

Sub# 7



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**Submission to Health and Disabilities Committee Inquiry into the Health  
Legislation Amendment Bill 2011**

**Heart Foundation  
September 2011**

**To:**  
Chair  
Health and Disabilities Committee  
[hdc@parliament.qld.gov.au](mailto:hdc@parliament.qld.gov.au)

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## **Heart Foundation**

The Heart Foundation welcomes the opportunity to make comment on Part 8 Amendment of Tobacco and Other Smoking Products Act 1998 in the current public inquiry on the Health Legislation Amendment Bill 2011.

The Heart Foundation would appreciate the opportunity to provide a representative/s to give expert input to the public hearing on Wednesday, 12 October 2011. The Heart Foundation is the leading non-government organisation in cardiovascular health, committed to reducing heart disease and improving the health of all Queenslanders.

## **Tobacco reform in Queensland**

Smoking is a leading cause of preventable death and disease in Queensland. Queensland's rates of decline in smoking continue to lag behind most other Australian states and territories, with 19.7% of all adults regular smokers (daily and weekly). The proportion of daily smokers in Queensland is 16.7% which is higher than the national average of 15.1% (AIHW, 2011).

The Queensland Government is to be commended on past tobacco law reform, especially in showing leadership on alfresco and outdoor smoking bans. However, as well as having higher smoking rates than all mainland states, Queensland has now fallen behind other states and territories in legislative reform. Further reforms are urgently needed to prevent the next generations from starting to smoke, to reduce cigarette consumption and to save lives.

Public opinion surveys confirm that well-funded tobacco control measures, including stronger legislation, are popular with the community (AIHW, 2011).

The Heart Foundation welcomes this review as an opportunity to achieve the proposed reforms, and to also introduce further reforms to regain the leadership in tobacco control, prevent unnecessary deaths, improve productivity and significantly reduce health costs.

Much more can be done over the next decade to ensure that the nationally agreed target of reducing the smoking rate to 10% or less by 2018 can be achieved. In order to achieve this target, it is important that Queensland continues to reform our tobacco laws and fund a comprehensive tobacco control program.

Queensland's Chief Health Officer Report (Queensland Health 2010) notes that smoking causes:

- the second largest proportion of the burden of disease in Queensland (2007)
- 1 in 7 of all deaths or 1 in 6 premature deaths
- 3,422 deaths each year on average
- 35,781 hospitalisations each year in 2006-2007

In addition:

- smoking costs \$31.5 billion in direct and indirect cost per annum in Australia (2004/05); and
- 23% of all deaths from tobacco are attributable to heart and circulatory disease (AIHW, 2007)

In a survey commissioned by Queensland Health, only 18% of respondents agreed that the current enclosed places provisions of the Act are meeting the objective to reduce public exposure to environmental tobacco smoke and 87% indicated that further reforms are required (Queensland Government, 2007).

While smoking rates are the only risk factor for chronic disease clearly heading in the right direction among the Toward Q2 goals, there is still a long way to go. It is important to make the most of this favourable trend by pushing even harder, as reducing smoking rates will have enormous short and long term benefits on improving health, reducing health care costs and improving productivity of Queenslanders. It is one obvious investment that the Queensland Government can not afford to ignore.

## **Heart Foundation response to proposed amendments:**

### **Clause 69: Support amendment of 26S (No smoking sign)**

The Heart Foundation supports this amendment to no smoking signs, to achieve the policy intent of ensuring that premises such as clubs, hotels and casinos that have DOSAs continue to have signage to reinforce that smoking indoors is strictly prohibited.

### **Clause 70: Propose amendments of s 26A (Designating an outdoor smoking area)**

The Heart Foundation does not support the current concession in the law for licensed premises to have a Designated Outdoor Smoking Area (DOSA).

#### **1. Propose new amendment to ban DOSAs**

During the 2007 review of smoke-free laws in Queensland, 89% of people supported modifying provisions for DOSAs with the most common response being "Removing the DOSA exemption altogether" (Queensland Government, 2007). The Heart Foundation believes that DOSAs should be removed altogether and that this current review should consider the removal of DOSAs.

Given that a large majority of all licensed premises (85%) in Queensland have at least one DOSA and there are currently 2,725 DOSAs in 1,705 licensed venues in Queensland (Queensland Health, 2008a); many patrons and staff continue to be exposed to environmental tobacco smoke. Of note, venues in Brisbane or the Gold Coast are more likely to have more than one DOSA (55% vs. 39% of venues in regional or rural locations).

