**Submission to the Ministry of Health on the enforcement of the Smoke-Free Environments Act from University of Otago staff**

Director General, Ministry of Health

May 27, 2015

Dear Sir,

This is in response to the request for comments of April 7, 2015, on the Ministry’s proposed approach to deciding on where smoking will be allowed in semi-enclosed public and workplace spaces under the Smoke-Free Environments Act (SFEA).

Our proposal is about the protection of people *indoors*. Smoke from *outdoors* can affect people *inside*. Therefore, for the purpose of the SFEA, discussion about the exact definition of ‘indoors’ is arguably beside the point. This is because no matter how ‘indoors’ is defined, tobacco smoke at or near openings will drift inside.

**Basis for our response**

We base our response on (i) legislative requirements and (ii) empirical evidence relevant to those legislative requirements.

*Legislation*

The relevant sections of the SFEA are s.3A(1)(a) which states the first purpose of the Act:

‘to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others’

and Section 4(a) which states the first purpose of that Section:

‘to prevent the detrimental effect of other people's smoking on the health of people in workplaces, or in certain public enclosed areas, who do not smoke or do not wish to smoke there’.

*Relevant evidence*

This evidence is about the lack of protection for people *inside* from tobacco smoke pollution (TSP) produced *outside*. New Zealand research has found that, where smoking is allowed at or near entrances or windows to public interiors, then those inside were exposed to TSP as indicated by fine particulate levels (PM2.5) ‘with a mean of 54 mcg/m3 (range of maximum values: 18-239 mcg/m3)’.1 A further separate study also found TSP smoke drift into interiors from outside, and this increased when increased smoking patronage was observed in the outdoor area.2 An international review has confirmed this smoke drift.3

*Implications of the evidence for the achievement of the legislative requirements*

The findings on indoor TSP caused by smoke drift from ‘outdoor’ areas means that the *consequence* of smoking outside near openings to the interior conflicts with the relevant purposes of the SFEA. Thus the definition of ‘internal area’ is only relevant in establishing the locations of opening to the ‘internal area’. Therefore the focus on enabling the enforcement of the SFEA needs to be on ensuring smoke does not enter the ‘internal area’.

Effective reduction of this indoor TSP (derived from outdoor TSP) requires an exclusion smokefree zone around any openings into indoor areas used by the public. This best practice approach has been extensively used in other jurisdictions, including Queensland,4 from July 2015 in New South Wales,5 a number of states and cities in the USA,6 and a number of Canadian provinces and cities in Canada.7 We would be happy to provide further details on the successful implementation and use elsewhere of this best practice policy.

**Recommendations for the enforcement of the purposes of the Act, to protect people inside**

We therefore recommend the use of the international best practice policies for reducing TSP in *indoor* workplaces by requiring 10 metre smokefree zones around any openings to indoor workplaces and places used by the public. As there is no safe level of TSP,8 this 10 metre distance is needed to ensure a minimum of TSP movement into interior spaces, so as comply with the SFEA ‘to prevent the detrimental effect of other people's smoking’(SFEA s.4(a)).

We suggest that any Ministry policy that allows TSP in *indoor* places (even where that smoke is not produced inside) is in contravention of the relevant purposes of the SFEA, and will be open to judicial review.

**Summary of our concerns with the current proposal by the Ministry**

Our concerns include:

* The lack of reference to the purposes of the SFEA
* The use of a very limited range of precedents from other jurisdictions
* The lack of attention to the issue of smoking in external areas creating hazardous air pollution for people in indoor workplaces and public spaces, in contradiction to the SFEA
* The resulting omissions of proposed policies that will best comply with and help achieve the purpose of the Act.

Thank you for considering this letter.

Yours sincerely,

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**References**

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