;
- appropriate enforcement by authorised officers as there will be an expectation in the community that the law will be enforced.

The realistic constraints with no smoking enforcement must be recognised by the State.

Specifically, areas at public transport waiting points, because of their number and widespread locations experience the reality that smoking is a transient behaviour and for short periods. Programmed attendance is required and the collection of data for "hot spot" locations is paramount to coincide with a reasonable education and awareness strategy. This is significantly resource intensive for any responsible agency to enforce.



The State must also recognise specific concerns for local government in respect to:

- The identification of an offender for determination of an offence is problematic for local government authorised officers. Without Police assistance, a Council officer would simply only be able to ask the smoker to stop smoking or remove themselves from the area.
- Costs are significant for local government and would involve as a minimum:
  - no smoking signage at some of the significant number of public transport waiting places.
  - education and awareness for the community on the no smoking requirement is critical to its success.
  - officer resources as part of programmed attendance at all public transport waiting points to meet community expectation.

**Additional Request by Logan City Council - Person must not smoke on school land**

This subject relates to Section 26ZGD of the Act - Person must not smoke on School Land.

Whilst this section is not part of the Bill, there is an opportunity to raise the concerns of school parents in a submission.

Section 26ZGD provides

- A person must not smoke on School Land
- A person must not smoke on land within 5m outside the boundary of the a school

Using the Flagstone State School as an example (see attached), there are immediately adjacent car parks that are not School land and are, in part, outside 5m of the boundary. i.e. There are areas of school car parks covered and areas not covered by no smoking creating an anomaly in the intent of the legislation. Whilst this is the jurisdiction of State Health Officers, in conjunction with school principals, it is considered the no smoking area should include all "associated/dedicated" school parking areas for the respective school.

Please, if you have any questions or require clarification, call me directly on the above listed number.

Yours faithfully



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