

Introduced by Dr P A C Macdonald, MP

First print



New South Wales

# **Smoke-Free Areas (Enclosed Public Places) Bill 1996**

## **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to prohibit or restrict smoking in enclosed public places.

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## 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 6 months after the date of assent or on an earlier day appointed by proclamation.

**Clause 3** defines *public place* and other words and expressions used in the proposed Act.

**Clause 4** states the object of the proposed Act.

**Clause 5** states that the proposed Act binds the Crown.

**Clause 6** prohibits smoking in an enclosed public place, with certain specified exceptions. The regulations may prescribe other exceptions.

**Clause 7** makes it an offence to fail to obey the direction of an inspector, or of the occupier of premises, to stop smoking in contravention of the proposed Act.

**Clause 8** makes the occupier of an enclosed public place guilty of an offence if any person smokes in contravention of the proposed Act, subject to certain defences.

**Clause 9** requires the occupier of an enclosed public place to display certain signs.

**Clause 10** requires:

- (a) the occupier of an enclosed public place to take reasonable steps to stop smoke entering the place from another part of the same premises where smoking is not prohibited, and
- (b) the occupier of a part of premises where smoking is not prohibited to take reasonable steps to prevent smoke from that part from spreading to an enclosed public place on the same premises.

**Clause 11** provides for the appointment of inspectors for the purposes of the proposed Act.

**Clause 12** empowers inspectors to enter enclosed public places and to give certain directions in relation to offences.

**Clause 13** prohibits obstruction and impersonation of an inspector.

**Clause 14** provides that proceedings for offences under the proposed Act are to be taken before a Local Court.

**Clause 15** states that the proposed Act neither creates nor preserves a right to smoke in an enclosed public place.

**Clause 16** allows regulations to be made in aid of the proposed Act.

**Clause 17** is the standard provision requiring a review of the proposed Act after 5 years' operation.

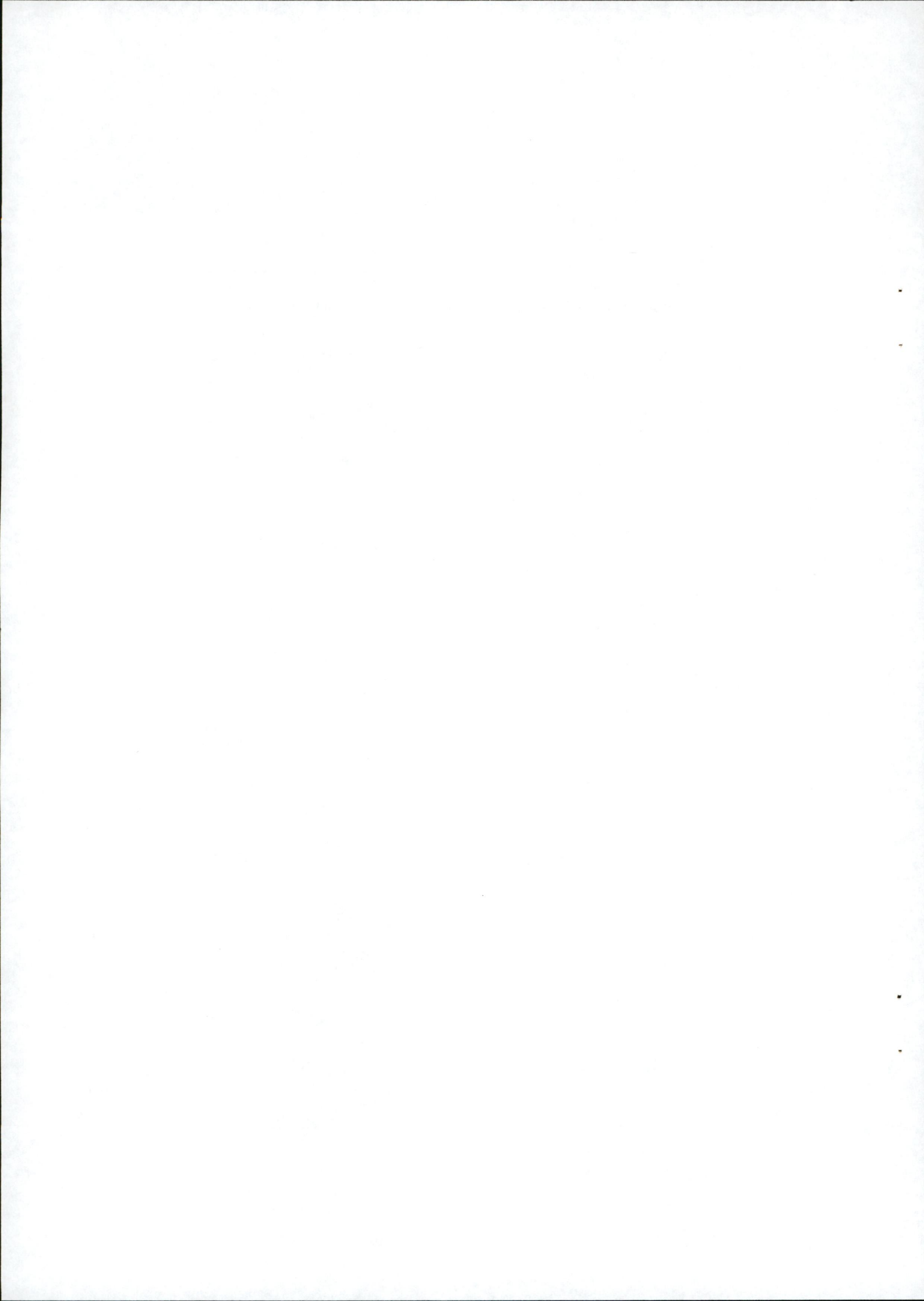
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Explanatory note

