

## “The detrimental effect of passive smoking is now beyond dispute.”

Spokesman for NSW Health Minister Craig Knowles after the verdict

## “Let’s Clear the Air.”

World No Tobacco Day, 31<sup>st</sup> May 2001, dedicated to the issue of second-hand smoke (ETS)

### Comment

In September last year smokefree legislation was introduced to make restaurants and cafes smoke-free in time for the Olympics. The same legislation will introduce a ban on smoking in dining areas in clubs and pubs on September 6 this year.

However, after the Marlene Sharp victory in early May, the NSW Government must bring forward the banning of all smoking in all enclosed public areas without exception. There is no other option; it is now sensible public policy which will continue to build on the commitment to a smoke-free environment already shown by this government

Since last year’s legislation was framed, a non-smoker who worked in NSW clubs has won compensation for cancer caused by passive smoking, also known as environmental tobacco smoke (ETS). Marlene Sharp’s victory in early May showed that courts accept that ETS causes cancer. Her victory also led to a reluctant acceptance by hotels and clubs that they have will have to change their practices, if only to keep down insurance premiums. They know that they are likely to face other damages actions from non-smoking employees or possibly even smoking staff as well as patrons.

The peak state industry body, **Clubs NSW**, issued a circular to its members immediately after Mrs Sharp’s victory in the Supreme Court for injury to her health during her employment.

Titled **Sharp vs Port Kembla RSL Club – some early thoughts and implications**, it shows that the industry anticipated the decision, because it suggests a policy for ETS management which was developed in consultation with WorkCover before the court decision was handed down.

A core recommendation is that smokefree areas should include the dining/function room, kitchen, dance floor, store room, office and 50% of the bar.

While this early response by Clubs NSW - that at least half of bar areas should be quarantined - is commendable, it is not viable. Professor Simon Chapman responded in the Sydney Morning Herald: “...this is akin to designating 50% of a swimming pool as a non-urination area.”

### The LHMU, the largest hospitality union, says...

*Governments must ensure the health of all hospitality workers is protected by banning smoking in enclosed workplaces.*

Tim Ferrari, Assistant National Secretary, LHMU.

### Even surveys by tobacco companies show strong support for bans

An Auspoll national survey of 2000 people last year found that 89% of people would go more often, or make no difference, if hotel bars were smokefree.

- 91% for licensed restaurants
- 89% for nightclubs
- 91% for gaming clubs

Philip Morris, Auspoll 2000.

### AHA survey finds bars too smoky

The AHA (Vic) commissioned a survey of patrons to find out about the main weaknesses of pubs and hotels. The main weakness was too smoky (24%). Sweeney Research, AHA (Vic).

### Tests for workers

Medical testing of hospitality workers conducted recently by health authorities and unions in Hong Kong and at Burswood Casino in WA have shown that workers are exposed to workplace tobacco toxins and employers are risking legal action if they fail to provide safe smokefree workplaces. The Cancer Council, ASH and the LHMU are discussing ways of offering cotinine tests to workers in an effort to end all indoor workplace exposure to tobacco toxins.

# Tobacco Facts for MPs

## Litigation and passive smoking

Legal action on passive smoking has increased over the last decade. In 1991, the landmark case Australian Federation of Consumer Organisations vs Tobacco Institute of Australia in the Federal Court found that tobacco industry advertisements disputing the harmful effects of passive smoking were misleading or deceptive. Before that case, compensation was awarded or settled out of court in ten cases nationally for health damage resulting from workplace ETS; a further twelve cases, including Marlene Sharp's, resulted in similar compensation decisions or out-of-court settlements since that time. The complaints

ranged from throat and lung cancers to respiratory illnesses, such as emphysema, aggravation of asthma, pneumonia, nausea, headache, and other respiratory symptoms. Before Marlene Sharp's award, the two largest compensation payments have been \$65,000 in 1988 in an out-of-court settlement to bus driver Sean Carroll, for lung cancer after 36 years of ETS exposure, and \$85,000 in 1992 to Liesel Scholem for aggravated asthma due to passive smoking.

Source: When smoke gets in your eyes...A guide to passive smoking and the law in NSW. The Cancer Council of New South Wales 2001.

### Good News

The Queensland and Tasmanian Governments have just passed smoke-free public places legislation to ban smoking in pubs and clubs where food is served, including counter meals. Also the Carr Government has modified the terms of reference of the working group so that its advice on smoking bans can consider the implications of the Sharp case.



### Bad News

#### Opposition based on fear not evidence...

The AHA threaten that pubs will go broke and promote ventilation instead, even though it is known to be costly and unacceptable as a health standard. Clubs' advice to members that bars should be 50% smoke-free is a step in the right direction but does not go far enough.



#### What the papers say:

#### Editorials after Sharp decision

##### Australian Financial Review

"Government and business must work together to make all public venues smokefree."

##### Sydney Morning Herald

"The days of smoking in hotels and clubs in the way that now occurs are numbered."

##### The Australian

Proprietors who let customers smoke on their premises do so at grave commercial risk."

##### The Age

"[The] landmark victory was a recognition of the dangers of passive smoking..."

##### Manly Daily

"Why is smoking permitted at all if we are aware that it is killing people?"

##### Illawarra Mercury

"Clearly hotels, pubs... will want to avoid damages claims... better disgruntled smokers at the bar than lawyers."

## 33 studies show bans are good for business

33 independent, published studies show no negative impact from bans on smoking in restaurants and bars, based on taxable sales receipts. Approval of the smokefree bar law in California and the importance of a smokefree environment among bar patrons increased from 1998 to 2000.

	APPROVAL	IMPORTANCE
1998	58.6	65.8
2000	72.5	75.2

Source: Bar patrons Survey March 1998 & July 2000 by Californian Dept of Health Services, Sept 2000. Contact ASH for summary of studies.

## Bans: no need for "smoke police"

A compliance monitoring study of 78 Sydney restaurants over 2 weeks in October found that:

71% experienced favourable comments from patrons about the bans

78% of staff supported the bans

76% reported normal trade; 14% more trade; and only 9% less trade.

Chapman et al, Med J Aust 2001 174:512-515

## Parliamentary Questions Service

If you would like assistance with a tobacco-related question please contact ASH on 02 93341876

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