

Smoke-free Environment Amendment Bill 2004

New South Wales

Explanatory note

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

Overview of Bill

The *Smoke-free Environment Act 2000* (the **Principal Act**) prohibits smoking in an enclosed public place but contains certain exemptions in relation to a hotel, club, nightclub, casino or other prescribed premises.

The object of this Bill is to gradually phase out those exemptions by 1 July 2007. Smoking will continue to be permitted in a casino private gaming area after that date, but this exemption is to be regularly reviewed by the Minister to determine whether it is justified on the grounds of maintaining parity with smoking restrictions in casinos in other States and Territories.

Outline of provisions

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 1 January 2005 except for Schedule 1 [13] which commences on 1 July 2007.

Clause 3 is a formal provision that gives effect to the amendments to the *Smoke-free Environment Act 2000* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other Acts and regulation set out in Schedule 2.

Schedule 1 Amendment of Smoke-free Environment Act 2000

Schedule 1 [4] replaces the concept of exempt premises in the Principal Act with a similar concept of exempt areas. The prohibition on smoking contained in the Principal Act does not apply to an exempt area. **Schedule 1 [1]–[3], [5], [6], [8] and [9]** make consequential amendments. The only areas that will be exempt areas after 1 January 2005 are certain parts of a club, hotel, nightclub or casino. These exemptions are to be phased out by 1 July 2007 except in relation to a casino private gaming area. It should be noted that the Principal Act regulates enclosed public places so it does not affect smoking in places such as beer gardens and residential accommodation in hotels.

Proposed section 11A sets out the temporary exemption that will apply in relation to a club, hotel, nightclub or casino on and after 1 January 2005 and before 1 July 2005. During that period, any bar rooms, gaming machine rooms and recreation rooms in a club, hotel, nightclub or casino may be set aside as exempt areas in which smoking will be permitted. However, smoking will not be permitted in any dining area, at any counter at which drinks or food are ordered or served, in one bar room (but only if there is more than one bar room), in one gaming machine room (but only if there is more than one gaming machine room) and one recreation room for each game or recreational activity offered at the premises (but only in premises where there is more than one recreation room offering that game or activity).

Proposed section 11B sets out the temporary exemption that will apply in relation to a club, hotel, nightclub or casino on and after 1 July 2005 and before 1 July 2007. During that period, one room (being a bar room, gaming machine room or recreation room), or one part of such a room, in a club, hotel, nightclub or casino may be set aside as an exempt area in which smoking will be permitted. The exempt area when expressed as a percentage of the total area of all the rooms (being bar rooms, gaming machine rooms and recreation rooms) in the club, hotel, nightclub or casino, must not exceed 50% (on or after 1 July 2005 and before 1 July 2006) or 25% (on or after 1 July 2006 and before 1 July 2007). However, smoking will not be permitted in any

dining area, toilet area, foyer, lobby, thoroughfare, dance floor or auditorium or at any counter at which drinks or food are ordered or served.

On and after 1 July 2007 smoking will not be permitted in any part of a club, hotel, nightclub or casino that is an enclosed public place (other than in a casino private gaming area). Smoking will be permitted in a casino private gaming area by proposed section 11 and this exemption is not affected by proposed clauses 11A and 11B. This exemption will continue after 1 July 2007. However, proposed section 11C requires this exemption to be reviewed regularly by the Minister to determine whether the exemption is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories. **Schedule 1 [13]** makes a consequential amendment to Schedule 1 to the Principal Act to reflect the removal of the exemptions on 1 July 2007.

Schedule 1 [7] makes it clear that any duty a person may have under the *Occupational Health and Safety Act 2000* is not affected by an exemption under Part 3 of the Principal Act.

Schedule 1 [10] inserts a new section 21A that makes it clear that compensation is not payable by or on behalf of the State arising directly or indirectly from the enactment or operation of the proposed Act or the Principal Act, or the exercise by any person of a function under the Principal Act or a failure to exercise any such function, or any statement or conduct relating to the regulation of smoking in enclosed public places.

Schedule 1 [11] permits regulations to be made for or with respect to guidelines in relation to determining what is an enclosed public place and when a covered outside area is considered to be substantially enclosed for the purposes of the Principal Act.

Schedule 1 [12] amends Schedule 1 to the Principal Act to make it clear that the Principal Act does not prohibit smoking in residential accommodation in a motel or hostel.

Schedule 1 [14] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the Principal Act.

Schedule 1 [15] omits a redundant Part from Schedule 2 to the Principal Act.

Schedule 2 Amendment of other Acts and regulation

Schedule 2.1 amends the *Liquor Act 1982* to permit a licensee or his or her employee to refuse to admit to, or turn out of, licensed premises any person who smokes while on any part of the licensed premises that is a smoke-free area.

Schedule 2.2 amends the *Registered Clubs Act 1976* to permit the secretary or an employee of a registered club to refuse to admit to, or turn out of, the premises of the club any person who smokes while on any part of the premises that is a smoke-free area.

Schedule 2.3 amends the *Smoke-free Environment Regulation 2000* as a consequence of the proposed removal of the concept of exempt premises from the Principal Act.