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**Schedule 1** gives examples of enclosed public places where smoking is prohibited.

**Schedule 2** sets out a list of places that are exempted from the ban on smoking in certain circumstances.





New South Wales

## Smoke-Free Areas (Enclosed Public Places) Bill 1996

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New South Wales

## **Smoke-Free Areas (Enclosed Public Places) Bill 1996**

No. , 1996

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### **A Bill for**

An Act to prohibit or restrict smoking in enclosed public places.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Smoke-Free Areas (Enclosed Public Places) Act 1996*.

**2 Commencement**

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This Act commences on the earlier of the following days:

- (a) the day that is 6 months after the date of assent,
- (b) a day to be appointed by proclamation.

**3 Definitions**

In this Act:

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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 by walls, sides or windows.

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

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*inspector* means an inspector appointed under section 11.

*occupier* of an enclosed public place means a person having the management or control, or otherwise being in charge, of that place.

*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 body, or otherwise).

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*smoke* means smoke, hold or otherwise have control over, an ignited tobacco product.

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*tobacco product* means a cigarette, cigar or other product of which tobacco is a substantial ingredient.

*vehicle* means a train, bus, taxi or ferry or other watercraft.



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**4 Object of Act**

The object of this Act is to promote public health by reducing exposure to environmental tobacco smoke.

**5 Act binds Crown**

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.

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**6 Smoke-free areas**

- (1) Smoking is prohibited in an enclosed public place.
- (2) Without limiting subsection (1), smoking is prohibited in any 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). 10
- (3) This section does not prohibit smoking in:
  - (a) an enclosed public place of a kind specified in Schedule 2 at the times or in the circumstances so specified in relation to that place, or 15
  - (b) an enclosed public place of a kind prescribed by the regulations, at the times or in the circumstances so prescribed. 20

**7 Offence by smoker**

A person who is smoking in contravention of section 6 must not, without reasonable excuse, fail to comply with a direction to stop smoking in the enclosed public place concerned, given by:

- (a) an inspector under section 12 (4) (b), or 25
- (b) the occupier of the enclosed public place concerned or an employee or agent of such an occupier.

Maximum penalty: 5 penalty units.

**8 Offence by occupier**

- (1) If a person smokes in contravention of section 6, the occupier of the enclosed public place concerned is guilty of an offence. 30

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

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- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking in the enclosed public place concerned and that: 5
- (a) neither the defendant nor any employee or agent of the defendant was aware, or could reasonably be expected to have been aware, that the contravention was occurring, or
- (b) as soon as the defendant or any employee or agent of the defendant became aware that the contravention was occurring, the defendant (or that or any other employee or agent of the defendant): 10
- (i) directed the person concerned to stop smoking in the enclosed public place concerned, and
- (ii) informed the person that the person was committing an offence. 15

