

District Council of Peterborough



Amalgamated 1997

**DISTRICT COUNCIL
of
PETERBOROUGH**

Non-Smoking Policy



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NON-SMOKING POLICY

- Adoption Reference:** Council Meeting 20/05/2019
Resolution 50/19
- Applicable Legislation:** There is no legislative requirement for Council to have a policy relating to this area.
- Version:** The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.
- Accessibility:** This Policy, and all policies and By-Laws, are available for viewing, downloading or printing from Council's website: www.peterborough.sa.gov.au
Hard copies can be provided in accordance with Council's Fees and Charges at the Council office at 108 Main Street, Peterborough, SA 5422 during ordinary business hours.
- Grievances:** Any grievances in relation to this Policy or Code, or its application, should be forwarded in writing addressed to the Chief Executive Officer of Council.
- Review Dates:**

1. BACKGROUND

Section 19 – Primary duty of care - of the **Work Health Safety Act 2012** (“the Act”) states:

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—*
- (a) workers engaged, or caused to be engaged by the person; and*
 - (b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.*
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.*
- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable—*
- (a) the provision and maintenance of a work environment without risks to health and safety; and*
 - (c) the provision and maintenance of safe systems of work; and*
 - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and*
 - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.*

Section 28 – Duties of workers and Section 29 – Duties of other persons at the workplace- of the Work Health Safety Act 2012 (“the Act”) state:

28—Duties of workers

While at work, a worker must—

- (a) take reasonable care for his or her own health and safety; and*
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and*
- (c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and*
- (d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.*

29—Duties of other persons at the workplace

A person at a workplace (whether or not the person has another duty under this Part) must—

- (a) take reasonable care for his or her own health and safety; and*
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and*
- (c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.*

SafeWork SA advises that:

Smoking is prohibited by law in all enclosed workplaces and shared work areas such as offices, shops, factories and work vehicles.

A person conducting a business or undertaking (PCBU) must ensure that smoking in or around the workplace does not create a risk to their own or anyone else's health and safety. You must ensure that this risk is managed by identifying the hazards, assessing the risks and taking action to eliminate or control them.

Workplace exposure to passive smoke can produce symptoms of ill health, particularly for people with pre-existing medical conditions, such as respiratory or cardiovascular.

Workers must be protected from the harmful health effects of exposure to second hand tobacco smoke. At the same time, workers who smoke should not be stigmatised.

Part 4 Section 46 of the **Tobacco and E-Cigarette Products Act 1997** provides that:

- (1) *Smoking is banned in enclosed public places, workplaces or shared areas.*
- (2) *If a person smokes in contravention of subsection (1), the person is guilty of an offence.*
- (3) *If smoking occurs in an enclosed public place in contravention of subsection (1), the occupier of the place is guilty of an offence.*
- (4) *If smoking occurs in an enclosed workplace in contravention of subsection (1), the employer with responsibility for the workplace under the Work Health Safety Act 2012 is guilty of an offence.*
- (5) *It is a defence to an offence against subsection (3) or (4) if the defendant proves:*
 - (a) *that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred; and*
 - (b) *that:*
 - (i) *he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or*
 - (ii) *he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.*

2. PREAMBLE

The District Council of Peterborough ('the Council') is committed to the promotion of the work, health and safety of all workers.

Council regards smoking as a health hazard for both smokers and non-smokers, and therefore is an unsafe and unacceptable workplace practice. Under the provisions of Section 19, 28 and 29 of the Act, Council has a clear responsibility to take all reasonable action to ensure the health and safety its workers is maintained.

Council believes that in order to properly discharge its responsibilities under the Act, it must necessarily place substantial restrictions upon smoking.

3. POLICY POSITION

Smoking is prohibited in all buildings, confined areas, vehicles and plant, owned or hired, by Council.

'Buildings' includes sheds, verandahs, alcoves, patios, courtyards, etc which are fully enclosed or which are at least partially covered by a ceiling and have one or more walls such that the total area of the ceiling and wall surfaces exceeds 70 per cent of the total notional ceiling and wall area (refer Section 4 (3) of the Tobacco and E-Cigarette Products Act 1997).

Playgrounds

Section 50 (1) of the Tobacco and E-Cigarette Products Act 1997 requires that a person must not smoke or use an e-cigarette within 10 metres of children's playground equipment located in a public area. The SA Health website states that this requirement - includes playgrounds at public parks, schools, sporting venues, restaurants, hotels and businesses, and that the 10 metre exclusion zone goes beyond a fence or boundary into a public area.

4. OBJECTIVES OF THE AUTHORITY

Council recognises that smoking has the potential to create problems in the workplace. The objective of this policy is to improve the quality of air in Council workplaces, in order to maintain a healthy and active workforce.

This Policy should not be seen as an anti-smoking campaign and the issue is not who smokes, but where smoking occurs.

5. COUNCIL RESPONSIBILITIES

Council and Management will be responsible for implementing and policing the following:

5.1 Education

- Ensuring that all workers are made aware of their obligations under this Policy and the risks associated with smoking and of being in an atmosphere containing tobacco smoke and its by-products (including E-Cigarettes);
- Posting of signage notifying all persons that Council buildings, including the swimming pool, confined areas, vehicles and plant are smoke free areas and that smoking is not permitted;
- Ensuring that all workers politely and firmly inform customers and visitors who are smoking of this Policy and its purpose.

5.2 Implementation

- Enforcing the Policy position that smoking is prohibited in all Council buildings, confined areas, vehicles and plant, whether hired or owned;
- Supporting smokers through the provision of information about 'stop smoking' programs and associated support literature;
- Removing all ashtrays from the prohibited areas and providing receptacles for the disposal of smoking materials at entrances to these areas (where appropriate).

5.3 Consultation

- Ensuring that all workers are involved in the review of this Policy document;
- Ensuring that all workers are adequately informed of this Policy document, its content and its review date;
- Ensuring that the effectiveness of this Policy is reviewed by the Committee on a regular basis.

6. WORKER RESPONSIBILITIES

All workers of Council are responsible for:

- Ensuring that they comply with guidelines and directions issued under the authority of this Policy;
- Obeying any reasonable instruction that is given in relation to health and safety at work;
- Protecting their own health and safety, and that of others, while at work;
- Raising any grievance regarding this matter through the appropriate channels as outlined in this Policy;
- Assisting Council and Management with any positive suggestions.

7. GRIEVANCES AND DISPUTES

Any disputation or grievance arising in respect of this Policy should be forwarded to Management through the WHS Committee representative for that work area.

Any such issues will be dealt with in confidence and in an appropriate manner.

The outcomes of such issues or grievances may be decided by an independent suitably qualified/experienced arbitrator if required.