



AUSTRALIAN CAPITAL TERRITORY

Smoke-free Areas (Enclosed Public Places) Act 1994

No. 63 of 1994

An Act to prohibit or restrict tobacco smoking in certain enclosed public places, and for related purposes

[Notified in ACT Gazette S196: 5 October 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

Commencement

2. (1) Sections 1, 2, 3 and 4 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) A day shall not be fixed under subsection (2) in relation to the commencement of section 5 that is earlier than 60 days after the day on which this Act is notified in the *Gazette*.

(4) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. In this Act, unless the contrary intention appears—

“enclosed”, in relation to a public place, means a public place that has a ceiling or roof and is, except for doors and passageways, completely or substantially enclosed by walls or windows;

“licensed premises” means—

(a) premises licensed under the *Liquor Act 1975*, being premises where liquor is served; or

(b) premises licensed under the *Casino Control Act 1988*;

other than any part of those premises that is a restaurant;

“occupier”, in relation to 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 which the public, or a section of the public, is entitled to use or which 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);

“register” means the register established and maintained under section 6;

“restaurant” means an enclosed public place where the primary business is the sale of food for consumption on the premises;

“smoke” means smoke, hold, or otherwise have control over, an ignited tobacco product;

“tobacco product” means a cigarette, cigar or any other product a substantial ingredient of which is tobacco.

Object of Act

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

Smoke-free areas

5. (1) Smoking is prohibited in an enclosed public place.

(2) Without limiting the generality of subsection (1), smoking is prohibited in any part of premises or a place of a kind described in Part I of the Schedule that is an enclosed public place (irrespective of the name by which the particular premises or place is known).

(3) Subsections (1) and (2) do not apply to a restaurant or part of licensed premises in respect of which a certificate of exemption has been granted under section 8 to the extent that the certificate exempts the restaurant or part from the operation of those subsections.

(4) Subsections (1) and (2) do not apply in relation to—

- (a) a part of premises of a kind specified in Part II of the Schedule at the times or in the circumstances so specified in relation to that part; or
- (b) a prescribed enclosed public place at the times or in the circumstances prescribed in relation to that place.

(5) Regulations made for the purposes of paragraph (4) (b) take effect—

- (a) at the expiration of 90 days after the day on which they are notified in the *Gazette*; or
- (b) as provided in the regulations;

whichever is later.

Register

6. The Minister shall establish and maintain a register to be known as the Register of Exempted Premises.

Applications for certificate of exemption

7. (1) The occupier of a restaurant or licensed premises may apply for a certificate of exemption in respect of the restaurant or a specified part of the licensed premises.

(2) An application under subsection (1) shall be—

- (a) in a form approved by the Minister; and
- (b) accompanied by the fee determined by the Minister by notice in writing.

Grant of certificate

8. (1) On receiving an application in accordance with section 7 and subject to this section, the Minister shall—

- (a) if the application relates to a restaurant—grant a certificate for the restaurant; or
- (b) if the application relates to part of licensed premises—grant a certificate of exemption for that part.

(2) The Minister shall not grant a certificate under paragraph (1) (a) unless—

- (a) satisfied that the restaurant to which the application relates is fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2; and
- (b) the occupier agrees to allow inspectors to—
 - (i) regularly inspect the air cleaning equipment; and
 - (ii) monitor air quality within the premises.

(3) The Minister shall not grant a certificate under paragraph (1) (b) unless—

- (a) satisfied that the part of the premises to which the application relates—
 - (i) is not greater than 50% of the public area of the premises;
 - (ii) is a clearly defined area; and
 - (iii) is fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2; and
- (b) the occupier agrees to allow inspectors to—
 - (i) regularly check the air cleaning equipment; and
 - (ii) monitor air quality within the premises.

(4) Where the Minister grants a certificate of exemption under this section he or she shall enter the details of the exemption in the register.

Conditions of certificate of exemption

9. The conditions of a certificate of exemption are as follows:

- (a) the premises exempted under the certificate shall at all times be fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2;
- (b) air quality in the premises shall comply with Australian Standard 1668.2;
- (c) inspectors are allowed to—
 - (i) regularly inspect air cleaning equipment on the premises; and
 - (ii) monitor the air quality within the premises;

- (d) if the certificate relates to a restaurant—not less than 75% of the public area of the restaurant shall remain smoke-free.

Revocation of certificate of exemption

10. (1) The Minister may revoke a certificate of exemption if satisfied on reasonable grounds that—

- (a) the occupier to whom the certificate was granted has not complied, or is not complying, with a condition of the certificate; or
- (b) the premises to which the certificate relates do not comply with a condition of the certificate.

(2) Where a certificate is revoked under subsection (1), that revocation takes effect on the day on which the occupier granted the certificate is given notice of the revocation in accordance with paragraph 17 (b).

(3) Where a certificate of exemption is revoked, the Minister shall amend the register accordingly.

Inspectors

11. (1) The Minister may, by instrument, appoint persons to be inspectors for the purposes of this Act.

(2) An inspector shall perform such duties as the Minister directs for the purpose of promoting compliance with this Act and the regulations.

(3) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

(4) A former inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister.

Penalty for contravention of subsection (4): \$100.

Powers of inspectors

12. (1) Subject to subsections (2) and (3), an inspector has power to do all things necessary or convenient to be done in the performance of his or her duties.

