

Smoke-free Environment Act 2000

Reprint history:

Reprint No 1

31 July 2007

Long Title

An Act to regulate smoking in enclosed public places and to repeal the *Smoking Regulation Act 1997*.

Part 1 – Preliminary

1 Name of Act

This Act is the *Smoke-free Environment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Object of Act

The object of this Act is to promote public health by reducing exposure to tobacco and other smoke in enclosed public places.

4 Definitions

In this Act:

"certificate of authority" means a certificate of authority referred to in section 14.

"Director-General" means the Director-General of the Department of Health.

"enclosed", in relation to a public place, means having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily.

"exempt area" has the meaning given by section 11.

"exercise" a function includes perform a duty.

"function" includes a power, authority or duty.

"inspector" means an inspector appointed under section 14.

"occupier" of premises or a part of premises means a person having the management or control, or otherwise being in charge, of those premises or part.

"public place" means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

"smoke" means smoke, hold or otherwise have control over, an ignited smoking product.

"smoke-free area" has the meaning given by section 6.

"smoking product" means any tobacco or other product that is intended to be smoked.

"vehicle" means a train, bus, tram, aeroplane, taxi or hire car, or ferry or other vessel.

5 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 2 – Prohibition on smoking in smoke-free areas

6 Smoke-free area

(1) In this Act, **"smoke-free area"** means any enclosed public place, but does not include an exempt area.

(2) Without limiting the generality of subsection (1), **"smoke-free area"** includes any place, or part of a place, of a kind described in Schedule 1 that is an enclosed public place (irrespective of the name by which the particular place is known).

7 Offence of smoking in smoke-free area

(1) A person must not smoke in a smoke-free area. Maximum penalty: 5 penalty units.

(2) A person who performs in a theatre or other performance space does not commit an offence under this section by smoking during the performance if smoking is a necessary part of the performance.

(3) It is a defence to a prosecution for an offence under subsection (1) if the defendant proves that he or she did not know, and could not reasonably be expected to have known, that the place in which the person was smoking was a smoke-free area.

8 Occupier not to allow smoking in smoke-free area

(1) If a person smokes in a smoke-free area in contravention of section 7, the occupier of the smoke-free area is guilty of an offence. Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

(2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that neither the defendant nor any employee or agent of the defendant provided (otherwise than by sale) any ashtray, matches or lighter (or other thing that could facilitate smoking) in the smoke-free area concerned and that:

- (a) neither the defendant nor any employee or agent of the defendant knew, or could reasonably be expected to have known, that the person concerned was smoking in the smoke-free area, or
- (b) as soon as the defendant or any employee or agent of the defendant became aware that the person was smoking in the smoke-free area, the defendant (or that employee or agent of the defendant):
 - (i) required the person to stop smoking in the smoke-free area, and
 - (ii) informed the person that the person was committing an offence by smoking in the smoke-free area, and
 - (iii) if the person continued to smoke after having been required to stop, required the person to leave the smoke-free area.

(3) A requirement under subsection (2) (b) (iii) that a person leave a smoke-free area:

- (a) does not affect any liability (whether arising under an Act, contract or otherwise) of the person to pay for any food or beverage supplied to or ordered by the person (whether or not it has been consumed), and
- (b) may include a requirement that the person satisfy, or make arrangements for satisfying, any such liability before the person leaves the smoke-free area.

9 Occupier to display signs

(1) The occupier of a smoke-free area must not fail to display within that area the signs (if any) prescribed by the regulations, in the manner (if any) prescribed by the regulations. Maximum penalty:

- (a) 5 penalty units, in the case of a natural person, or
- (b) 25 penalty units, in the case of a body corporate.

(2) The regulations may exempt any public place, or class of public place, from subsection (1).

10 Duty to prevent spread of smoke

(1) If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the smoke-free area must take reasonable steps to prevent smoke caused by smoking in the other parts of those premises from penetrating the smoke-free area.