Moreover, where DOSAs are provided, they are well patronised; with 62% of venues having at least one DOSA that is mostly full of patrons during peak business hours. In Brisbane, this is as high as 75% and for the Gold Coast 78% (Queensland Health, 2008a).

Another survey showed that 68% of the adults who go to pubs, clubs or casinos at least monthly are non-smokers (Queensland Health, 2008b). In addition, 52% of smokers are accompanied to licensed premises by a mixture of those who smoke and those who do not.

A greater proportion of smokers are found in liquor licensed premises than in the general Queensland population (32% vs. 19%) (Queensland Health, 2008b), however this is not surprising given that smoking is encouraged in DOSAs in these venues.

The Heart Foundation is calling for DOSAs on licensed premises to be banned altogether, with smokers required to move off the premises to smoke, as is the case with all other businesses in Queensland. More than a third of all respondents to the 2007 Review of Smoke-free Laws (Queensland Government, 2007) supported the removal of DOSAs. This would bring these premises into line with restaurants, cafes and sports stadia; whereby patrons leave the venue to smoke.

This legislation is operating smoothly in restaurants, cafes and sports stadia, and would remove any of the current issues arising in relation to DOSAs. Without DOSAs, the issue of smoke-drift to non-smoking areas and the misuse of DOSAs to provide entertainment would be removed.

DOSAs are currently problematic because of their high usage at peak times. Data on who uses DOSAs are of concern (Queensland Health, 2008b):

- While the majority of non-smokers remain indoors (55%), alarmingly, 7 in 10 smokers and 1 in 10 non-smokers who regularly go to hotels, pubs or taverns, spend most of their time in a DOSA;

- Looking at all patrons (regular and occasional), non-smokers represent between 15% and 19% of patrons who spend most of their time in DOSAs and do so for the social interaction and connectivity;
- It is disturbing to note that a small percentage of patrons reported being with children under the age of 18 when in a DOSA; and
- The greatest use of DOSAs, however, is amongst females (37%) and young people aged 18-24 (39%).

DOSAs were intended to be a concession whereby a smoker could take a drink only and have a cigarette. The legislation was not intended to create DOSAs as "party zones" where people spend most of their time in them and are thereby continually exposed to environmental tobacco smoke.

The Heart Foundation is concerned about the reasons given for staying in designated outdoor smoking areas by patrons, particularly by non-smokers (Queensland Health, 2008b):

*"Because some of my friends are smokers and I want all of us to enjoy ourselves not to have to go in and out of the pub all the time."*

18-24 years, female, Gold Coast

*"I sometimes get chatting to other people that are smoking, or my friends decide to light up another one."*

25-34 years, female, Gold Coast resident, non-smoker

*"It's good to have a drink and a smoke at the same time."*

18-24 years, female, Gold Coast resident, heavy smoker

Smoke-drift is an increasing issue simply because of the large volume of smoke coming from a packed DOSA at peak times. This is exacerbated where the barriers currently in place are either not 2.1 metres high or are made of plants. Non-smokers and staff outside the DOSA are being put at risk of increased exposure to environmental tobacco smoke.

People who have had, or are at risk of a heart attack, are particularly vulnerable to exposure to tobacco smoke in a confined space. Wincup (2004) found that exposure to environmental tobacco smoke can increase the risk of heart attack by 50% to 60%. Further, the effects of exposure to environmental tobacco smoke on the heart can be rapid. In Japan, a study showed that just 30 minutes of exposure to environmental tobacco smoke by healthy, non-smokers substantially reduced their coronary blood flow (Otsuka, 2001).

The concern over exposure to smoke in DOSAs is also confirmed by Klepeis (2007) whose research on outdoor tobacco smoke particle levels found that if people are near to active smokers over the course of one or more cigarettes, this can be comparable with average indoor environmental tobacco smoke particle levels observed in living rooms or bedrooms during smoking.

Removing DOSAs altogether will also stop their current misuse by some licensees who provide entertainment such as television screens, music, stages and so on, that are visible and/or audible from a DOSA or closer than 5 metres to a DOSA.

It would also appear to be a good business decision for licensees to increase the available non-smoking space, which would appeal to the 68% of patrons and 80% of Queensland adults who are non-smokers. This could be done at no extra cost by removing DOSAs altogether and encouraging the majority of non-smokers back into the outdoor areas.

