



New South Wales

Tobacco Legislation Amendment Act 2012 No 56

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Smoke-free Environment Act 2000 No 69	3
Schedule 2 Amendment of Health Services Act 1997 No 154	9



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Tobacco Legislation Amendment Act 2012 No 56

Act No 56, 2012

An Act to amend the *Smoke-free Environment Act 2000* to provide for the regulation of smoking in certain outdoor public places and to make further provision for proceedings for offences under that Act; and to amend the *Health Services Act 1997* to provide for the regulation of smoking at public health establishments. [Assented to 21 August 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Tobacco Legislation Amendment Act 2012*.

2 Commencement

This Act commences on 7 January 2013.

Schedule 1 Amendment of Smoke-free Environment Act 2000 No 69

[1] Long title

Omit “enclosed”. Insert instead “certain”.

[2] Section 3 Object of Act

Omit “enclosed”. Insert instead “certain”.

[3] Section 4 Definitions

Insert in alphabetical order:

commercial outdoor dining area has the meaning given in section 4A.

[4] Section 4, definition of “enclosed public place”

Omit the definition of *enclosed*. Insert instead:

enclosed public place means a public place that has a ceiling or roof and, except for doors and passageways, is completely or substantially enclosed, whether permanently or temporarily.

[5] Section 4, definition of “outdoor public place”

Insert in alphabetical order:

outdoor public place means a public place that is not an enclosed public place.

[6] Section 4, definition of “smoke-free area”

Omit the definition. Insert instead:

smoke-free area means a smoke-free area under section 6 or 6A.

[7] Section 4A

Insert after section 4:

4A Commercial outdoor dining areas

- (1) In this Act, *commercial outdoor dining area* means an outdoor public place that is:
 - (a) a seated dining area, or
 - (b) within 4 metres of a seated dining area on premises that are licensed premises under the *Liquor Act 2007* or the premises of a restaurant as defined in that Act, or

- (c) within 10 metres of a place at a food fair where food is sold or supplied for consumption at the event, with a *food fair* being an organised event at which the principal activities are the sale or supply of food for consumption at the event and the consumption of that food.
- (2) A *seated dining area* is an area in which seating is provided and in which food that has been purchased and served on plates or packaged for immediate consumption is consumed. The seating must have been provided by the occupier of the premises where the food is purchased or by the operator of the business from which the food is purchased.
- (3) An area is only a seated dining area when food is being consumed there or is available to be purchased and consumed there.
- (4) An area is not a seated dining area if the area is designated as not being for the consumption of food by the display within the area of signs complying with the regulations.
- (5) The occupier of an area designated for the purposes of subsection (4) as not being for the consumption of food must take reasonable steps to ensure that the consumption of food does not occur in the 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.
- (6) In this section, *food* does not include drink.

[8] Sections 6 and 6A

Omit section 6. Insert instead:

6 Smoke-free areas—enclosed public places

- (1) Every enclosed public place is a *smoke-free area* for the purposes of this Act.
- (2) Schedule 1 contains a list of examples of enclosed public places that are smoke-free areas (irrespective of the name by which the particular place is known).
- (3) An enclosed public place is not a smoke-free area if it is an exempt area (see section 11).

6A Smoke-free areas—outdoor public places

- (1) An outdoor public place is a *smoke-free area* for the purposes of this Act if it is any of the following places (or part of any of those places):
- (a) a place that is within 10 metres of children’s play equipment but only if the children’s play equipment is in an outdoor public place,
 - (b) a swimming pool complex,
 - (c) an area set aside for or being used by spectators to watch an organised sporting event at a sports ground or other recreational area, but only when an organised sporting event is being held there,
 - (d) the platform of a passenger railway or light rail station,
 - (e) a ferry wharf,
 - (f) a light rail stop (with *light rail stop* to include any area where persons queue or gather when waiting at a light rail stop),
 - (g) a bus stop (with *bus stop* to include any area where persons queue or gather when waiting at a bus stop),
 - (h) a taxi rank (with *taxi rank* to include any area where persons queue or gather when waiting at a taxi rank),
 - (i) a place that is within 4 metres of a pedestrian access point to a building (as provided by subsection (2)),
Note. A place within 4 metres of a pedestrian access point to licensed premises or a restaurant is not a smoke-free area until 6 July 2015.
 - (j) a commercial outdoor dining area,
Note. A commercial outdoor dining area is not a smoke-free area until 6 July 2015.
 - (k) a place at a public hospital, health institution or health service under the *Health Services Act 1997* that is designated as a smoke-free area by a by-law or regulation under that Act and notified by signs displayed in, or at an entrance to, any such area,
 - (l) any other outdoor public place that is prescribed by the regulations as a smoke-free area.

