

## LETTERS TO THE EDITOR

Letters intended for publication should be a maximum of 400 words and 10 references and should be sent to Simon Chapman, deputy editor, at the address given on the inside front cover. Those responding to articles or correspondence published in the journal should be received within six weeks of publication.

### The impact of smoking litigation on Australian workplaces

*To the Editor*—On 27 May 1992, Liesel Scholem aged 65, was awarded \$85 000 by a District court judge after suing the New South Wales (NSW) Health Department in Australia for damages in relation to passive smoking. When Ms Scholem started work as a psychologist with the Health Department in 1974 she suffered from mild but controllable asthma. After 12 years of exposure to environmental tobacco smoke she resigned in 1986 suffering from acute asthma attacks and emphysema, and requiring constant medication.

The decision was immediately assumed to have wider implications for the regulation of passive smoking in workplaces. The Secretary of the Labor Council of NSW was reported as saying that the decision would accelerate the implementation of smoke-free policies in workplaces. Since the decision, some analysts have simply assumed that it has influenced the decision-making processes of employers. Gottlieb,<sup>1</sup> for example, asserts that "as a direct result of this case, many Australian employers are implementing smoking bans to protect themselves from similar suits". Shean<sup>2</sup> had previously argued that litigation "has probably been instrumental" in encouraging smoke-free policies.

Despite these arguments there is little hard evidence which links litigation with changes in workplace policy. Because of this we sought to assess the impact of the Liesel Scholem case on the smoke-free policy-making decisions of workplaces in a particular geographical area of Sydney.

Our sample was comprised of 550 workplaces drawn from an Australian business directory, which was searched for companies located in the south west of Sydney and having more than 20 employees. This search generated 480 companies and this was supplemented by companies drawn randomly from the major Sydney Business Telephone directory. In total 550 companies were contacted with 34.8% being either uncontactable or declining the request to be involved. This left a final sample of 359 companies.

The telephone survey was conducted in the third and fourth weeks of July 1992, approximately eight weeks after the Scholem decision. This was considered an appropriate amount of time because it was (i) long enough after the Scholem decision for policy change to be considered or even implemented, and (ii) short enough for the case to be remembered if it were instrumental in facilitating policy change.

Interviews were conducted with company personnel who identified themselves as being closely involved in these issues and with a reasonably accurate overview of current policy. The key informants included general managers, human resource managers, personnel managers, and occupational health

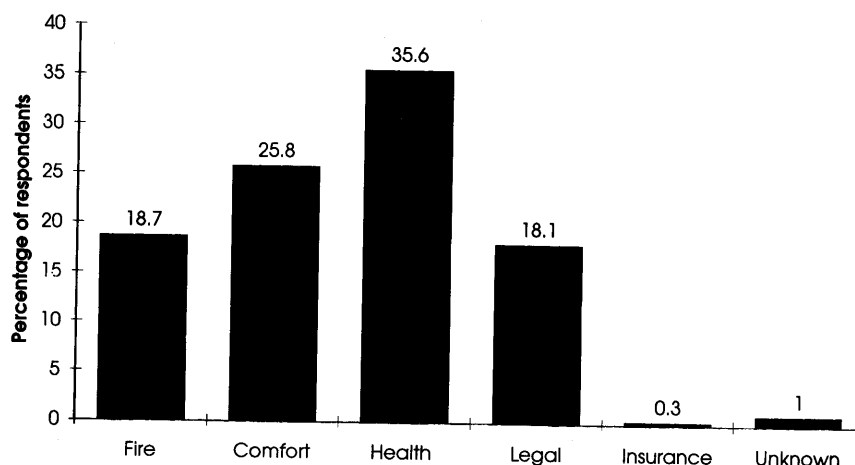


Figure 1 Main reason for introducing restrictions (n = 309)

