



THE TOBACCO INSTITUTE OF SOUTHERN AFRICA

MEDIA RELEASE

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Draft regulations on smoking in public places and certain outdoor public places

Francois van der Merwe, CEO of the Tobacco Institute of Southern Africa (TISA), emphasises that although the tobacco sector supports the regulation of smoking in public places, the Draft Regulations on Smoking in Public Places and Certain Outdoor Public Places are excessively restrictive. Mr van der Merwe said that TISA has submitted its comments to the Department of Health and wish to highlight the following:

1. When the Tobacco Products Control Act, 1993 (as amended) was passed into law, it made provision for the Minister to prescribe regulations for designated indoor smoking areas. The Draft Regulations prohibit smoking in indoor public places. This we believe is not in line with the spirit and purpose of the Act.
2. In terms of the Act, vending machines selling tobacco products can only be placed in a designated indoor smoking area. By banning indoor smoking areas, this effectively makes it unlawful for tobacco product vending machines to exist anywhere. We believe that this was not the intention of the legislators.
3. We further believe that in terms of Draft Regulation 5, the Minister has acted beyond the powers given to him by the Act. We could not find any provision in the Act, empowering the Minister to prescribe that people cannot be served food, beverage or be entertained or that "smokers are to be discouraged from remaining in the area longer than is necessary to smoke a cigarette".
4. We also believe that there are certain clauses in the Draft Regulations that are vague and uncertain. The most obvious example of this is Draft Regulation 2(2)(h), which prohibits smoking on "*beaches where public bathing is permitted, not less than 50 metres away from the closest person near the demarcated swimming area*". It is not at all clear what is meant by this provision or, more particularly, how this restricted area is defined. Secondly, Draft Regulation 5(e) requires the owner or person in control of a

public place, or an employer in respect of a workplace, to “*ensure that ... smokers are discouraged from remaining in the area longer than is necessary to smoke a cigarette*”. It is difficult to fathom how such person is expected to “discourage” smokers from remaining in the smoking area.

5. The Draft Regulations also creates confusion by proposing various distances beyond which one is supposedly allowed to smoke. There is a reasonable distance, “*This distance shall be a minimum of five (5)metres*”. In relation to windows and ventilation outlets “*the prescribed distance is 10 metres*” and where public bathing is permitted “*the prescribed distance is 50 metres*”. This clearly indicates that either there is a lack of evidence or uncertainty on the part of the Department with regard to the appropriate distance when smoking outdoors.

Public smoking laws need to be practical, enforceable and fair to both smokers and non-smokers. The Department of Health has stated that it is confident that the proposed regulations will be “self-enforced”, however, the Department fails to convey that non-compliance with the Draft Regulations carries with it fines and criminal sanctions.

We believe that the existing regulations on smoking in public places (29 September 2000, No. R. 975), where they are complied with and enforced, work well and provide for both smokers and non-smokers. If it is the Department’s rationale to introduce the new regulations as a means to curtail non-compliance, we believe that additional enforcement and not additional regulations will be more effective.

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