

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES) AMENDMENT
BILL 2009**

EXPLANATORY STATEMENT

**Circulated by the authority of
Katy Gallagher MLA
Minister for Health**

Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2009

This explanatory statement relates to the Smoking (Prohibition in Enclosed Public Places) Amendment Bill 2009 as introduced to the Legislative Assembly.

Overview

The Smoking (Prohibition in Enclosed Public Places) Amendment Bill amends the *Smoking (Prohibition in Enclosed Public Places) Act 2003* (Smoking Act).

The Smoking Act ended the exemption system for smoking areas in restaurants and licensed premises established under the *Smoke-free Areas (Enclosed Public Places) Act 1994*. From 1 December 2006, all enclosed public places became smoke free. This Bill proposes to take the next step and restrict smoking in outdoor eating and drinking areas and at underage functions. Tasmania and Queensland ban smoking at outdoor eating and drinking places and Victoria has an express prohibition on smoking at underage functions. Through government policies there are currently restrictions on smoking in outdoor public places at Canberra Stadium, Manuka Oval, ACT Government schools and ACT Health facilities.

The Bill's purpose is to further reduce exposure to second-hand smoke, also known as environmental tobacco smoke, by restricting smoking at outdoor eating and drinking areas and at underage functions (note: the Smoking Act uses the term environmental smoke, see section 5A). Outdoor eating and drinking areas typically have people in close proximity, with limited capacity to move to avoid smoke. In addition, outdoor eating and drinking areas are workplaces where employees can be exposed to smoke. Underage functions are places where young people may be exposed to smoking and messages about smoking from their peers.

An employer's occupational health and safety (OH&S) responsibilities extend to the limiting of smoking on work premises. Workers in the hospitality industry, however, have largely not been able to enjoy the same protections as are available to other workers. The *National Tobacco Strategy* emphasises the need to extend workplace protection from tobacco smoke to hospitality workers because of the nature of their workplaces. To address this important OH&S issue, no service will be allowed to an area where smoking occurs. This would serve to protect hospitality workers from exposure to environmental tobacco smoke.

To reflect the Smoking Act's expanded purpose, the name of the Act is to be amended to *Smoke-Free Public Places Act 2003*. The Bill proposes regulatory consistency between enclosed public places, outdoor public places, and underage functions by aligning the offences in part 2, enclosed public places, of the Smoking Act with the offences proposed in the Bill. Part 3 of the Smoking Act is proposed to be amended to provide for clearer powers of enforcement.

Impact of the restrictions

Legislation, particularly legislation that proposes restrictions on activities, tends to have an impact. Below is a general discussion on the likely impacts the community may experience from the extension of the Smoking Act to smoking in outdoor eating and drinking places and at underage functions.

Outdoor eating and drinking places

It is anticipated that the legislation may have an impact on the trading environment of the hospitality industry, eg., bars, clubs and restaurants with outdoor eating areas and other businesses responsible for proposed smoke free areas. Other parties affected by the restrictions will be the 15.8% of Canberrans who are current daily smokers. However, the Canberra

community, in particular adult non-smokers including employees, young people and children and the ACT environment will benefit.

Extending the current smoking controls in enclosed public places to premises that serve food or alcohol in outside areas is the logical and most effective means of implementing this ban. Owner/occupiers are already aware of their obligations to manage smoking in indoor areas. It will also assist to reduce the exposure to smoke that occurs. The levels of smoke at outdoor restaurants has been found to approach the indoor smoking levels of smoke or environmental tobacco smoke (ETS). This effect can persist for significant periods. Further, diners are usually concentrated in a small place, have limited ability to avoid ETS from adjacent tables and typically stay in the area for an extended period, while employees are exposed to tobacco smoke throughout their shift¹. Workers in the hospitality industry, however, have largely been unable to enjoy the same protections as are available to other workers. It is something which has long contradicted an employer's occupational health and safety (OH&S) responsibilities to limit smoking on work premises².

Representatives of the club and hotel industries have suggested that other government actions are putting pressure on their revenues, including prohibition of smoking in gaming rooms and inside drinking areas and increased taxes on gambling revenues from poker machines. It is argued that further restrictions on smoking will exacerbate their difficulties. Clubs ACT has reported that the experience of other jurisdictions have shown recovery periods of between 18 months to over five years in relation to indoor smoking bans³. The Australian Hotels Association opposes a ban on smoking in outdoor licensed areas, reporting revenue losses of between 8% and 16% in Tasmania and Queensland (these figures have not been verified). A data review on the effect of smoke-free policies on revenue in bars in Tasmania has concluded that Tasmania's smoke-free legislation, which includes outdoor areas, had no adverse effect on sales turnover⁴.

