

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Helen Cross)

Smoking (Prohibition in Enclosed Public Places) Bill 2003

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Smoking (Prohibition in Enclosed Public Places) Bill 2003

A Bill for

An Act to prohibit smoking in enclosed public places, and for related purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Smoking (Prohibition in Enclosed Public Places) Act*
4 *2003*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Dictionary**

10 The dictionary at the end of this Act is part of this Act.

11 *Note 1* The dictionary at the end of this Act defines certain terms used in this
12 Act, and includes references (*signpost definitions*) to other terms
13 defined elsewhere.

14 For example, the signpost definition '*smoking product*—see the
15 *Tobacco Act 1927*, dictionary.' means that the expression 'smoking
16 product' is defined in that dictionary and the definition applies to this
17 Act.

18 *Note 2* A definition in the dictionary (including a signpost definition) applies to
19 the entire Act unless the definition, or another provision of the Act,
20 provides otherwise or the contrary intention otherwise appears (see
21 Legislation Act, s 155 and s 156 (1)).

22 **4 Notes**

23 A note included in this Act is explanatory and is not part of this Act.

24 *Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

1 **5 Offences against Act—application of Criminal Code etc**

2 Other legislation applies in relation to offences against
3 this Act.

4 *Note 1 Criminal Code*

5 The Criminal Code, ch 2 applies to all offences against this Act (see
6 Code, pt 2.1).

7 The chapter sets out the general principles of criminal responsibility
8 (including burdens of proof and general defences), and defines terms
9 used for offences to which the Code applies (eg *conduct*, *intention*,
10 *recklessness* and *strict liability*).

11 *Note 2 Penalty units*

12 The Legislation Act, s 133 deals with the meaning of offence penalties
13 that are expressed in penalty units.

- 1 **Part 2** **Smoking prohibited in**
2 **enclosed public places**
- 3 **6 Offence to smoke in enclosed public place**
- 4 (1) A person commits an offence if the person smokes in an enclosed
5 public place.
- 6 Maximum penalty: 5 penalty units.
- 7 (2) It is a defence to a prosecution for an offence against subsection (1)
8 if the defendant establishes that he or she held or had control over
9 the smoking product for the purpose only of extinguishing it or
10 removing it from the public place.
- 11 **7 Offence to smoke in contravention of direction**
- 12 (1) This section applies to a person if the person—
- 13 (a) smokes in an enclosed public place; and
- 14 (b) is directed to stop smoking in the enclosed public place by an
15 inspector or the occupier of the enclosed public place.
- 16 (2) The person commits an offence if the person contravenes the
17 direction.
- 18 Maximum penalty: 20 penalty units.
- 19 (3) However, a person does not commit an offence against this section
20 if—
- 21 (a) the inspector who gives the direction is not a uniformed police
22 officer; and
- 23 (b) when asked by the person, the inspector does not produce an
24 identity card that identifies him or her as a person who is an
25 inspector.

1 (4) In this section:

2 *occupier*, of a place, includes—

3 (a) a person believed on reasonable grounds to be an occupier of
4 the place; and

5 (b) a person apparently in charge of the place.

6 **8 Offence by occupier**

7 (1) The occupier of an enclosed public place commits an offence if
8 someone else commits an offence against section 7 (1) in the
9 enclosed public place.

10 Maximum penalty: 10 penalty units.

11 (2) It is a defence to a prosecution for an offence against subsection (1)
12 if the occupier establishes—

13 (a) that the occupier did not provide anything designed to facilitate
14 smoking in the enclosed public place; and

15 (b) that—

16 (i) the occupier was not aware, and could not reasonably be
17 expected to have been aware, that the person was
18 committing the offence; or

19 (ii) the occupier told the person that the person was
20 committing an offence and asked the person to stop
21 committing the offence; or

- 1 (iii) the person held or had control over the smoking product
2 for the purpose only of extinguishing it or removing it
3 from the enclosed public place.

4 **Examples for par (a)**

5 1 ashtray

6 2 cigarette lighter

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

10 **9 Offence by neighbouring occupier**

11 The occupier of premises where smoking is not prohibited under
12 this Act commits an offence if the occupier fails to take reasonable
13 steps to prevent smoke from the premises from entering an enclosed
14 public place at any time when the public, or a section of the public,
15 has access to the place.

16 Maximum penalty: 10 penalty units.

Part 3 Enforcement

10 Inspectors

(1) Each of the following is an inspector for this Act:

(a) an authorised officer under the *Tobacco Act 1927*, section 32;

(b) a public servant appointed under subsection (2).

(2) The chief executive may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

11 Identity cards for inspectors

(1) The chief executive must give an inspector appointed under section 10 (2) an identity card that states the person is an inspector for this Act and shows—

(a) a recent photograph of the person; and

(b) the name of the person; and

(c) the date of issue of the card; and

(d) an expiry date for the card; and

(e) anything else prescribed under the regulations.

