

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

**Smoke-free Areas (Enclosed Public Places)
Bill 1993**

**A BILL
FOR**

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

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

Short title

5 **1.** This Act may be cited as the *Smoke-free Areas (Enclosed Public Places) Act 1993*.

Commencement

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

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

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(3) 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.

5 Interpretation

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

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

“occupier”, in relation to an enclosed public place, means a person having the management or control, or otherwise being in charge, of that place;

15 “public place” means a place which the public, or a section of the public, is entitled to use or which is open to, or used by, the public or a section of the public (whether on payment of money, by virtue of membership of a body, or otherwise);

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

20 “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.

25 Declarations

5. (1) The Minister may, by notice published in the *Gazette*, declare that smoking in a specified enclosed public place, or in a specified part of such a place, is prohibited—

- (a) absolutely;
- 30 (b) at specified times or in specified circumstances; or
- (c) except in accordance with specified or prescribed conditions.

(2) A notice under subsection (1) may be expressed to take effect on and from a specified date.

35 (3) A notice under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Inspectors

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

5 (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.

10 (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

15 7. (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.

20 (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.

25 (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 8—direct the person to cease the contravention; and

(b) require the person to furnish his or her name and usual address.

Offence by smoker

30 8. (1) A person shall not smoke in an enclosed public place or a part of such a place—

(a) if smoking in that place or part is prohibited by a declaration under paragraph 5 (1) (a);

35 (b) at a time when, or in circumstances in which, smoking in that place or part is prohibited by a declaration under paragraph 5 (1) (b); or

(c) otherwise than in accordance with conditions applicable to that place or part by virtue of a declaration under paragraph 5 (1) (c).

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

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- (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.

10 Penalty: \$500.

Offence by occupier

15 9. (1) If a person contravenes subsection 8 (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—

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- (a) was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) took reasonable steps to avoid the contravention or a continuation of the contravention.

25 (3) An occupier of an enclosed public place in respect of which a declaration under subsection 5 (1) is in force shall not, without reasonable excuse, fail to display, in the prescribed manner (if any), the prescribed signs within that place.

Penalty:

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

Obstruction

10. A person shall not, without reasonable excuse—

- (a) fail to comply with a requirement under paragraph 7 (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:

- 5 (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

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

Regulations

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

- (a) required or permitted by this Act to be prescribed; or
- 15 (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—

- 20 (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
- 25 (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.