The restaurant industry appears to have had different impacts to the clubs and hotel industries from the enclosed public places ban. Individual establishments may have been affected negatively, whereas the industry itself experienced minimal impact. Similarly individual establishments may also be affected by outdoor restrictions, but the industry itself experiences minimal impact.

Some venues have indicated to government they will suffer economic loss because they invested in outdoor facilities expressly with the purpose of providing an area where patrons can smoke. Consequently, the investment may be seen to be unwise in light of a prohibition on smoking across eating and drinking areas. Business owners may consider this a loss because the investment cannot be used as intended. Substantial amounts of money does appear to have been spent on outdoor areas. Social cost benefit analysis treats past investments as 'sunk costs' and ignores them, since the decision to be assessed cannot affect these costs.

Finally, the ban may be considered to have the potential to restrict competition and affect consumer choice to a significant extent. Restrictions on competition may occur for premises with outside eating areas that depend on allowing smoking. In the case of hotels and clubs, the major

¹ Repace (2004) estimated that ETS in the workplace causes more than 73 worker deaths a year among the 40,000 club, pub, tavern and bar workers in New South Wales, or 0.2% a year. The estimate has not been independently established.

² Code of Practice for Smoke Free Workplaces, 1994, made under the *Occupational Health and Safety Act 1989*.

³ Socio-Economic Impact Study of Clubs in the Australian Capital Territory, prepared by The Allen Consulting Group, March 2008, page 45. <http://www.clubsact.com.au/docs/seis.pdf>

⁴ Lal, A and Siahpush, M, *The effect of smoke-free policies on revenue in bars in Tasmania, Australia*; Tobacco Control, published online 16 July 2009 (tobaccocontrol.bmj.com).

impact on competition would occur if the consequence of smoking bans was that owners decide to close eating areas entirely. This is considered unlikely to occur in practice.

Prohibiting smoking in all outdoor eating and drinking areas is supported in view of anticipated health and amenity benefits. To accommodate the concerns of clubs and pubs to provide an outside space for smokers, the legislation proposes that clubs and pubs have the option of designating an outdoor smoking area. The consumption of food and service to the areas, known as designated outdoor smoking areas – DOSA, will not be permitted in these areas.

Underage functions

Victoria prohibited the supply of tobacco products and smoking at “under-age music/dance events” in the *Tobacco (Amendment) Act 2005 (Vic)*. An under-age music/dance event involves the provision of music, is predominantly organised for people aged under 18 years of age, is open to the public and occurs in an area or premises other than a private residence.

The Bill proposes a prohibition on smoking at under-age functions, irrespective of whether the function is indoors or outside. The restriction on smoking applies where an underage function has been predominantly organised for people aged under 18 years of age. If the event has not been predominantly organised for young people other provisions of the Act may apply.

Although only a minority of young people smoke (8.6% current smokers), there is ample evidence that young people are affected by exposure to smoking, in terms of the cue to smoke and the health effects. This Bill will provide protection from peer exposure at events attended by persons under 18 years of age. It is considered that a prohibition on smoking at the event is unlikely to dramatically reduce total numbers of people attending. There may be some compliance burden in ensuring that people do not smoke at underage functions, but this is not likely to be significant. Guidance material on managing smoking at underage functions will be developed to assist organisers in mitigating impacts.

Commencement of the legislation

The Bill proposes that the legislation not commence until at least 1 December 2010. This is to allow the hospitality industry to prepare for the legislative changes and for the community to be informed that smoking cannot occur in outdoor eating and drinking places, except in a designated outdoor smoking area at pubs and clubs, and that smoking is not allowed at underage functions.

An information campaign is proposed. This will include letters to premises, pamphlets, information sheets, etc, made available for distribution to customers. This will assist to ensure that the community understands the new smoking restrictions. The Bill also proposes that signs be placed on tables at outdoor eating and drinking places and at underage functions so people are aware smoking is not permitted. An announcement about smoking is also required at an underage function.

Notes on clauses

Where a clause amends a section of the Smoking Act, *old section* is used to refer to the previous section and *new section* is used to refer to the amendment.