Maximum penalty:

- (a) 10 penalty units in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

(2) If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the other parts of those premises in which smoking is allowed must take reasonable steps to prevent smoke caused by smoking in those other parts from penetrating the smoke-free area. Maximum penalty:

- (a) 10 penalty units in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

(3) The Minister may issue guidelines from time to time as to what constitutes reasonable steps to prevent the penetration of smoke into smoke-free areas.

(4) An occupier who, in relation to premises or a part of premises, complies with any guidelines in force for the time being under subsection (3) is to be considered as having taken all reasonable steps as referred to in subsections (1) and (2) in relation to those premises or that part.

Part 3 – Exempt areas

10A Definitions

(1) In this Part: "**bar room**" means a room in which drinks are ordered, served and consumed, but does not include a gaming machine room or a recreation room. "**casino**" means premises, or part of premises, defined as a casino for the time being under section 19 of the *Casino Control Act 1992* and includes the whole or a specified part of any premises the subject of an order under section 89 (3) of that Act. "**casino private gaming area**" means an area in a casino that is used substantially for gaming by international visitors to the casino other than an area used substantially for the purposes of gaming machines. "**club**" means the premises of a registered club within the meaning of the *Registered Clubs Act 1976*. "**dining area**" means an area where meals are served and are consumed at tables. "**gaming machine**" has the same meaning as in section 8 of the *Casino Control Act 1992*. "**gaming machine room**" means a room used substantially for the purposes of gaming machines. "**hotel**" means any premises that are the subject of a hotelier's licence in force under the *Liquor Act 1982*. "**nightclub**" means any premises that are the subject of a nightclub licence in force under the *Liquor Act 1982*. "**recreation room**" means a room used substantially for the purposes of games or other recreational activities other than gaming machines. "**thoroughfare**" means an area set aside as a thoroughfare but does not include an entrance to an exempt area.

(2) In this Part, any reference to an "**area**" or "**room**" does not include a reference to any area or room, or part of an area or room, that is not an enclosed public place.

11 Meaning of "exempt area"

In this Act, "**exempt area**", in relation to a club, hotel, nightclub or casino, means the area set aside in accordance with section 11A or 11B or a casino private gaming area, but does not include any area:

- (a) required to be designated as a smoke-free area under regulations referred to in section 12, or
- (b) that is the subject of a declaration in force under section 13.

11A Temporary exemption for areas of a club, hotel, nightclub or casino from 3 January 2005 until 4 July 2005

- (1) On or after 3 January 2005 and before 4 July 2005, the bar rooms, gaming machine rooms and recreation rooms in a club, hotel, nightclub or casino may be set aside as an exempt area.
- (2) However, the following areas are not to be set aside as an exempt area or as part of an exempt area:
 - (a) any dining area,
 - (b) any counter at which drinks or food are ordered or served,
 - (c) one bar room, but only in premises where there is more than one bar room,
 - (d) one area used substantially for the purposes of gambling (whether or not with gaming machines), but only in premises where there is more than one such area,
 - (e) one recreation room for each game or recreational activity offered at the premises, but only in premises where there is more than one recreation room offering that game or activity.

11B Temporary exemption for areas of a club, hotel, nightclub or casino from 4 July 2005 until 2 July 2007