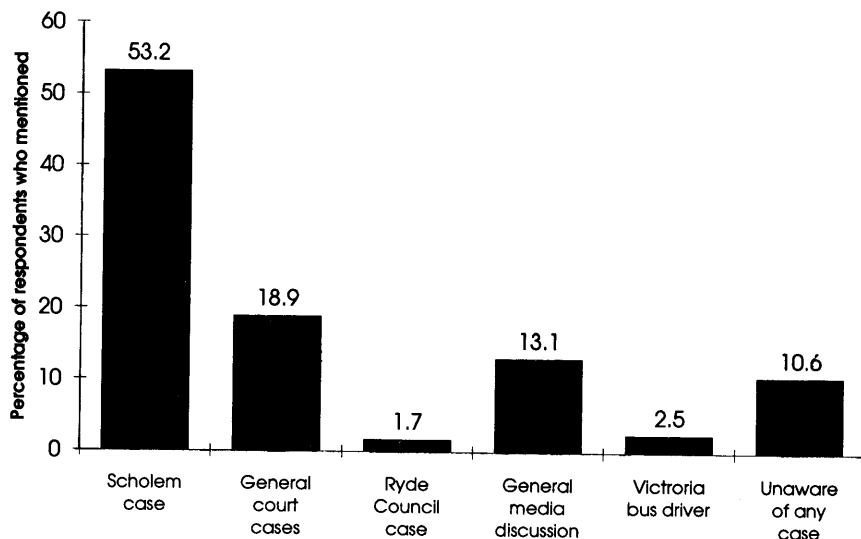


Figure 2 Court cases specified by respondents (n = 359)

nurses. The questionnaire included items on (i) the existence of restrictions on smoking, (ii) type of restriction, (iii) period since restrictions were implemented, (iv) reasons for the introduction of policy, and (v) influence of recent litigation on policy development.

The results showed that 86% of companies had some restrictions on smoking in the workplace. Of these 57% had partial restrictions and 42% had total bans.

When Richmond *et al*<sup>3</sup> conducted a survey of the top 600 companies in Australia in February 1991, less than 4% of the companies with restrictions on smoking mentioned legal concerns or the prospect of litigation as major reasons for implementing these restrictions. By contrast, our survey showed that legal concerns were more prominent 18 months later, with 18% of companies that restricted smoking indicating that this was the main reason for implementing restrictions (figure 1). Companies were asked if they were aware of any recent "legal developments related to passive smoking"; 89% reported that they were. When asked to indicate what specific court cases they were aware of, just over half of the respondents mentioned the Scholem case (figure 2).

Of those companies that indicated they were aware of recent legal developments, 42% reported that it had actually affected their policy. About a quarter (23.5%) of these companies had either initiated a total ban (10.5%) or increased restrictions (13.0%) as a result of the legal developments.

A further 14.5% of these companies said that legal developments would either reinforce existing policies in the short term or affect future policies in the long term.

Cross-sectional studies of the type reported here cannot validly establish causal relationships between legal events and policy decisions. The current study does demonstrate, however, that the Scholem case was still prominent in the minds of employers two months after the decision, and that they were apparently mindful of its implications.

These results clearly support the current strategy of the health lobby to pursue landmark civil cases in order to protect the rights of non-smokers to breathe fresh air. It is an effective and sensible approach given the current lack of strong legislative measures in Australia which would protect the rights of non-smokers directly.

MARTIN PALIN  
NSW QUIT Campaign,  
PMB No 6, Rozelle,  
New South Wales, Australia

MICHELLE YOUNG  
Health Promotion Unit  
South Western Sydney Area Health Service  
New South Wales, Australia

- Gottlieb M. Australian passive smoker successfully brings suit against employer. *World Smoking and Health* 1992; 17 (2) 13-5.
- Shean R. Smoking in the workplace: theoretical and practical considerations. *Community Health Studies* 1987; 11 (3) 202-6.
- Richmond R, Heather N, Holt P, Hu W. Workplace policies and programs for tobacco, alcohol and other drugs in Australia. 1992, NCADA Monogr Ser No 24.