### 9 Duty to display signs

The occupier of an enclosed public place where smoking is prohibited under section 6 must not, without reasonable excuse, fail to display within that place the signs (if any) prescribed by the regulations, in the manner (if any) prescribed by the regulations. 20

Maximum penalty:

- (a) 5 penalty units, in the case of a natural person, or
- (b) 25 penalty units, in the case of a body corporate. 25

### 10 Duty to prevent spread of smoke

- (1) If section 6 prohibits smoking in an enclosed public place but not in another part of the premises where the place is located, the occupier of that place must not, without reasonable excuse, fail to take reasonable steps to prevent smoke caused by smoking penetrating that place from the other part of the premises. 30

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

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- (2) If section 6 prohibits smoking in an enclosed public place but not in another part of the premises where the place is located, the occupier of that other part must not, without reasonable excuse, fail to take reasonable steps to prevent smoke caused by smoking in that part penetrating the enclosed public place. 5

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or  
(b) 50 penalty units, in the case of a body corporate.

## 11 Inspectors

- (1) The Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act. 10
- (2) An inspector has such functions as the regulations prescribe for the purpose of promoting compliance with this Act and the regulations.
- (3) Each person appointed as an inspector is to be issued with an identity card that states the name of the inspector and the fact of his or her appointment, as well as containing a recent photograph of the inspector. 15
- (4) A former inspector must not, without reasonable excuse, fail to return his or her identity card to the Minister on demand. 20

Maximum penalty (subsection (4)): 1 penalty unit.

## 12 Powers of inspectors

- (1) An inspector has power to do all things necessary or convenient to be done in the exercise of the inspector's functions.
- (2) For the purpose of performing his or her functions, an inspector may at all reasonable times enter an enclosed public place that he or she is not otherwise entitled to enter. 25
- (3) An inspector who enters an enclosed public place pursuant to subsection (2) is not entitled to remain in that place if, on request by the occupier of that place, the inspector does not produce his or her identity card. 30

- (4) An inspector who has reason to believe that a person is committing or has committed an offence against this Act or the regulations may, on producing his or her identity card:
- (a) require the person to furnish his or her name and residential address, and 5
  - (b) if the person is smoking in contravention of section 6— direct the person to stop smoking in contravention of that section.

**13 Obstruction of inspectors**

A person must not, without reasonable excuse: 10

- (a) fail to comply with a requirement made of the person under this Act by an inspector, or
- (b) hinder or obstruct an inspector in the exercise of his or her functions under this Act, or
- (c) impersonate an inspector. 15

Maximum penalty: 5 penalty units.

**14 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone. 20

**15 No right to smoke in enclosed public place**

Nothing in this Act is to be construed as creating or preserving a right of a person to smoke in an enclosed public place.

**16 Regulations**

- (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. 25
- (2) In particular, the regulations may make provision for the following: 30

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- (a) the display within enclosed public places of signs relating to smoking,
  - (b) the content, dimensions and location of those signs,
  - (c) the requirements to be observed by occupiers of enclosed public places to facilitate compliance with this Act and the regulations, 5
  - (d) the powers of inspectors.
- (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. 10

#### **17 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 15
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1      Examples of places where, if they are enclosed public places, smoking is prohibited

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**Schedule 1      Examples of places where, if they are enclosed public places, smoking is prohibited**

(Section 6 (2))

1	Shopping centres, malls and plazas	5
2	Restaurants, cafes, bars, cafeterias and other eating places	
3	Clubs	
4	Schools, colleges and universities	
5	Professional, trade, commercial and other business premises	10
6	Community centres or halls and places of worship	
7	Theatres, cinemas, libraries and galleries	
8	Trains, buses, taxis and ferries and other watercraft	
9	Hostels, nursing homes, boarding houses and other multiple-unit residential premises	15
10	Hotels and motels	
11	Fitness centres, bowling alleys and other sporting and recreational facilities	
12	Childcare facilities	

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**Schedule 2 Places exempted at certain times or  
in certain circumstances**

(Section 6 (3))

<b>Place</b>	<b>Time or circumstance</b>	
1 A theatre or performance space	if the smoking is by a performer during a performance	5
2 A common area of a hotel or motel, of a club that offers accommodation or of a hostel, nursing home, boarding house or other multiple-unit residential premises (other than a lobby, hall, stairway, elevator or dining area)	if a similar area of a comparable standard in which smoking is not permitted is provided	10

