

The Right to Choose



Submission to NSW Smoke Free Mental Health Taskforce

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1. Background

In late 2007, NSW Department of Health established a taskforce to bring together a committee of experts and stakeholders to advise the Department on the implementation of the NSW Health Smoke Free Workplace Policy in NSW Health mental health inpatient facilities.

The brief of the taskforce is to make recommendations for progression to the implementation of smoke-free policies in such facilities following the enactment of the *Smoke Free Environment Act 2000*.

This is a submission to the taskforce.

2. Executive Summary

In our submission:

- (a) we do not support smoking and accept that it is a significant health issue;
- (b) in the context of smoking and mental health consumers, we are of the view that the most appropriate way of discouraging this group from smoking is through voluntary smoking intervention programs such as self-help groups, support phone lines, access to quit phone lines, appropriate educational materials and the use of tools such as nicorettes and patches. We believe access to these materials should be made available as an add on to the mental health treatment programs prescribed in mental health institutions for consumers who smoke; and
- (c) to impose a compulsory requirement that mental health consumers must give up smoking is wrong because:
 - it targets a particularly vulnerable section of society with bans that the government will not impose on the larger community; and
 - it imposes a disproportionate level of suffering on those who are already suffering enough.

3. Arguments in support of the right to smoke

(a) *Why the debate?*

The current position is:

- there is no legislation in Australia prohibiting smoking and it remains a pastime enjoyed by millions of people in this country;
- there are restrictions about smoking in certain locations because of health reasons associated with passive smoking.
- the NSW government has legislated to address that issue by requiring certain businesses to provide smoke free areas and by providing itself designated smoking areas in its own government facilities;
- health experts have agreed that providing smoke free areas satisfactorily addresses all health concerns associated with the dangers of passive smoking; and
- the government has already provided designated smoking areas in many of its facilities in NSW including hospital and mental health facilities.

Given these factors, the most likely reasons for the NSW government to propose prohibiting smoking in mental health facilities is either to:

- impose its own moral criteria on people's right to choose to smoke; or
- save government money from the cost of providing designated smoking areas in some of its own facilities for the purpose protecting non smokers from the dangers inherent with 'passive smoking' and thereby avoiding litigation.

Imposition of 'moral' criteria

Philosophically, by not prohibiting the act of smoking, the NSW government is saying not only it is legal to smoke but also that people have the right to choose to smoke.

If the government is imposing a ban on smoking for moral reasons, our submission is that it is wrong for government to try and impose its own moral criteria on a section of the community who would otherwise have a right to smoke, just because government believes it is wrong. It is discriminatory to target one group and not another and strikes at the very heart of democracy to try and take that right away.

Government may well have an argument that smoking adversely affects people's health, but until it completely prohibits smoking, it is wrong for it to single out a group of people such as those in mental institutions to somehow 'protect them from themselves'.

The proposed ban is even more unfair when you take into account the group targeted. Mental health patients often spend years and in some cases, their whole lives in these types of facilities. In a very real sense, the facilities become their homes. The rest of the population is not prohibited from smoking in their homes. Why should the government single out a group of disadvantaged people to whom it owes a duty of service to take away a legal right to choose to smoke?

It is a paradox that on the one hand government is trying to prohibit smoking in a certain section of the population because it says the practice is harmful, whilst on the other hand it lives from the taxation revenue provided from that practice. In our submission this makes the proposed ban even more indefensible.

Saving Costs

If cost saving for the purpose of protecting non smokers from 'passive smoking' and thereby avoiding litigation is the reason for the proposed ban, then government should be open about the issue. There should be disclosure of the cost of not implementing the ban and providing reasonable protection to non smokers against the perceived dangers of passive smoking.

In our view, to take away a right available to the rest of the community by targeting an already disadvantaged group of citizens simply for financial reasons when there is no evidence that such costs are prohibitive, is simply wrong.

Mental Health Act

In our submission, the Taskforce should keep in mind the following sections of the *Mental Health Act (2007)*:

- Section 3(d) which states:

'The objects of the Act are [to provide for the care etc of the mentally ill]... while protecting the civil rights of those persons,...'; and

- Section 68(f) which states:

'Any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self respect is to be kept to the minimum necessary in the circumstances.'

(b) Discourage Voluntary Patients

The right to smoke is a right enjoyed by many. To take that right away will be regarded by many as a significant loss. Prospective consumers who would otherwise voluntarily attend mental health facilities, are much less likely to attend these facilities if they know they will not be able to smoke.

(c) Significance of Smoking in Mental Health Facilities

It is well established that to many people smoking is a very important activity.

For many in mental health facilities where the stresses are much higher than in the 'normal' world, it promotes social connections in the sharing of cigarettes.

For others such as those in jails, it is the most important 'activity' open to them. Many spend all their weekly buy up allowance on cigarettes and there is no doubt it is the most important currency in those institutions.

To take away a consumer's right to smoke, is to make not only the consumers unhappy but also the mental health facility a negative place.

The use of tobacco has a calming influence on consumers and therefore operates as a form of self medication for the consumer.

Generally, to ban smoking in such facilities will result in an escalation in tension amongst the consumers.

(d) Research Statistics

A report prepared for SANE Australia by Access Economics late last year¹ revealed that over 38.3% of smokers have a mental illness. Even more significantly, the research also revealed that with some types of consumers such as those with schizophrenia, around 90% smoke.

The report also showed that at least 42% of all cigarettes sold in Australia are consumed by people with a mental illness.

This research reveals how big an issue smoking is to consumers. It is one of the few pleasures they control. It preserves and enhances their personal autonomy and has become a fundamental part of their culture.

(e) Passive Smoking Issues are Manageable

Any problem of service providers and others being exposed to the dangers of passive smoking can be overcome by setting aside designated smoking areas within these institutions. That is the current practice in NSW and has worked well in the past.

(f) The Experience in other Comparable Jurisdictions

In other jurisdictions including Victoria and England, exemptions from prohibitions against smoking have been given to mental health institutions.

(g) The Position of the United Nations

The views outlined in this submission are entirely consistent with and are supported by Principle 9 of the UN resolution 4619 adopted on 17 December 1991 entitled 'Principles for the protection of persons with mental illness and the improvement of mental health care'.

The opening words of that Principle say, 'Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment...'

¹ Access Economics (2007) Smoking and Mental Illness: Costs. Report for SANE Australia, December, Canberra

4. A Fair Outcome

Our submission does not advocate smoking. Rather it argues that this particularly vulnerable section of society should not be targeted with bans that the government will not impose on the larger community. As we mentioned, such a ban would not only be undemocratic, but also impose a disproportionate level of suffering on those who are already suffering enough.

It is our submission that the Taskforce refuse to recommend the banning of smoking in mental institutions. Instead we ask that the Taskforce recommend that as an addition to the mental health treatment programs available to consumers, smoking intervention programs be made available to consumers who smoke. This would encourage them to give up smoking through treatment programs such as self-help groups, support phone lines, access to quit phone lines, appropriate education materials and the use of such tools as nicotine patches or patches.