

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

**SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES) AMENDMENT  
REGULATION 2010 (No 1)**

**SL2010-44**

**EXPLANATORY STATEMENT**

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

## Smoking (Prohibition in Enclosed Public Places) Amendment Regulation 2010 (No 1)

### Overview

The *Smoking (Prohibition in Enclosed Public Places) Act 2003* commenced on 1 December 2006 for the purpose of prohibiting smoking in enclosed public places to reduce the community's exposure to harmful tobacco smoke. The *Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009* (the Act) commences on 9 December 2010. The Act amends the *Smoking (Prohibition in Enclosed Public Places) Act 2003* and, upon commencement, will rename it the *Smoke-Free Public Places Act 2003*.

The Act's purpose is to further reduce the community's 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 Act uses the term environmental smoke, see section 5A). In particular, the Act aims to protect the health of hospitality workers who may be exposed to smoke in outdoor eating and drinking areas through their employment.

The Act is supported the *Smoking (Prohibition in Enclosed Public Places) Regulation 2005* which defines what is meant by 'enclosed' and explains how to determine if a public place meets this definition.

### *This Regulation*

The purpose of the Smoking (Prohibition in Enclosed Public Places) Amendment Regulation 2010 (No 1) (the Regulation) is to give effect to certain provisions in the Act. The Regulation prescribes the amended name of the Regulation, the minimum height for a smoke-impervious buffer screen or wall in a designated outdoor smoking area (DOSA) and that the diagram in a smoking management plan must be the licensee's licensed premises plan.

### Clauses

#### **Clause 1 – Name of regulation**

This section declares the name of the Regulation to be the Smoking (Prohibition in Enclosed Public Places) Amendment Regulation 2010 (No 1).

#### **Clause 2 – Commencement**

This provision provides for the commencement of the Regulation. The commencement of the Regulation is proposed for 9 December 2010. This is the same day that the Act commences.

#### **Clause 3 – Legislation amended**

This section expressly states that the Regulation amends the Smoking (Prohibition in Enclosed Public Places) Regulation 2005.

#### **Clause 4 – Section 1**

The section amends the name of the Regulation to be the *Smoke-Free Public Places Regulation 2005* upon commencement.

#### **Clause 5 – New part 3**

This clause inserts a new Part 3 into the Smoking (Prohibition in Enclosed Public Places) regulation 2005 which deals with public outdoor eating and drinking places. Part 3 explains the

required minimum height of a smoke impervious screen or wall buffer. Section 9F(5) of the Act states that each DOSA must have a buffer on its perimeter wherever it is adjacent to other parts of the premises' outdoor area that is ordinarily accessed by patrons. Section 9F(6) states that this buffer must be either:

- a screen or wall that is impervious to smoke and at least the height prescribed by regulation; or
- an area at least 4m wide where patrons are not allowed to eat, drink or smoke, half of which must be taken from the area that would otherwise form part of the DOSA.

This section stipulates that a screen or wall buffer must be at least 1.8 metres high. This 1.8 metres is an interim height and will change to 2.1 metres on 9 December 2011.

The 1.8 metres must be measured from the highest floor level within the DOSA. This is to ensure that the wall is effective as a smoke impervious buffer and smoke does not drift into smoke-free areas, as may occur if the buffer height was measured from a lower point.

An exception to the minimum of 1.8 metres is allowed only at a point in the buffer where a ceiling or covering within a DOSA is less than 1.8 metres above the floor. In this case, the buffer must reach the ceiling or covering and be secured to it in such a way that no smoke may travel through the join. It should be noted that the existence of the buffer must not cause the area to be considered an enclosed public place (that is, 75 percent or more enclosed). If this would be the case, then the licensed premises is unable to utilise the screen or wall buffer option.

Part 3 also expands upon section 9J of the Act, which provides that a smoking management plan must include a diagram of the premises that identifies the DOSA, the DOSA's buffer and the location of the notice stating the conditions of the DOSA. The Regulation prescribes that this diagram must be the licensed premises plan that is created as part of the premises' liquor licence. The licensee must obtain their licensed premises plan from the Office of Regulatory Services and clearly mark on it the DOSA, any buffers, and the location of the notice.

#### **Clause 6 – Section 13 (1)**

On 9 December 2011 the minimum buffer height of 1.8 metres will be replaced with a minimum buffer height of 2.1 metres. The interim height of 1.8 metres has been provided to allow premises time to undertake necessary building and development approval processes, which may extend beyond 9 December 2010. From 9 December 2011, all DOSA buffer screens or walls must comply with the 2.1 metre minimum.

The temporary provision for a lesser minimum buffer height does not preclude an occupier of a premises from their obligation under the Act to take reasonable steps to prevent smoke drifting from a DOSA into any part of the premises' outdoor eating and drinking areas or enclosed public places.

#### **Clause 7 – Dictionary, notes 2 and 3**

Note 2 in the dictionary is amended to include that the Legislation Act provides a definition for the term 'Act'. Note 3 in the dictionary is amended to update references to the *Smoke-Free Public Places Act 2003*.