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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**SMOKE-FREE PUBLIC PLACES AMENDMENT BILL
EXPLANATORY STATEMENT**

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Outline

This Bill amends the *Smoke-Free Public Places Act 2003* (the Act) to allow the establishment of new smoke-free public places and events by Ministerial declaration.

Currently, new smoke-free areas are created in the ACT through primary legislation. Whilst this ensures rigorous legislative scrutiny, it provides minimal flexibility and has contributed to long delays introducing smoke-free areas. This has attracted public criticism and contributed to the ACT falling behind other jurisdictions in implementing smoke-free public places and events.

To facilitate an approach to future proposals for smoke-free public places and events that is flexible and accountable, this Bill will allow the Chief Minister and Minister to jointly declare a public place or event smoke-free in subordinate legislation.

To ensure a balanced approach to implementing new smoke-free public places and events, Ministers will undertake community consultation prior to making each declaration. Ministers will also have due regard to factors such as: the frequency with which the place or event is visited by children or families, the impact on community health, costs and benefits of making an area smoke-free, and measures to promote compliance.

The majority of smoke-free areas and events currently established under the Act are confined to the built environment, either at venues or within buildings. This Bill supports the implementation of *Future directions for tobacco reduction in the ACT 2013-2016* (Future Directions) by facilitating the future declaration of public places or events in both the built environment and in outdoor or open locations.

Areas identified in Future Directions that could be declared smoke-free include outdoor areas at public pools, playgrounds and children's play equipment, sporting fields, public transport waiting areas, and health facilities, as well as large public gatherings and events.

As the Bill does not create any new smoke-free areas, it does not give rise to financial implications. However, future decisions to implement new smoke-free areas through subordinate legislation may require funding, including for enforcement.

Human Rights Assessment

It is a requirement that compatibility with the *Human Rights Act 2004* (the HRA) be addressed in explanatory statements to Bills proposed to the Legislative Assembly.

Clause 5 of this Bill proposes to insert a new Part 2C into the Act. Six of the new sections within that new part contain strict liability offences, three of which (sections 9R, 9T and 9U) include defences that impose an evidential burden on the defendant. The offence in section 9S applies if reasonable steps are not taken by the defendant.

New sections 9Q, 9R and 9S carry a maximum penalty of 50 penalty units. A maximum penalty of 20 penalty units is attached to new section 9U, and new sections 9T and 9V have a maximum penalty of just 5 penalty units.

Strict liability

Strict liability offences engage the right to be presumed innocent in section 22(1) of the HRA because there are no fault elements to these offences. The absence of a fault element generally places a burden upon the defendant to challenge the prosecution case by raising a defence through the presenting or pointing to some evidence.

Strict liability offences are predominately crafted to address unlawful behaviour in a context where the person knows, or ought to know, their legal obligations. It is for this reason that strict liability offences are most commonly used for ‘regulatory’ offences. However, it has also been appropriate to apply strict liability in situations where there is adequate signage or forewarning that particular conduct is an offence. Examples include offences for smoking at outdoor eating or drinking places and the consumption of liquor at certain public places.

In the existing offences cited as examples above, the ACT Government has accepted that while strict liability offences engage the presumption of innocence, strict liability offences are not inherently incompatible with human rights. In those instances the limitation on the human right in section 22(1) of the HRA was demonstrably justifiable given community expectations about the conduct to which the offence applies, and that there will be signage or other information indicating the application of the offence. These same considerations apply to the strict liability offences in this Bill.

While the inclusion of strict liability within an offence limits the range of defences that may be available for a person accused of the offence to which it applies, a number of defences remain available to the accused, depending on the particular circumstances of each case. Section 23(1)(b) of the ACT *Criminal Code 2002* (the Criminal Code) provides a specific defence to strict liability offences of mistake of fact. Section 23(3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, such as the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

Defences and reverse burden of proof

In reading and applying an offence, regard must be given to the provisions of the Criminal Code. The Criminal Code has codified many common law principles concerning offences, including such matters as the burden of proof and defences that can be relied upon.

Section 56 of the Criminal Code confirms that the prosecution has the legal burden, being the burden of proving the existence of a matter, of every element of an offence relevant to the guilt of the person charged. This legal burden of proof must be discharged beyond reasonable doubt.

