

First print



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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Explanatory note

- (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.



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New South Wales

Smoke-free Environment Bill 2000

No. , 2000

A Bill for

An Act to regulate smoking in enclosed public places and to repeal the *Smoking Regulation Act 1997*.

Clause 1 Smoke-free Environment Bill 2000

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Smoke-free Environment Act 2000*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
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3 Object of Act 8

The object of this Act is to promote public health by reducing exposure to tobacco and other smoke in enclosed public places. 9
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4 Definitions 11

In this Act: 12

certificate of authority means a certificate of authority referred to in section 14. 13
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Director-General means the Director-General of the Department of Health. 15
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enclosed, in relation to a public place, means having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily. 17
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19

exempt premises has the meaning given by section 11. 20

exercise a function includes perform a duty. 21

function includes a power, authority or duty. 22

inspector means an inspector appointed under section 14. 23

occupier of premises or a part of premises means a person having the management or control, or otherwise being in charge, of those premises or part. 24
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public place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise). 27
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<i>smoke</i> means smoke, hold or otherwise have control over, an ignited smoking product.	1 2
<i>smoke-free area</i> has the meaning given by section 6.	3
<i>smoking product</i> means any tobacco or other product that is intended to be smoked.	4 5
<i>vehicle</i> means a train, bus, tram, aeroplane, taxi or hire car, or ferry or other vessel.	6 7
5 Act to bind Crown	8
This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	9 10 11

Part 2 Prohibition on smoking in smoke-free areas	1
6 Smoke-free area	2
(1) In this Act, <i>smoke-free area</i> means any enclosed public place, but does not include exempt premises.	3 4
(2) Without limiting the generality of subsection (1), <i>smoke-free area</i> includes any place, or part of a place, of a kind described in Schedule 1 that is an enclosed public place (irrespective of the name by which the particular place is known).	5 6 7 8
7 Offence of smoking in smoke-free area	9
(1) A person must not smoke in a smoke-free area. Maximum penalty: 5 penalty units.	10 11
(2) A person who performs in a theatre or other performance space does not commit an offence under this section by smoking during the performance if smoking is a necessary part of the performance.	12 13 14
(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that he or she did not know, and could not reasonably be expected to have known, that the place in which the person was smoking was a smoke-free area.	15 16 17 18
8 Occupier not to allow smoking in smoke-free area	19
(1) If a person smokes in a smoke-free area in contravention of section 7, the occupier of the smoke-free area is guilty of an offence. Maximum penalty:	20 21 22
(a) 10 penalty units, in the case of a natural person, or	23
(b) 50 penalty units, in the case of a body corporate.	24
(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that neither the defendant nor any employee or agent of the defendant provided (otherwise than by sale) any ashtray, matches or lighter (or other thing that could facilitate smoking) in the smoke-free area concerned and that:	25 26 27 28 29
(a) neither the defendant nor any employee or agent of the defendant knew, or could reasonably be expected to have known, that the person concerned was smoking in the smoke-free area, or	30 31 32 33

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- | | | |
|----------|---|----------------------|
| (b) | as soon as the defendant or any employee or agent of the defendant became aware that the person was smoking in the smoke-free area, the defendant (or that employee or agent of the defendant): | 1
2
3
4 |
| (i) | required the person to stop smoking in the smoke-free area, and | 5
6 |
| (ii) | informed the person that the person was committing an offence by smoking in the smoke-free area, and | 7
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| (iii) | if the person continued to smoke after having been required to stop, required the person to leave the smoke-free area. | 9
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| (3) | A requirement under subsection (2) (b) (iii) that a person leave a smoke-free area: | 12
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| (a) | does not affect any liability (whether arising under an Act, contract or otherwise) of the person to pay for any food or beverage supplied to or ordered by the person (whether or not it has been consumed), and | 14
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| (b) | may include a requirement that the person satisfy, or make arrangements for satisfying, any such liability before the person leaves the smoke-free area. | 18
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| 9 | Occupier to display signs | 21 |
| (1) | The occupier of a smoke-free area must not fail to display within that area the signs (if any) prescribed by the regulations, in the manner (if any) prescribed by the regulations. | 22
23
24 |
| | Maximum penalty: | 25 |
| (a) | 5 penalty units, in the case of a natural person, or | 26 |
| (b) | 25 penalty units, in the case of a body corporate. | 27 |
| (2) | The regulations may exempt any public place, or class of public place, from subsection (1). | 28
29 |

