



PROTECTING PEOPLE WITH DISABILITIES FROM ENVIRONMENTAL TOBACCO SMOKE TOXINS

ASH Australia Submission to the Australian Building Codes Board
on Development of a Disability Standard on Access to Premises
and Proposed Changes to the Building Codes Act

February 2002

ASH Australia
153 Dowling St, Woolloomooloo NSW 2011
Ph (02) 9334.1876
Fx (02) 9334.1742
Email: annej@ashaust.org.au
Website: www.ashaust.org.au

1. People with disabilities vulnerable to tobacco smoke toxins

ASH estimates that at least 2.3 million Australians suffer from health conditions constituting disability (as defined by the International Classification of Impairment, Disabilities and Handicaps, the ICDH) whose conditions would be worsened by exposure to Environmental Tobacco Smoke (ETS).

They include people suffering from asthma (1,206,100); diabetes type 2 (469,400); COPD/emphysema (296,600); cataracts (168,800); and angina pectoris (168,100).

See *Australian Institute of Health and Welfare report, "Australia's Health 2000"* at <http://www.aihw.gov.au/publications/health/ah00/ah00-c02b.pdf> (see p.9, Table 2.5).

There are also some 259,700 people with disabilities relating to a range of respiratory diseases; 112,800 with eye diseases, many of which would be adversely affected by tobacco smoke; 63,500 who have suffered strokes; and 248,700 with "other circulatory diseases – many of whom would be smoke-affected.

See "Australia's Welfare 1999" (AIHW, at <http://www.aihw.gov.au/publications/welfare/aw99/aw99-c07.pdf> (see p.6)

Note that these figures do not include other infectious diseases, cancer, other heart conditions or conditions relating to pregnancy – all of whom would be at high risk.

According to the National Heart Foundation, cardiovascular disease or CVD (including a variety of heart diseases, stroke and related vascular diseases) is the leading cause of disability for Australians. In 1996-97, there were 421,516 hospitalisations for cardiovascular conditions (8% of all hospitalisations).

Refer to http://www.heartfoundation.com.au/heart/index_fr.html

All of these people are effectively discriminated against by being denied access to enclosed public spaces where tobacco smoke is present.

2. The health effects of environmental tobacco smoke

ETS or passive smoking is clearly established as a significant cause of morbidity and mortality. ETS can cause or exacerbate a range of health conditions – especially chronic respiratory and cardiovascular ailments.

Regular ETS exposure increases risk of heart disease by 25%; and "People who already have heart disease, such as angina, may experience exacerbated symptoms and disturbances of the heart's electrical rhythms, with potentially serious consequences."

See VicHealth, "Passive Smoking Close to the Heart" at <http://www.vichealth.vic.gov.au/default.asp?artid=77&tid=377&level=2>

An overview of the evidence is provided in "When smoke gets in your eyes...nose, throat, lungs and bloodstream: a guide to passive smoking and the law in NSW" at http://www.cancercouncil.com.au/cncrinfo/cncrsmt/tobasmok/whensmoke/whensmoke_index.htm (Section 1).

3. Disability discrimination: the law relating to ETS

There are a number of legal obligations in Australia, including under OHS, Common Law, Workers Compensation, civil remedies and Disability Discrimination, requiring workplaces to be safe places. The Human Rights and Equal Opportunity Commission has ruled that just as

a building without ramps discriminates against a person confined to a wheelchair, so a building allowing tobacco smoke discriminates against a person with acute sensitivity to ETS. Successful legal actions are reviewed, including *Francey and Meeuwissen v Hilton Hotels of Australia Pty Ltd*, 1997, HREOC in http://www.cancercouncil.com.au/cncrinfo/cncrsmrt/tobasmok/whensmoke/whensmoke_index.htm (Section 4).

In the HREOC decision above, in a footnote in relation to the number of people suffering from asthma, it says:

[1] I refer to exhibit two, an extract from a decision of Morling J in Australian Federation of Consumer Organisations Inc -v- The Tobacco Institute of Australia (1991) ATPR 41-079, at p.52,254. Morling J said:

Dr Breslin said that about 20% of children under the age of 20 and about 10% of the total Australian population have asthma. His practice is to initially ask his patients what sort of things they have noticed trigger their asthma and then he subsequently asks them directly whether other things which he nominates, trigger it. Thirty to 35 per cent of patients volunteer that cigarette smoke appears to have an effect on their asthma. When patients are specifically asked whether cigarette smoke has an effect on their asthma, the percentage of patients who respond positively rises to the order of 50% or 60% (T.5)

It should be noted that the presence of ETS not only discriminates against people with disabilities wishing to visit public spaces as customers or guests; it also disadvantages such people from seeking employment in smoky venues.

4. Public enclosed places that still permit smoking

Data shows that, at least in some states, approximately 75% of workers are protected by smokefree workplace policies - with entertainment venues, factories and warehouses the main areas where exposure is still common.

There are still many enclosed places and workplaces where tobacco smoking is currently permitted. Legislation and regulations vary between states and territories; but in general, there are still widespread exemptions from smoking bans – notably in the areas of hospitality, alcohol-serving, gaming, entertainment and performance.

The Northern Territory has one of the highest smoking rates in Australia and is the only jurisdiction yet to introduce smokefree public places legislation to reduce exposure.

Refer VicHealth Centre for Tobacco Control, "Environmental Tobacco Smoke in Australia: What is being done and what more could be done to reduce exposures" (May 2001), p.3

5. Ventilation and separation are no solutions

Some employers have sought to minimise the harm of ETS by either separating smoking from smoke-free indoor areas, or by installing ventilation equipment. Ventilation has largely been promoted by the tobacco industry and the Australian Hotels Association as a solution despite the evidence that it does not remove the gaseous components of ETS nor limit their liability for ETS harm in workplaces under their control or influence.

Ventilation and separation options have been dismissed by independent ventilation experts and authoritative health agencies both in Australia and overseas in favour of removal of the hazard at source.

The World Health Organisation says:

“Smoking bans remain the only viable control measure to ensure that workers and patrons of the hospitality industry are protected from exposure to the toxic wastes from tobacco consumption.”

Refer to Repace J, OSHA Ventilation Workshop Analysis, “Can Ventilation Control Secondhand Smoke in the Hospitality Industry?”, 2000

6. Recommendations

That any national standard determined by the Australian Building Codes Board recognise that:

- exposing persons with disabilities to ETS can constitute unlawful discrimination, as established by the HREOC decision in *Francey and Meeuwissen v Hilton Hotels of Australia Pty Ltd*, 1997; and
- the only adequate means of preventing such discrimination is requiring that all enclosed workplaces and indoor public places be smoke free.

For further information, please contact ASH on (02) 9334.1876
or annej@www.ashaust.org.au