- (2) A *pedestrian access point* is an entrance to or exit from a building for use by pedestrians, but does not include:
- (a) an entrance to or exit from a building that is used only for residential purposes (including a boarding house and a building in a caravan park), or
 - (b) an entrance to or exit from a building that is used partly for residential purposes and partly for other purposes if the entrance or exit concerned is used solely for entry to or exit from that part of the building that is used for residential purposes, or
 - (c) an emergency exit that is locked to entry.
- (3) It is a defence to a prosecution for the offence of smoking in a smoke-free area that is a light rail stop, bus stop, taxi rank or within 4 metres of a pedestrian access point to a building if it is established that the accused was smoking only while passing through the smoke-free area and did not remain in the smoke-free area while smoking.
- (4) The regulations may exempt a specified outdoor public place or class of outdoor public places from being a smoke-free area under this section.

[9] Section 8 Occupier not to allow smoking in certain smoke-free areas

Omit section 8 (1). Insert instead:

- (1) If a person smokes in contravention of section 7 in any of the following smoke-free areas, the occupier of the smoke-free area is guilty of an offence:
- (a) any enclosed public place,
 - (b) a commercial outdoor dining 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.

[10] Section 9 Occupier to display signs

Insert after section 9 (2):

- (3) The following outdoor public places are exempt from subsection (1):
- (a) a place that is within 10 metres of children's play equipment,

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- (b) a sports ground or other recreational area, unless the regulations otherwise provide in a particular case or class of cases,
 - (c) a light rail stop,
 - (d) a bus stop,
 - (e) a taxi rank,
 - (f) a place that is a smoke-free area because it is within 4 metres of a pedestrian access point to a building.
- (4) The Director-General may enter into arrangements with any government or local government agency or body for the display of signs relating to smoking in an outdoor public place that is exempt from subsection (1) and in respect of which the government or local government agency or body is the occupier.

[11] Section 20 Proceedings for offences

Insert at the end of the section:

- (2) Proceedings for an offence against this Act or the regulations may only be brought by:
 - (a) the Director-General, or
 - (b) a person or a member of a class of persons prescribed by the regulations for the purposes of this section.

Note. Section 21 of the *Health Administration Act 1982* provides for the delegation of a function of the Director-General.

Section 20A provides for inspectors to serve penalty notices.

[12] Section 21 Act does not create right to smoke

Omit “an enclosed public place”. Insert instead “a public place”.

[13] Section 21A Compensation not payable

Omit “the *Smoke-free Environment Amendment Act 2004*” from section 21A (1) (a).

Insert instead “any Act that amends this Act”.

[14] Section 21A (1) (c)

Omit “enclosed”.

[15] Section 23 Regulations

Omit “enclosed” from section 23 (2) (a) and (c) wherever occurring.

[16] Schedule 2 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[17] Schedule 2, Part 2

Insert as Part 2:

Part 2 Provisions consequent on enactment of Tobacco Legislation Amendment Act 2012

2 Commercial outdoor dining areas

A commercial outdoor dining area is not a smoke-free area until 6 July 2015.

3 Licensed premises and restaurants—pedestrian access points

A place that is within 4 metres of a pedestrian access point to a building that is licensed premises under the *Liquor Act 2007* or a restaurant as defined in that Act is not a smoke-free area under section 6A (1) (i) until 6 July 2015 (even if the place would otherwise be a smoke-free area as a result of being within 4 metres of a pedestrian access point to another building that is not licensed premises or a restaurant).

Schedule 2 Amendment of Health Services Act 1997 No 154

[1] Section 39 Local health district may make by-laws

Insert after section 39 (1) (c):

- (d) regulating or prohibiting smoking at any public hospital, health institution or health service under its control, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,

[2] Section 60 Statutory health corporation may make by-laws

Insert after section 60 (1) (c):

- (d) regulating or prohibiting smoking at any public hospital, health institution or health service under its control, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,

[3] Section 140 Regulations

Insert after section 140 (2) (n):

- (o) regulating or prohibiting smoking at any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation), including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*.

[4] Schedule 7 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[Second reading speech made in—

Legislative Assembly on 31 May 2012

Legislative Council on 15 August 2012]