

1994

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

AMENDMENTS TO

SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) BILL 1993

EXPLANATORY MEMORANDUM

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

Amendments to the *Smoke-free Areas (Enclosed Public Places) Bill 1993* moved by the Minister for Health

Summary

The amendments to the *Smoke-free Areas (Enclosed Public Places) Bill 1993* implement the Government's response to the Standing Committee on Conservation, Heritage and Environment' report "Clearing the Air" on this Bill.

The amendments introduce a general prohibition on smoking in enclosed public places to come into effect at least 60 days after the Act is notified in the *Gazette*, including, but not limited to, places specified in a schedule to the Bill. Places exempted from the general prohibition are also specified in a schedule to the Bill.

The Bill provided the power for the Minister to declare smoking to be prohibited in specific places, absolutely, partially or except for compliance with certain conditions. This has been amended to allow only further exemptions to be made to the general smoking prohibition. Further exemptions will be made through regulations which will have at least a 90 day period between notification in the *Gazette* and date of implementation to permit debate by the Assembly prior to the regulation going into effect.

Definitions for "enclosed" and "public place" have been amended slightly, and the defences for an occupier where a person is smoking in an area where smoking is prohibited have been clarified.

A requirement that the occupier take reasonable steps to prevent smoke from entering an area where smoking is prohibited has been introduced.

Financial Implications

The amendments to the Bill do not have specific financial implications.

Amendments to the *Smoke-free Areas (Enclosed Public Places) Bill 1993* moved by the Minister for Health

1. Commencement of prohibition on smoking in enclosed public places

Clause 2: provides that a general prohibition on smoking in enclosed public places (in clause 4A) does not come into commencement earlier than 60 days after the Act is notified in the Gazette.

2. Definition of "enclosed"

Clause 3: omits the requirement for an enclosed public place, within the meaning of the Act, to have a floor.

3. Definition of "public place"

Clause 3: inserts the words "is being" before "used" so that the new wording reflects that one aspect of public places is that they are only public when they are being used by the public.

4. Smoke-free areas

Clause 4A, to follow clause 4: inserts a new clause into the Principal Legislation which prohibits smoking in an enclosed public place.

While sub-section 4A(1) introduces this general prohibition, subsection 4A(2) prohibits smoking in a place listed in Part I of the Schedule that is an enclosed public place, without limiting the generality of subsection 4A(1). Subsection 4A(2) also specifies that smoking is prohibited in the general category of places listed in Part I to the Schedule, irrespective of the local name by which the premises or part of premises is known.

Subsection 4A(3) provides an exemption from the general prohibition on smoking in enclosed public places, to places or parts of those places or at times specified in Part II of the Schedule and to places which are notified in regulations in subsection 12.

Subsection 4A (4) requires that regulations made for the purposes of subsection 4A(3) have a date of effect at least 90 days after being notified in the *Gazette* to permit the opportunity for debate in the Assembly.

5. Regulations to exempt places

Clause 5: through opposing the clause, the power is removed for the Minister to declare that smoking is prohibited in enclosed public places, absolutely, at various times or except in accordance with certain conditions. Subsection 12 of the Principal Legislation provides the power for the Minister to make regulations required or permitted to be prescribed within the Act and hence provides the power to make regulations to exempt places or parts of places from the general prohibition on smoking.

The capacity to prohibit smoking in additional places by removing places or parts of places from Part II of the Schedule can only occur through amendment of the Schedule.

6. Places where people shall not smoke

Subsection 8(1) replaces the existing subsection 8 with a requirement that people shall not smoke in places or parts of places in which smoking is prohibited by subsections 4A(1) or (2).

7. Defences for an occupier

Subsection 9(2) clarifies an occupier's defence where a person smokes in a place where smoking is prohibited under subsections 4A(1) or (2). The defence is:

- that the occupier did not provide smoking paraphernalia, including a lighter, matches, or an ashtray for use in a place where the contravention took place. These items can be provided or sold in such places if they are not intended for use in that place; and
- that the occupier was unaware, or could not reasonably have been aware, that a person was smoking in a place where smoking is prohibited under subsection 4A(1) or (2); or
- if the occupier was aware, he or she
 - requested the person to stop smoking; and
 - informed the person that he or she was committing an offence.

8. Signage

Clause 9(3): removes a reference to subsection 5 (1) which has been amended by clause 5 above and permits signage requirements, where prescribed, for all enclosed public places.

9. Requirement to prevent smoke from penetrating smoke-free areas

Clause 9(4): provides a requirement for the occupier to take all reasonable steps to prevent smoke from penetrating (finding access into or through) places or parts of places where smoking is prohibited, unless that occupier has a reasonable excuse for not doing so.

The penalty for failure to do so is \$1 000 for an individual and \$5 000 for a body corporate.

10. Schedule

Part I

Provides examples of premises or places, in the public parts of which smoking is prohibited. It should be noted that this list provides examples of places. Smoking is prohibited in these places only when they are public places for the purposes of the Act. The list is qualified by subsection 4A (1) which prohibits smoking in all enclosed public places and by subsection 4A(3) which exempts places listed in Part II of the schedule and by regulations.

1. Includes public areas of completely or substantially enclosed shops and shopping centres.
2. Includes all indoor restaurants, cafes, eating houses and dining areas open to the public, regardless of whether they are free standing or contained within other premises.
3. Includes club premises, whether or not they are licensed under the *Liquor Act 1975*.
4. Includes all indoor premises of such facilities, including professional and further education.
5. Includes all premises where goods and services are sold or delivered, including parts of private homes when being used for registered child care, but not when being used for casual or privately arranged baby-sitting or child care.
6. Includes all places of public meeting or gathering.
7. Includes these premises when open to the public or a section of the public.
8. Includes buses and coaches, boats carrying public passengers, and taxis (but not private hire cars).
9. Includes public areas of these premises, and not residents' bedrooms or other private areas.
10. Includes public areas of these premises, such as reception areas and foyers, and not guest bedrooms.
11. Includes all enclosed and substantially enclosed premises, but not outdoor seating and walkways which are partially or entirely covered by a roof.

Part II

Provides a list of places or parts of places which are exempted from the general prohibition on smoking. The Schedule names the category of places either by reference to it being licensed under nominated legislation, for example, premises licensed under the *Liquor Act 1975*, or by using its common name, for example, nursing homes.

The Schedule defines the part of the place which is exempt either by the activity which can or is occurring in that place or the provision of a similar area which is smoke-free.

Places to be exempted are:

1. Those areas of premises licensed under the *Liquor Act 1975* which are primarily for the consumption or service of alcohol.

This exemption does not extend to areas, whether separately enclosed or part of a larger area, when and where meals are consumed in licensed premises and the serving or consumption of alcohol is incidental to or accompanies the meal.

2. Those areas of premises licensed under the *Gaming Machine Act 1987* which are primarily used for playing of gaming machines.

This exemption is limited to the specific area where such machines are located and played.

3. Those areas of premises licensed under the *Casino Control Act 1988* primarily used for gaming.

This exemption is specific to the areas of the Casino used for gaming. Areas of the casino which are licensed under the *Liquor Licensing Act 1975* fall under the exemption above.

4. A stage or performing area, other than an area which includes members of the public where smoking is by a performer while a performance is taking place.
5. A common area of a hotel, motel, hostel, nursing home or other multiple-unit residential premises if a similar non-smoking area of comparable standard is provided.