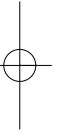
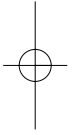


Going Smokefree in New Zealand

*Lessons from
the battlefield*



Going Smokefree in New Zealand

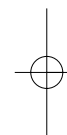
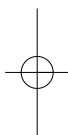
Lessons from the battlefield

L. Price and M. A. Allen

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People used to think second-hand smoke was a nuisance – now we know it's a killer. Around 350 New Zealanders die every year because of other people's tobacco smoke. Many bar and restaurant workers breathe in second-hand smoke day after day, week after week. So the next time someone wants to poison your air, you don't have to pretend it's OK.

Supported by ASH, Heart Foundation, Cancer Society, Health Sponsorship Council, Quit Group, Te Hotu Manawa Maori, ATAK-Maori Smokefree Coalition, Smokefree Coalition

Summary

Objectives

To identify and assess the key strategies in support of the passage of the *Smoke-free Environments Amendment Act 2003* which banned smoking in all indoor workplaces, including bars, restaurants, cafes, clubs, casinos and gaming venues; and the arguments advanced by those who opposed the legislation.

Method

Fifteen individuals and agencies that had taken leadership roles in the passage of the Act were interviewed – including those who opposed smokefree indoor environments. Those interviewed were asked what strategies were used to aid or hinder the passage of the 2003 Act, who they thought the key proponents and opponents were, and what barriers, hurdles or challenges were faced. Eleven face-to-face interviews were conducted, and four telephone interviews.

Results

Supporters of the legislation emphasised the health effects of exposure to second-hand smoke, the right of workers to have a safe workplace, and the success of similar legislation enacted overseas. Opponents said that hospitality venues would lose business, the ban would be impossible to enforce, and ventilation of venues was an alternative means of protecting health. Factors in the successful passage of the 2003 Act included its strong political support and the highly co-ordinated non-government sector. The time lag between the introduction of the legislation and its passage and implementation was also useful as it gave the public time to become accustomed to the idea of smokefree bars and restaurants. Opponents appeared to be effective in delaying the passage of the legislation and created challenges for its passage by proposing lesser measures.

Conclusion

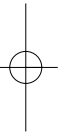
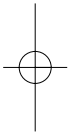
There are strategies that can be used to increase the likelihood that smokefree indoor workplaces legislation will be enacted. New Zealand benefited from overseas experiences, and was therefore able to anticipate and address issues raised by opponents. The New Zealand strategy may in turn serve as a guide for legislative change in other countries.

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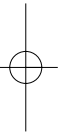
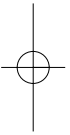


Introduction

New Zealand's *Smoke-free Environments Amendment Act* (the 2003 Amendment Act) was passed on 3 December 2003. The Act required all indoor workplaces to be smokefree from 10 December 2004, including bars, restaurants, cafés, clubs, casinos and gaming machine venues, if they were workplaces, served alcohol or had a gambling venue licence.

As has been the case overseas, the suggestion of smokefree bars was met by fierce resistance from the hospitality sector. A number of arguments were advanced – businesses will go bust; people will lose their jobs; accommodation between smokers and non-smokers, specifically ventilation, is a better approach; we will see an increase in drink spiking and violence as people go outside to smoke, 'old soldiers' fought for this country – they should be able to have a smoke at the local Returned and Services Association (RSA).

Supporters of the Act used a number of strategies and tactics to neutralise these objections, and provide counter arguments to garner public support. This paper considers these strategies and how successful they were – from the point of view of both supporters and opponents of the legislation.



Background

With the passage of the *Smoke-free Environments Act* in 1990 (the Act), New Zealand was considered a world leader in tobacco control, with its bans on advertising and sponsorship, smoking in offices, and the sale of cigarettes to those under 16 years (changed in 1998 to those under 18 years), and its smoking restrictions in restaurants and licensed premises.

However, since 1990, many other jurisdictions have enacted legislation and regulations that go well beyond the provisions in New Zealand's 1990 Act – particularly in the area of smokefree workplaces.

In 1999 when the Smoke-free Environments (Enhanced Protection) Amendment Bill (the 1999 Bill)¹ was introduced to Parliament as a Private Member's Bill, twenty-six percent of New Zealanders aged 15 years and over smoked. Smoking prevalence rates for Maori (who make up 15 percent of the New Zealand population) were 51 percent, and 30 percent for Pacific peoples (who make up 7 percent of the New Zealand population).²

There had been a ban on smoking in offices and on public transport, and restrictions on smoking in cafes, restaurants and licensed premises for nearly ten years. The Smokefree brand was well known, and there was a growing trend towards the voluntary provision of smokefree environments in sports clubs and other public venues. Several major sporting stadia had moved to providing smokefree environments (totally or substantially). Regrettably, a 1995 amendment had seen the 1990 total ban on smoking in gaming areas of casinos replaced with a more limited ban on smoking in only 25 percent of gaming areas.

Research carried out by NFO CM Research in 1999 for the Health Sponsorship Council (random telephone sample of 500 people aged 15 plus) showed 52 percent support for a total smoking ban in sports clubs/centres with only six percent supporting smoking anywhere in those venues.

Smoke-free Environments (Enhanced Protection) Amendment Bill

The implementation of smokefree bars and restaurants had been a goal for New Zealand tobacco control advocates for many years. Achieving this goal became a possibility in 1999 with the introduction to Parliament by New Zealand First MP Tukoroirangi Morgan of a Private Member's Bill to further restrict smoking in workplaces. The key provisions were:

- a ban on smoking in the buildings and grounds of educational institutions (excluding tertiary) 24 hours a day, seven days a week;

1. Smoke-free Environments (Enhanced Protection) Amendment Bill (1999B310-2), introduced by New Zealand First Member of Parliament Tukoroirangi Morgan, 1 July 1999.

2. Ministry of Health (2003). *Tobacco Facts: 2003*. (Public Health Intelligence Occasional Report No 20). Wellington: Ministry of Health.

- the extension of protection from second-hand smoke for workers (but not including workers in licensed premises);
- a ban on the display of tobacco products at points-of-sale within retail outlets;
- provision for judges upon sentencing someone for a repeat offence of selling a tobacco product to a minor to ban that person from selling tobacco products, or set restrictions, for a period of time.

While the 1999 Bill did not propose a ban on smoking in licensed premises, it did give advocacy groups the opportunity to push for stronger legislation. The Bill was taken over by Labour MP Steve Chadwick in 2000, and subsequently by Labour MP Judy Keall later in the same year. Judy Keall was Chair of Parliament's Health Committee at the time.

Supplementary Order Paper

In 2001 Labour Member of Parliament Judy Keall introduced a Government Supplementary Order Paper (SOP)³ to Parliament to significantly amend the 1999 Bill. This SOP was considered by the Health Committee alongside the 1999 Bill. As well as clarifying and amending provisions in the original Bill, The SOP proposed a range of new amendments to:

- further restrict young people's access to tobacco products, including banning the supply of tobacco products and the sale and supply of herbal smoking products to minors, and banning self-service vending machines;
- provide for regulation-making powers to be made for the future fuller disclosure of the contents of tobacco products, pictorial health warnings, health warnings on herbal products, and inserts inside tobacco packets to carry information on the contents of tobacco products;
- provide some limited powers for enforcement officers;
- provide greater protection from exposure to second-hand smoke for workers and the public, including restricting smoking in hospitality venues (bars, restaurants, casinos) to 'designated smoking areas'. These areas were to be no more than 50 percent of the total area of the licensed premises, separated from non-smoking areas, separately ventilated, and all reasonably practicable steps were to be taken to minimise the effect of tobacco smoke on employees working in the area concerned. Clubs were not covered by the 50 percent smokefree requirement.⁴

The suggestion that at least 50 percent of hospitality venues must be entirely smokefree satisfied no-one. Health advocates wanted a complete ban on smoking in bars, restaurants, clubs and casinos, while the hospitality groups wanted a retention of the status quo, which allowed smoking in most areas.

