

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2009

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J2007-659

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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(Minister for Health)

Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2009

A Bill for

An Act to amend the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2007-659

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Smoking (Prohibition in Enclosed Public Places)*
3 *Amendment Act 2009*.

4 **2 Commencement**

- 5 (1) This Act commences on—
6 (a) 1 December 2010; or
7 (b) if, before 1 December 2010, the Minister fixes another day by
8 written notice—the day fixed.

9 *Note 1* The naming and commencement provisions automatically commence on
10 the notification day (see Legislation Act, s 75 (1)).

11 *Note 2* A single day or time may be fixed, or different days or times may be
12 fixed, for the commencement of different provisions (see Legislation
13 Act, s 77 (1)).

- 14 (2) However, if this Act has not commenced within 15 months
15 beginning on its notification day, it automatically commences on the
16 first day after that period.

- 17 (3) The Legislation Act, section 79 (Automatic commencement of
18 postponed law) does not apply to this Act.

19 **3 Legislation amended**

20 This Act amends the *Smoking (Prohibition in Enclosed Public*
21 *Places) Act 2003*.

22 *Note* This Act also amends the following legislation (see sch 1):

- 23 • *Corrections Management Act 2007*
24 • *Liquor Act 1975*
25 • *Road Transport (Public Passenger Services) Regulation 2002*.

1 **4 Long title**

2 *substitute*

3 An Act to prohibit smoking in certain public places, and for other purposes

4 **5 Section 1**

5 *substitute*

6 **1 Name of Act**

7 This Act is the *Smoke-Free Public Places Act 2003*.

8 **6 Section 5A**

9 *substitute*

10 **5A Object**

11 The object of this Act is to promote public health by minimising the
12 exposure of people to environmental smoke—

- 13 (a) in enclosed public places; and
14 (b) in outdoor eating or drinking places; and
15 (c) at underage functions.

16 **7 Meaning of *smoke***
17 **Section 5B (2), example 2**

18 *substitute*

19 2 a pipe (including a hookah, water pipe or bong)

1 **8 New section 5B (3) and (4)**

2 *after the note, insert*

3 (3) However, a person does not *smoke* if the person holds or has control
4 over a smoking product for the purpose only of extinguishing it or
5 removing it from—

6 (a) an enclosed public place; or

7 (b) an outdoor eating or drinking place; or

8 (c) an underage function.

9 (4) For this Act, each of the following is a *smoking product*:

10 (a) a tobacco product;

11 (b) a herbal product;

12 (c) any other product that is designed for smoking.

13 **9 Sections 6 to 8**

14 *substitute*

15 **6 Offence to smoke in enclosed public place**

16 (1) A person commits an offence if the person smokes in an enclosed
17 public place.

18 Maximum penalty: 5 penalty units.

19 (2) An offence against this section is a strict liability offence.

20 **7 Offence to smoke in enclosed public place in
21 contravention of direction**

22 (1) A person commits an offence if—

23 (a) the person smokes in an enclosed public place; and

- 1 (b) an inspector, or the occupier of the place, directs the person to
2 stop smoking in the enclosed public place; and
- 3 (c) the person contravenes the direction.
- 4 Maximum penalty: 20 penalty units.
- 5 (2) An offence against this section is a strict liability offence.
- 6 (3) A person does not commit an offence against this section if—
- 7 (a) the direction was given by an inspector who is not a uniformed
8 police officer; and
- 9 (b) when asked by the person, the inspector does not produce the
10 inspector's identity card for inspection.

11 **8 Offence by occupier—person smoking in enclosed public**
12 **place**

- 13 (1) The occupier of an enclosed public place commits an offence if a
14 person smokes in the enclosed public place.
- 15 Maximum penalty: 10 penalty units.
- 16 (2) An offence against this section is a strict liability offence.
- 17 (3) The occupier does not commit an offence against this section if—
- 18 (a) the occupier was not aware, and could not reasonably be
19 expected to have been aware, that the person was smoking in
20 an enclosed public place; or
- 21 (b) the occupier directed the person to stop smoking in the
22 enclosed public place and the person contravened the direction.