- (1) In this section: "**room**" means bar room, gaming machine room or recreation room.
- (2) On or after 4 July 2005 and before 2 July 2007, one room, or one part of one room, in a club, hotel, nightclub or casino may be set aside as the exempt area.
- (3) The exempt area under this section, when expressed as a percentage of the total area of all the rooms in the club, hotel, nightclub or casino, must not exceed:
 - (a) 50% on or after 4 July 2005 and before 3 July 2006, or
 - (b) 25% on or after 3 July 2006 and before 2 July 2007.
- (4) Despite subsection (3), if the total area of all the rooms in the club, hotel, nightclub or casino does not exceed 100 square metres, the exempt area under this section, when expressed as a percentage of the total area of all the rooms in the club, hotel, nightclub or casino, must not exceed 50% on or after 4 July 2005 and before 2 July 2007.
- (5) The following areas are not to be set aside as an exempt area or as part of an exempt area under this section and are not to be taken into account when determining the area of a room or rooms for the purposes of this section:
 - (a) a dining area, toilet area, foyer, lobby, thoroughfare, dance floor or auditorium,
 - (b) a counter at which drinks or food are ordered or served,
 - (c) a casino private gaming area.
- (6) Subject to subsection (3), the Minister may authorise a club, hotel, nightclub or casino to set aside a second room (or part of a second room) as part of the exempt area under subsection (2). The granting of the authorisation and the authority conferred by the authorisation are subject to any requirements set out in the regulations (including with respect to the criteria to be met before an authorisation may be granted).

11C Review of casino private gaming area exemption

- (1) The Minister is to review regularly the exemption for a casino private gaming area to determine whether the exemption is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories.
- (2) A review is to be undertaken within one month after 1 January each year and the first such review is to take place in 2006.
- (3) A report on the outcome of each review is to be tabled in each House of Parliament no later than 1 June of the year in which the review is undertaken.

12 Premises containing exempt areas to comply with certain requirements

- (1) The regulations may make provision for or with respect to requirements with which premises containing an exempt area must comply.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to any one or more of the following in relation to any premises containing an exempt area:
 - (a) requirements relating to the erection of partitions or barriers to prevent the penetration of smoke into smoke-free areas,
 - (b) requirements relating to ventilation,
 - (c) requirements as to the designation of areas as smoke-free areas.
- (3) An exemption under this Part does not affect any duty a person may have under the *Occupational Health and Safety Act 2000*.

13 Removal of exemption by Director-General

- (1) The Director-General may declare that any particular area ceases to be an exempt area if satisfied that:
 - (a) any requirement of this Act or the regulations has not been complied with in relation to the premises containing the exempt area, or
 - (b) any guidelines in force under section 10 have not been complied with in relation to the premises containing the exempt area.
- (2) The Director-General may only make a declaration under this section:
 - (a) after having given the occupier of the premises concerned:
 - (i) written advice of the Director-General's intention to make the declaration, and
 - (ii) the reasons why the Director-General intends to make the declaration, and
 - (iii) an opportunity to make submissions within the period specified in the advice (being not less than 14 days), and
 - (b) after having considered any submissions made by the occupier within that period.
- (3) A declaration under this section:
 - (a) must be in writing, and
 - (b) must be given to the occupier of the premises concerned, and
 - (c) takes effect on the day on which the declaration is given or on a later day specified in the notice.
- (4) The Director-General may, at any time, revoke a declaration under this section by notice in writing given to the occupier of the premises concerned.

Part 4 – Inspection of premises

14 Appointment of inspectors

- (1) The Director-General may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.
- (2) An inspector has such functions as are conferred on the inspector by this Act or the regulations.
- (3) Each person appointed as an inspector is to be issued with a certificate of authority that states the name of the inspector and the fact of his or her appointment.
- (4) A former inspector must not, without reasonable excuse, fail to return his or her certificate of authority to the Director-General on demand. Maximum penalty: 1 penalty unit.
- (5) The regulations may prescribe classes of inspectors (however described) appointed under other legislation who are to be taken to be inspectors appointed under this section.
- (6) If an inspector of a class so prescribed has a certificate of authority (however described) by virtue of other legislation under which he or she is an inspector:
 - (a) the certificate of authority may be used by the inspector for the purposes of

this Act as if it had been issued under this section, and
(b) subsection (4) does not apply to the certificate of authority.