In many instances, a burden of proof imposed upon a defendant by a law is, according to section 58 of the Criminal Code, to be an evidential burden only. An evidential burden is the burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist. In response, the prosecution carries the legal burden of disproving any matter in relation to which a defendant has discharged an evidential burden. Again, the prosecution must discharge this legal burden beyond reasonable doubt. New sections 9R, 9T and 9U contain notes referencing section 58 of the Criminal Code.

A legal burden of proof is a heavier burden than an evidential burden. For this reason section 59 of the Criminal Code establishes that the heavier burden of a legal burden can only be imposed on a defendant if the law imposing the burden expressly requires the defendant to prove a matter, or expressly provides that the burden of proof imposed on the defendant is a legal burden. None of the new sections to be inserted by Part 2C reference section 59 of the Criminal Code.

Pursuant to new section 9R, where a smoke-free public place or event is permitted a designated smoking area, no food is to be consumed in that designated smoking area. Responsibility for preventing food from being consumed in a designated smoking area is placed upon the occupier where the declaration relates to a public place, or the manager where the declaration relates to an event.

Nevertheless, subsection 3 of this offence provision enables an occupier or manager to claim a defence if they were not aware food was being consumed in the designated smoking area, or they could not have been reasonably expected to be aware that food was being consumed in the designated smoking area. The raising of this defence creates an evidential burden, and there is a note following subsection 3 to alert the reader to that fact.

The offence contained in new section 9T establishes that an offence against the section is not committed if signage was required under section 9Q, and that signs were not displayed, or not displayed as required. This defence has the effect of reversing the onus of proof, in that the evidentiary burden is upon the defendant rather than the prosecution. That is, if a person charged with an offence under section 9T seeks to rely on subsection 3, the alleged offender holds the evidentiary burden to present evidence, or point to the reasonable possibility of the existence of such evidence. This could involve the defendant or another person testifying that signs were not displayed, were not visible, or did not satisfy the signage requirements imposed. Should the defendant be able to produce such evidence, or demonstrate the reasonable possibility of the existence of such evidence, it is then upon the prosecution to refute that defence, and do so beyond reasonable doubt.

The requirements for signs may be imposed by the declaration of a smoke-free public place or event, which is a disallowable instrument made pursuant to section 9O. Requirements for signage contained within a declaration of a smoke-free public place or event will be specific to that declared public place or event. Alternatively, generic requirements for the display of signs that will apply to all smoke-free public places and events may be made by the Minister through a notifiable instrument under section 9P. Disallowable instruments and notifiable instruments are legislative instruments under the *Legislation Act 2001*, and are therefore publically available and accessible through the ACT Legislation Register. As such, should either the prosecution or defence need to adduce evidence of the signage requirements for a smoke-free public place or event they need only refer to the ACT Legislation Register and look for whatever legislative instrument, if any, was valid at the time of the alleged offence.

The offence contained in new section 9U establishes that an offence against the section is not committed if the direction that was contravened was issued by an inspector that was not in uniform, and who failed to produce an inspector's identity card when requested. This defence has the effect of reversing the onus of proof, in that the evidentiary burden is upon the defendant rather than the prosecution. That is, if a person charged with an offence under

section 9U seeks to rely on subsection 3, the alleged offender holds the evidentiary burden to prove that the inspector was not in uniform, that the accused asked to see the inspector's identity card, and the identity card was not produced. Should the defendant be able to produce such evidence, or demonstrate the reasonable possibility of the existence of such evidence, it is then upon the prosecution to refute that defence, and do so beyond reasonable doubt.

The defences provided for in sections 9R, 9T and 9U have the effect of reversing the onus of proof. Placing the burden on the defendant engages the presumption of innocence, protected by section 22(1) of the HRA. It therefore needs to be considered whether imposing the burden on the defendant is permissible as a reasonable limitation under section 28 of the HRA.

The presumption of innocence is, in its simplest form, that a person be treated as not having committed any offence until the State, through a prosecution, adduces sufficient evidence to satisfy an independent and impartial tribunal that the person is guilty. That is, a court should not begin proceedings with the preconception that the person has committed the offence. Although the burden of proof in each of the relevant sections is evidential, it still raises a potential human rights compatibility issue because the defendant may have to raise a defence to prove their innocence. The general principle is that a defendant should not be obligated to offer a defence.