1 **10 New section 8AA**

2 *after section 8A, insert*

3 **8AA Offence by occupier—not displaying required signs**

- 4 (1) The regulations may prescribe requirements in relation to the
5 display of ‘no smoking’ signs in enclosed public places.
- 6 (2) The occupier of an enclosed public place commits an offence if—
- 7 (a) a ‘no smoking’ sign is required by regulation to be displayed in
8 the enclosed public place; and
- 9 (b) the sign is not displayed as required by regulation.
- 10 Maximum penalty: 5 penalty units.
- 11 (3) An offence against this section is a strict liability offence.

12 **11 New parts 2A and 2B**

13 *insert*

14 **Part 2A Smoking prohibited in outdoor**
15 **eating or drinking places**

16 **Division 2A.1 General**

17 **9A Meaning of *outdoor eating or drinking place***

- 18 (1) A place is an *outdoor eating or drinking place* if—
- 19 (a) it is a public place (other than an enclosed public place); and
- 20 (b) people at the place may consume food or drink provided from
21 an on-site service; and

- 1 (c) either—
2 (i) the place is licensed premises; or
3 (ii) tables and chairs are provided by the on-site service for
4 use by people consuming food or drink at the place.

5 **Examples—par (c) (ii)**

- 6 1 an area containing tables and chairs on a footpath outside a cafe or takeaway
7 food shop
8 2 an outdoor area at a shopping centre, surrounded by food outlets, containing
9 tables and chairs at which food or drink purchased at the outlets may be
10 consumed
11 3 an area containing tables and chairs, and bounded by hoardings or planter
12 boxes, that is around a food caravan at a sporting ground

13 *Note* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 Legislation Act, s 126 and s 132).

- 16 (2) However, a place is an outdoor eating or drinking place only
17 while—
18 (a) food or drink is being provided, or is available to be provided,
19 at the place from an on-site service; or
20 (b) food or drink provided from an on-site service is being
21 consumed at the place; or
22 (c) clearing or cleaning related to the provision of food or drink in
23 the place is being done.
24 (3) Food or drink is taken to be provided from an on-site service
25 whether it is—
26 (a) served to a person in the outdoor eating or drinking place by or
27 for the person conducting the on-site service; or
28 (b) taken by a person from the on-site service for consumption in
29 the outdoor drinking or eating place.

1 (4) In this section:

2 *food or drink service* means a business, or an enterprise of a
3 commercial, charitable or community nature, that sells food or
4 drink.

5 *on-site service*, in relation to a place, means a food or drink service
6 at the place.

7 *provide*, food or drink, includes distribute, give or sell the food or
8 drink.

9 **Division 2A.2 Smoking prohibited—outdoor eating**
10 **or drinking places**

11 **9B Offence to smoke in outdoor eating or drinking place**

12 (1) A person commits an offence if—

13 (a) the person smokes in an outdoor eating or drinking place; and

14 (b) the place where the person smokes is not a designated outdoor
15 smoking area.

16 Maximum penalty: 5 penalty units.

17 (2) An offence against this section is a strict liability offence.

18 **9C Offence to smoke in outdoor eating or drinking place in**
19 **contravention of direction**

20 (1) A person commits an offence if—

21 (a) the person smokes in an outdoor eating or drinking place; and

22 (b) the place where the person smokes is not a designated outdoor
23 smoking area; and

24 (c) an inspector, or the occupier of the place, directs the person to
25 stop smoking in the outdoor eating or drinking place; and

1 (d) the person contravenes the direction.

2 Maximum penalty: 20 penalty units.

3 (2) An offence against this section is a strict liability offence.

4 (3) A person does not commit an offence against this section if—

5 (a) the direction was given by an inspector who is not a uniformed
6 police officer; and

7 (b) when asked by the person, the inspector does not produce the
8 inspector's identity card for inspection.

9 **9D Offence by occupier—person smoking in outdoor eating**
10 **or drinking place**

11 (1) The occupier of an outdoor eating or drinking place commits an
12 offence if—

13 (a) a person smokes in the outdoor eating or drinking place; and

14 (b) the place where the person smokes is not a designated outdoor
15 smoking area.