15 Powers of inspectors to enter premises

(1) For the purposes of this Act, an inspector may, at any reasonable time, do any one or more of the following:

- (a) alone, or with such other persons as the inspector considers necessary, enter and inspect any premises,
- (b) examine and inspect any apparatus or equipment in any premises,
- (c) take such photographs, films and audio, video and other recordings as the inspector considers necessary,
- (d) for the purpose of analysis, take samples of any thing to determine whether the provisions of this Act and the regulations are being complied with in relation to the premises,
- (e) take samples of any thing, other than for the purpose of analysis, that the inspector reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the regulations,
- (f) require records or documents to be produced for inspection,
- (g) examine, inspect and copy any such records or documents and, for that purpose, take away and retain (for such time as may, for that purpose, be reasonably necessary) any such records or documents.

(2) An inspector who enters any premises in accordance with this section that he or she is not otherwise entitled to enter (unless under the authority of a search warrant) is not to remain on the premises if, on request by the occupier of the premises, the inspector does not produce his or her certificate of authority.

(3) This section does not authorise entry into any part of premises that is being used solely for residential purposes, except:

- (a) with the consent of the occupier of the premises, or
- (b) under the authority of a search warrant.

16 Search warrants

(1) An inspector may apply to an authorised officer for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.

(2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant:

- (a) to enter the premises concerned, and
- (b) to search the premises for evidence of a contravention of this Act or the regulations.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section: "**authorised officer**" has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

17 Power of inspector to make requirements

(1) An inspector may require a person who is smoking in contravention of section 7 to stop smoking in contravention of that section.

(2) An inspector may at any time require a person by whom the inspector reasonably suspects any provision of this Act or the regulations is being or has been contravened, or who is apparently the occupier of premises where such a contravention is occurring or evidently has occurred, to state his or her name and address and (if the person is not the occupier of the premises) the name of the occupier of the premises.

18 Failure to comply with directions or requirements of inspectors

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector duly made under this Part. Maximum penalty: 5 penalty units.
- (2) A person must not, in connection with a requirement of an inspector made under this Part, provide any information or produce any document that the person knows is false or misleading in a material particular. Maximum penalty: 5 penalty units.
- (3) A requirement under this Part is not duly made unless, at the time of the making of the requirement:
 - (a) the inspector has identified himself or herself to the person of whom the requirement is made as an inspector and, on request, produced his or her certificate of authority, and
 - (b) the person is informed by the inspector that a refusal or failure to comply with the requirement may constitute an offence.

19 Obstruction or impersonation of inspectors

- (1) A person must not, without reasonable excuse, resist, obstruct, or attempt to obstruct, an inspector in the exercise of the inspector's functions under this Act. Maximum penalty: 5 penalty units.
- (2) A person must not impersonate an inspector. Maximum penalty: 5 penalty units.

Part 5 – Miscellaneous

20 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

21 No right to smoke in enclosed public place

Nothing in this Act is to be construed as creating or preserving a right of a person to smoke in an enclosed public place.

21A Compensation not payable

- (1) Compensation is not payable by or on behalf of the State arising directly or indirectly from any of the following matters occurring before or after the commencement of this section:
 - (a) the enactment or operation of this Act or the *Smoke-free Environment Amendment Act 2004*,
 - (b) the exercise by any person of a function under this Act or a failure to exercise any such function,
 - (c) any statement or conduct relating to the regulation of smoking in enclosed public places.
- (2) In this section: "**compensation**" includes damages or any other form of monetary compensation. "**conduct**" includes any act or omission, whether unconscionable, misleading, deceptive or otherwise. "**statement**" includes a representation of any kind:
 - (a) whether made verbally or in writing, and
 - (b) whether negligent, false or misleading or otherwise."**the State**" means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown and an inspector appointed under section 14. "**this Act**" includes any regulation made under this Act or any declaration made by the Director-General under section 13.

22 Giving of documents

Any notice or other document that is required by or under this Act to be given to a person may be given:

- (a) by delivering it personally to the person to whom it is addressed, or
- (b) by delivering to the place of residence or business of the person to whom it is

addressed and by leaving it there for the person with some other person, or
(c) by posting it to the person to whom it is addressed to the person's place of residence or business last known to the person sending the document.