**If DOSAs are not banned:**

**Propose new amendment that children are not allowed into DOSAs**

Children should at no time be allowed into a DOSA where they will be exposed to environmental tobacco smoke. Some patrons reported being with a child under 18 when they were in a DOSA (Queensland Health, 2008b). These children need protection by the state and the legislation needs amending to ensure that children cannot enter a DOSA at any time.

**2. Propose new amendment to ban drinks being brought into DOSAs**

The single most effective way to stop the misuse of DOSAs as social centres that attract people and expose them to smoking is to remove the concession to allow drinks in DOSAs. This concession was originally allowed due to spurious arguments by industry that the risk of drink spiking would increase if the drinks were left behind. This was a red herring to enable the creation of current unacceptable practice. For public health benefit, people should be required to finish their drink then leave the venue to smoke as commonly and clearly happens in restaurants, cafes and sports stadia. Without drinks, the DOSA becomes solely a smoking area, which was the original intent of the law.

**3. Propose new amendment to ban entertainment visible from or within 5 metres of a DOSA**

DOSAs are being misused by some licensees to provide entertainment for patrons to make the DOSAs more interesting and social areas. This is clearly against the intent of the law, and leads to increased numbers of people in the DOSA being exposed to smoking, particularly young people, women and, of great concern, many non-smokers.

The Heart Foundation proposes that this amendment be reinstated to require that no entertainment, such as television screens, music, stages or other forms of entertainment are visible from a DOSA and/or are not closer than 5 metres to a DOSA.

**4. Support proposed amendment to Section 26ZA (7) to remove the 'thick screening hedge' as a buffer option.** Current practice has shown that a thick hedge typically does not meet the requirements of a screen that is impervious to smoke. This makes this option ambiguous and open to abuse.

**5. Support proposed amendment to Section 26ZA** to specify that the height of a buffer screen, that is impervious to smoke, is measured as if the base of the screen were level with the highest point of the ground or floor within one metre on either side of the screen.

This will stop the current misuse by some licensees whereby screens linking non-smoking areas and DOSAs are less than 2.1 metres allowing smoke to drift over the screen and into the non-smoking areas, increasing the exposure of patrons and staff to environmental tobacco smoke.

**Clause 71: Support Amendment of s 26ZS (Supply of food or toys resembling tobacco products)**

The Heart Foundation supports the amendment to clarify section 26ZS of the Tobacco Act, that the supply of any object that is not a tobacco product but resembles a tobacco product, is prohibited. This amendment is intended to capture more broadly any food, toy or novelty item.

This is supported because of research showing that reducing the number of children who take up smoking is the most effective way of reducing the smoking incidence in the community, deaths and illnesses caused by smoking and the resultant demands on the health system (Health Legislation Amendment Bill 2011).

The intent of the law was to make tobacco less obtainable and less desirable to children and de-normalise smoking to children. The Heart Foundation supports this amendment because of the evidence that shows that children who have used products such as food or toys that resemble tobacco products are more likely to experiment with tobacco than children who have not (Health Legislation Amendment Bill 2011).

The current law captures toys, but fails to capture other novelty items that resemble tobacco products, such as a cigarette shaped pen, that are currently sold in Queensland. This loophole needs to be closed.

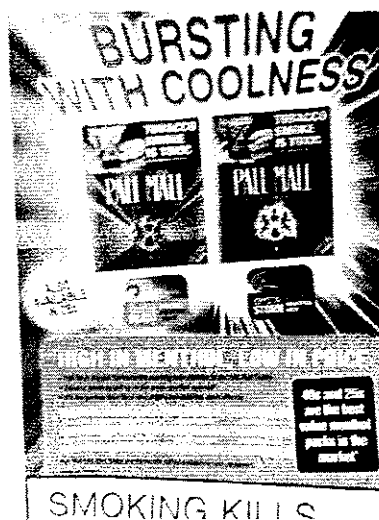
**Clause 72: Insertion of new s 26ZT (to ban confectionary and fruit flavoured cigarettes)**

**1. a) Support the prohibition of the sale of confectionary-flavoured or fruit-flavoured cigarettes and;**

The Heart Foundation supports the proposal to ban of the sale of confectionary-flavoured or fruit-flavoured cigarettes because of their increased appeal to children.