16 Maximum penalty: 10 penalty units.

17 (2) An offence against this section is a strict liability offence.

18 (3) The occupier does not commit an offence against this section if—

19 (a) the occupier was not aware, and could not reasonably be
20 expected to have been aware, that the person was smoking in
21 an outdoor eating or drinking place that was not a designated
22 outdoor smoking area; or

23 (b) the occupier directed the person to stop smoking in the outdoor
24 eating or drinking place and the person contravened the
25 direction.

- 1 **9E Offence by occupier—not displaying required signs etc**
- 2 (1) The occupier of an outdoor eating or drinking place must ensure that
- 3 ‘no smoking’ signs are prominently displayed at the place.
- 4 Maximum penalty: 20 penalty units.
- 5 (2) The occupier of an outdoor eating or drinking place that is not
- 6 licensed premises must ensure that tables and chairs provided by the
- 7 on-site service for use by people consuming food or drink at the
- 8 place are clearly identified by either or both of the following:
- 9 (a) a plan displayed at the place;
- 10 (b) signs or markings on the tables and chairs.
- 11 Maximum penalty: 20 penalty units.
- 12 (3) An offence against this section is a strict liability offence.

13 **Division 2A.3 Designated outdoor smoking areas**

14 **9F Designating outdoor smoking area**

- 15 (1) This section applies to—
- 16 (a) premises in relation to which a club licence under the *Liquor*
- 17 *Act 1975* is in force; and
- 18 (b) premises in relation to which a licence under the *Liquor*
- 19 *Act 1975* is in force authorising the sale of liquor for
- 20 consumption on the premises, and that are used principally for
- 21 that purpose.

22 **Example—par (b)**

23 a pub or tavern

24 *Note* An example is part of the Act, is not exhaustive and may extend, but

25 does not limit, the meaning of the provision in which it appears (see

26 Legislation Act, s 126 and s 132).

-
- 1 (2) The licensee of the premises may designate part of the licensed
2 outdoor area of the premises as an area in which drinking and
3 smoking is allowed (a *designated outdoor smoking area*) by
4 displaying a notice near the area—
- 5 (a) stating that the area is a designated outdoor smoking area for
6 this Act; and
- 7 (b) stating that a person under 18 years old is not permitted in the
8 area; and
- 9 (c) stating that a smoking management plan for the premises is
10 available for inspection at any time; and
- 11 (d) including a diagram that sets out the limits of the area.
- 12 (3) There may be more than 1 designated outdoor smoking area at the
13 premises.
- 14 (4) The parts of the licensed outdoor area of the premises that may be
15 designated outdoor smoking areas are—
- 16 (a) any part (an *off-gaming area*) that—
- 17 (i) is adjacent to a gaming area and accessible only from a
18 gaming area; and
- 19 (ii) was part of the licensed outdoor area of the premises on
20 1 November 2009; and
- 21 (b) up to 50% of the total area of the licensed outdoor area of the
22 premises that is not an off-gaming area.
- 23 (5) Each designated outdoor smoking area must have a buffer on its
24 perimeter wherever it is adjacent to other parts of the outdoor area
25 of the premises ordinarily accessed by patrons.
- 26 (6) A buffer must be—
- 27 (a) a screen or wall that is impervious to smoke and at least the
28 height prescribed by regulation; or

- 1 (b) an area at least 4m wide where patrons are not allowed to eat,
2 drink or smoke, half of which must be taken from the area that
3 would otherwise form part of the designated outdoor smoking
4 area.
- 5 (7) A designated outdoor smoking area—
- 6 (a) must not be adjacent to an entrance to the premises (unless it is
7 an off-gaming area); and
- 8 (b) must be in a position that minimises smoke from the area
9 entering any part of an outdoor eating or drinking place that is
10 not a designated outdoor smoking area.
- 11 (8) A licensee of premises must not designate a part or parts of the
12 licensed outdoor area of the premises under subsection (2) otherwise
13 than in accordance with this section.
- 14 Maximum penalty: 50 penalty units.
- 15 (9) An offence against this section is a strict liability offence.