10	Duty to prevent spread of smoke	1
(1)	If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the smoke-free area must take reasonable steps to prevent smoke caused by smoking in the other parts of those premises from penetrating the smoke-free area.	2 3 4 5
	Maximum penalty:	6
(a)	10 penalty units in the case of a natural person, or	7
(b)	50 penalty units, in the case of a body corporate.	8
(2)	If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the other parts of those premises in which smoking is allowed must take reasonable steps to prevent smoke caused by smoking in those other parts from penetrating the smoke-free area.	9 10 11 12 13
	Maximum penalty:	14
(a)	10 penalty units in the case of a natural person, or	15
(b)	50 penalty units, in the case of a body corporate.	16
(3)	The Minister may issue guidelines from time to time as to what constitutes reasonable steps to prevent the penetration of smoke into smoke-free areas.	17 18 19
(4)	An occupier who, in relation to premises or a part of premises, complies with any guidelines in force for the time being under subsection (3) is to be considered as having taken all reasonable steps as referred to in subsections (1) and (2) in relation to those premises or that part.	20 21 22 23 24

Part 3 Exempt premises

1

11 Exempt premises

2

- (1) In this Act, *exempt premises* means any of the following premises or parts of premises that are not the subject of a declaration in force under section 13:
- (a) any premises that are the subject of a hotelier's licence in force under the *Liquor Act 1982*, other than a part of the premises while the part is being used as a dining area where genuine meals are ordered, served and consumed at tables,
- (b) the premises of a registered club within the meaning of the *Registered Clubs Act 1976*, other than a part of the premises while the part is being used:
- (i) as a dining area where genuine meals purchased on the premises may be consumed at tables, or
- (ii) for a function at which food is served,
- (c) any premises that are the subject of a nightclub licence, in force under the *Liquor Act 1982*, other than a part of the premises while the part is being used as a dining area where genuine meals purchased on the premises may be consumed at tables,
- (d) any part of the premises of a casino (within the meaning of the *Casino Control Act 1992*) that is used solely for the purposes of gaming machines (within the meaning of section 8 (5) of that Act) or solely for the purposes of a bar (whether or not such gaming machines are situated in the bar area),
- (e) any premises, or class of premises, prescribed by the regulations for the purposes of this definition.
- (2) However, *exempt premises* does not include any part of premises required to be designated as a smoke-free area under regulations referred to in section 12.

12 Exempt premises to comply with certain requirements	1
(1) The regulations may make provision for or with respect to requirements with which exempt premises must comply.	2 3
(2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to any one or more of the following in relation to any exempt premises:	4 5 6
(a) requirements relating to the erection of partitions or barriers to prevent the penetration of smoke into smoke-free areas,	7 8
(b) requirements relating to ventilation,	9
(c) requirements as to the designation of parts of the premises as smoke-free areas.	10 11
13 Removal of exemption for premises	12
(1) The Director-General may declare that any particular premises cease to be exempt premises if satisfied that:	13 14
(a) any requirement of this Act or the regulations has not been complied with in relation to the premises, or	15 16
(b) any guidelines in force under section 10 have not been complied with in relation to the premises.	17 18
(2) The Director-General may only make a declaration under this section:	19
(a) after having given the occupier of the premises concerned:	20
(i) written advice of the Director-General's intention to make the declaration, and	21 22
(ii) the reasons why the Director-General intends to make the declaration, and	23 24
(iii) an opportunity to make submissions within the period specified in the advice (being not less than 14 days), and	25 26
(b) after having considered any submissions made by the occupier within that period.	27 28
(3) A declaration under this section:	29
(a) must be in writing, and	30
(b) must be given to the occupier of the premises concerned, and	31
(c) takes effect on the day on which the declaration is given or on a later day specified in the notice.	32 33

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- (4) The Director-General may, at any time, revoke a declaration under this section by notice in writing given to the occupier of the premises concerned. 1
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Part 4 Inspection of premises

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14 Appointment of inspectors