For sections 9R, 9T and 9U the burden placed upon the defendant is evidential and not legal, and as such proving the offence and its elements to the criminal standard of beyond reasonable doubt still rests upon the prosecution. As such, the reverse burden is appropriate in the circumstances and is a reasonable limitation under section 28 of the HRA.

Section 28(1) of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified.

The limit that this Bill places on the right to the presumption of innocence in section 22 (1) is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28(2) of the HRA.

The right to presumption of innocence before the law is a very important right that has been recognised by the common law for centuries, and is now codified in section 22(1) of the HRA. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where those who might be affected by an offence would be expected to be aware of its existence. The proposed offences in Part 2C are essentially regulatory in nature.

The purpose of providing a reverse onus of proof through the proposed strict liability offences is to ensure the effective enforcement of and compliance with the new sections in Part 2C. A reverse onus enables the offences to be more effectively prosecuted. The limitation on section 22(1) is aimed at ensuring the effective operation of places and events declared to be smoke-free.

Managers of events declared to be smoke-free should be well aware of the declaration and its requirement. In many instances the occupier of a public place declared to be smoke-free will be the Territory itself. Nevertheless, the requirements in section 9O about community consultation prior to the introduction of a declaration will also contribute to an occupier's expected awareness of the declaration and its requirements.

The strict liability offences in the new sections within Part 2C engage the right to be presumed innocent by reversing the onus of proof from the prosecution onto a defendant. New sections 9Q, 9R and 9S carry a maximum penalty of 50 penalty units. A maximum penalty of 20 penalty units is attached to new section 9U, and new sections 9T and 9V have a maximum penalty of just 5 penalty units. These penalties are nevertheless considered proportionate and not unduly harsh for offences of a regulatory nature.

Detailed explanation

Clause 1 Name of Act

This clause declares the name of the Act to be the *Smoke-Free Public Places Amendment Act 2016*.

Clause 2 Commencement

Pursuant to this provision, this Act is to commence the day after it is notified.

Due to the operation of section 75(1) of the *Legislation Act 2001* (the Legislation Act) the naming and commencement provisions of this Act, clauses 1 and 2, commence automatically on the day the Act is notified. A note to that effect is included in the provision.

Clause 3 Legislation amended

This clause declares that this Bill will amend the Act.

When notified this Bill becomes the *Smoke-Free Public Places Amendment Act 2016*, which upon commencement will alter the *Smoke-Free Public Places Act 2003* in accordance with the provisions that this Bill contains. The *Smoke-Free Public Places Amendment Act 2016* will then be immediately repealed.

Consequentially, from the date that the *Smoke-Free Public Places Amendment Act 2016* commences a new republication of the *Smoke-Free Public Places Act 2003* will be available.

The note declares that this Act also amends the *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010*.

Clause 4 Offence to smoke at underage function in contravention of direction Section 9N (2), new note

Section 9N of the Act provides that it is an offence to contravene the direction of an inspector or an organiser to stop smoking at an underage function. The offence applies to any person, including an underage person. Subsection 2 of the provision establishes however that an offence against section 9N is not committed if the direction that was contravened was issued by an inspector that was not in uniform, and who failed to produce an inspector's identity card when requested.

Clause 4 does not alter the operation of the offence provision in section 9N. The amendment is limited to the insertion of a new note following section 9N(2), which is a standard note in line with current legislative drafting practice. The purpose of this new standard note is to alert the reader to the fact that the offence in subsection 2 of section 9N imposes an evidentiary burden onto the defendant in relation to the defence provided. That is, if a person charged with an offence under section 9N seeks to rely on subsection 2, the alleged offender holds the evidentiary burden to prove that the inspector was not in uniform, that the accused asked to see the inspector's identity card, and the identity card was not produced.

Clause 5 New Part 2C

This clause provides for the key provisions of this Bill, with the insertion of a new Part 2C into the Act. The focus of the new Part is apparent from the title; ‘Smoking prohibited at declared smoke-free public places or events’. The new Part consists of eight sections. To fit in between existing provisions of the Act, the new sections have been numbered 9O through to 9V. The details of the new provisions are explained below.

9O Declaration of smoke-free public place or event

The declaration of smoke-free public places and events is an important public health measure to reduce people’s exposure to environmental smoke and de-normalise smoking behaviour. However, any such declaration could have potential impacts wider than just public health. These impacts may be upon the use of a public place, or attendance and organisation of a public event. There could also be indirect impacts, such as to areas adjacent to the declared public place or event. This could occur if smokers merely moved outside of a declared smoke-free area, rather than refrain entirely. There is also the potential for economic and business impacts, both direct and indirect from any declaration made.