Strict liability

The Bill contains strict liability offences. These are clearly identified in the Bill and in this explanatory statement. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and protection of the revenue. It is considered, however, that strict liability offences engage the presumption of innocence in subsection 22(1) of the *Human Rights Act 2004*.

The Bill proposes strict liability for those offences that are clearly regulatory in nature. It is usually desirable that strict liability offences be proposed where a defendant can reasonably be expected, usually because of his or her professional involvement, to be aware of the requirements of the law. However, a defendant's frame of mind for some regulatory offences is irrelevant, unless some knowledge or intention ought to be required to commit a particular offence.

The offence of smoking in a place where smoking is prohibited (new section 6 and section 9B) are strict liability because the offences relate to matters that are regulatory in nature and the physical element of the offences are clear. In addition, the Bill includes a requirement that notice be given by an occupier that smoking is prohibited at a public place. Other offences where strict liability is proposed are because the person, through their professional involvement, ought to be aware of the requirements of the law.

Penalties for strict liability offences contained in the Bill do not exceed 50 penalty units and do not propose a term of imprisonment. The mistake of fact defence expressly applies to strict liability offence as do other defences in part 2.3 of the Criminal Code.

Clauses

Clause 1 declares the name of the Act to be the Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009.

Clause 2 provides for the commencement of the Act. The commencement of the Act is proposed for 1 December 2010, the fourth anniversary of the commencement of the enclosed public places ban. The hospitality industry requested at least 12 months to prepare for the new arrangements. It is also necessary for the community to be informed about the legislation. Therefore, if the Bill passes after 1 December 2009, provision has been made for the Minister to provide for a different commencement date. Delaying commencement for longer than 6 months requires section 79 of the *Legislation Act 2001* to be displaced.

Clause 3 provides that the Act amends the *Smoking (Prohibition in Enclosed Public Places) Act 2003* (Smoking Act). The note also indicates other Acts are amended by Schedule 1.

Clause 4 updates the long title for the Act.

Clause 5 amends the name of the Act to be the Smoke-Free Public Places Act 2003.

Clause 6 inserts new section 5A. Section 5A provides the Objects of the Act. New section 5A expands the objects to provide that the Act is to promote public health by minimising the exposure of people to environmental smoke to include outdoor eating or drinking places and at underage functions. The old section referred only to enclosed public places.

Clause 7 expands the example of the types of devices to include a hookah. This is to remove doubt that a hookah is a smoking device.

Clause 8 inserts new section 5B(3) and (4). Section 5B provides for the meaning of *smoke* and when a person smokes. Section 5B(3) provides for the circumstances when a person is not taken to *smoke*. This has been moved to 5B(3) from the offences in part 2, enclosed public places, because it applies to all of the offences for this Act. For example, old section 6 provides it is a defence for a person who held or had control over the smoking product only for the purpose of extinguishing it or removing it. Rather than repeat this defence for all the offences, new section

5B(3) provides for the circumstances when a person is taken not to smoke. The prosecution, of course, will have to prove that a person was smoking and that they were not in the process of extinguishing or removing the smoking product.

Section 5B(4) provides what is a smoking product for the Act. A smoking product includes a tobacco product, herbal product and any other product that is designed for smoking. Tobacco products and herbal products are defined in the *Tobacco Act 1927*. Any other product is a catch-all provision to ensure a product designed for smoking is captured.

Clause 9 substitutes old sections 6, 7 and 8. The offences are being amended to bring them into line with the offences being inserted in part 2A and 2B. New section 6, the offence of smoking in an enclosed public place, omits old section 6(2) which provided the defence that is now incorporated at 5B(4). It is a strict liability offence.

New section 7, which makes it an offence for a person to smoke in an enclosed public place in contravention of a direction by an occupier or inspector, is restated and an unnecessary definition of *occupier* removed. It is a strict liability offence.

New section 8 is also restated. This section provides that an occupier commits an offence if a person smokes in an enclosed public place. An exception to the offence is provided for the occupier to show that they were not aware and could not reasonably be expected to be aware that a person was smoking in the enclosed public place. Alternatively, the occupier may show they had directed the person to stop smoking. New section 8 also omits old section 8(2)(iii) as it is now incorporated at 5B(4). It is a strict liability offence.

