

1997

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

**Smoke Free Areas (Enclosed Public Places)
(Amendment) Bill 1997**

EXPLANATORY MEMORANDUM

**Circulated by the authority of Kate Carnell MLA
Minister for Health and Community Care**

Smoke-free Areas (Enclosed Public Places) (Amendment) Bill 1997
Moved by the Minister for Health and Community Care

Summary

The Bill seeks to amend the *Smoke-free Areas (Enclosed Public Places) Act 1994* through the introduction of transitional arrangements for certain types of licensed premises. The effect of the arrangements, which are conditional on certain requirements being met, is to delay the application of the general smoking prohibition to these premises so that they are given an opportunity to implement a staged approach similar to that afforded to restaurants during December 1994 and December 1995.

The amendments provide a definition of 'transitional premises' which includes parts of licensed premises used primarily for gaming or the consumption of alcohol, and including nightclubs. Parts of licensed premises which are excluded from the definition of transitional premises include restaurants, unenclosed bar areas within or adjacent to restaurants, cabarets, and areas used primarily for entertainment, sports, recreation, and meetings.

The transitional arrangements are subject to the four requirements in subsection 22(2) and may be revoked by the Minister, following the issuing of a written notice to the occupier, if there are grounds for believing that there have been persistent contraventions of the Act in the premises.

An intended effect of the transitional arrangements is for many provisions of the Principal Act to still apply, including those concerning responsibilities of the occupier under 14(4) and 14(A) to take reasonable steps to prevent tobacco smoke from penetrating smoking-prohibited areas.

The amendments also remove an inconsistency between the Schedule and the licensed premises exemption provisions which could have permitted some licensed premises to circumvent the exemption provisions.

Financial Implications

The amendments do not have specific financial implications, as information, implementation and enforcement functions will be consistent with those had the legislation remained unaltered.

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1. Title

Clause 1 states that the amending legislation may be cited as the *Smoke-free Areas (Enclosed Public Places) (Amendment) Act 1997*.

2. Commencement

Clause 2 provides that the Act takes effect on 6 June 1997.

3. Principal Act

Clause 3 notes that the 'Principal Act' is the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

4. Interpretation

Clause 4 amends the Principal Act by inserting a new definition, being a definition of 'Tribunal' meaning the Administrative Appeal Tribunal.

5. Insertion of transition arrangements

Clause 5 inserts, after section 21 of the Principal Act: a definition of 'transitional premises' (in subsection 22(1), meaning part of the public area of licensed premises that excludes any area primarily used: as a restaurant; as a bar area within or adjacent to an area primarily used as a restaurant, where that bar area is not separately enclosed; for a cabaret or similar activity; or for any other purpose or activity in relation to which gaming or the consumption of alcohol is incidental. These latter purposes or activities include entertainment, sports, recreation and the holding of meetings, but do not include parts of premises primarily used as a nightclub or for a similar activity.

The reference to the 'primary use' of areas allows for changes in primary use, so that areas may, at some times, be transitional areas (for example, when they are bars) and at other times not be transitional areas (for example, when they are restaurants).

Subsection 22(1) also provides the meaning of 'licensed premises', being premises licensed under the *Liquor Act 1975* where liquor is served, or premises licensed under the *Casino Control Act 1988*. This definition is inserted because of its relevance to subsections 22(2)(c) and (d).

Subsection 22(2) provides that, subject to this section, subsections 5(1) and 5(2) of the Principal Act does not apply during the period 6 June 1997 - 9 November 1998 in relation to smoking on transitional premises in a single area, subject to that area:

- being considered to be clearly defined by a reasonable person, through the display of signs or by other means (subsection 22(2)(a));
- taking up a maximum of 25 percent of the floor area of the transitional premises (subsection 22(2)(b));
- that, where reasonably practicable, is at least 1.5 metres, at its nearest point, from any bar on the premises and from any other area which is a regular workplace (subsection 22(2)(c); and

- where reasonably practicable, does not include an area through which persons must pass to gain reasonable access to the normal facilities of other parts of the premises (subsection 22(2)(d)).

6. Response to persistent contraventions

Subsection 22(3) provides that if the Minister is satisfied on reasonable grounds that there have been persistent contraventions of the Act as it relates to particular transitional premises, whether these contraventions are by the occupier or by persons present on the premises, or both, the Minister may issue a written notice to the occupier declaring that subsections 5(1) and 5(2) of the Principal Act will apply in relation to those premises, as from a specified date. This date will be a date later than the date on which the notice is given to the occupier.

7. Application of subsections 5(1) and 5(2)

Subsection 22(4) provides that, where a notice is given under subsection (3), subsections 5(1) and (2) of the Principal Act will apply in relation to those premises on and after the specified date. This means that smoking is prohibited in those premises (although the premises may at any time apply for an exemption).

8. Review of decision

Subsection 22(5) provides that the occupier may apply to the Administrative Appeals Tribunal for a review of a decision to issue a notice under subsection 22(3).

9. Requirements of *Administrative Appeals Tribunal Act 1989*

Subsection 22(6) provides that a notice under subsection (5) shall be in accordance with the Code of Practice under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*. This tells people what their rights are in relation to the availability of review and in obtaining a copy of the reasons for the decision in question.

10. Schedule

Clause 6 amends Item 2 of Part II of the Schedule to the Principal Act by omitting from the first column the words '(other than a lobby, hall stairway, elevator or dining area)' and inserting the words, '(a) a common area consisting of a lobby, hall, stairway, elevator or dining area; or (b) any area in premises that are licensed premises.

This means that common areas of multiple-unit residential facilities, including hotels, motels, hostels, and nursing homes, are exempt from the general smoking prohibition as long as they provide an area of comparable standard in which smoking is prohibited, and as long as they are not licensed premises. The effect of this amendment is to clarify that multiple-unit residential premises which are licensed premises have a choice of prohibiting smoking or applying for a licensed premises exemption, but not being subject to provisions of Part II of the Schedule.