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- (1) The Director-General may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act. 3
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- (2) An inspector has such functions as are conferred on the inspector by this Act or the regulations. 5
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- (3) Each person appointed as an inspector is to be issued with a certificate of authority that states the name of the inspector and the fact of his or her appointment. 7
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- (4) A former inspector must not, without reasonable excuse, fail to return his or her certificate of authority to the Director-General on demand. 10
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Maximum penalty: 1 penalty unit. 12
- (5) The regulations may prescribe classes of inspectors (however described) appointed under other legislation who are to be taken to be inspectors appointed under this section. 13
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- (6) If an inspector of a class so prescribed has a certificate of authority (however described) by virtue of other legislation under which he or she is an inspector: 16
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 - (a) the certificate of authority may be used by the inspector for the purposes of this Act as if it had been issued under this section, and 19
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 - (b) subsection (4) does not apply to the certificate of authority. 22

15 Powers of inspectors to enter premises

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- (1) For the purposes of this Act, an inspector may, at any reasonable time, do any one or more of the following: 24
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 - (a) alone, or with such other persons as the inspector considers necessary, enter and inspect any premises, 26
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 - (b) examine and inspect any apparatus or equipment in any premises, 28
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 - (c) take such photographs, films and audio, video and other recordings as the inspector considers necessary, 30
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(d)	for the purpose of analysis, take samples of any thing to determine whether the provisions of this Act and the regulations are being complied with in relation to the premises,	1 2 3
(e)	take samples of any thing, other than for the purpose of analysis, that the inspector reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the regulations,	4 5 6 7
(f)	require records or documents to be produced for inspection,	8
(g)	examine, inspect and copy any such records or documents and, for that purpose, take away and retain (for such time as may, for that purpose, be reasonably necessary) any such records or documents.	9 10 11 12
(2)	An inspector who enters any premises in accordance with this section that he or she is not otherwise entitled to enter (unless under the authority of a search warrant) is not to remain on the premises if, on request by the occupier of the premises, the inspector does not produce his or her certificate of authority.	13 14 15 16 17
(3)	This section does not authorise entry into any part of premises that is being used solely for residential purposes, except:	18 19
(a)	with the consent of the occupier of the premises, or	20
(b)	under the authority of a search warrant.	21
16	Search warrants	22
(1)	An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.	23 24 25 26
(2)	An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant:	27 28 29 30 31
(a)	to enter the premises concerned, and	32
(b)	to search the premises for evidence of a contravention of this Act or the regulations.	33 34
(3)	Part 3 of the <i>Search Warrants Act 1985</i> applies to a search warrant issued under this section.	35 36

(4)	In this section, <i>authorised justice</i> means an authorised justice within the meaning of the <i>Search Warrants Act 1985</i> .	1 2
17	Power of inspector to make requirements	3
(1)	An inspector may require a person who is smoking in contravention of section 7 to stop smoking in contravention of that section.	4 5
(2)	An inspector may at any time require a person by whom the inspector reasonably suspects any provision of this Act or the regulations is being or has been contravened, or who is apparently the occupier of premises where such a contravention is occurring or evidently has occurred, to state his or her name and address and (if the person is not the occupier of the premises) the name of the occupier of the premises.	6 7 8 9 10 11
18	Failure to comply with directions or requirements of inspectors	12
(1)	A person must not, without reasonable excuse, fail to comply with a requirement of an inspector duly made under this Part. Maximum penalty: 5 penalty units.	13 14 15
(2)	A person must not, in connection with a requirement of an inspector made under this Part, provide any information or produce any document that the person knows is false or misleading in a material particular. Maximum penalty: 5 penalty units.	16 17 18 19 20
(3)	A requirement under this Part is not duly made unless, at the time of the making of the requirement:	21 22
(a)	the inspector has identified himself or herself to the person of whom the requirement is made as an inspector and, on request, produced his or her certificate of authority, and	23 24 25
(b)	the person is informed by the inspector that a refusal or failure to comply with the requirement may constitute an offence.	26 27

19	Obstruction or impersonation of inspectors	1
(1)	A person must not, without reasonable excuse, resist, obstruct, or attempt to obstruct, an inspector in the exercise of the inspector's functions under this Act.	2 3 4
	Maximum penalty: 5 penalty units.	5
(2)	A person must not impersonate an inspector.	6
	Maximum penalty: 5 penalty units.	7