23 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the display within enclosed public places of signs relating to smoking,
- (b) the content, dimensions and location of those signs,
- (c) the requirements to be observed by occupiers of enclosed public places to facilitate compliance with this Act and the regulations,
- (d) the powers of inspectors,
- (e) guidelines in relation to determining what is an enclosed public place and when a covered outside area is considered to be substantially enclosed for the purposes of this Act,
- (f) the determination of what is a room (including a bar room, gaming machine room or recreation room) for the purposes of this Act.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units in the case of a natural person and 25 penalty units in the case of a body corporate.

24 (Repealed)

25 Repeal of Smoking Regulation Act 1997

The *Smoking Regulation Act 1997* is repealed.

26 Savings, transitional and other provisions

Schedule 2 has effect.

Schedule 1 Examples of places that are smoke-free if they are enclosed public places

(Section 6)

Shopping centres, malls and plazas

Restaurants, cafes, cafeterias, dining areas and other eating places

Schools, colleges and universities

Professional, trade, commercial and other business premises

Community centres or halls and places of public worship

Theatres, cinemas, libraries and galleries

Trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels

Hostels (other than residential accommodation)

Motels (other than residential accommodation)

Fitness centres, bowling alleys and other sporting and recreational facilities

Childcare facilities

Hospitals

Casinos (other than a casino private gaming area or residential accommodation)

Hotels (other than residential accommodation)

Clubs (other than residential accommodation)

Nightclubs

Schedule 2 Savings, transitional and other provisions

(Section 26)

Part 1 – General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Smoke-free Environment Amendment Act 2004

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 – (Repealed)

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
ClI	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Smoke-free Environment Act 2000 No 69*. Assented to

31.8.2000. Date of commencement, sec 10 excepted, 6.9.2000, sec 2 and GG No 116 of 6.9.2000, p 9885; date of commencement of sec 10, 2.7.2007, sec 2 and GG No 19 of 10.2.2006, p 757. This Act has been amended as follows:

200 2	No 103	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> . Assented to 29.11.2002. Date of commencement of Sch 4, 1.12.2005, sec 2 and GG No 45 of 15.4.2005, p 1356.
200 3	No 52	<i>Health Legislation Amendment Act 2003</i> . Assented to 23.10.2003. Date of commencement, 1.2.2004, sec 2 and GG No 12 of 16.1.2004, p 164.
	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2003</i> . Assented to 27.11.2003. Date of commencement of Sch 3, assent, sec 2 (1).
200 4	No 110	<i>Smoke-free Environment Amendment Act 2004</i> . Assented to 15.12.2004. Date of commencement of Sch 1, Sch 1 [13] excepted, 3.1.2005, sec 2 (1); date of commencement of Sch 1 [13], 2.7.2007, sec 2 (2).

Table of amendments

Sec 4	Am 2004 No 110, Sch 1 [1].
Sec 6	Am 2004 No 110, Sch 1 [2].
Part 3, heading	Am 2004 No 110, Sch 1 [3].
Sec 10A	Ins 2004 No 110, Sch 1 [4].
Sec 11	Am 2003 No 52, Sch 6 [1] [2]. Subst 2004 No 110, Sch 1 [4].
Secs 11A-11C	Ins 2004 No 110, Sch 1 [4].
Sec 12	Am 2004 No 110, Sch 1 [5]-[7].
Sec 13	Am 2004 No 110, Sch 1 [8] [9].
Sec 16	Am 2002 No 103, Sch 4.87 [1]-[3].
Sec 21A	Ins 2004 No 110, Sch 1 [10].
Sec 23	Am 2004 No 110, Sch 1 [11].
Sec 24	Rep 2003 No 82, Sch 3.
Sch 1	Am 2004 No 110, Sch 1 [12] [13].
Sch 2	Am 2004 No 110, Sch 1 [14] [15].