Clause 10 inserts section 8AA. This section provides that a regulation may be made which prescribes that a no smoking sign be displayed in an enclosed public place. The Smoking Act does not currently require that notice be provided to a member of the public that smoking is prohibited. As a notice requirement is proposed to be included for outdoor eating and drinking places, a similar provision is inserted for enclosed public places. However, because of the diverse nature of enclosed public places it is proposed that a regulation specify those enclosed public places where a no smoking sign is required. It is a strict liability offence.

Clause 11 inserts a new part 2A and 2B to insert the provisions relating to smoking in outdoor dining and drinking places and underage functions.

Overview of part 2A – Smoking prohibited in outdoor eating or drinking places

Part 2A provides for a ban on smoking where food or drink service is provided in an outdoor public place. Smoking is not permitted where this service is provided. An outdoor public place may be a restaurant, café, coffee shop, club, pub, etc.

Despite the ban on smoking at outdoor eating or drinking places, hotels and licensed clubs can make a business decision to set aside a designated outdoor smoking area (DOSA). Licensees of hotels and clubs have an important role to play in the responsible management of smoking. A licensee can decide to make the entire outdoor areas of the licensed premises non-smoking or have a DOSA in up to 50 per cent of their total outdoor licensed area. The main purpose of the DOSA is to allow an area for customers to smoke and then return to non-smoking areas of the premises. It is not intended to be a place to hang out and socialise. Consequently restrictions are proposed on what can occur in the DOSA, eg., no entertainment and no food or drink may be ordered, purchased or served in the designated outdoor smoking area and no food may be consumed there. A customer, however, may take a drink which has been purchased in another

part of the hotel or club into the designated outdoor smoking area for consumption. There are other restrictions on what is allowed in a DOSA explained further at section 9G.

In establishing a DOSA a licensee will be obliged to manage smoking through a smoking management plan. The licensee must include buffers between a smoking area and a non-smoking area. The buffers are intended to reduce the impact of smoking on people in non-smoking areas.

Section 9A defines what is an outdoor eating or drinking place. An outdoor eating or drinking place must be a public place, other than an enclosed public place, where people at the place may consume food or drink provided from an on-site service. An on-site service is defined as a food or drink service at the place. A food or drink service can be a business or a commercial, charitable or community enterprise that sells food or drink. An outdoor eating or drinking place can either be a licensed premise or a place where tables and chairs have been provided by on-site service for the purpose of consuming food or drink. Examples may be tables or chairs placed outside a café; tables or chairs surrounded by hoardings or planter boxes to show the limits of the area. Chair includes all forms of seating that may be provided by an eating or drinking place.

An outdoor eating or drinking place, though, is only an outdoor eating or drinking place while food or drink is being provided or consumed, eg., tables and chairs are set up in the outside area.

Sections 9B to 9D create offences of smoking in an outdoor eating or drinking place, to smoke in contravention of a direction by an inspector or occupier and on the occupier if a person smokes in an outdoor eating or drinking place. These offences mirror the offences in part 2, enclosed public places. The offences are strict liability offences.

Section 9E provides that an occupier commits an offence if they fail to prominently display at the place no smoking signs. This requirement is included to ensure persons are on notice that smoking is not allowed in an outdoor eating and drinking place. Also, under section 9A a public place is an outdoor eating or drinking place if people may consume food or drink provided from an on-site service and either the place is licensed premises or tables and chairs are provided by the on-site service for their use. To ensure people are on notice that smoking is prohibited, the occupier is required by section 9E to display a plan or place on outside tables or chairs that no smoking is allowed. It is a strict liability offence.

Division 2A.3 provides for the designation of outdoor smoking areas and associated requirements. Only certain liquor licensed premises may designate an outdoor smoking area. A holder of a permit under the *Liquor Act 1975* may not designate an outdoor smoking area.

Premises that have a club licence under the *Liquor Act 1975* or a premise which has a licence authorising the sale of liquor for consumption on the premises and the premises are principally used for that purpose may establish an outdoor smoking area. The licence categories under the *Liquor Act 1975* for non-club premises (eg., general, on and special) are used by the Office of Regulatory Services to licence pubs and taverns in the ACT. Consequently, a reference to a licence class is not included. However, it is important to note that the premises must sell liquor principally for consumption on the premises, eg., a pub or tavern. A premise whose principal purpose is not the sale of liquor, eg., restaurant and café, are not permitted to establish a DOSA.

