



AUSTRALIAN CAPITAL TERRITORY

## **Smoke-free Areas (Enclosed Public Places) (Amendment) Act 1994**

No. 92 of 1994

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### **An Act to amend the *Smoke-free Areas (Enclosed Public Places) Act 1994***

*[Notified in ACT Gazette S279: 2 December 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) (Amendment) Act 1994*.

#### **Commencement**

2. This Act commences, or is to be taken to have commenced, on 6 December 1994.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Smoke-free Areas (Enclosed Public Places) Act 1994*.<sup>1</sup>

#### **Interpretation**

4. Section 3 of the Principal Act is amended—

- (a) by omitting the definition of “restaurant” and substituting the following definition:

“ ‘restaurant’ means a public place or part of a public place used primarily for the consumption of food or non-alcoholic drinks purchased on the premises that—

(a) is within enclosed licensed premises; or

(b) in the case of a public place—is enclosed;”;

(b) by inserting the following definitions:

“ ‘determined fee’ means the fee determined by the Minister under section 19A for the purposes of the provision in which the expression occurs;

‘equipment’ means mechanical ventilation and air conditioning equipment;

‘public area’ means—

(a) in relation to licensed premises—the part of the premises normally frequented by patrons, other than a corridor, stairway, lift, toilet, lobby or waiting area; and

(b) in relation to a restaurant—the part of the restaurant set aside for the consumption of food or drinks by patrons;”.

### **Smoke-free areas**

5. Section 5 of the Principal Act is amended by adding at the end the following subsection:

“(6) In this section—

‘certificate of exemption’ does not include a certificate that is under suspension.”.

### **Application for certificate of exemption**

6. Section 7 of the Principal Act is amended by omitting from paragraph (2) (b) “fee determined by the Minister by notice in writing” and substituting “determined fee”.

### **Grant of certificate**

7. Section 8 of the Principal Act is amended—

(a) by omitting from paragraph (2) (a) “air cleaning”;

(b) by omitting from subparagraph (2) (b) (i) “air cleaning”;

- (c) by omitting subparagraph (3) (a) (iii) and substituting the following subparagraph:
  - “(iii) is within premises that are fitted with equipment capable of maintaining air quality in accordance with Australian Standard 1668.2;”;
- (d) by omitting from subparagraph (3) (b) (i) “air cleaning”;
- (e) by adding at the end of subparagraph (3) (b) (ii) “and”; and
- (f) by adding at the end of subsection (3) the following paragraph:
  - “(c) the determined fee has been paid.”.

### **Insertion**

8. After section 8 of the Principal Act the following section is inserted:

#### **Annual fees**

“8A. (1) An occupier of a restaurant or licensed premises shall, on or before the first and second anniversary of the grant of a certificate of exemption, pay to the Territory the determined fee.

“(2) Where a fee payable under subsection (1) is not paid in accordance with that subsection, the certificate is, by virtue of this subsection, suspended.

“(3) A suspension under subsection (2)—

- (a) takes effect on the day after the anniversary of the grant of the certificate on or before which the fee should have been paid; and
- (b) ceases when the annual fee is paid or the certificate is cancelled, whichever first occurs.

“(4) The Minister may cancel a certificate that has been suspended by virtue of subsection (3) for a period of not less than 3 months.

“(5) The Minister shall not cancel a certificate under subsection (4) unless, at least 1 month before doing so, he or she gives to the occupier of the relevant restaurant or licensed premises a written notice stating that, unless the determined fee is paid, the licence may be cancelled on or after a specified day.”.

#### **Conditions of certificate of exemption**

9. Section 9 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “air cleaning”; and

(b) by omitting paragraphs (c) and (d) and substituting the following paragraphs:

- “(c) the occupier shall keep such records, in relation to the equipment on the premises, as are specified on the certificate of exemption and relate to maintenance on and the operation of the equipment;
- (d) inspectors are allowed to—
  - (i) regularly inspect equipment on the premises;
  - (ii) monitor the air quality within the premises; and
  - (iii) inspect the records referred to in paragraph (c);
- (e) if the certificate relates to a restaurant—smoking is prohibited in not less than 75% of the public area of the restaurant.”.

#### **Insertion**

10. After section 9 of the Principal Act the following section is inserted:

#### **Duration of certificates of exemption**

“9A. Subject to this Act, a certificate of exemption ceases to have effect at the expiry of the period of 3 years after its grant.”.

#### **Offence by occupier**

11. Section 14 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) Where smoking is prohibited in a part of an enclosed public place, the occupier shall not, without reasonable excuse, fail to take reasonable steps to prevent smoke from penetrating that part from another part of the public place where smoking is not prohibited.

Penalty:

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

#### **Insertion**

12. After section 14 of the Principal Act the following section is inserted:

#### **Responsibility of neighbouring occupier**

“14A. The occupier of premises where smoking is not prohibited under this Act shall not, without reasonable excuse, fail to take reasonable steps to

prevent smoke from those premises from penetrating premises where smoking is prohibited under this Act.

Penalty:

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

### **Insertion**

**13.** After section 19 of the Principal Act the following section is inserted:

#### **Power of Minister to determine fees**

“19A. (1) The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

“(2) A notice under subsection (1) may provide for a relevant fee to be calculated by reference to a formula having as a component the area of the public area in relation to which the fee is payable.”.

### **Transitional**

**14.** Section 21 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

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

### **Schedule**

**15.** The Schedule to the Principal Act is amended—

- (a) by omitting from Part II items 1, 2 and 3; and
- (b) by renumbering items 4 and 5 as 1 and 2 respectively.

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#### **NOTE**

1. Act No. 63, 1994.

*[Presentation speech made in Assembly on 29 November 1994]*