It is for these reasons that this section provides that the Chief Minister and Minister may jointly declare a public place or event to be smoke-free. If the Chief Minister is also the responsible Minister, another Minister must make the declaration with the Chief Minister.

Ordinarily the making of declarations would be vested in a single minister. In this instance, the requirement for a joint declaration acknowledges the breadth of potential implications from a smoke-free public place or event declaration. It also demonstrates the government’s commitment to consultation, transparency, and the importance of striking a balance in regard to the use of public places.

Under this new section potentially any public place or event within the ACT could be declared smoke-free. Accordingly it is possible for some declarations to impact on a very small portion of the Canberra community, just as others might have a more significant and wider impact. As such, the costs and benefits of each proposed declaration will need to be individually assessed.

To ensure a balanced approach to the implementation of new smoke-free areas, this new section expressly requires that before making a declaration the Minister must consult with the community, including people or organisations that would be directly affected by the declaration. In deciding to make a declaration, the Chief Minister and Minister must also consider:

- the frequency with which the place or event is visited by children or families;
- the number of people likely to be present at the place or event;
- whether the declaration will create a more supportive environment for people who have, or are trying to, quit smoking;
- whether the declaration will reduce people’s exposure to environmental smoke;
- the outcomes of community consultation;
- any identified costs and benefits of establishing the area as smoke-free, including economic and business impacts; and

- measures to promote compliance.

A declaration may set out requirements for ‘no smoking’ signs in a new smoke-free area. The requirements of such signs are the subject of new section 9P.

A declaration may also permit part of a declared smoke-free area to become a designated smoking area – i.e. an area where smoking is allowed. If a designated smoking area is permitted, the occupier or manager of the public place or event can choose if they want to set up the designated smoking area.

If a designated smoking area is established, requirements will apply to help minimise the impact of the smoking area on the public (see Section 9Q). The declaration may also include additional requirements e.g. relating to the size, location and number of smoking areas permitted.

Subsection 6 makes a declaration for a smoke-free public place or event a disallowable instrument. A note draws the reader’s attention to the application of the Legislation Act in regard to disallowable instruments, including the requirement that disallowable instruments be presented to the Legislative Assembly.

9P Signage

This section provides that the Minister may determine requirements for the display of ‘no smoking’ signs in a declared smoke-free public place or event. These could include the size, location and number of signs.

Subsection 2 provides that any determination about signage made by the Minister is a notifiable instrument. More information about notifiable instruments is contained within the Legislation Act. Notifiable instruments differ to disallowable instruments in that they do not need to be presented to the Legislative Assembly as per the requirements of Chapter 7 of the Legislation Act.

9Q Requirements for designated smoking areas

This section outlines the requirements for designated smoking areas, where a smoking area is permitted in the declaration for a new smoke-free public place or event.

It is important to note that not every declared smoke-free public place or event will be permitted to have a designated smoking area. Declarations are made under section 9O, and subsection 5 of that provision provides that the declaration ‘may’, not ‘must’, make provision for designated smoking areas. It is equally important to note that even if a declaration under section 9O permits a designated smoking area, it is not mandatory that one be provided. The decision to go ahead and establish a designated smoking area rests with the occupier or manager.

In deciding whether to include a designated smoking area the occupier or manager will need to have regard to any requirements for such an area imposed by the declaration under section 9O, the requirements imposed by section 9Q, and the obligations that arise from having a designated smoking area in provisions such as sections 9R and 9S. Having had due

regard for these matters the relevant occupier or manager may conclude that it is not possible to establish a designated smoking area that satisfies all requirements. It may also be possible, and fair, for a relevant occupier or manager having had regard to all factors to decide against having a designated smoking area even if it permissible and achievable.

The inclusion of a designated smoking area will require that the relevant occupier or manager take reasonable steps to prevent smoke drift from the area. It would therefore be entirely reasonable for the occupier or manager to free themselves from this duty, and avoid the assessment of what steps are or are not reasonable, by simply electing not to have a designated smoking area. Alternatively, it may be the manager of an event simply decides that the additional personnel required to adequately monitor a designated smoking area would be too expensive.