In 2002 Judy Keall retired, and Steve Chadwick once more picked up sponsorship of the Bill, sponsorship which now also included the SOP provisions.

Submissions on the Bill and SOP were heard from 2001 to 2003; a total of 397 submissions, both written and oral, were received. Many submissions were generally supportive of the Bill but sought changes to some aspects. Others considered the measures contained in the Bill to be unnecessary

3. Supplementary Order Paper 148, introduced by Judy Keall, 12 June 2001.

4. Clubs that were workplaces and to which the public had access were required to be smokefree under the 1990 provisions, although many clubs disagreed with this interpretation of the Act, and compliance varied throughout the country.

or overly restrictive. The proposed restrictions on smoking in hospitality venues were a key focus of the submissions.

Key arguments advanced in submissions in support of smokefree hospitality venues were:

- second-hand smoke kills;
- bar and restaurant workers deserve a safe workplace;
- ventilation doesn't work;
- a smoking ban will be self-enforcing;
- smoking bans in restaurants and bars overseas have been followed by increases in profits, jobs and tourism (or at least no financial loss).

Key arguments against were:

- the evidence about the health effects of second-hand smoke is inconclusive;
- ventilation and/or air filtration adequately removes chemicals and poisons from the air;
- the ban will not be enforced, or if it is, there will be a 'smoke police';
- if people have to smoke outside they will stop going to bars. Profits will drop and jobs will be lost;
- it is not fair to expect ex servicemen and women who fought or served for this country to smoke outside at RSAs;
- Clubs (including RSAs) are not public places and should therefore not be included in smokefree provisions;
- tourists will not come here if they cannot smoke in bars.

Health Committee report back

When the Health Committee reported back to Parliament in March 2003, it recommended a total ban on smoking in all workplaces, including bars, restaurants, clubs and casinos.

Specifically it recommended that:

- all indoor workplaces, with some limited exceptions, be completely smokefree. The exceptions were motel and hotel rooms, accommodation on ships and trains, prison cells and employers' private residences. These places were excluded from the definition of 'workplace';
- the exemption allowing smoking in certain indoor areas of licensed premises (bars and pubs), cafes and restaurants, gaming machines venues, and casinos be removed;
- clubs (including RSAs) be included in smokefree provisions;
- smoking be prohibited at schools and early childhood centres;
- the same restrictions that apply to tobacco products apply to herbal smoking products (with a few exceptions including the notable exception that advertising restrictions not apply to herbal products);
- the display of tobacco products be restricted to 100 packages and 40 cartons at each point of sale, except in tobacconists' shops;

- the display of tobacco products be prohibited within one metre of any product marketed primarily for children;
- the courts be able to prohibit offenders who have repeatedly (at least two convictions within a two-year period) sold tobacco products to minors from selling tobacco products for a period of up to three months;
- cigarette vending machines be required to be activated directly by staff, so they are no longer self service;
- the current regulation-making powers in relation to labelling and health messages be extended to require the use of pictorial health warnings and leaflets covering not just health effects but constituents in tobacco and its smoke if required by regulations;
- ‘co-packaging’ of tobacco products with other products be prohibited;
- enforcement officers be given some limited enforcement powers;
- that individual smokers who unlawfully smoke in an indoor workplace be able to be issued with infringement notices.

Passage of the legislation

The report-back was greeted with jubilation by the tobacco control community and with dismay by the hospitality industry. Media coverage was significant, with some media querying the need for completely smokefree hospitality venues, arguing that smokefree bars should be left to market forces and predicting losses of jobs and income.

New Zealand legislation goes through three readings, with most of the debate taking place during the second reading and Committee of the Whole stages, and a final vote being held before a Bill becomes law. Opponents focused on slowing the passage of the legislation (now called the Smoke-free Environments Amendment Bill) as it passed through these stages.

As this was a Private Member’s Bill only able to be heard on Private Members’ Day (every second Wednesday), the progress of the Bill through Parliament was always destined to be slow. It was held up even more by ‘filibustering’ from opposition MPs who made a large number of points of order, especially during the second reading and Committee of the Whole stage.

The *Smoke-free Environments Amendment Act 2003* was passed on 3 December 2003, by 68 votes to 52. It was a party vote for members of the Labour Party (who formed the minority Coalition Government along with the Progressive Party) which voted in support of the legislation, and a conscience vote for most other parties. Five members of parties in which the vast majority of members opposed the Bill, voted in its support. They included the health spokespeople from the National, United Future and New Zealand First parties.

There were two changes to the final legislation from the provisions contained in the Health Committee’s report back:

- the provision to issue individual smokers with infringement notices was removed;
- a provision to ban the sale of toy tobacco products to persons aged under 18 years was added.

Methods

The Act received Royal Assent on 10 December 2003. Some of its provisions – such as banning the supply of cigarettes to minors – came into force immediately, but most, including the ban on smoking indoors in bars and restaurants came into force on 10 December 2004. Provisions relating to schools came into force on 1 January 2004.

Fifteen individuals who had an involvement with the passage of the Act were interviewed between February and May 2005 for the purposes of this paper. They included a researcher, policy-makers, public health advocates, politicians and industry groups, the latter including a representative from each of the tobacco and hospitality industries. Interviews were mostly face-to-face and took between one and two hours.

Interviewees

Those interviewed, and their positions at the time of their involvement in the legislation, are listed below.

POLITICIANS

- Hon Damien O'Connor, Associate Minister of Health, Minister in charge of the Bill following the introduction of the SOP.
- Judy Keall, sponsor of the Bill.
- Steve Chadwick, sponsor of the Bill.

MINISTRY OF HEALTH

- Clare Bear, Analyst, National Drug Policy Team.
- Nicola Holden, Senior Analyst, National Drug Policy Team.
- Kate Rockpool, Senior Analyst, National Drug Policy Team.
- John Stribling, Analyst, National Drug Policy Team.

NON-GOVERNMENT ORGANISATIONS

Advocated for the passage of the legislation:

- Leigh Sturgiss, Director of the Smokefree Coalition.
- Shane Bradbrook, Director of the Maori Smokefree Coalition (ATAK, now Te Reo Marama).

- Trish Fraser, Director of Action on Smoking and Health (ASH).
- Dr Diana North, Medical Director, National Heart Foundation of New Zealand.
- Helen Glasgow, Chair Smokefree Coalition, Executive Director of The Quit Group.

RESEARCHER

- Dr George Thomson, Wellington School of Medicine and Health Sciences, University of Otago.

HOSPITALITY INDUSTRY

- Bruce Robertson, Executive Director, Hospitality Association of New Zealand (HANZ).

TOBACCO INDUSTRY

- Carrick Graham, Head of Corporate and Regulatory Affairs, British American Tobacco (BAT).

Line of questioning

An open-questioning approach was taken, depending on the way the interview developed. Information sought included:

- the role of different agencies and individuals in the development and/or passage of the legislation;
- the strategies used in support of or opposition to the Bill and how successful they were;
- who the key supporters and opponents were;
- what the barriers, hurdles or challenges faced were;
- key steps and processes;
- influence of the media;
- influence of individuals and agencies, for example, industry groups, politicians, key public figures, publicans;
- implementation experience to date;
- what is next for smokefree environments in New Zealand.

