

[Act 2000 No 69]



New South Wales

Smoke-free Environment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to regulate smoking in enclosed public places.

The Bill repeals the *Smoking Regulation Act 1997*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 states the object of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 states that the proposed Act binds the Crown.

Part 2 Prohibition on smoking in smoke-free areas

Clause 6 defines “smoke-free area” for the purposes of the proposed Act. A smoke-free area is any enclosed public place, but does not include exempt premises as defined in clause 11.

Clause 7 makes it an offence to smoke in a smoke-free area, unless the smoking is by a performer as part of a performance or the person smoking did not know (and could not reasonably be expected to have known) that the place concerned was a smoke-free area. (Clause 3 of Schedule 2 provides that, in the first year of operation of clause 7, a person does not commit an offence under this clause unless the person smokes after having been required to stop by the occupier of the smoke-free area, or an employee or agent of the occupier, or an inspector.)

Clause 8 makes an occupier of a smoke-free area guilty of an offence if a person is smoking in the smoke-free area in contravention of the proposed Act, subject to certain defences.

Clause 9 makes it an offence for an occupier of a smoke-free area not to display signs required by the regulations. The regulations may exempt any public place, or class of public place, from the operation of the clause.

Clause 10 makes it an offence for the occupier of a smoke-free area, or of any part of premises in which there is a smoke-free area, to fail to take reasonable steps to prevent the spread of smoke to the smoke-free area from areas on the premises where smoking is allowed.

The clause allows the Minister to issue guidelines as to what constitutes reasonable steps to prevent the spread of smoke in premises.

Part 3 Exempt premises

Clause 11 defines “exempt premises” for the purposes of the proposed Act. These include parts of certain premises licensed or registered under the *Liquor Act 1982*, *Registered Clubs Act 1976* or *Casino Control Act 1992* and any premises prescribed by the regulations. However, exempt premises does not include any premises in respect of which a declaration of the Director-General of the Department of Health is in force under clause 13 removing the exemption for those premises. (Clause 4 of Schedule 2 contains transitional provisions extending the classes of exempt premises during the first year of operation of the proposed Act.)

Clause 12 enables regulations to be made with respect to requirements with which exempt premises must comply.

Clause 13 enables the Director-General of the Department of Health to declare that premises are no longer exempt premises if satisfied that any requirement of the proposed Act or the regulations have not been complied with in relation to the premises or any guidelines issued under clause 10 have not been complied with in relation to the premises.

Part 4 Inspection of premises

Clause 14 provides for the appointment of inspectors for the purposes of the proposed Act.

Clause 15 enables inspectors to enter premises and to carry out inspections for the purposes of the proposed Act.

Clause 16 enables an inspector to apply for a search warrant to enter premises if satisfied that there are reasonable grounds for believing that the proposed Act or the regulations have been contravened on the premises.

Clause 17 enables an inspector to require a person who is smoking in contravention of the proposed Act to stop smoking. The clause also enables an inspector to require the name and address of a person by whom the inspector reasonably suspects the proposed Act or the regulations have been contravened or who is apparently the occupier of premises on which such a contravention has occurred or is occurring (or, if the person is not the occupier, the name of the occupier).

Clause 18 makes it an offence to fail to comply with a requirement of an inspector made under the proposed Part or to give false information in relation to such a requirement.

Clause 19 makes it an offence to obstruct or impersonate an inspector in the exercise of the inspector's functions under the proposed Act.

Part 5 Miscellaneous

Clause 20 provides that proceedings for offences under the proposed Act are to be taken before a Local Court.

Clause 21 states that the proposed Act neither creates nor preserves a right to smoke in an enclosed public place.

Clause 22 provides for the manner in which documents may be given to a person under the proposed Act.

Clause 23 enables regulations to be made for the purposes of the proposed Act.

Clause 24 makes a consequential amendment to the *Search Warrants Act 1985*.

Clause 25 repeals the *Smoking Regulation Act 1997*.

Clause 26 gives effect to Schedule 2 which contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 1 Examples of places that are smoke-free if they are enclosed public places

Schedule 1 contains examples of places that are smoke-free areas if they are also enclosed public places, such as shopping centres, schools, theatres, trains and hospitals.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

In particular, the Schedule varies the operation of certain provisions of the proposed Act during the first year after its commencement in the following ways:

- (a) clause 3 of the Schedule provides that during the first year a person does not commit an offence of smoking in a smoke-free area unless the person smokes after having been required to stop smoking by the occupier of the smoke-free area or an inspector,

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- (b) clause 4 of the Schedule provides that during the first year, an area in a restaurant that is authorised at the commencement of the year under the *Liquor Act 1982* to be used as a reception area, and all parts of the premises of a licensed hotel or nightclub or registered club, are exempt premises.