**b) Propose the prohibition of menthol-flavoured cigarettes.**

The Heart Foundation strongly recommends that menthol-flavoured cigarettes should also be prohibited from sale. Menthol is not just a flavour enhancer, but has a particular property of increasing penetration of nicotine through the mouth, thereby speeding up the addictive effect of smoking; as well as increasing the oral exposure to carcinogens (Squire et al, 2010). The Heart Foundation recommends that the Queensland Government help facilitate a nationally coordinated response towards banning menthol in tobacco products.



*Bursting with heart disease*

Promo to retailers, 2011 for these "best value menthol packs on the market".

Appeal to young people enhanced by laser lights and buzzword "cool"

**Clause 73: Insertion of new s 42E (to provide for the forfeiture to the State of smoking products seized from a child)**

The Heart Foundation supports the insertion of this new s 42E into the Tobacco Act. This is a loophole that needs closing so that tobacco products are not required to be returned to children.

The Heart Foundation also proposes seven new amendments as follows:

**1. Propose amendment to 26ZPB (to bring in a state law prohibiting smoking at public transport waiting points and pedestrian malls)**

In the review in 2007, 90% of people supported action to give local councils the power to ban smoking in malls and 92% in public transport waiting points (Queensland Government, 2007). However, the legislation which was introduced has failed, with only one council, the Brisbane City Council, bringing in a ban on smoking in the Queen Street Mall from 1 September 2011. The 2007 survey clearly demonstrated that people want this kind of reform, but councils throughout Queensland are not delivering, despite being given the power.

The Heart Foundation therefore recommends an important amendment to 26ZPB to ensure that there is a uniform state-wide law to ban smoking in public malls and at public transport waiting points, rather than the current weak law that leaves it up to local governments.

All Queenslanders deserve the right to minimal exposure to environmental tobacco smoke as they go about their daily lives. The Queensland Government should provide this protection to all Queenslanders and not defer responsibility for population health to discretionary decisions by local government. Wherever people gather in proximity, people should be protected from environmental tobacco smoke.

**2. Propose amendment to 15 (to prohibit vending machines)**

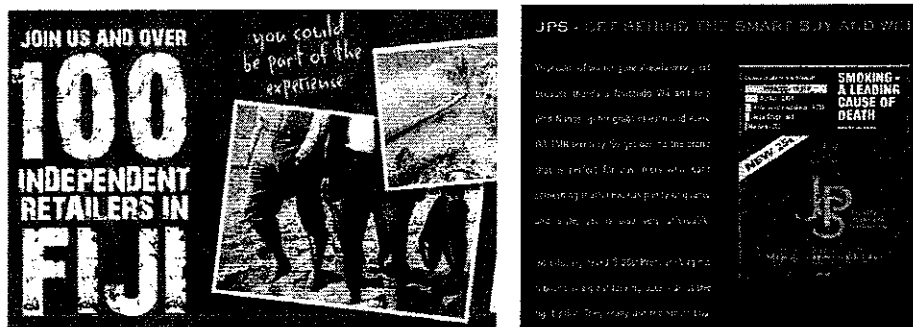
The Heart Foundation recommends the banning of all vending machines as they remain a weak link in the supply of cigarettes to minors. Although the intention of the law is that the vending machines are overseen by a bar supervisor, in reality they are unmonitored and easily accessed by children in these venues. Tobacco is one of, if not the, most available consumer product in Queensland, available at approximately 13,000 points of sale. Removing vending machines will reduce the accessibility to tobacco by children but will not significantly reduce availability of tobacco products to smokers.

The Framework Convention on Tobacco Control (FCTC), to which Australia is a signatory, supports measures to prohibit sales to minors, including ensuring that vending machines are not accessible to minors and do not promote the sale of tobacco products to minors. The Australian Capital Territory has banned vending machines and this is under consideration in Western Australia.

**3. Propose amendment to prohibit the tobacco promotions to retailers**

The Heart Foundation recommends closing the loophole that permits tobacco companies offering incentives to retailers to promote tobacco - including overseas trips and other prizes for selling more tobacco and attracting new smokers, almost all of whom are young people.

Reward schemes whereby individuals are directly targeted with promotional materials through direct mail, telemarketing and consumer surveys should also be banned with no exemptions. The FCTC Article 13 requires a comprehensive ban of all forms of advertising, promotion and sponsorship, as partial bans are proven to be ineffective.