Section 9F provides that a licensee may designate part of the licensed outdoor area as a DOSA. The licensee must place a notice near the DOSA informing people that it is a designated smoking area; that persons under 18 years are not permitted in the area; that a smoking management plan

(see section 9I) is available and include a diagram of the area. The notice's purpose is to inform patrons about the location of the DOSA.

The total area of the DOSA must not be more than 50 per cent of the whole licensed outdoor area. However, in working out the whole licensed outdoor area, an area that is off a gaming area (*off-gaming area*) and existed at 1 October 2009 is not included. The licensee may make this area a smoking area but is not required to include it in the 50 per cent calculation. The exception is included because premises previously made business decisions to establish separate outdoor areas for gaming members. It should be noted that gaming machines are not permitted in outdoor areas.

Each DOSA must have a buffer on its perimeter wherever it is adjacent to other parts of the outdoor area able to be accessed by patrons. This is to separate smoking and non-smoking patrons and to assist with preventing smoke drift. An area that is an *off-gaming area* and is not adjacent to other parts of an outdoor area is not required to have a buffer. The buffer may be a screen or wall of height to be prescribed by regulation. Alternatively, the buffer may be an area four (4) metres wide, half of which must be taken from the DOSA (ie. two metres). Nothing is to be placed in this buffer and patrons may not eat, drink or smoke in the buffer.

In establishing the DOSA, a licensee must ensure it is not adjacent to an entrance to the premises, the enclosed part of the premise, and that it is in a position that minimises smoke entering an outdoor eating or drinking place.

The licensee commits an offence if they designate a DOSA otherwise than in accordance with the section. It is a strict liability offence.

Section 9G requires a licensee to notify the Commissioner for Fair Trading (the Commissioner has responsibility for liquor licensing) that the licensee has created a DOSA. The licensee must do so within 14 days of creating a DOSA. Failure to do so is a strict liability offence. Notification is required so that the Commissioner is aware of the pubs and clubs that have DOSAs and is able to easily follow up on compliance with the Act.

Section 9H provides that a licensee must ensure that certain things do not occur in a DOSA. These are that no persons under 18 years of age are present; there is no food or drink service and no food is consumed. A drink purchased elsewhere on the premises may be consumed in a DOSA. No entertainment is to be offered or directly accessible. Entertainment does not include public announcements or recorded music. A television, for example, may not be placed in a DOSA or be capable of being seen from a DOSA. This is to avoid making DOSAs overly attractive, with television screens being set up on the border of DOSAs so that smokers could still watch television and view sporting results. There are no gaming machines. An exception to (1)(c), no food is consumed, is provided for the occupier to show that they were not aware and could not reasonably be expected to be aware that food was being consumed in the DOSA. It is a strict liability offence.

Section 9I requires an occupier at premises that have a designated outdoor smoking area to ensure smoke does not drift into an outdoor eating or drinking area. An occupier is required to take reasonable steps to do so. An occupier is the person who has management or control or otherwise being in charge of premises. A licensee is not always in charge of premises on a day to day basis, consequently an obligation is imposed on the occupier to ensure smoke drift does not occur. It is a strict liability offence.

Section 9J provides that a licensee who decides to designate an outdoor smoking area will be required to develop and maintain a smoking management plan. The plan must be available for

inspection by patrons and authorised officers. A smoking management plan must identify the designated outdoor smoking area, the buffer zones, the outdoor areas where food is provided, and state how smoking is managed at the premises with the aim of reducing smoking.

Through the development of a smoking management plan, licensees will be able to adopt measures to manage and minimise smoking in a way that suits their particular business. Licensees may wish to work with staff and unions in developing their plan, particularly as the plan requires a licensee to minimise people's, including their staff's, exposure to environmental tobacco smoke in the DOSA. A smoking management plan should address staff training, signage and measures to manage smoking at the licensed premises. If a licensee chooses to have a DOSA, it is an offence not to have a plan or to fail to have the plan available for inspection on request. It is a strict liability offence.

Overview of part 2B – Smoking prohibited at underage functions

Part 2B provides for a ban on smoking at underage functions. Smoking is to be banned throughout the function, including outdoor areas that form part of the function. While it is illegal to sell tobacco to a person under the age of 18 years, statistics show that 8.6% of students smoked at least one day in the last 7 days; 2.6% of students are daily smokers (2005 ACT Secondary Student Drug and Health Risk Survey).