16 **9G Licensee to notify commissioner of designated outdoor**
17 **smoking area**

- 18 (1) The licensee of premises at which there is a designated outdoor
19 smoking area must give the commissioner notice of the designated
20 outdoor smoking area within 14 days after the day the licensee
21 designates the outdoor smoking area.

22 *Note* If a form is approved under s 21 for this provision, the form must be
23 used.

24 Maximum penalty: 50 penalty units.

- 25 (2) An offence against this section is a strict liability offence.

1 **9H Obligations of licensee—things not allowed in designated**
2 **outdoor smoking area**

3 (1) The licensee of premises at which there is a designated outdoor
4 smoking area must ensure that, in the designated outdoor smoking
5 area—

6 (a) there are no people under 18 years old; and

7 (b) there is no food or drink service; and

8 (c) no food is consumed; and

9 (d) no entertainment is offered or directly accessible; and

10 (e) there are no gaming machines.

11 Maximum penalty: 50 penalty units.

12 *Note* For where gaming machines may be located, see the *Gaming Machine*
13 *Act 2004*.

14 (2) An offence against this section is a strict liability offence.

15 (3) The licensee does not commit an offence against this section in
16 relation to a contravention of subsection (1) (c) if the licensee was
17 not aware, and could not reasonably be expected to have been
18 aware, that food was being consumed in the designated outdoor
19 smoking area.

20 (4) In this section:

21 ***entertainment*** includes television (for example, televised sporting
22 events), but does not include public announcements or recorded
23 music.

24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).

- 1 **9I Offence by occupier—permitting smoke from designated**
2 **outdoor smoking area to enter another part of outdoor**
3 **eating or drinking place**
- 4 (1) This section applies to premises at which there is a designated
5 outdoor smoking area.
- 6 (2) The occupier of the premises commits an offence if the occupier
7 fails to take reasonable steps to prevent smoke from the designated
8 outdoor smoking area entering any part of an outdoor eating or
9 drinking place at the premises that is not a designated outdoor
10 smoking area.
- 11 Maximum penalty: 50 penalty units.
- 12 *Note* The occupier also commits an offence if smoke from the premises
13 enters an enclosed public place on the premises (see s 8A).
- 14 (3) An offence against this section is a strict liability offence.

- 15 **9J Smoking management plan**
- 16 (1) A *smoking management plan* is a document, prepared for premises
17 at which there is a designated outdoor smoking area, stating how
18 smoking is managed at the premises with the aim of reducing harm
19 from environmental smoke at the premises.
- 20 (2) A smoking management plan must include—
- 21 (a) a diagram of the premises that identifies—
- 22 (i) the designated outdoor smoking area; and
- 23 (ii) the buffer for the designated outdoor smoking area; and
- 24 (iii) the location of the notice mentioned in section 9F (2);
25 and
- 26 (b) a statement of how the exposure to environmental smoke will
27 be minimised; and

- 1 (c) a description of the training given to workers about the
2 requirements of this Act; and
- 3 (d) a description of how the prohibition on food or drink service in
4 designated outdoor smoking areas will be managed; and
- 5 (e) anything else prescribed by regulation.
- 6 (3) The licensee of premises at which there is a designated outdoor
7 smoking area must—
- 8 (a) prepare and keep up-to-date a smoking management plan that
9 complies with this section; and
- 10 (b) make the smoking management plan available for inspection
11 on request.
- 12 Maximum penalty: 50 penalty units.
- 13 (4) An offence against this section is a strict liability offence.

14 **Part 2B** **Smoking prohibited at underage** 15 **functions**

16 **9K** **Meaning of *underage function*—pt 2B**

- 17 (1) In this part:
- 18 *underage function* means a function that—
- 19 (a) has as its principal purpose the provision of live or recorded
20 music (for listening to, dancing to or both); and
- 21 (b) is predominantly organised for people under 18 years old; and
- 22 (c) is open to the public or a section of the public (with or without
23 payment); and

1 (d) takes place in an area or premises other than a private
2 residence.

