

**2004**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES)  
AMENDMENT BILL 2004**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Minister for Health  
Mr Simon Corbell MLA

This Explanatory Statement relates to the *Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2004* (the Bill) as introduced into the Legislative Assembly.

## **Overview of Bill**

The purpose of this Bill is to amend the *Smoking (Prohibition in Enclosed Public Places) Act 2003*. The Bill is designed to reinforce provision in the Act that will prohibit smoking in all enclosed public places. The phasing out of the exemptions under the *Smoke-free areas (Enclosed Public Places) Act 1994* and the transition to the *Smoking (Prohibition in Enclosed Public Places) Act 2003* which requires that all enclosed public places become non-smoking by 1 December 2006.

A Regulation under the regulation-making power in relation to the definition of ‘enclosed public place’ is being prepared and will be notified and tabled in the Assembly in accordance with the normal Regulation making process.

## **Summary**

The Bill makes amendments to the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

The substantive changes in the Bill are:

### Object of Act

The Bill has an Object for the Act, being ‘to promote public health by minimising the exposure of people in enclosed public places to environmental smoke.’ This is intended to reflect the strengthening of the legislation following from the elimination of the exemption system in the 1994 Act, whose Object refers to ‘reducing’ exposure to environmental smoke.

### Preventing smoke from penetrating non-smoking areas

The Bill includes an obligation on occupiers to take reasonable steps to prevent smoke from their premises from penetrating smoking-prohibited areas of the premises. This recognises that, while smoking will be prohibited in all enclosed public areas, occupiers must implement measures to prevent smoke from smoking-permitted areas (such as areas which are not enclosed) on the premises from penetrating non-smoking areas.

### Definition of ‘enclosed’

The Bill removes the definition of ‘enclosed public place’ in the *Smoking (Prohibition in Enclosed Public Places) Act 2003* and replaces it with a reference to ‘a public place, or part of a public place, that is enclosed as prescribed by regulation.’

### Definition of Public Place

The Bill contains an amended definition of ‘public place’ to make it clear that a public place includes a place to which the public have access by virtue of membership of a body. The amended definition closes the potential loophole by making it clear that the law applies to membership bodies such as licenses clubs and ensure that businesses such as bars and taverns cannot avoid the smoking prohibition by setting themselves up as membership clubs. The amended definition is consistent with the definition in the 1994 Act.

The revised definition also includes places to which the public or a section of the public has access by virtue of ‘entitlement or permission’, to ensure that the definition includes the concept in the 1994 Act of a place being a ‘public place’ because it is ‘open to or is being used by, the public’.

### **Revenue/Cost Implications**

There are no cost implications.

## **Summary on Clauses**

### **SECTION 1 Preliminary**

#### **Clause 1 Name of Act**

This clause sets out the name of the Act '*Smoking Prohibition in Enclosed Public Places) Amendment Act 2004*'.

#### **Clause 2 Commencement**

This clause provides for the Act to commence on 1 December 2006.

#### **Clause 3 Legislation Amendments**

This clause states that the Act amends the *Smoking (Prohibition in Enclosed Public Places) Act 2003*.

#### **Clause 4 New Part 1A**

This section inserts a new part 1A which outlines the important concepts of the Act

#### **Section 5A Object**

This section provides that the object of the Act is to promote public health by minimising the exposure of people in enclosed public place to environmental smoke.

#### **Section 5B Meaning of smoke**

This section provides that the meaning of smoke for the purposes of the *Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2004* means smoke from an ignited smoking product. It also provides that a person smokes if the person directly puffs smoke, whether or not the person uses a device designed for the inhalation of smoke by a smoker or holds or has control over a smoking product while it is ignited.

#### **Clause 5 Section 8 - heading**

This clause substitutes the previous heading and provides a new heading titled 'offence by occupier – person smoking in enclosed public place'. The purpose of this is to provide a clear distinction that it is an offence by an occupier if a person is smoking in an enclosed public place owned by the occupier.

#### **Clause 6 Section 8(1)**

This section makes a technical amendment to correct a previous drafting error. It replaces section 7(1) (Offence to smoke in contravention of direction) with section 6(1) (Offence to smoke in enclosed public place).

## **Clause 7      Section 9 - substitute**

This clause substitutes previous section 9 to section 8A to provide that an occupier of premises commits an offence if the occupier fails to take reasonable steps to prevent smoke entering the enclosed public place from another part of the premises occupied by the occupier. The maximum penalty units are 10.

## **Section 9      Offence by neighbouring occupier**

This section replaces previous section 9 to provide that the occupier of premises commits an offence if the occupier fails to take reasonable steps to prevent smoke from the premises entering an enclosed public place on other premises. The maximum penalty units are 10.

## **Clause 8      Dictionary definition of enclosed public place, occupier, public place and smoke**

This section provides that the new definition of enclosed public place means a public place, or part of a public place, that is enclosed as prescribed by regulation. It also sets out examples of public places. This section also provides that the definition of occupier of premises or a part of premises means a person having the management or control, or otherwise being in charge, of the premises or part of the premises. Public Place means a place to which the public or a section of the public has access, whether by payment, membership of a body or otherwise or by entitlement or permission.