(2) A person commits an offence if—

(a) the person was appointed as an inspector under section 10 (2); and

- 1 (b) the person ceases to be an inspector; and
- 2 (c) the person does not return the person's identity card to the
- 3 chief executive as soon as practicable (but within 7 days) after
- 4 the day the person ceases to be an inspector.

5 Maximum penalty: 1 penalty unit.

- 6 (3) An offence against this section is a strict liability offence.

7 **12 Powers of inspectors**

- 8 (1) An inspector may enter an enclosed public place at any time when
- 9 the public, or a section of the public, has access to the place,
- 10 whether by payment or not.

- 11 (2) If an inspector believes on reasonable grounds a person is
- 12 committing or has just committed an offence against this Act, the
- 13 inspector may—

- 14 (a) if the person is smoking in an enclosed public place—direct the
- 15 person to stop smoking; and

- 16 (b) require the person to give the inspector the person's name and
- 17 usual address.

18 **13 Obstructing inspector**

- 19 (1) A person commits an offence if—

- 20 (a) the person knows, or is reckless about the fact, that the person
- 21 is an inspector; and

- 22 (b) the person obstructs, hinders, intimidates or resists a inspector
- 23 in the exercise of the inspector's functions.

24 Maximum penalty: 10 penalty units.

- 25 (2) Strict liability applies to subsection (1) (b).

1 **14 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 *Note* Regulations must be notified, and presented to the Legislative
4 Assembly, under the Legislation Act.

5 (2) The regulations may exempt an area of premises from the operation
6 of part 2 (Smoking prohibited in enclosed public places) if—

7 (a) the premises are occupied by a university or another entity
8 prescribed by the regulations; and

9 (b) the area is for scientific research into the effects of smoking.

Part 4 Transitional provisions

15 Definitions for pt 4

In this part:

commencement day means the day when this Act commences.

repealed Act means the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

repealed regulations means the *Smoke-free Areas (Enclosed Public Places) Regulations 1994*.

16 Existing exemptions—restaurants and licensed premises

(1) Despite the repeal of the repealed Act, the provisions of that Act continue to apply in relation to exempt premises and, in particular—

(a) a certificate of exemption in force immediately before the commencement day continues in force subject to those provisions and any condition that applied to it immediately before the commencement day; and

(b) a certificate of exemption under suspension immediately before the commencement day remains suspended subject to the provisions of the repealed Act.

(2) In this section:

certificate of exemption means a certificate of exemption granted under the repealed Act, section 8.

exempt premises means a restaurant, or a part of licensed premises, to the extent to which a certificate of exemption applies.

1 **17 Existing exemptions—certain times and circumstances**

2 Despite the repeal of the repealed Act, the provisions of that Act
3 continue to apply in relation to—

- 4 (a) a place mentioned in the repealed Act, schedule 1, part 1.2
5 (Places exempted at certain times or in certain circumstances),
6 item 2; and
- 7 (b) a place mentioned in the repealed regulations, schedule 1
8 (Places exempted in certain circumstances).

9 **18 Applications under repealed Act**

10 (1) This section applies if, before the commencement day—

11 (a) an application is made under the repealed Act, section 7
12 (Application for certificate of exemption) in relation to a
13 restaurant or a part of licensed premises; and

14 (b) the Minister has not decided the application.

15 (2) The Minister may decide the application as if the repealed Act,
16 section 8 were still in force.

17 (3) If the Minister grants a certificate of exemption for a restaurant or
18 part of licensed premises under this section—

19 (a) the provisions of the repealed Act continue to apply in relation
20 to the exempt premises; and

21 (b) the certificate of exemption is subject to the provisions of the
22 repealed Act.

23 (4) In this section:

24 *exempt premises* means a restaurant, or a part of licensed premises,
25 to the extent to which a certificate of exemption under this section
26 applies.

- 1 **19 Limitation on exemptions**
- 2 Despite any provision of the repealed Act—
- 3 (a) the Minister must not vary an exemption for a part of licensed
- 4 premises under the provisions of the repealed Act, section 10A
- 5 (Variation of exemptions) in a way that increases the total area
- 6 of the licensed premises to which the certificate of exemption
- 7 relates; and
- 8 (b) a certificate of exemption granted by the Minister under
- 9 section 18 ceases to have effect 3 years after the
- 10 commencement day.
- 11 **20 Regulations modifying pt 4**
- 12 The regulations may modify the operation of this part to make
- 13 provision in relation to any matter that is not, or is not in the
- 14 Executive's opinion adequately, dealt with in this part.
- 15 **21 Expiry of pt 4**
- 16 This part expires 3 years after the day it commences.

