

Passed by both Houses



New South Wales

Smoke-free Environment Amendment Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Smoke-free Environment Amendment Bill 2004

Act No , 2004

An Act to amend the *Smoke-free Environment Act 2000* to remove certain exemptions under that Act and to make consequential amendments to the *Liquor Act 1982*, the *Registered Clubs Act 1976* and the *Smoke-free Environment Regulation 2000*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Smoke-free Environment Amendment Act 2004*.

2 Commencement

- (1) This Act commences on 3 January 2005 except as otherwise provided by this section.
- (2) Schedule 1 [13] commences on 2 July 2007.

3 Amendment of Smoke-free Environment Act 2000 No 69

The *Smoke-free Environment Act 2000* is amended as set out in Schedule 1.

4 Amendment of other Acts and regulation

Each Act and regulation specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Smoke-free Environment Act 2000

(Section 3)

[1] **Section 4 Definitions**

Omit the definition of *exempt premises*. Insert instead:

exempt area has the meaning given by section 11.

[2] **Section 6 Smoke-free area**

Omit “exempt premises” from section 6 (1). Insert instead “an exempt area”.

[3] **Part 3, heading**

Omit “premises”. Insert instead “areas”.

[4] **Sections 10A, 11 and 11A–11C**

Omit section 11. Insert instead:

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.

[5] Section 12 Premises containing exempt areas to comply with certain requirements

Omit “exempt premises” wherever occurring.

Insert instead “premises containing an exempt area”.

[6] Section 12 (2) (c)

Omit “parts of the premises”. Insert instead “areas”.

[7] Section 12 (3)

Insert after section 12 (2):

- (3) An exemption under this Part does not affect any duty a person may have under the *Occupational Health and Safety Act 2000*.

[8] Section 13 Removal of exemption by Director-General

Omit “premises cease to be exempt premises” from section 13 (1).

Insert instead “area ceases to be an exempt area”.

[9] Section 13 (1) (a) and (b)

Insert “containing the exempt area” after “premises” wherever occurring.

[10] Section 21A

Insert after section 21:

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.

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- (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.

[11] Section 23 Regulations

Insert after section 23 (2) (d):

- (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.

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

Omit the following:

Common areas in hostels
Common areas in motels

Insert instead:

Hostels (other than residential accommodation)
Motels (other than residential accommodation)

[13] Schedule 1

Insert at the end of the Schedule:

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

Smoke-free Environment Amendment Bill 2004

Schedule 1 Amendment of Smoke-free Environment Act 2000

[14] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Smoke-free Environment Amendment Act 2004

[15] Schedule 2, Part 2

Omit the Part.

Schedule 2 Amendment of other Acts and regulation

(Section 4)

2.1 Liquor Act 1982 No 147

Section 103 Exclusion of persons from licensed premises

Insert after section 103 (1) (d):

- (d1) who smokes, within the meaning of the *Smoke-free Environment Act 2000*, while on any part of the licensed premises that is a smoke-free area within the meaning of that Act, or

2.2 Registered Clubs Act 1976 No 31

Section 67A Removal of persons from premises of registered club

Insert after section 67A (1) (d):

- (d1) who smokes, within the meaning of the *Smoke-free Environment Act 2000*, while on any part of the premises that is a smoke-free area within the meaning of that Act, or

2.3 Smoke-free Environment Regulation 2000

Clause 6

Omit the clause. Insert instead:

6 Exempt areas—prescribed requirements

The occupier of premises that contain an exempt area is required:

- (a) to separate the exempt area from any other part of the premises that is a smoke-free area by the use of partitions or other similar barriers, or
- (b) to ensure that a space of at least 1.5 metres is maintained between the exempt area and any other part of the premises that is a smoke-free area.