Strategies that supported the passage of the legislation

Although the interviewees came from a number of organisations and had a variety of perspectives, there was wide agreement on the key strategies that supported the successful passage of the Act.

These can be summarised as:

- strong political support;
- an active and highly co-ordinated NGO sector with a clear and consistent advocacy strategy;
- highlighting to the public the harm caused by second-hand smoke and the rights of workers to breathe smokefree air;
- background research by the Ministry of Health into each measure proposed;
- highlighting positive economic and enforcement data from other jurisdictions with smokefree bars.

In addition, the five year time lag between the introduction of the Bill and its passage and implementation, while frustrating at the time, in hindsight was seen as extremely useful by many of those interviewed. During this time, jurisdictions introducing smokefree bars and restaurants included New York, Ireland and Norway, and a number of others announced plans to go smokefree in these venues in the near future. It became very difficult for opponents of the legislation to argue that the New Zealand proposal was extreme, against a background of increasing domestic and international support for smokefree workplaces.

Strong political support

Although the Bill was not Government legislation, interviewees felt that its passage was made possible by strong support and leadership from the Government, including the Prime Minister, Minister of Health and Associate Minister of Health, and sponsors of the Bill.

A number of those interviewed credited New Zealand's Prime Minister Helen Clark with playing a major role in the passage of the legislation; her support 'never wavered'⁵ and some said it was the single most important factor in its success.⁶

The passage of the Smoke-free Environments Amendment Bill became virtually assured in mid-2003 when the Labour Party announced that it would have a party vote rather than a conscience vote on the legislation. This, along with support from coalition partner the Progressive Party, as well as from the Green Party, meant that the legislation would have the numbers to get through the House.

5. Steve Chadwick

6. Helen Clark was Minister of Health when the original Smoke-free Environments Act was passed in 1990. The Act banned smoking in offices, on public transport and in certain other public places, and restricted smoking in cafes, restaurants and licensed premises. At the time the legislation was considered world-leading, and attracted considerable opposition from the tobacco industry, hospitality industry and opposition MPs.

The MPs who sponsored the Bill were seen as having drive and genuine commitment to the issues. They told of how this commitment was not without cost, and at times resulted in them becoming the target of threats and personal abuse.

Steve Chadwick, who took over sponsorship of the Bill in 2002, said that she believed the smokefree legislation marked the beginning of ‘wedge’ politics in New Zealand; with misinformation that bars would go broke and that second-hand smoke was not harmful being used to play on people’s fears and undermine public support. She said that for the first time since she had been in Parliament she had to deal with sexism, with one opposition MP referring to MPs supporting the legislation as ‘Helen Clark and her merry band of ugly feminists’.

Steve Chadwick received hate mail that contained references to ‘smoking Nazis’ and ‘Clark Gestapo’, and at one time part of Parliament Buildings had to be evacuated after she received an anthrax-like substance in the mail. The substance turned out to be harmless.

Judy Keall, who sponsored the Bill in its earlier stages until she retired in 2002, talked of the political strategising that went on behind the scenes, including ongoing debate about the issue within the Labour caucus. Not all Labour MPs were supportive of the Bill initially.

An active and highly co-ordinated NGO sector with a clear and consistent advocacy strategy

The NGO advocacy strategy had three parts: providing information to decision-makers, providing information to the public, and refuting what advocates termed misinformation.

Providing information to decision makers

The three politicians interviewed for this paper all commented on the constructive relationship they had with the NGO sector during the passage of this legislation. Steve Chadwick said that working with NGOs was critical. ‘They came to me. Information is power. You can’t pass public health legislation if you can’t liaise with NGOs. Advocacy is vital or it will be a one-sided argument.’

Judy Keall said how much better interface between Government and NGOs was, compared with the far more fraught relationship in 1990, when the original legislation was being debated. In particular she mentioned the Smokefree Coalition as providing ‘a wonderful support mechanism for the process’. She said that the advocacy of groups like the Smokefree Coalition, ATAK (now renamed Te Reo Marama (TRM)), the Cancer Society and the National Heart Foundation was very professional.

Dr Diana North, then Medical Director of the National Heart Foundation said that the key to the success of the advocacy groups was having good, open communication and a clear plan of action. It was also helpful to be able to call upon people with a range of backgrounds – people with advocacy skills, medical knowledge, epidemiologists and so on. ‘All the groups brought different strengths’. She believes the co-ordination of advocacy agencies was the single most important factor in the passage of the legislation.

NGOs continually supplied decision-makers with information about the harm caused by second-hand smoke, success of smokefree hospitality venues overseas, and likely arguments from opponents.

The Cancer Society of New Zealand, National Heart Foundation and the Stroke Foundation of New Zealand jointly wrote to all MPs highlighting the dangers of exposure to second-hand smoke and encouraging them to support a total ban on smoking in workplaces. Senior members of each organisation together visited a number of MPs to push the case for indoor smokefree workplaces.

Other health NGOs undertook their own visits, and regional and local health workers provided their MPs with information on an ongoing basis.

Then ASH Chair Dr Murray Laugesen set up Doctors for a Smokefree New Zealand, and signed up over 1000 doctors.

Providing information to the public

Co-ordination services are provided to the New Zealand tobacco control workforce by several organisations including the Health Sponsorship Council, ASH, the Smokefree Coalition and TRM. There are also regional smokefree co-ordinators who cover different areas of the country.

Advocacy groups were able to use these existing networks to channel key messages about the legislation to tobacco control workers. Information provided included ‘Swiss cheese’ letters to the editor – containing information about, for example, the success of smokefree bars overseas, into which local tobacco control workers could insert their details and any local information or flavour, and submit to the media.

The following key messages were promoted by all tobacco control workers:

- second-hand smoke kills;
- hospitality workers deserve a safe workplace;
- ventilation of hospitality venues will not be effective in reducing risk to workers;
- a smoking ban will be self-enforcing;
- smoking bans in restaurants and bars overseas have been followed by increases in profits, jobs and tourism – or at the very least by no overall losses.

These messages were used consistently and often.

Organisations worked together, both locally and nationally. If one tobacco control organisation promoting smokefree environments sparked a media article or letter to the editor, another would respond, backing up the points made by the first organisation.

Good use was made of health organisations, in particular the Cancer Society, National Heart Foundation and Stroke Foundation. Spokespeople from these organisations would often front the media, rather than advocacy agencies like the Smokefree Coalition or ATAK (now TRM). It was felt that these health agencies had more credibility in the eyes of the public than paid advocates. Members of the medical profession often fronted issues, particularly when emphasising the harm caused by exposure to second-hand smoke.

There was also liaison with potentially supportive hospitality-focused organisations, such as the Service and Food Workers Union, which passed a remit supporting the need for their union members to work in smokefree environments. The New Zealand Council of Trade Unions also indicated its support for the legislation.

Refuting misinformation

The provision of information to the public and decision-makers about the negative effects of smoking bans in hospitality venues was one tactic used by the hospitality industry. While the New Zealand tobacco industry kept a low profile, HANZ consistently opposed the legislation. Health groups provided counter arguments (see Arguments used by opponents to the legislation on page 23 for more detail).

WHAT WILL SMOKEFREE BARS AND RESTAURANTS MEAN FOR MY BUSINESS?

Brought to you by the Cancer Society, Heart Foundation, Stroke Foundation and Asthma and Respiratory Foundation.

Parliament is currently considering legislation that would require restaurants and bars to be completely or partly smokefree. Understandably, some restaurant and bar owners/managers are nervous about these changes.