Tobacco companies "pushing to the pushers" 2009-11

#### **4. Part 2 B Section 26R Amendment (to remove the exemption of smoking in enclosed premium gaming rooms)**

The Heart Foundation recommends that this exemption to allow smoking in premium gaming rooms be removed. More than 80% of respondents to the 2007 Review of Smoke-free Laws (Queensland Government, 2007) supported the removal of this exemption.

It is inequitable to allow employees and patrons to be exposed to environmental tobacco smoke in a premium gaming room, when all other workers and patrons are protected because of the serious health dangers of being exposed to environmental tobacco smoke.

Enclosed gaming rooms expose workers and patrons to high levels of second-hand smoke, contrary to legal obligations under Occupational Health and Safety and Disability Discrimination law and to Article 8 of the Framework Convention on Tobacco Control (FCTC).

Other jurisdictions (ACT, Tasmania and South Australia) no longer have these exemptions. Queensland has previously flagged its willingness to cooperate with NSW and Victoria on an agreed date to end these exemptions. No agreement has yet been reached and we urge the Queensland Government to renew its efforts through the Australian Health Ministers' Conference and any other relevant avenue to reach an agreement on an end-date.

#### **5. Propose amendment to require all tobacco sellers to be licensed**

In Queensland, there are more than 13,000 tobacco sellers but they're not required to have a license to sell a product that kills its users. By comparison, pharmacists must be qualified and registered (licensed) to dispense drugs which improve health and prevent disease.

Mandatory licensing of tobacco sellers is in force in South Australia, West Australia, ACT and Tasmania – where it helps prevent illegal sales to children, and to cover the costs of regulation including retailer education and compliance monitoring.

Mandatory seller licensing was recommended in 2002 by the Intergovernmental Committee on Drugs, endorsing a report from the Allen Consultancy Group (Allen Consulting Group, 2002). Further, the National Preventative Health Taskforce reported in 2009 that licensing of tobacco retailing is primarily a state and territory responsibility.

Queensland is falling behind most other states in ensuring tobacco sellers are licensed so that they can be monitored and held accountable. This will deliver greater protection to children in Queensland from unscrupulous retailers who sell to children.

#### **6. Propose amendment to ban the sale of tobacco products by under 18's**

The Framework Convention on Tobacco Control (FCTC), to which Australia is a signatory, includes article 16 (7) which prohibits the sale of tobacco products by anyone under the age of 18 years.

Children cannot sell other drugs such as alcohol; but are able to sell cigarettes which they are not legally able to buy. Children are susceptible to peer pressure and research confirms that the age of the seller is associated with increased sales of tobacco products to children (DiFranza, 2001).

Stopping children from selling tobacco products is consistent with laws that prohibit children from being supplied with these products.

#### **7. Propose amendment to prohibit smoking while driving**

The Heart Foundation proposes that the legislation banning smoking in a car while carrying a person under 16 years of age be amended to extend to all people while driving, so that everyone in the confined space of a car is protected from environmental tobacco smoke.

People who have had, or are at risk of a heart attack, are particularly vulnerable to exposure to tobacco smoke in a confined space. Wincup (2004) found that exposure to environmental tobacco



smoke can increase the risk of heart attack by 50% to 60%. Further, the effects of exposure to environmental tobacco smoke on the heart can be rapid. In Japan, a study showed that just 30 minutes of exposure to environmental tobacco smoke by healthy non-smokers substantially reduced their coronary blood flow (Otsuka, 2001).

Apart from contributing to the development of chronic diseases, research shows that smoking while driving is also a danger; and may be more serious than other distractions like mobile phones or eating; since smoking involves the risk of dropping burning matter onto drivers' hands or lap.

Several studies on smoking and car safety were reviewed by Monash University Accident Research Centre (MUARC, 2003). The review included studies pointing to smokers having an increased risk of being involved in motor accidents, with actual distraction caused by the act of smoking a likely factor. The review concluded that "it is clear that smoking while driving is a hazard". One study connects smoking while driving with over 2000 accidents a year. Another published in *Tobacco Control* found that smoking while driving almost doubles car death risk (Wen, 2005).

If governments, including the Queensland Government, can ban using mobile phones while driving, and more recently prohibit smoking in cars carrying children, then this is also feasible in the case of smoking while driving, with enforcement undertaken opportunistically by police in the same way but more importantly leading to a change in social norms and behaviour over time.

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