3 **Examples—underage functions**

4 1 a blue light disco

5 2 a live band performance organised for students at a secondary school

6 3 a lakeside dance party organised for under 18 year olds only

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

10 (2) In working out whether a function is predominantly organised for
11 people under 18 years old, each of the following must be
12 considered:

13 (a) the name of the function;

14 (b) the nature of the body or person who is the organiser of the
15 function;

16 (c) the ways used to publicise the function;

17 (d) who the function is publicised to;

18 (e) ticketing arrangements for the function (if any);

19 (f) anything else prescribed by regulation.

20 *Note* Section 9M (1) (b) requires any tickets issued for an underage function
21 to state that smoking is prohibited.

22 **9L Smoking prohibited at underage function**

23 Smoking is prohibited at an underage function.

24 **9M Obligations on organiser of underage function**

25 (1) The organiser of an underage function must ensure that—

26 (a) ‘no smoking’ signs are prominently displayed at the function;
27 and

- 1 (b) any ticket issued for the function includes a statement that
2 smoking is prohibited; and
3 (c) a public announcement that smoking is prohibited is made at
4 the beginning of the function.

5 Maximum penalty: 20 penalty units.

6 (2) The organiser of an underage function must—

- 7 (a) give a direction to stop smoking to any person who smokes at
8 the function; and
9 (b) give a direction to immediately leave the function to any
10 person who continues to smoke in contravention of a direction
11 given to the person under paragraph (a).

12 Maximum penalty: 20 penalty units.

13 (3) Subsection (2) (a) does not apply if the organiser was not aware, and
14 could not reasonably be expected to have been aware, that the
15 person was smoking at the function.

16 **9N Offence to smoke at underage function in contravention**
17 **of direction**

18 (1) A person commits an offence if—

- 19 (a) the person smokes at an underage function; and
20 (b) an inspector, or the organiser of the function, directs the person
21 to stop smoking at the function; and
22 (c) the person contravenes the direction.

23 Maximum penalty: 10 penalty units.

- 1 (2) A person does not commit an offence against this section if—
2 (a) the direction was given by an inspector who is not a uniformed
3 police officer; and
4 (b) when asked by the person, the inspector does not produce the
5 inspector's identity card for inspection.

6 **12 Section 12**

7 *substitute*

8 **12 Power to give directions**

9 If an inspector believes on reasonable grounds that a person is
10 smoking in contravention of the Act, the inspector may direct the
11 person to stop smoking.

12 **13 Power to enter premises**

- 13 (1) For this Act, an inspector may—
14 (a) at any reasonable time, enter premises that the public is entitled
15 to use or that are open to the public (whether or not on
16 payment); and
17 (b) at any time, enter premises with the occupier's consent.
18 (2) However, subsection (1) (a) does not authorise entry into a part of
19 premises that is being used only for residential purposes.
20 (3) An inspector may, without the consent of the occupier of premises,
21 enter land around the premises to ask for consent to enter the
22 premises.
23 (4) To remove any doubt, an inspector may enter premises under
24 subsection (1) without payment of an entry fee or other charge.

1 **14 Production of identity card**

2 An inspector must not remain at premises entered under this part if
3 the inspector does not produce his or her identity card when asked
4 by the occupier.

5 **15 Consent to entry**

6 (1) When seeking the consent of an occupier of premises to enter the
7 premises under section 13 (1) (b), an inspector must—

8 (a) produce his or her identity card; and

9 (b) tell the occupier—

10 (i) the purpose of the entry; and

11 (ii) that anything found and seized under this part may be
12 used in evidence in court; and

13 (iii) that consent may be refused.

14 (2) If the occupier consents, the inspector must ask the occupier to sign
15 a written acknowledgment (an *acknowledgement of consent*)—

16 (a) that the occupier was told—

17 (i) the purpose of the entry; and

18 (ii) that anything seized under this part may be used in
19 evidence in court; and

20 (iii) that consent may be refused; and

21 (b) that the occupier consented to the entry; and

22 (c) stating the time and date consent was given.

23 (3) If the occupier signs an acknowledgment of consent, the inspector
24 must immediately give a copy to the occupier.

- 1 (4) A court must find that the occupier did not consent to entry to the
2 premises by the inspector under this part if—
3 (a) the question arises in a proceeding in the court whether the
4 occupier consented to the entry; and
5 (b) an acknowledgment of consent is not produced in evidence;
6 and
7 (c) it is not proved that the occupier consented to the entry.