The following are commonly-asked questions about the proposed legislation. They are based on international evidence, and a list of source documents is available from the Cancer Society upon request (info@csnz.org.nz).

WILL MY BUSINESS LOSE MONEY IF WE GO SMOKEFREE?

Overseas figures show that smokefree restaurants and/or bars have been good news for owners, with no overall loss of profits or jobs. In many cases profits have risen, as these venues start to attract back the 75% of the population who don't smoke. Non-smokers also tend to be higher income earners and have more money to spend.

WON'T WE END UP WITH 'SMOKE POLICE'?

There has been no need for 'smoke police' in smokefree restaurants and bars overseas. In fact, there is high compliance with smokefree laws. Similar enforcement concerns were raised in 1990 when New Zealand's Smoke-free Environments Act required offices to be smokefree. These fears proved to be completely groundless - thirteen years later compliance is extremely high and there has only been one prosecution for a breach of this part of the legislation.

CAN'T WE JUST INSTALL A GOOD VENTILATION SYSTEM?

Ventilation systems may remove visible smoke but they won't get rid of the toxic gases produced by tobacco. Even tobacco company Philip Morris admits that the ventilation system they promote to bars in the United States cannot remove the health risks of breathing in other people's tobacco smoke. In addition, ventilation systems are costly to install and maintain.

SHOULDN'T PEOPLE BE ABLE TO SMOKE WHEREVER THEY WANT TO?

Smokers have the right to smoke - but not where they can harm others. Some bar workers are exposed to second-hand smoke hour after hour, day after day, week after week. Patrons have a choice whether or not to go into a bar or restaurant - staff don't.

It is estimated that second-hand smoke kills around 100 workers in New Zealand every year. Virtually every other employee in New Zealand is offered a smokefree workplace - why should hospitality workers be any different?

Remember: 75 percent of New Zealand adults don't smoke.
Smokefree restaurants and bars will open up a whole new market.

Information flyer sponsored by the Cancer Society, Heart Foundation, Stroke Foundation and Asthma and Respiratory Foundation. The flyer was published in hospitality industry magazines.

Highlighting the harm caused by second-hand smoke and the rights of workers to breathe smokefree air

In 2001, when MP Judy Keall introduced the SOP which required at least 50 percent of hospitality venues to be smokefree, there was considerable scepticism from publicans, and some members of the public about whether second-hand smoke was really that bad. After all, many of the people frequenting bars had grown up in households filled with second-hand smoke and perceived that 'it hadn't hurt them'. This view was supported by HANZ which said that it was by no means certain that second-hand smoke was a killer, and referred people to articles such as 'Cherry-picked Science on Secondhand Smoke.'⁷ HANZ's information sheet *Points for inclusion in submissions*,⁸ stated 'The science linking second-hand smoke and cancer is inconclusive and conflicting'. Similar sentiments were expressed by publicans around the country.

A priority for health groups was to refute this argument and give the public evidence-based information about second-hand smoke. This was approached in a number of ways.

Overseas experts

Overseas experts were invited to speak to politicians and the media. They included biophysicist James Repace (ventilation does not remove the poisons in second-hand smoke), Stanton Glantz from the University of California and Cynthia Hallett from Americans for Non-smokers' Rights (the success of smokefree bars in California, legislative options to protect smokers).

Paid media

The Health Sponsorship Council, a social marketing agency that promotes the Smokefree brand, developed and ran media campaigns promoting smokefree environments and emphasising the harms caused by second-hand smoke. The campaigns were not part of the NGO's smokefree hospitality venues strategy.

They included television commercials, radio and print advertising. The television commercials showed second-hand smoke affecting a baby in a cot, second-hand smoke in bars and the attitudes of workers to this smoke, and the chemicals present in second-hand smoke with a focus on smoking in homes and cars. The campaigns ran sporadically from 2001, in line with New Zealand's World No Tobacco Day (31st May) message: *Let's clear the air*.

For the first time the public was provided with consistent, high impact, information about the harms caused by second-hand smoke.

Advocacy groups also used print resources to highlight the harms caused by second-hand smoke. A poster was developed that showed which groups believed that second-hand smoke killed (all the health groups) and which groups believed it didn't (the tobacco industry). Another poster showed the smoke from a cigarette turning into arsenic, cyanide and ammonia. These posters were distributed widely by health workers, featured on t-shirts that were worn by tobacco control workers to Health Committee hearings, and pasted up around the country.

7. Perske M (2001). Cherry-picked Science on Secondhand Smoke. From JunkScience.com. As referred to on the HANZ website, retrieved on 10 February 2005 from http://www.hanz.org.nz/index.cfm/Industry_News_issues/Smoke_Free_Environments_1/Info_sheet

8. Retrieved from the HANZ website on 10 February 2005 from http://www.hanz.org.nz/index.cfm/Industry_News_issues/Smoke_Free_Environments_1/Info_sheet



Posters developed for the second-hand smoke in homes media campaign.

Personal experience

Advocates were extremely lucky to have the support of David Simm, a former supermarket manager who developed lung cancer following many years of exposure to second-hand smoke in the workplace. Despite failing health, David Simm and his wife Elizabeth did all they could to support the passage of the legislation, including talking to the Health Committee and being available to present their story to the media. They put a human face to the second-hand smoke issue. David was present the night the legislation was passed, on 3 December 2003, and sadly died six months later.

World No Tobacco Day

New Zealand at times chooses its own themes for World No Tobacco Day (called World Smokefree Day locally) depending on the national tobacco control priorities at the time. The theme for World Smokefree Days 2001, 2002, 2003 and 2004 was *Let's clear the air*. World Smokefree Day is coordinated nationally and the same messages delivered by health workers throughout the country, using common resources. For four years, *Let's clear the air* was promoted throughout the month of May. This complemented the paid advertising mentioned in the previous page.

Communication with HANZ

In July 2001, the Chief Executive of the Cancer Society, and the Medical Directors of the National Heart Foundation and Stroke Foundation wrote to the nine board members of HANZ saying that it was being irresponsible and misinforming the public.

The letter said ‘We cannot accept statements from HANZ that second-hand smoke is not harmful...’ The letter prompted an angry response from the HANZ president who said ‘the hotel industry... has been extremely generous to all three groups... I have until now had an excellent relationship with all three and been involved in fundraising and funding thousands of dollars over the years.’⁹

Health and safety links

ASH led the debate on the health and safety angle of exposure to second-hand smoke. It argued strongly that exposure to second-hand smoke was already a breach of the *Health and Safety in Employment Act 1992* and that the passage of the smokefree legislation would merely strengthen and complement this existing legislation.

In 2001, Occupational Safety and Health¹⁰ (OSH) and the Ministry of Health developed a memorandum of understanding (MOU) on second-hand smoke. The purpose of the MOU was to formalise a co-operative arrangement between the parties relating to the workplace hazard of second-hand smoke. It aimed to minimise the overlapping of functions and resources, and to encourage collaboration between the two parties.

The MOU stated that second-hand smoke was a ‘significant hazard capable of causing serious harm.’¹¹ OSH’s hierarchy of control states that all practicable steps must be taken to eliminate significant hazards from the workplace.

Background research carried out by the Ministry of Health

Background research was carried out by the Ministry of Health into the health effects of second-hand smoke, reasons advanced for and against smokefree environments, the rationale and evidence behind each proposed change to the Act, research around smoking restrictions within the hospitality industry, and industry actions in respect to second-hand smoke issues. Information was provided to the Health Committee, and internal Ministry of Health documents were developed for each proposed amendment.

