

1994

**LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY**

**SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES)  
(AMENDMENT) BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of Terry Connolly MLA  
Minister for Health**

## ***Smoke-free Areas (Enclosed Public Places) (Amendment) Bill 1994***

### **Summary**

The amendments will correct and clarify the *Smoke-free Areas (Enclosed Public Places) Act 1994* by

- redefining 'restaurant' to more closely reflect the Assembly's intent;
- defining terms relevant to the system for exemptions;
- clarifying the exemption system, including exemption approvals for 36 months, annual fees, responsibilities of occupiers and duties of inspectors;
- correcting a drafting error in the section concerning offences by occupiers and clarifying those offences by inserting a new section relating to the responsibility of a neighbouring occupier; and
- correcting errors in the section detailing transitional arrangements for licensed premises.

### **Financial Implications**

The amendments relating to the exemption system should provide a basis for a lower level of fees than the provisions in the current Act, in that the inspection load may be reduced and the fees can be amortised over a 3-year period, rather than basing the total cost recovery for the exemption system on the initial fee.

***Smoke-free Areas (Enclosed Public Places) (Amendment) Bill 1994*****1. Short title**

Clause 1: provides that the Act may be cited as the *Smoke-free Areas (Enclosed Public Places) (Amendment) Act 1994*.

**2. Commencement**

Clause 2: provides a commencement date of 6 December 1994 as the Bill amends sections of the *Smoke-free Areas (Enclosed Public Places) Act 1994* which take effect on that date. Without the 6 December commencement date, licensed premises which under current legislation must be at least 50 per cent smoke free from 6 December 1994, would be in breach of the Act. This would be contrary to the intent of the majority Assembly decision.

**3. Principal Act**

Clause 3: states that the Principal Act is the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

**4. Interpretation**

Clause 4 (a): redefines "restaurant" as a public place or part of a public place used primarily for the consumption of food and non-alcoholic drinks sold on the premises. In enclosed licensed premises, a restaurant is not necessarily separately enclosed, while in other public places it must be separately enclosed.

Open dining areas in non-licensed enclosed public places, such as enclosed shopping malls, are not considered restaurants and are subject to the general prohibition on smoking in enclosed public places.

Within enclosed licensed premises, dining areas, including places primarily for the service of non-alcoholic beverages (such as tea and coffee shops) are considered restaurants, irrespective of whether they are separately enclosed. In the case of bistros, which may have a dining area and a bar area in a single enclosed space, the area used primarily for the consumption of food would be considered a restaurant.

Where dining areas are located in the open air, they are not subject to the Act, which only prohibits smoking in enclosed public places.

Clause 4 (b): provides definitions for "determined fee", for "equipment" as being mechanical ventilation and air conditioning equipment, and for "public area" in licensed premises and restaurants. This latter definition is relevant to the areas for which an exemption from the Act may be sought. The definition limits the area of exemption to, in the case of licensed premises, areas normally frequented by patrons except for corridors, lobbies, hallways, stairways, lifts, toilets, and waiting area. In practice, the exempted area is broadly limited to the bar areas and other areas set aside primarily for the consumption of alcohol. In the case of restaurants, the area is limited to the part of a restaurant set aside for the consumption of food or drinks by patrons.

**5. Smoke-free areas**

Clause 5: provides that where a certificate of exemption has been suspended, it does not provide the occupier with an exemption from the general prohibition on smoking in enclosed places. Suspension occurs when the occupier has not paid the annual fee, where this is applicable.

#### **6. Application for certificate of exemption**

Clause 6: substitutes a determined fee for the current capacity for the Minister to determine a fee by notice in writing. The former is defined as fee notified in the *Gazette*.

#### **7. Grant of a certificate**

Clause 7 amends section 8 "Grant of certificate" of the Principal Act.

Clause 7 (a), (b), (d): delete the term "air cleaning" as the relevant equipment does not necessarily clean air, but introduces a required amount of fresh air per person.

Clause 7 (c): provides that, where licensed premises apply for an exemption, the exempted area must be within premises fitted with equipment capable of maintaining air quality in accordance with AS 1668.2. Previously only the exempted area needed to be fitted with this equipment, which meant that non-exempted areas may be fitted with inferior or no air conditioning equipment.