8 **16 General powers on entry to premises**

- 9 (1) An inspector who enters premises under this part may, for this Act,
10 do 1 or more of the following in relation to the premises or anything
11 on the premises:
12 (a) inspect or examine;
13 (b) take measurements or conduct tests;
14 (c) take samples;
15 (d) take photographs, films, or audio, video or other recordings;
16 (e) require the occupier, or anyone at the premises, to give
17 information, answer questions, or produce documents or
18 anything else, reasonably needed to exercise the inspector's
19 functions under this Act.

20 *Note* The Legislation Act, s 170 and s 171 deal with the application of
21 the privilege against selfincrimination and client legal privilege.

- 22 (2) A person must take all reasonable steps to comply with a
23 requirement made of the person under subsection (1) (e).

24 Maximum penalty: 10 penalty units.

1 **17 Power to require name and address**

- 2 (1) An inspector may require a person to state the person's name and
3 home address if the inspector suspects on reasonable grounds that
4 the person is committing or has just committed an offence against
5 this Act.
- 6 (2) The inspector must tell the person the reason for the requirement
7 and, as soon as practicable, record the reason.
- 8 (3) The person may ask the inspector to produce the inspector's identity
9 card for inspection by the person.
- 10 (4) A person must comply with a requirement made by the inspector
11 under subsection (1) if the inspector—
- 12 (a) tells the person the reason for the requirement; and
- 13 (b) complies with any request made by the person under
14 subsection (3).
- 15 Maximum penalty: 10 penalty units.

16 **18 Power to seize things**

- 17 (1) An inspector who enters premises under this part with the occupier's
18 consent may seize anything in the premises if—
- 19 (a) the inspector is satisfied on reasonable grounds that the thing is
20 connected with an offence against this Act; and
- 21 (b) seizure of the thing is consistent with the purpose of the entry
22 told to the occupier when seeking the occupier's consent.
- 23 (2) An inspector who enters premises under this part (whether with the
24 occupier's consent or otherwise) may seize anything at the premises
25 if satisfied on reasonable grounds that—
- 26 (a) the thing is connected with an offence against this Act; and

- 1 (b) the seizure is necessary to prevent the thing from being—
2 (i) concealed, lost or destroyed; or
3 (ii) used to commit, continue or repeat the offence.
- 4 (3) Having seized a thing, an inspector may remove the thing from the
5 premises where it was seized to another place.
- 6 (4) A person commits an offence if—
7 (a) the person interferes with a seized thing; and
8 (b) the person does not have an inspector's approval to interfere
9 with the thing.
- 10 Maximum penalty: 10 penalty units.
- 11 (5) An offence against this section is a strict liability offence.

12 **19 Receipt for things seized**

- 13 (1) As soon as practicable after an inspector seizes a thing under this
14 part, the inspector must give a receipt for it to the person from
15 whom it was seized.
- 16 (2) If, for any reason, it is not practicable to comply with subsection (1),
17 the inspector must leave the receipt, secured conspicuously, at the
18 premises where the thing was seized.
- 19 (3) A receipt under this section must include the following:
20 (a) a description of the thing seized;
21 (b) an explanation of why the thing was seized;
22 (c) the inspector's name, and how to contact the inspector;
23 (d) if the thing is moved from the premises where it is seized—
24 where the thing is to be taken.

1 **13 Section 13**

2 *substitute*

3 **Part 4 Miscellaneous**

4 **20 Acts and omissions of representatives**

5 (1) In this section:

6 *person* means an individual.

7 *Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal
8 responsibility.

9 *representative*, of a person, means an employee or agent of the
10 person.

11 *state of mind*, of a person, includes—

12 (a) the person's knowledge, intention, opinion, belief or purpose;
13 and

14 (b) the person's reasons for the intention, opinion, belief or
15 purpose.

16 (2) This section applies to a prosecution for any offence against this
17 Act.

18 (3) If it is relevant to prove a person's state of mind about an act or
19 omission, it is enough to show—

20 (a) the act was done or omission made by a representative of the
21 person within the scope of the representative's actual or
22 apparent authority; and

23 (b) the representative had the state of mind.