As with the information supplied by advocacy groups, this enabled politicians to be up-to-date with the latest evidence.

The Ministry of Health also commissioned reviews of the mortality and morbidity attributed to exposure to second-hand smoke. These reviews estimated that around 350 New Zealanders die every year because of exposure to second-hand smoke – about 100 of whom were exposed in the workplace.¹²

9. ‘Health Groups, hoteliers clash on smokefree law’. *Evening Post*, 17 July 2001.

10. Occupational Health and Safety is a service of the Department of Labour. Its roles include the provision of workplace health and safety services.

11. Occupational Health and Safety and the Ministry of Health (June 2001). *Policy and Operating Procedure for Second Hand Smoke* (June 2001).

12. Woodward A, Laugeson M (2001). How many deaths are caused by second-hand cigarette smoke? *Tobacco Control*, 10, 383-8.

Morbidity due to exposure to second-hand smoke was estimated to include:

- more than 500 hospital admissions of children under two years suffering from chest infections;
- more than 27,000 GP consultations for asthma and other respiratory problems in childhood;
- 1000 cases of glue ear;
- 50 cases of meningococcal disease;
- 20,000 asthma attacks in children;
- 50 deaths from SIDS;
- almost 500 admissions to hospital of persons suffering from strokes;
- approximately 1200 admissions for ischaemic heart disease.¹³

Highlighting positive economic and enforcement data from other jurisdictions with smokefree bars

The economic argument

As happened in other jurisdictions, concerns were expressed by opponents to the legislation that businesses would go broke and people would lose their jobs due to smokers staying away from bars and restaurants.

Initially, New Zealand leaned heavily on the data from California that showed that profits had not suffered. In November 2001, while in transit back from Framework Convention on Tobacco Control negotiations, representatives from both the Cancer Society and the Ministry of Health met with representatives from the County of Los Angeles Department of Health Services, to discuss the California experience first-hand. At that time, the dominant impression in New Zealand was that smokefree bars in California had led to a loss in profits and jobs.

After talking to the LA Department of Health Services it was confirmed that smokefree restaurants and bars had in fact been a success in California.

The most recent facts and figures from California were taken back to New Zealand and actively promoted to tobacco control workers and the media by the Cancer Society. In December 2001 hearings on the Bill began. The Cancer Society was first to address the Health Committee, and as such there was considerable media interest. The Society's oral submission concentrated on the recent visit to California, and presented the latest data. The success of smokefree bars and restaurants in California was new information and was widely reported.

In September 2002, Cynthia Hallett, Executive Director of Americans



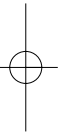
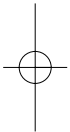
Cynthia Hallett

13. Woodward A, Laugeson M (2001). Morbidity attributable to second-hand cigarette smoke in New Zealand. Report to the Ministry of Health. Wellington: Department of Public Health, Wellington School of Medicine.

for Nonsmokers' Rights addressed a tobacco control conference in Wellington. Her message was that smokefree venues in California had not hurt business, and she was able to show the latest figures. Her message was picked up widely by the media, and she communicated the same message to key politicians.

By the time Parliament voted on the passage of the legislation, in December 2003, more and more jurisdictions were considering going smokefree in bars and restaurants. It started to become obvious to the public and politicians that smokefree restaurants and bars were on their way – like it or not.

More recently, health groups have quoted the 2004 Scollo study widely. This study analysed a number of economic impact studies conducted on smokefree ordinances, and suggested that no legitimate study had shown a negative economic impact as the result of implementation of a smokefree ordinance.¹⁴



14. Scollo M, Lal A, Hyland A, Glantz SA (2003) Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry. *Tobacco Control*, 12: 13-20.

Arguments used by opponents of the legislation

HANZ was the most vocal and consistent opponent to smokefree hospitality venues. Others to express opposition included Clubs New Zealand, the RSA, political party ACT New Zealand, and British American Tobacco (BAT).

Both BAT and HANZ expressed concern at some of the information used by advocates to support the passage of the Bill, in particular, economic data from California, information pointing to the lack of effectiveness of ventilation, and statements made about the health effects of second-hand smoke. This information was felt to be unbalanced. Carrick Graham of BAT cited claims that second-hand tobacco smoke could somehow ‘jump off the furniture and get you’, and suggestions by advocates that an effective ventilation system would need hurricane strength flows of air as ludicrous.

Challenges to the legislation continued even after its implementation. In March 2005 a Member’s Bill was introduced proposing to weaken the legislation by providing for smoking in clubs and licensed premises where all employees consent.¹⁵ The Bill was rejected by Parliament.

Arguments and counter-arguments included:

Bars will go bust – they did in California

The hospitality industry consistently foretold mass bar closures and job losses as a result of smokefree bars. In 2001, HANZ video-linked Beverly Swanson – director of the California Licensed Beverage Association, and with tobacco industry links – into its annual general meeting.

Ms Swanson stated:

‘This type of legislation is out and out prohibition and it will hurt your business, it will kill it. From the start operators here experienced a 30 percent decrease in customers, a 50 percent increase in complaints and a 29 percent decrease in jobs and cut hours.’¹⁶

As mentioned previously, a Cancer Society representative had visited California to investigate the situation first-hand, and was able to report positive findings to the Health Committee.

Ventilation will protect health, while still allowing people to smoke

The effectiveness of ventilation was a key argument from opponents to the smokefree legislation. In its submission HANZ said ‘most ventilation and filtration equipment manufacturers claim that their equipment is in excess of 90 percent efficient in removing second-hand smoke as well as other impurities and bacteria in the air.’¹⁷

15. Smoking exemptions sought by ACT MP. Muriel Newman media release, 17 March 2005.

16. ‘Thumbs down to no pub smoking.’ *Wanganui Chronicle*, 17 October 2001.

17. HANZ, submission to Health Select Committee, 23 November 2001. Retrieved on 11 Feb 2005 from http://www.hanz.org.nz/index.cfm/Industry_News_Issues/Smoke_Free_Environments_1/Submission

In 2003, the National Institute of Water and Atmospheric Research (NIWA), a Crown research agency, was invited by Clubs New Zealand to investigate the impact of ventilation and air purification systems on second-hand smoke. NIWA carried out a study at the Bream Bay Club in Northland, a venue with a recently-installed ventilation system.¹⁸ Clubs New Zealand claimed the report demonstrated that the ventilation system at the club provided a satisfactory level of protection from the effects of second-hand smoke.

The Ministry of Health's Public Health Advisory Committee subsequently considered the NIWA report and concluded that there were 'severe flaws in both the project's research methodology and the report itself', and that, in light of these it 'cannot be used as evidence for the efficacy of ventilation systems in reducing the health impacts of second-hand smoke'.¹⁹

The Bream Bay study was not released until August 2003, by which time submissions had closed and the Bill was being read in the House. It is conceivable that had it been released earlier, it could have had a greater impact on the provisions in the legislation. Indeed it and other lobbying focusing on ventilation as an alternative to a total ban on smoking in hospitality venues, did spark the submission of a last minute SOP that would have provided for continued smoking in bars under a proposal for a 'minimum air quality standard'.

The SOP was from the leader of the United Future Party, Peter Dunne.²⁰ It suggested that smoking only be prohibited if, as a result of smoking, the air did not meet a minimum air quality standard. The Ministry of Health would have been required to develop such a standard before 1 February 2006. The SOP was rejected by Parliament.

Health groups countered:

- there is no ventilation system available that can adequately remove carcinogens from the air;
- ventilation systems are costly to install and run;
- they are often turned off in winter because they make the air inside too cold;
- they will not address the issue of making smoking 'less normal'.