A ban on smoking at an underage function will assist to denormalise the practice of smoking in social situations and assist in reducing smoking uptake by young people. For young people who already smoke, evidence suggests their consumption is likely to reduce if smoking were banned in social venues. There is no provision for establishing a designated outdoor smoking area at an underage function.

Section 9K inserts a definition of underage function. For the part to apply, a function must:

- have as its principal purpose the provision of live or recorded music for listening to, dancing to or both;
- is predominantly organised for people under 18 years of age;
- be open to the public or a section of the public, with or without payment;
- take place in an area or premise other than a private residence.

To assist the assessment of whether a function is predominantly organised for people under 18 years of age, indicia has been included in the Bill.

Section 9L states that smoking is prohibited at an underage function. It is not an offence under the *Tobacco Act 1927* for a young person to smoke or be in possession of smoking products, therefore it is not an offence to smoke at an underage function. However, note that it is an offence to ignore a direction to cease smoking at a function (see section 9M).

Section 9M provides for the obligations an organiser of an event has in relation to smoking. The organiser must ensure that no smoking signs are prominently displayed, any tickets advise that smoking is prohibited and give an announcement at the beginning of the function that smoking is prohibited. The onus is on the organiser to ensure smoking does not occur at the function.

The organiser is required to give a direction to a person who is smoking to stop smoking. The organiser is also required to direct a person to leave the premises if they continue to smoke in contravention of the direction to smoke. These provisions reinforce the responsibilities organisers have to control the function, security and safety of those attending. The concept of organiser is used in part 2B because the place where the function is held may have been hired for the purpose of running a function. Because the hirer or occupier may not be the organiser of the

function, it is not appropriate for them to be obliged to post no smoking signs, ensure tickets advise no smoking or provide the announcement.

Section 9N provides that it is an offence to contravene the direction of an inspector or an organiser to stop smoking at a function. The offence applies to any person, including an underage person. Although an underage person does not commit an offence of smoking at an underage function, it is the contravention of a direction to cease smoking and not the smoking itself that an underage person is being asked to comply with.

Clause 12 inserts new sections 12, 13, 14, 15, 16, 17, 18, 19. Part 3, enforcement, provided inspectors with limited powers in relation to enforcement. Old section 12, powers of inspectors, only provided that an inspector may enter an enclosed public place at any time when the public, or a section of the public, has access to the place, whether by payment or not. It also authorised an inspector to direct a person to stop smoking and require the giving of a name and address. With the expanded purpose of the Act, additional enforcement powers were required.

An inspector for the purpose of the Act can be a police officer, an authorised officer under the *Tobacco Act 1927* or a public servant appointed by the chief executive.

New section 12 restates an inspector's power to give directions. New section 13 restates the power to enter premises and provides that an inspector may also enter premises with the occupier's consent. New section 14 provides that an inspector may not remain at premises if he fails to produce his or her identity card when asked by the occupier.

New section 15 provides the procedure to be followed by an inspector where they have entered premises following an occupier's consent to entry. New section 16 provides for the general powers on entry to premises (either at any reasonable time or under consent). An inspector may inspect or examine, take measurements or conduct tests, take samples, photographs, films, audio, video or other recordings and require the answering of questions or provide assistance to an inspector. It is an offence of a person required to answer questions fails to take reasonable steps to comply with an inspector's request.

New section 17 restates the inspector's power to require name and address. New section 18 provides a power to seize things and remove the seized thing from the premises. New section 19 provides for an inspector to provide a receipt for the seized thing.

Clause 13 substitutes old section 13 and inserts two new sections, sections 20 and 21. The first section (new section 20) inserts an acts and omissions of representatives provision. The Act requires occupiers, licensees and organisers to do certain things. It is more likely, however, that an employee or agent of the occupier, licensee or organiser will be delegated the task to do something. It is necessary to ensure that a person cannot be proceeded against merely because a representative did or omitted to do something in accordance with the Act. For corporate criminal responsibility, please see part 2.5, Criminal Code.

New section 21 provides a power for the commissioner to approve forms for the purpose of this Act.

Clause 14 renumbers old section 14, regulation-making power, as new section 22.

Clause 15 inserts a note in the dictionary that the term, commissioner for fair trading, is a term defined in the *Legislation Act 2001*.

Clause 16 inserts new definitions for the Act.

Schedule 1

Schedule 1 amends two Acts and a Regulation that refer to the Smoking Act and updates them to refer to the *Smoke-Free Public Places Act 2003*.