Part 5 Miscellaneous	1
20 Proceedings for offences	2
Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.	3 4
21 No right to smoke in enclosed public place	5
Nothing in this Act is to be construed as creating or preserving a right of a person to smoke in an enclosed public place.	6 7
22 Giving of documents	8
Any notice or other document that is required by or under this Act to be given to a person may be given:	9 10
(a) by delivering it personally to the person to whom it is addressed, or	11 12
(b) by delivering to the place of residence or business of the person to whom it is addressed and by leaving it there for the person with some other person, or	13 14 15
(c) by posting it to the person to whom it is addressed to the person's place of residence or business last known to the person sending the document.	16 17 18
23 Regulations	19
(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	20 21 22 23
(2) In particular, the regulations may make provision for or with respect to the following:	24 25
(a) the display within enclosed public places of signs relating to smoking,	26 27
(b) the content, dimensions and location of those signs,	28
(c) the requirements to be observed by occupiers of enclosed public places to facilitate compliance with this Act and the regulations,	29 30 31
(d) the powers of inspectors.	32

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units in the case of a natural person and 25 penalty units in the case of a body corporate.	1 2 3
24 Amendment of Search Warrants Act 1985 No 35	4
The <i>Search Warrants Act 1985</i> is amended by inserting in the definition of <i>search warrant</i> in section 10 in alphabetical order of Acts the following:	5 6 7
section 16 of the <i>Smoke-free Environment Act 2000</i>	8
25 Repeal of Smoking Regulation Act 1997	9
The <i>Smoking Regulation Act 1997</i> is repealed.	10
26 Savings, transitional and other provisions	11
Schedule 2 has effect.	12

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

Schedule 1	Examples of places that are smoke-free if they are enclosed public places	1
		2
	(Section 6)	3
	Shopping centres, malls and plazas	4
	Restaurants, cafes, cafeterias, dining areas and other eating places	5
	Schools, colleges and universities	6
	Professional, trade, commercial and other business premises	7
	Community centres or halls and places of public worship	8
	Theatres, cinemas, libraries and galleries	9
	Trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels	10 11
	Common areas in hostels	12
	Common areas in motels	13
	Fitness centres, bowling alleys and other sporting and recreational facilities	14 15
	Childcare facilities	16
	Hospitals	17

Schedule 2	Savings, transitional and other provisions	1
	(Section 26)	2
Part 1	General	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
	this Act	6
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	7
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	8
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	9
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	10
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Part 2	Provisions consequent on enactment of this Act	19
Division 1	Operation of Act during first year	20
2	Definition of “first year”	21
	In this Part, <i>first year</i> means the period of 12 months after the commencement of section 7.	22
		23

3	Offence of smoking	1
(1)	During the first year, a person does not commit an offence under section 7 unless the person smokes in the smoke-free area concerned after having been required, at the time the person is smoking, to stop smoking by:	2
		3
		4
		5
(a)	an inspector under section 17, or	6
(b)	the occupier of the smoke-free area or an employee or agent of the occupier.	7
		8
(2)	During the first year, a reference in section 8 (2) (b) (ii) to informing a person that the person is committing an offence by smoking in the smoke-free area is to be read as a reference to informing the person that the person would be committing an offence in the smoke-free area by continuing to smoke.	9
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		11
		12
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4	Smoke-free areas	14
	Despite section 11, during the first year, <i>exempt premises</i> includes:	15
(a)	any part of the premises of a restaurant that at the commencement of the first year is authorised to be used as a reception area under section 88 of the <i>Liquor Act 1982</i> , but only while the authorisation remains in force,	16
		17
		18
		19
(b)	all parts of premises that are the subject of a hotelier's licence, or a nightclub licence, in force under the <i>Liquor Act 1982</i> , or	20
		21
(c)	all parts of the premises of a registered club within the meaning of the <i>Registered Clubs Act 1976</i> .	22
		23
Division 2	Other provisions	24
5	No compensation payable	25
	The Crown is not liable to indemnify any person, or to pay damages or compensation to any person, as the result of the enactment or operation of this Act.	26
		27
		28