The Australian Capital Territory (ACT) is one of few jurisdictions to have introduced partial smoking bans in hospitality venues that rely on ventilation to provide clean air. During its consideration of the Bill and SOP, the Health Committee visited ACT to consider the effectiveness of this approach. It was told by ACT health officials that the measures had not been effective. In November 2003 ACT announced a phasing out of the ventilation approach, finding that it did not work and exposed some workers to unnecessary health risks. Smoking will not be allowed in any enclosed public places in ACT from December 2006, including bars and clubs.

Our tourist industry will be devastated – all our overseas visitors expect to smoke

Opponents of the legislation expressed concern that tourists to New Zealand, in particular those from Asian countries with high smoking rates, would expect to be able to smoke in hospitality venues and would stop visiting New Zealand if this was not the case.

18. Fisher G, Reddish L (2003). *Air Quality inside the Bream Bay Club, Ruakaka*. Auckland: National Institute of Water and Atmospheric Research.

19. NHAC (2003). *Advice from the Public Health Advisory Committee on the Smoke-free Environments (Enhanced Protection) Amendment Bill*. 26 September 2003. Document number 20034480.

20 See http://www.ash.org.nz/tobacco_industry.php?sid=31&id=Con860 which sets out the voting record and views of Hon Peter Dunne with respect to tobacco control.

Advocacy groups provided information that showed that banning smoking in New Zealand restaurants and bars was unlikely to have a negative impact on overseas tourist numbers or revenue, and that such a move might in fact boost New Zealand's attractiveness to overseas visitors.

They found that each year more than 1.7 million people visit New Zealand for a holiday. More than half of these visitors come from countries like Australia, the United States and the United Kingdom, where smoking rates are similar to New Zealand's. Only about 20 percent of NZ visitors come from countries with high male smoking rates (ie. greater than 40 percent). These countries include Japan, Korea, Taiwan and China. Female smoking rates in these countries are much lower.

Advocacy groups argued that these figures indicated that non-smokers are likely to comprise the dominant share of New Zealand's inbound tourist market – around 75 percent overall. Most of these non-smokers are likely to support smoking bans or restrictions in restaurants and bars, since this is typically the finding in most studies of public attitudes to second-hand smoke in developed countries. As well, many of New Zealand's international visitors are from countries such as Australia and the United States, where smoking bans have already been introduced in bars or restaurants in several states and cities.²¹

The legislation will be impossible to enforce – we'll have smoke police

This was increasingly argued as it became clear that smokefree bars in New Zealand were likely to become a reality. HANZ and publicans said that the ban would be impossible to enforce and there were a large number of media stories about video camera-totting smoke police bursting into licensed premises.

Health groups responded with information from California showing that compliance had not been an issue (compliance in 2000 by bars was nearly 70 percent and increasing, and compliance by restaurants 95 percent).²² More recently, figures from Ireland show compliance in hospitality workplaces at 93 percent.²³

Health groups also noted that similar concerns about non-compliance were advanced in 1989/90 when smokefree workplaces legislation was being considered in New Zealand. However, there has been a high rate of compliance with this legislation, with only one smokefree environments-based prosecution having been taken between 1990 and 2004.

Returned servicemen and women will have to smoke outside in the rain (even though they fought for this country)

This was a very emotive argument and one that had considerable public resonance.

Advocates replied that the RSA was simply another licensed premises, and one in which people deserved protection from poisonous chemicals. They said that it seemed a little hypocritical for people to talk about freedom and rights while putting the health of others at risk by smoking around them.

21. Smoking Bans in NZ Restaurants and Bars: How will overseas visitors react? Information Sheet produced by the Smokefree Coalition

22. Weber MD et al (2003). Long term compliance with California's Smoke-Free Workplace Law among bars and restaurants in Los Angeles County. *Tobacco Control* 2003; 12:269-273.

23. Office of Tobacco Control (2005) *Smoke-Free Workplaces in Ireland: A One-Year Review*. Office of Tobacco Control: County Kildare.

It was also pointed out that allowing people to smoke in RSAs would remove the regulatory ‘level playing field’ that was so important for the success of the legislation.

Second-hand smoke isn’t that harmful anyway – even the World Health Organization says so

There was a lot of media attention around the World Health Organization (WHO) study on environmental tobacco smoke (ETS),²⁴ which was promoted by some as failing to find a clear link between passive smoking and lung cancer. The WHO had responded at the time refuting this misrepresentation with a media release *Passive Smoking Does Cause Lung Cancer, Do Not Let Them Fool You*²⁵ but this was not acknowledged by opponents, nor were further studies supporting the WHO’s view.

In New Zealand, the ‘second-hand smoke kills’ message was promoted countrywide via national media campaigns and local information campaigns.

People will get their drinks spiked if they go outside to smoke

This was raised after the legislation had been passed, but before implementation. It did not seem to be based on any evidence.

Advocates largely ignored the comments, feeling that a response might legitimise the argument. Any comment noted that people had always had to go to the toilet when at a bar, and had always wandered off from time to time to talk to other people, leaving their drink at the table. They pointed out that blaming the smokefree legislation for a possible increase in drink spiking was clutching at straws.

The ‘paid advocacy’ debate

In August 2003 a series of official information disclosures revealed that NGOs such as the Smokefree Coalition, ATAK (now TRM) and ASH had been provided with public funds for their advocacy efforts. Specifically, contracts for those groups made it clear that they were to advocate to relevant decision-making bodies and individuals for regulatory/legislative change.

This fact, coming at the closing stages of the passage of the legislation, posed a real risk to its successful passage. Opponents of the legislation were incensed at what they saw as secretive funding of lobby groups by the Government, arguing that the groups should have declared their funding sources when making their submissions to the Health Committee. Bruce Robertson of HANZ said that the extent of Government funding of these groups left him feeling ‘uncomfortable and pretty sick’.

Supporters of the legislation argued that the funding was provided in order to balance what they saw as the considerable resourcing that the hospitality and tobacco industries had to oppose the legislation. As indicated above, Steve Chadwick said that working with NGOs was critical to the passage of the legislation and that advocacy was vital to avoid a one-sided argument.

24. Boffetta P, Agudo A, Ahrens W, et al (1998). Multicenter Case-Control Study of Exposure to Environmental Tobacco Smoke and Lung Cancer in Europe. *J Natl Cancer Inst* 1998;90:1140-50.

25. World Health Organization (1998). Passive smoking does cause lung cancer, do not let them fool you. Media release 9 March 1998. Retrieved 8 September 2005 from <http://www.who.int/inf-pr-1998/en/pr98-29.html>

Challenges and hurdles

Those interviewed for this paper and who supported the legislation, mentioned a number of key challenges and hurdles, including:

The personal toll

Several people commented on how difficult it was to stay positive and motivated as the legislation worked its way through the Parliamentary process over five years. While there is some agreement that this lengthy timeframe had a number of advantages, such as allowing full public discussion of the proposed measures, it took a toll on advocates.

Then ASH Director Trish Fraser said ‘People really got hooked into it and put their lives on hold. There was a high risk of burn out.’

Diana North said that supporters had to learn to keep their energy up between hearings of the Bill, and not lose sight of the final goal.

Resources needed to refute arguments

While all the arguments advanced by opponents of the legislation were addressed and answered by advocates, it was time-intensive to do so, and took financial and human resources away from other strategies such as providing the public with information about the effects of exposure to second-hand smoke.