1 (4) An act done or omitted to be done on behalf of a person by a
2 representative of the person within the scope of the representative's
3 actual or apparent authority is also taken to have been done or
4 omitted to be done by the person.

5 (5) However, subsection (4) does not apply if the person establishes that
6 reasonable precautions were taken and appropriate diligence was
7 exercised to avoid the act or omission.

8 **21 Approved forms**

9 (1) The commissioner may approve forms for this Act.

10 (2) If the commissioner approves a form for a particular purpose, the
11 approved form must be used for that purpose.

12 (3) An approved form is a notifiable instrument.

13 *Note* A notifiable instrument must be notified under the Legislation Act.

14 **14 Regulation-making power**
15 **Section 14**

16 *renumber as section 22*

17 **15 Dictionary, note 2**

18 *insert*

- 19 • commissioner for fair trading

20 **16 Dictionary, new definitions**

21 *insert*

22 ***commissioner*** means the commissioner for fair trading.

23 ***designated outdoor smoking area***—see section 9F (2).

24 ***gaming area***—see the *Gaming Machine Act 2004*, dictionary.

25 ***herbal product***—see the *Tobacco Act 1927*, dictionary.

1 ***outdoor area***, of premises, means any part of the premises that is
2 not an enclosed public place.

3 ***outdoor eating or drinking place***—see section 9A.

4 ***smoking management plan***—see section 9J.

5 ***tobacco product***—see the *Tobacco Act 1927*, dictionary.

6 ***underage function***—see section 9K.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Corrections Management**
4 **Act 2007**

5 **[1.1] Section 86 (4)**

6 *omit*

7 *Smoking (Prohibition in Enclosed Public Places) Act 2003*

8 *substitute*

9 *Smoke-Free Public Places Act 2003*

10 **Part 1.2 Liquor Act 1975**

11 **[1.2] Section 84 (1) (h) and (i)**

12 *substitute*

13 (h) the licensee has allowed people to smoke in a part of the
14 licensed premises that is an enclosed public place or an outdoor
15 eating or drinking place (other than a designated outdoor
16 smoking area);

17 (i) the licensee has failed to take reasonable steps to prevent
18 smoke from another area occupied by the licensee entering an
19 enclosed public place or an outdoor eating or drinking place
20 (other than a designated outdoor smoking area);

21 **[1.3] Section 84 (5)**

22 *omit*

1 **[1.4] Section 110A (1)**

2 *substitute*

- 3 (1) It is a condition of a permit that the permit-holder must not allow
4 people to smoke in a part of the premises for which the permit is
5 issued that is an enclosed public place or an outdoor eating or
6 drinking place.

7 **[1.5] Section 116 (2) (b)**

8 *substitute*

- 9 (b) whether the permit-holder has allowed people to smoke in a
10 part of the premises for which the permit is issued that is an
11 enclosed public place or an outdoor eating or drinking area;

12 **[1.6] Dictionary, new definitions**

13 *insert*

14 *designated outdoor smoking area*—see the *Smoke-Free Public*
15 *Places Act 2003*, section 9F (2).

16 *enclosed public place*—see the *Smoke-Free Public Places Act 2003*,
17 dictionary.

18 *outdoor eating or drinking place*—see the *Smoke-Free Public*
19 *Places Act 2003*, section 9A.

20 *smoke*—see the *Smoke-Free Public Places Act 2003*, section 5B.

1 **Part 1.3 Road Transport (Public**
2 **Passenger Services)**
3 **Regulation 2002**

4 **[1.7] Section 41, note 1 etc**

5 *omit*

6 *Smoke-free Areas (Enclosed Public Places) Act 1994*

7 *substitute*

8 *Smoke-Free Public Places Act 2003*

9 *in*

- 10 • section 41, note 1
11 • section 52 (2), note
12 • section 119 (1), note 2
13 • section 148 (3), note
14 • section 202 (1), note 2
15 • section 211 (3), note
16 • section 274 (1), note 1
17 • section 286 (2), note
18 • section 289 (3), note

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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