

1993

**The Legislative Assembly for the
Australian Capital Territory**

Smoke-free Areas (Enclosed Public Places) Bill 1993

EXPLANATORY MEMORANDUM

**Circulated by the authority of
the Deputy Chief Minister
Wayne Berry MLA**

SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) BILL 1993

The *Smoke-free Areas (Enclosed Public Places) Bill 1993* provides the power for the Minister to prohibit tobacco smoking in enclosed public places. The prohibition on smoking can be absolute, or smoking may be permitted in places where specific conditions are met. The legislation provides the Minister the power to set these conditions and to specify the public places to which they apply.

The legislation also gives the Minister the power to appoint inspectors for the purpose of promoting compliance with the Bill and the regulations. The Bill gives the Executive the power to make regulations for carrying out or giving effect to the Bill.

Environmental tobacco smoke is now a recognised cause of ill health in non-smokers. Whereas legislation currently in force in the A.C.T. prohibits or restricts smoking for reasons of hygiene or safety (such as by persons handling or serving food, or in areas where chemicals are stored), there is no legislation restricting smoking for the express purpose of limiting the exposure of non-smokers to other people's smoke. This Bill will give explicit protection to customers, patrons and other members of the public who may otherwise be involuntarily exposed to environmental tobacco smoke in enclosed public places.

Financial implications

The Bill will be implemented without cost. Inspectors will be appointed from within ACT Health, which will meet all implementation costs, including costs relating to the provision of public information.

Details of the Bill are attached.

SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) BILL 1993**Formal clauses****Short Title**

Clause 1 provides that the Act can be cited as the *Smoke-free Areas (Enclosed Public Places) Bill 1993*.

Commencement

Clause 2 provides that sections 1, 2, 3 and 4 of the Bill will commence on the date of gazettal. The remainder of the Bill will commence on a day or days fixed by the Minister by notice in the Gazette. Where the remainder of the Act has not commenced through notification in the Gazette, within 6 months, the provision(s) will commence on the first day after the 6 month period.

Interpretation

Clause 3 provides definitions to be used in interpreting terms within the Bill.

"Enclosed" is defined in such a way as to include places which are substantially enclosed;

"Occupier" means a person in charge of a public place;

"Public place" includes places open to the public, or a section of the public, whether on payment of money, by virtue of membership, or otherwise;

"Smoke" is defined in such a way as to apply to an ignited tobacco product; and

"Tobacco product" means a product, a substantial ingredient of which is tobacco.

Object

Clause 4 states that the object of the Bill is to promote public health by reducing exposure to tobacco smoke. The object provides a rationale for the Bill's provisions and provides guidance for subordinate legislation.

Declarations

Subclause 5(1) provides the Minister with the power to declare that smoking is prohibited, by notice published in the Gazette, in a specified enclosed public place, or part of such a place. Smoking can be absolutely prohibited, or prohibited at specific times or in specific circumstances.

Exceptions may be made where a place is in accordance with specified or prescribed conditions. The conditions, and the places to which they may apply, may be specified in the instrument or prescribed in regulations and may take place from a specified date (clause 12).

Subclause 5(2) provides that declarations made under subclause 5(1) may take place from a specified date.

Subclause 5(3) provides that declarations under subclause 5(1) are disallowable instruments under section 10 of the *Subordinate Laws Act 1989*.

Inspectors

Clause 6 provides a power for the Minister to appoint persons as inspectors for the purposes of the Bill (subclause 1). Inspectors will perform duties as directed by the Minister to promote compliance with the Bill and the regulations (subclause 2).

Inspectors will be issued, by the Minister, an identity card which specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector (subclause 3). Former inspectors will be required to return this card to the Minister (subclause 4).

Powers of Inspectors

Clause 7 provides an inspector, subject to clause 6, with the power to do all things necessary and convenient to the performance of his or her duties (subclause 1). This includes the power to enter, at all reasonable times, an enclosed place (subclause 2); however, an inspector is not entitled to remain in that place if he or she does not produce his or her identity card on request (subclause 3). Subclause 6(2) would have the effect of limiting an inspector's power in subclause 7(1).

Where an inspector believes that a person is committing or has committed an offence against the Bill or the regulations, he or she may, in the case of an individual smoker, direct the person to cease the contravention (subclause 4(a)). An inspector may also require the person to furnish his or her name and usual address (subclause 4(b)). This provision is necessary, should further action, such as a letter or initiation of prosecution, be necessary.

Offence by smoker

Clause 8 makes it an offence for a person to smoke in a place where smoking is prohibited under clause 5.

A person is also required to comply with a direction, from an inspector or the occupier of the enclosed public place, to cease the contravention. The clause provides that the person shall comply, except with reasonable excuse. A maximum penalty is set for an offence against subclause (1) or (2).

Offence by Occupier

Clause 9 provides that if a person contravenes clause 8, that is, smokes in place where smoking is prohibited, an occupier is guilty of an offence (subclause 1).

Maximum penalties have been set for contraventions of subclause (1).

It is a defence to a prosecution if an occupier establishes that he or she was not aware, or could not reasonably be expected to have been aware, of the contravention, or that he or she had taken reasonable steps to avoid the contravention or a continuation of it (subclause 2).

An occupier must not, without reasonable excuse, fail to display the prescribed signs (subclause 3). (Requirements relating to signs, including their content, dimensions and location, will be included in the regulations.)

A maximum penalty is set for an offence against subclause (3).

Obstruction

Clause 10 requires that a person shall not, without reasonable excuse, fail to comply with a request of an inspector to provide his or her name and usual address (subclause (a)). Subclause (b) requires that a person not hinder or obstruct an inspector in the exercise of his or her powers or the performance of his or her duties.

A maximum penalty is set for an offence.

No right to smoke

Clause 11 provides that the Bill cannot be construed to create or preserve a right to smoke in a public place. (Proprietors have the right, where smoking in a public place is not prohibited by the Bill, to totally or partially prohibit smoking in that place.)

Regulations

Clause 12 provides a power for the Executive to make regulations, not inconsistent with the Bill, which are required or permitted by the Bill or are necessary for carrying out or giving effect to the Bill (subclause 1).

These regulations may provide for:

- the displaying of signs (subclause 2(a)),
- the content, dimensions and location of the signs (subclause 2(b)),
- requirements of occupiers to facilitate compliance with the Bill and the regulations (subclause 2(c)); and
- maximum penalties for offences against the regulations (subclause 2(d)).