Clause 7 (f): does not permit the Minister to grant a certificate unless the determined fee has been paid.

#### **8. Insertion**

Clause 8 inserts a new section 8A into the Principal Act.

##### **Annual fees**

New clause 8A: provides that the certificate of exemption is subject to the payment of an annual fee determined by the Minister.

New clause 8A (1): requires that an occupier of a restaurant or licensed premises which has been granted an exemption certificate, pay an annual fee.

New clause 8A (2): provides that where a fee is payable, and has not been paid, the certificate is suspended. In practice, this means that the prohibition on smoking in public places applies to these premises during the period of suspension.

New clause 8A (3): provides that the suspension takes effect from the date the payment is due and has not been paid and ceases when the payment is made or the certificate is cancelled.

New clause 8A (4): gives the Minister the power to cancel a certificate where it has been suspended for not less than 3 months.

New clause 8A (5): states that the Minister cannot cancel a certificate unless he or she has advised the occupier in writing, at least one month beforehand, that the certificate will be cancelled on or after a specified day unless payment is made.

#### **9. Conditions of certificate of exemption**

Clause 9 (a): removes the words "air cleaning" for the reason noted in clause 7 above.

Clause 9 (b) removes the current conditions and replaces them with the same conditions with the addition of a requirement for an occupier to keep records relating to the maintenance and operation of equipment and the inspector's right to view these records. The intention is that occupiers can submit such records to inspectors as evidence that air conditioning equipment is operating at levels likely to meet the air conditioning standard AS1668.2.

The clause also replaces "smoke-free" with the phrase "smoking is prohibited" because the term "smoke-free" is not defined in the Act and has been interpreted elsewhere to include areas where smoking occurs and smoke is reduced by means of ventilation.

#### **10. Insertion**

Clause 10 inserts a new section 9A into the Principal Act.

##### **Certificates of exemption**

New clause 9A: provides that an exemption certificate expires after three years. Occupiers can apply for a new certificate of exemption for a further 3 years. This provision meets the Assembly's Standing Committee on Conservation, Heritage and Environment policy intention that fees be set to recover costs associated with the exemption process. This would not be possible on an ongoing basis if exemption certificates were issued for an indefinite period.

#### **11. Offence by occupier**

Clause 11: corrects the inadvertent reversal of phrases in subsection 14(4) of the Act and provides that an occupier must take all reasonable steps to prevent tobacco smoke from anywhere in the premises penetrating a smoking-prohibited area. The present Act limits occupiers' responsibilities in this regard to preventing smoke from non-prohibited areas under the Act from penetrating smoking prohibited areas. This means that, contrary to the Assembly's intent, there was no obligation to prevent smoke from non-public areas, such as staff rooms, penetrating smoking-prohibited areas.

#### **12. Insertion**

Clause 12 inserts a new section 14A into the Principal Act.

##### **Responsibility of a neighbouring occupier**

New clause 14A: provides that neighbouring occupiers must take all reasonable steps to prevent smoke from their premises penetrating the smoking-prohibited areas of other premises.

#### **13. Insertion**

Clause 13 inserts a new section 19A into the Principle Act.

##### **Power of the Minister to determine fees**

New clause 19A: provides the power for the Minister to determine a fee for an application for exemption and for annual fees. The Minister can, but is not required to, refer in the calculation of the fee to the floor area to which the exemption applies.

#### **14. Transitional**

Clause 14: omits the current subsection 21 (2), which requires both restaurants and licensed premises to ensure that smoking was not permitted in at least 50 per cent the public area of the restaurant. This is replaced with a requirement for only restaurants to prohibit smoking in at least 50 per cent of their public area. This change reflects the intention of the Assembly to defer any effect of the Act on licensed premises (with the exception of restaurants in those premises) for two years and six months after the commencement of the prohibition on smoking in public places.

#### **15. Schedule**

Clause 15: removes licensed premises, the casino and gaming areas from the general exemption in Part II of the Schedule, as the exemption provisions within the Act now provide for these premises. The remaining exemptions are renumbered.