If an occupier or manager chooses to establish a designated smoking area section 9Q requires that they must display a notice near the area stating that the area is a designated smoking area. The notice must also state that people under the age of 18 cannot enter the area and it must include a map/diagram showing the boundary of the designated smoking area.

Section 9Q also instructs that a designated smoking area must not be at the entrance to the public place or event, and must be in a position that minimises smoke from the area entering another part of the public place or event. These requirements alone will, for some public places or events, mean that it is simply not possible to have a designated smoking area. For example, in a small public place that has multiple entrances it may be impossible to find an appropriate area in which to place a designated smoking area.

This section includes a strict liability offence that applies if the occupier or manager does not meet the specified requirements of the designated smoking area. A maximum penalty of 50 penalty units has been assigned to this offence. It is important to note that the declaration for a new smoke-free public place or event may also set out additional requirements for a designated smoking area.

9R Obligations of occupier or manager – things not allowed in designated smoking areas

This section outlines the obligations for the occupier or manager of a declared smoke-free public place or event when a designated smoking area has been established (NB: a declaration must permit a designated smoking area in order for it to be set-up).

The occupier or manager must ensure that in the designated smoking area there are: no people under 18 years old, there is no food or drink service, there is no food consumed, and there is no entertainment offered or directly accessible. Entertainment includes television, but does not include public announcements or recorded music.

A maximum penalty of 50 penalty units applies if the occupier or manager does not meet these requirements. However, there is no offence if the occupier or manager could not reasonably be expected to know that food was being consumed in the designated smoking area. An offence against this section is a strict liability offence.

9S Offence by occupier or manager – permitting smoke from designated smoking area to enter another part of public place or event

This section provides that the occupier or manager commits an offence if they fail to take reasonable steps to prevent smoke from a designated smoking area entering another part of the public place or event.

For several reasons it would have been inappropriate to construct this offence as requiring that smoke entering a declared public place or event be minimised. Framing the offence in this manner would not require smoke drift to be entirely prevented where that is achievable, and as such would be a weaker obligation on the occupier or manager. Furthermore, the language of ‘minimising’ would be problematic in such an offence provision having regard to the burden of proof being upon the prosecution, and the standard of proof of ‘beyond reasonable doubt’ that applies.

Instead the obligation is framed as requiring that ‘reasonable steps’ be taken. This is reasonably common in the construction of offences, particularly in regulatory areas or in circumstances where a duty is imposed, such as in workplace health and safety. It reflects that where it is possible to entirely prevent something from occurring (in this case smoke entering another part of the public place or event) that must occur. However, it also recognises that there will be circumstances in which prevention is impossible or impractical to completely achieve, and as such the obligation is reduced to having taken reasonable steps to prevent it.

The ‘reasonable steps’ test is an objective test. It is dependent upon whether the court agrees that an ordinary reasonable person would, in the same circumstances as the defendant, have acted reasonably in taking the steps as the defendant.

What will and will not amount to reasonable steps will depend on the specific nature of the public place or event. Clearly not taking any steps or making any effort to prevent smoke drift would not be regarded as reasonable. In contrast, a barrier which smoke cannot pass through would be an expected reasonable step in most instances given that a designated smoking area will be located within, or adjacent to, a smoke-free public place or event.

Reasonable steps also extends to financial expenses. The inclusion of equipment that blows any smoke back to the designated smoking area, or away from the smoke-free areas, may be an effective step that is available, but it may not be a reasonable step if the cost of hiring or adding such equipment is disproportionate to the financial resources of the occupier or manager.

Strict liability applies to this offence, which carries a maximum penalty of 50 penalty units.

9T Offence to smoke at declared smoke-free public place or event

This section provides that a person commits an offence if they smoke at a declared smoke-free public place or event, unless they smoke in a designated smoking area or ‘no smoking signs’ are not displayed as required in the declaration.

Strict liability applies to this offence, which carries a maximum penalty of 5 penalty units.

9U Offence to smoke at declared smoke-free public place or event in contravention of direction

This section provides that a person commits an offence if they smoke at a declared smoke-free public place or event (in an area that is not a designated smoking area) and do not stop smoking when told to do so by an inspector or the occupier or manager.

It is an element of the offence, and therefore a matter that the prosecution must prove, that the person smoking was not in a designated smoking area. If this fact is not established the offence has not been conclusively established. Similarly, to prove the offence the prosecution must establish that the person smoking had been directed to stop by either the occupier of the place, the manager of the event, or an appointed inspector.