(2) For the purpose of performing his or her duties, an inspector may at all reasonable times enter an enclosed public place that he or she is not, but for this subsection, entitled to enter.

(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.

(4) Where an inspector has reason to believe that a person is committing or has committed an offence against this Act or the regulations, he or she may, on producing his or her identity card—

- (a) if the person is contravening section 13—direct the person to cease the contravention; and
- (b) require the person to furnish his or her name and usual address.

Offence by smoker

13. (1) A person shall not smoke in an enclosed public place if smoking in that place is prohibited by subsection 5 (1) or (2).

(2) A person who is contravening subsection (1) shall not, without reasonable excuse, fail to comply with a direction by—

- (a) an inspector; or
- (b) an occupier of the enclosed public place, or the part of such a place, where the contravention is occurring or an employee or agent of such an occupier;

to cease the contravention.

Penalty: \$500.

Offence by occupier

14. (1) If a person contravenes subsection 13 (1), an occupier of the enclosed public place, or the part of such a place, where the contravention occurred is guilty of an offence punishable on conviction by a fine not exceeding—

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

(2) It is a defence to a prosecution under subsection (1) if the defendant establishes that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention of subsection 13 (1) occurred and that—

- (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) he or she—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

(3) An occupier of an enclosed public place shall not, without reasonable excuse, fail to display, in the prescribed manner (if any), the prescribed signs within that place.

Penalty:

- (a) if the offender is a natural person—\$500;
- (b) if the offender is a body corporate—\$2,500.

(4) Where—

- (a) smoking is prohibited in a part of an enclosed public place; and
- (b) smoking is not prohibited in another part of that place;

the occupier of that place shall not, without reasonable excuse, fail to take reasonable steps to prevent smoke from the first-mentioned part from penetrating the other part.

Penalty:

- (a) if the offender is a natural person—\$1,000;
- (b) if the offender is a body corporate—\$5,000.

Obstruction

15. A person shall not, without reasonable excuse—

- (a) fail to comply with a requirement under paragraph 12 (4) (b); or
- (b) hinder or obstruct an inspector in the exercise of his or her powers, or the performance of his or her duties, under this Act or the regulations.

Penalty:

- (a) for a contravention of paragraph (a)—\$500;
- (b) for a contravention of paragraph (b)—\$5,000 or imprisonment for 6 months, or both.

No right to smoke

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

Notice of decision

17. Where the Minister makes a decision—

- (a) under subsection 8 (1) to refuse to grant a certificate of exemption applied for; or
- (b) under subsection 10 (1) to revoke a certificate;

he or she shall give notice in writing of the decision to the applicant or the occupier who was granted the certificate (as the case may be).

Contents of notice

18. (1) Before the prescribed date, a notice under section 17 shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(2) The validity of a decision referred to in section 17 shall not be taken to have been affected by a failure to comply with subsection (1).

(3) On or after the prescribed date, a notice under section 17 shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

(4) In this section—

“prescribed date” means the day on which section 9 of the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994* commences.

Review by Tribunal

19. Application may be made to the Tribunal for a review of a decision referred to in section 17.

Regulations

20. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for—

- (a) the displaying of signs within enclosed public places 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; and
- (d) penalties, not exceeding a fine of \$500 in the case of a natural person and \$2,500 in the case of a body corporate, for offences against the regulations.

Transitional

21. (1) Section 5 does not apply to a restaurant or licensed premises during the prescribed period.

(2) The occupier of a restaurant or licensed premises shall ensure that, during the prescribed period, smoking is not permitted in at least 50% of the public area of the restaurant or premises.

Penalty:

- (a) if the offender is a natural person—\$1,000;
- (b) if the offender is a body corporate—\$5,000.

(3) In this section—

“prescribed period” means—

- (a) in relation to a restaurant—12 months commencing on the day on which section 5 commences; or
- (b) in relation to licensed premises—2 years and 6 months commencing on the day on which section 5 commences.

SCHEDULE—continued**SCHEDULE**

Section 5

PART I—EXAMPLES OF PREMISES OR PLACES IN THE PUBLIC PARTS OF WHICH SMOKING IS PROHIBITED

1. shopping centres, malls and plazas
2. restaurants, cafeterias and other eating places
3. clubs
4. schools, colleges and universities
5. professional, trade, commercial and other business premises
6. community centres or halls and places of worship
7. theatres, cinemas, libraries and galleries
8. omnibuses, taxis and boats
9. hostels, nursing homes and other multi-unit residential premises
10. hotels and motels
11. sporting and recreational facilities

PART II—PLACES EXEMPTED AT CERTAIN TIMES OR IN CERTAIN CIRCUMSTANCES

- | <i>Place</i> | <i>Time or circumstance</i> |
|---|--|
| 1. A part of premises licensed under the <i>Liquor Act 1975</i> | if it is being primarily used for serving or consuming alcoholic beverages |
| 2. A part of premises licensed under the <i>Gaming Machine Act 1987</i> | if it is primarily used for playing gaming machines |
| 3. A part of premises licensed under the <i>Casino Control Act 1988</i> | if it is primarily used for gaming |
| 4. A stage or performance area (other than an area that includes members of the public) | if the smoking is by a performer during a performance |

5. A common area of a hotel, if a similar area of a comparable motel, hostel, nursing home or standard in which smoking is other multiple-unit residential not permitted is provided premises (other than a lobby, hall, stairway, elevator or dining area)

[Presentation speech made in Assembly on 16 December 1993]

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