The complexity of the Bill

The Bill was a complex piece of legislation, containing a large number of provisions in addition to the proposed ban on smoking in indoor workplaces. These included restrictions on the display of tobacco products, changes to sales-to-minors penalties, restriction on access to vending machines, including herbal products in provisions, and extensions to regulation-making powers.

Supporters of the legislation were aware that this was likely to be the last amendment to the *Smoke-free Environments Act 1990* for some years and were therefore committed to including as many new measures as possible. The result was a large SOP that completely rewrote the original Bill.

The wide scope of the legislation created issues for a Ministry of Health already stretched resource-wise, and there was a feeling from some staff that the non-workplace-related provisions would have benefited from having more time spent on them. Nicola Holden, who provided policy advice on the Bill in its latter stages, said that ideally there should be smaller amendments to the legislation, more frequently. ‘It would have been good to handle the second-hand smoke issues on their own, not everything at once.’

However, others noted that there was a need to seize the opportunity to amend the legislation in as many ways as necessary, as the next opportunity might not come for a number of years.

It should also be noted that the ability of the Ministry of Health to influence policy development at crucial and early stages was limited by the fact that the proposed legislation was a Private Member's Bill. This is likely to have impacted on the depth of the policy analysis.

The complexity of the legislation also impacted on implementation; the Ministry of Health was required to work with a number of disparate groups including retailers, employers, sports clubs, and licensees. It was necessary to quickly impart a lot of complex information on a number of issues to these different groups. Several of those interviewed mentioned the input of the Health Sponsorship Council as being pivotal to the success of this information distribution process.

The non-inclusion of clubs and RSAs in the SOP

The SOP that proposed a ban on smoking in 50 percent of the total area in all restaurants, licensed premises and casinos did not explicitly include clubs and RSAs in these requirements. While clubs and RSA were explicitly included in the final legislation, their original omission gave legitimacy to the argument of organisations like Clubs New Zealand that a different standard should apply to clubs because they had private members who could not be considered the public. It also implied that protecting workers in clubs from exposure to second-hand smoke was not important.

Health groups, and HANZ strongly opposed the exclusion of clubs and RSAs from the smokefree provisions; HANZ arguing that any smokefree legislation must provide a level playing field for hospitality venues.

Clubs and RSAs were included in the Health Committee's recommendations for smokefree indoor workplaces, and are now required by law to be smokefree inside.

Public opinion and media coverage

As discussed above, most of those interviewed considered the time the legislation took to move through Parliament to have been a positive factor in the change in public opinion.

A National Research Bureau poll carried out for the Ministry of Health in 1999²⁶ showed only 10 percent support for the option of totally smokefree bars versus 41 percent support for the alternative option of allowing smoking only in separate rooms that did not allow smoke drift. On the question of the best control over smoking in restaurants, 35 percent agreed that there should be no smoking at all in restaurants.

Smokefree Coalition Director Leigh Sturgiss said that a lot of public comment at the beginning, as gauged from talk-back radio and letters to the editor, was not positive, with the idea of smokefree bars still being seen as extreme.

The Smokefree Coalition began to respond to all media coverage of the legislation. A claim that smokefree bars would lead to a loss in profits, was countered by a letter to the editor talking about the harms of second-hand smoke, workers' rights, and positive information from California. Sometimes the letters were from the Smokefree Coalition, and sometimes from other health groups like the Cancer Society and the National Heart Foundation.

During this period, health groups actively and strongly promoted messages about the harm caused by exposure to second-hand smoke. This was new information for many New Zealanders who had formerly considered second-hand smoke merely a nuisance.

From 2004, the focus went on the poisonous chemicals in second-hand smoke, and how even short exposure can be fatal. A poster written in red ink made to look like blood pointed out how little time was needed to be harmed by second-hand smoke.



26. NRB (1999). Attitudes towards environmental tobacco smoke. Prepared for the Ministry of Health. Retrieved on 24 March 2005 from <http://www.ndp.govt.nz/tobacco/ETSReport.pdf>.

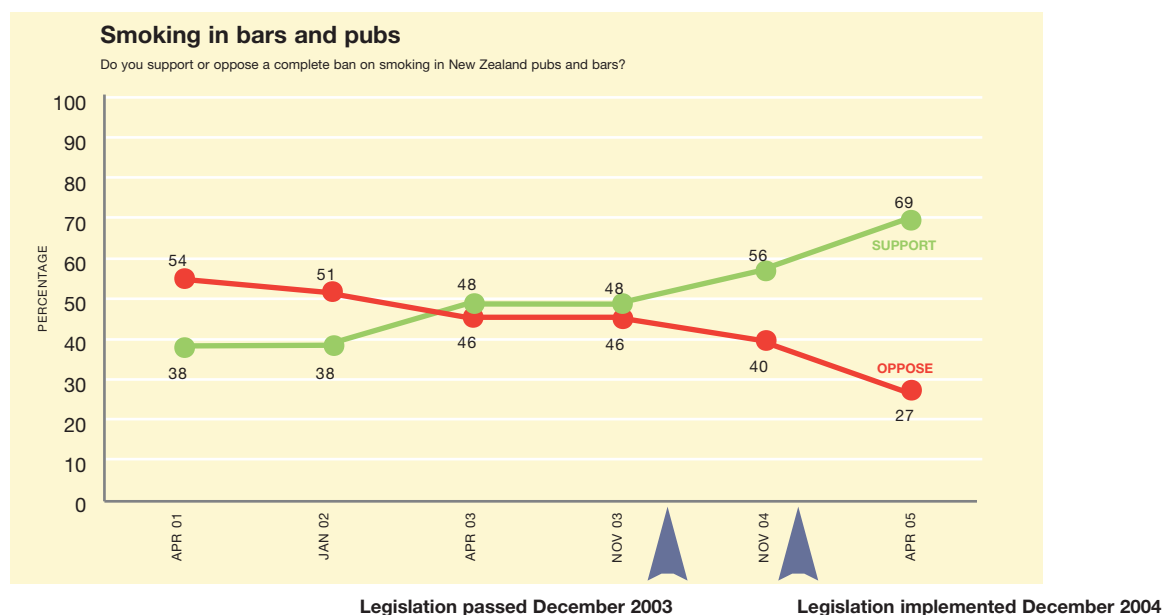
Annual polls continued to be conducted,²⁷ this time by UMR research, and funded by the National Heart Foundation (2001 to 2003) and jointly by the National Heart Foundation and ASH in 2004. Each year there was an increase in support for totally smokefree bars and restaurants. Support for smoke-free bars in 2001 was at 38 percent, and by November 2004, just before the ban was enacted, had reached 56 percent. Support for smokefree restaurants rose from 61 percent in 2001 to 73 percent in 2004.



A UMR survey released in April 2005 found that public support for a complete ban on smoking in pubs and bars had increased in the space of five months to nearly 70 percent. Support from smokers increased to 42 percent in April 2005, compared with 22 percent in November 2004. Support from non-smokers increased to 75 percent, from 66 percent in 2004.²⁸

Leigh Sturgiss said that the change in public attitudes was also evident from talkback radio and letters to the editor.

“Non-smokers appeared to now feel empowered to voice their right to a smokefree environment. Advocacy groups made a point of answering negative letters to the editor and correcting talkback misinformation; but this action was just as often taken by members of the public who were no longer reluctant to voice support for smokefree environments.”

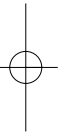
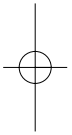


27. UMR Research (2004) Smoking ban in restaurants, bars and pubs. Retrieved on 24 March 2005 from <http://www.ash.org.nz/pdf/SecondhandSmoke/SmokefreeEnvironments/SmokingBanOmniResults.pdf>

28. UMR Research Limited (2005). Smoking ban in restaurants, bars and pubs: Omnibus results. Survey carried out for Action on Smoking and Health (ASH).