The offence contained in new section 9U establishes that an offence against the section is not committed if the direction that was contravened was issued by an inspector that was not in uniform, and who failed to produce an inspector's identity card when requested. This defence has the effect of reversing the onus of proof, in that the evidentiary burden is upon the defendant rather than the prosecution. That is, if a person charged with an offence under section 9U seeks to rely on subsection 3, the alleged offender holds the evidentiary burden to prove that the inspector was not in uniform, that the accused asked to see the inspector's identity card, and the identity card was not produced. Should the defendant be able to produce such evidence, it is then upon the prosecution to refute that defence, and do so beyond reasonable doubt.

Strict liability applies to this offence, which carries a maximum penalty of 20 penalty units.

9V Offence by occupier or manager – not displaying required signs

This section provides that an occupier or manager commits an offence if they do not display the 'no smoking' signs required in the declaration.

Strict liability applies to this offence, which carries a maximum penalty of 5 penalty units.

Clause 6 Inspectors Section 10N (2), new note

Section 10 of the Act sets out who are inspectors for the Act, which by virtue of subsection 2 of that provision includes a public servant appointed by the Director-General. Subsection 2 is immediately followed by two notes that alert the reader to the application of the Legislation Act in regard to appointments.

Clause 6 adds a third note following section 10(2), which is a standard note in line with current legislative drafting practice. The purpose of this new standard note is to alert the reader to the application of section 48 of the Legislation Act, which provides flexibility on the construction of appointment instruments, in order to address different classes or matters, or to include exceptions.

Clause 7 Dictionary, note 2

A dictionary is included at the end of the Act providing definitions of terms and phrases specifically for the Act. However, as note 1 in the dictionary outlines, there are some terms used within the Act that are not specific to the Act, such as ‘police officer’ and ‘Director-General’. Note 2 to the dictionary lists by dot point the terms used within the Act for which definitions are to be found in the Legislation Act.

This clause adds the term ‘Minister’ to that list of relevant terms defined in the Legislation Act and notes the appropriate section of the Legislation Act, being section 162.

Clause 8 Dictionary, new definitions

Clause 8 provides for new definitions to be inserted into the dictionary; being definitions of ‘declared smoke-free public place or event’, ‘designated smoking area’, and ‘manager’.

As the meaning of a ‘declared smoke-free public place or event’ is dealt with in section 9O(1), the definition simply refers the reader to that section. Similarly, as the meaning of a ‘designated smoking area’ is dealt with in section 9Q(2), the reader is referred to that provision.

A definition of ‘manager’ does not appear in an earlier section, so a full definition is to be inserted into the dictionary. The definition to be inserted establishes that in relation to a smoke-free public place or event the manager is to be regarded as a person responsible, whether wholly or in part, for the management of the event. This means that if a person has some responsibilities for the management of the event, even if that responsibility is limited to certain matters or shared with others, that person will be regarded as a manager and therefore has obligations under Part 2C. Furthermore, the definition contemplates that more than one person can be considered a manager, as different persons may be responsible for different matters, but where this occurs Part 2C will impose obligations on all persons regarded as a manager.

Clause 9 Further amendments, new note

This note is a standard note in line with current legislative drafting practice. It has been inserted to maintain consistency with similar notes in the Bill. It shifts the evidentiary burden onto the defendant in relation to the defence provisions mentioned.

Clause 10 Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010 Schedule 1, new items 12A to 12F

This clause adds the penalties for the new offences outlined in this Bill to the *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010*.

The *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010* is made under the *Magistrates Court Act 1930*. It enables infringement notices to be issued for prescribed offences under the *Smoke-Free Public Places Act 2003*. Infringement notices are intended to provide an alternative to prosecution.

This clause inserts new items 12A to 12 F to schedule 1 of the *Magistrates Court (Smoke-Free Public Places Infringement Notices) Regulation 2010*. Schedule 1 lists the infringement notice offences and penalties under the *Smoke-Free Public Places Act 2003*. The headings of each column (left to right) are: column 1 item; column 2 offence provision; column 3 offence penalty (penalty units); and column 4 infringement penalty (\$).

The offence penalty (penalty unit) and infringement penalty (\$) amounts for the new items are consistent with those that apply to the existing offences in schedule 1.