1	Part 5	Repeals and consequential
2		amendments
3	Division 5.1	Repeals
4	22	Act repealed
5		The <i>Smoke-free Areas (Enclosed Public Places) Act 1994</i> No 63 is
6		repealed.
7	23	Regulations repealed
8		The <i>Smoke-free Areas (Enclosed Public Places) Regulations 1994</i>
9		No 37 are repealed.
10	Division 5.2	Gaming Machine Act 1987
11	24	Commission may take disciplinary action against
12		licensee
13		New section 24 (3A)
14		<i>insert</i>
15	(3A)	The licence conditions that may be imposed or varied under
16		subsection (1) (b) include, but are not limited to, conditions to
17		ensure the licensee complies with the <i>Smoking (Prohibition in</i>
18		<i>Enclosed Public Places) Act 2003</i> , section 8 (Offence by
19		occupier) or section 9 (Offence by neighbouring occupier).
20	25	Section 24
21		<i>renumber subsections when Act next republished under Legislation</i>
22		<i>Act</i>

1 **26 Grounds for disciplinary action**
2 **Section 24A**

3 *omit*

4 In this Act

5 *substitute*

6 (1) In this Act

7 **27 New section 24A (1) (ba) and (bb)**

8 *insert*

9 (ba) the licensee has permitted people to smoke in a part of the
10 licensed premises that is an enclosed public place; or

11 (bb) the licensee has fails to take reasonable steps to prevent smoke
12 from another area occupied by the licensee entering an
13 enclosed public place; or

14 **28 Section 24A (1)**

15 *renumber paragraphs when Act next republished under Legislation*
16 *Act*

17 **29 New section 24A (2)**

18 *insert*

19 (2) In this section:

20 *enclosed public place*—see the *Smoking (Prohibition in Enclosed*
21 *Public Places) Act 2003*, dictionary.

22 *smoke*—see the *Smoking (Prohibition in Enclosed Public Places)*
23 *Act 2003*, dictionary.

Division 5.3 Liquor Act 1975

30 Grounds for issue of directions
Section 82

omit

For this part,

substitute

(1) For this part,

31 New section 82 (1) (ca) and (cb)

insert

(ca) a licensee has permitted people to smoke in a part of the
licensed premises that is an enclosed public place;

(cb) the licensee has failed to take reasonable steps to prevent
smoke from another area occupied by the licensee entering an
enclosed public place;

32 Section 82 (1)

*renumber paragraphs when Act next republished under Legislation
Act*

33 New section 82 (2)

(2) In this section:

enclosed public place—see the *Smoking (Prohibition in Enclosed
Public Places) Act 2003*, dictionary.

smoke—see the *Smoking (Prohibition in Enclosed Public Places)
Act 2003*, dictionary.

34 Types of directions
Section 85 (2) (c)

substitute

- (c) a direction requiring the licensee to do, or not to do, something to comply with the licensing standards manual;
- (d) if section 82 (1) (ca) or (cb) applies—a direction to ensure that the licensee complies with the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) or section 9 (Offence by neighbouring occupier).

35 New section 93A

93A Automatic cancellation of licence

A licence is cancelled automatically if the licensee is found guilty or convicted of an offence against the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) in relation to any part of the licensed premises.

36 New section 110A

insert

110A Permit to be subject to condition about smoking

- (1) It is a condition of a permit that the permit-holder must not permit people to smoke in a part of the premises for which the permit is issued that is an enclosed public place.
- (2) The condition under subsection (1) is in addition to any condition to which the permit is subject under section 110 (2).

37 Ground for cancellation
New section 116 (2) (ab)

insert

(ab) whether the permit-holder has permitted people to smoke in a part of the premises for which the permit is issued that is an enclosed public place;

38 Section 116 (2)

renumber paragraphs when Act next republished under Legislation Act

39 New section 116A

insert

116A Automatic cancellation of permit

A permit is cancelled automatically if the permit holder is found guilty or convicted of an offence against the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, section 8 (Offence by occupier) in relation to any part of the premises for which the permit is issued.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- found guilty
- must
- police officer.

enclosed public place means a public place, or part of a public place, that has a ceiling or roof and is, except for doors and passageways, completely or substantially enclosed by walls or windows.

Examples

- 1 a shopping centre, mall or plaza
- 2 a restaurant or cafeteria
- 3 a school, college or university
- 4 a community centre, hall or place of worship
- 5 a hostel or nursing home
- 6 a bus or taxi
- 7 the enclosed part of a boat

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

occupier, of an enclosed public place, means a person having the management or control, or otherwise being in charge, of the place.

public place means a place to which the public, or a section of the public, has access, whether by payment or not.

- 1 ***smoke***—a person ***smokes*** if the person—
- 2 (a) directly puffs the smoke of an ignited smoking product,
- 3 whether or not the person uses a device designed for the
- 4 inhalation of smoke by a smoker; or
- 5 (b) holds or has control over a smoking product while it is ignited.
- 6 **Examples for par (a)**
- 7 1 a cigarette holder
- 8 2 a pipe (including a water pipe or bong)
- 9 ***smoking product***—see the *Tobacco Act 1927*, dictionary.
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Endnotes

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.