Common themes in media clippings between 2003 and 2004 included:

- pubs going smokefree early, ahead of the 10 December 2004 deadline;
- pubs that have been smokefree for some time saying how good this had been for business;
- an increasing number of countries and jurisdictions are introducing smokefree workplaces legislation;
- confusion about what comprises an outdoor area;
- ‘old soldiers’ won’t be able to smoke at RSAs;
- queries about why people could still smoke in prisons and on marae²⁹;
- surveys of the attitudes of the local population to smokefree bars;
- publicans worried about drink spiking;
- smokers being likely to quit as a result of the ban.



29. A marae is a meeting place for the Māori community.

Implementation

Promoting the changes

Implementation posed a number of challenges, mainly due to the complexity of the legislation, and the number of different provisions it contained. The Health Sponsorship Council, led by Director Iain Potter, worked with the Ministry of Health to develop a plan to ensure affected groups were advised of the changes, and relevant information and signage was developed.

A small group of people with experience in tobacco control (the Legislation Communication Group or LCG) was convened by the Ministry of Health to co-ordinate advisory groups to look at the information needs of the affected groups.

The LCG oversaw the formation of four groups, one each responsible for delivering appropriate information to:

- hospitality venues;
- sports clubs;
- workplaces;
- retailers.

These groups were responsible for liaising with relevant agencies, such as HANZ and Clubs New Zealand, and developing information and signage. Around 30 separate resources were developed and distributed to various affected groups.

Television, radio and print advertising publicising the December 10 changes ran from November 2004. A second campaign – reminding people that they had to smoke outside – ran from January 2005.

NGOs also developed a short print and radio campaign to promote the changes. This campaign was co-ordinated by the Smokefree Coalition and ASH. The campaign poster, printed in newspapers nationwide on 10 December 2004 said ‘Let’s celebrate. From today all bars and restaurants throughout New Zealand are smokefree. It’s a fresh, new start. Enjoy.’

More than 60,000 copies of resources were sent to businesses.



Enforcement

In November 2004, the Ministry of Health launched an information phonenumber 0508 SMOKEFREE or 0508 766 533 ahead of the 10 December deadline. The purpose of the free phone line was to educate people about their rights and responsibilities under the 2003 Amendment Act.

The Ministry of Health received 173 complaints about breaches of the legislation in the first four months following the implementation of the legislation. Ninety-one involved licensed premises, 41 workplaces, 24 retailers, 11 restaurants and two tobacco sales.³⁰

A survey carried out for ASH in April 2005 found that 97 percent of bars were complying with the new laws. Of 193 bars visited, only five had smokers.³¹

While compliance with the new law appears to be high, a few publicans have taken a public stand and continue to allow smoking in bars. These publicans argue that by having smokefree signage and asking people not to smoke, they are fulfilling their obligations under the law. Several prosecutions are pending.

Bruce Robertson believes that some licensed venues are losing business as predicted by HANZ, although it is too early to tell the extent of the downturn. Tobacco industry commentators said that bar owners were very concerned about the impact winter would have on their business, when smokers had to go out in the cold to smoke.

30. Smokefree support skyrockets. Media release Hon Damien O'Connor, 28 April 2005.

31. National Research Bureau (2005). Nationwide Survey shows 97 percent compliance with the Smokefree Environments Act. Prepared for ASH. Retrieved on 8 June 2005 from <http://www.ash.org.nz/news.php?sid=11&id=Con910>.

Research and evaluation

New Zealand health groups are aware that there will be international interest in the impact of the 2003 Amendment Act. A range of research and evaluation initiatives have been put into place. These include:

- evaluation of economic impact: use of objective measures such as retail trade figures, compiled by independent sources. To be meaningful, at least one year of post-impact data needs to be considered. However, health groups have evaluated quarterly data from April 2005;
- liquor licensing trends before and after 10 December 2004;
- licensees' attitudes to the legislation, pre- and post-implementation;
- tally of complaints and estimate of compliance;
- monitoring of public attitudes and behaviours;
- cotinine testing to contrast hospitality workers' post-legislation levels with the pre-legislation baseline (cotinine is a biomarker for tobacco smoke exposure);
- monitoring of the sales of cigarettes and tobacco;
- number of people calling the Quitline pre- and post-legislation;
- further public opinion surveys.

Results will be available on the Ministry of Health's Smokefree Law website: www.smokefreelaw.co.nz. The Ministry of Health is also developing a document – *The Smoke is Clearing: Anniversary Report* – that evaluates the impact of the changes to the legislation.

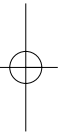
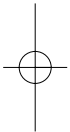
In addition the document *Aotearoa New Zealand Smokefree Workplaces: A 12-month report* will be available on the Asthma and Respiratory Foundation's website, www.asthmanz.co.nz, from 10 December 2005. This document is being developed by NGOs and summarises a number of indicators of the effects of the smokefree legislation.

What next for smokefree environments in New Zealand

Those interviewed for this paper felt that future priorities for smokefree environments were:

- the home and car, by way of further education not legislation;
- introducing a five-metre law so that smokers smoke away from entrances to smokefree venues;
- certain public outdoor areas such as beaches, parks and tourist spots. Local body laws were seen as playing a role here, rather than national legislation.

Other possible areas for improvement were prisons, mental health facilities, churches, sporting stadia, marae and outdoor areas of bars and restaurants. It was suggested that education, rather than legislation, be used to address these issues.

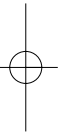
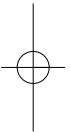


Discussion

The struggle for completely smokefree workplaces, including bars, restaurants, casinos and clubs took five years. It was marked by a strong and coordinated NGO sector, strong political support and a continual need to respond to extensive negative comment about the impacts of hospitality venues going smokefree.

NGOs planned their strategy carefully through regular meetings, sharing of information, and planning for any eventualities. The main goal was more important than promoting the cause of individual organisations. Decision-makers were well briefed and provided with the latest information about the success of smokefree bars overseas.

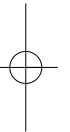
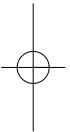
Much of the opposition to the smokefree legislation focussed on the controversial proposal to ban smoking in hospitality venues. This meant that the extension of smokefree venues to the grounds of schools and early childcare facilities, factories and other areas that had not been protected under the 1990 legislation (which had focussed largely on offices) went by almost unremarked.



Recommendations

Jurisdictions seeking to introduce smokefree hospitality venues will increase their chance of success by:

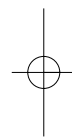
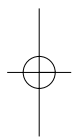
- laying the groundwork – consistently promoting the benefits of being smokefree and encouraging the voluntary adoption of smokefree environments pre legislation;
- thoroughly researching the issues and putting the time and commitment into developing robust policy;
- developing a strategy that involves a large number of supportive agencies working together collaboratively;
- having a few clear, consistent messages, and repeating them;
- feeding information to decision-makers, and in particular addressing misinformation;
- highlighting the health effects of second-hand smoke, and in particular the health effects on workers. This is the key to gaining public support;
- not doing everything at once. Attempting to work through multiple amendments can lead to weak legislation and detract from the main objective. However, this needs to be balanced with the need to seize any offered ‘windows of opportunity’.

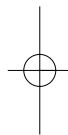
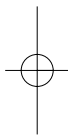




Supporters of the Smoke-free Environments Amendment Act 2003 on the steps of Parliament in Wellington, just after the legislation's passage on 3 December 2003.

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