



New South Wales

Smoke-free Environment Amendment Bill 2004

Explanatory note

Overview of Bill

The *Smoke-free Environment Act 2000* (the **Principal Act**) prohibits smoking in an enclosed public place but contains certain exemptions in relation to a hotel, club, nightclub, casino or other prescribed premises.

The object of this Bill is to gradually phase out those exemptions by 1 July 2007. Smoking will continue to be permitted in a casino private gaming area after that date, but this exemption is to be regularly reviewed by the Minister to determine whether it is justified on the grounds of maintaining parity with smoking restrictions in casinos in other States and Territories.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 2005 except for Schedule 1 [13] which commences on 1 July 2007.

Clause 3 is a formal provision that gives effect to the amendments to the *Smoke-free Environment Act 2000* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other Acts and regulation set out in Schedule 2.

Schedule 1 Amendment of Smoke-free Environment Act 2000

Schedule 1 [4] replaces the concept of exempt premises in the Principal Act with a similar concept of exempt areas. The prohibition on smoking contained in the Principal Act does not apply to an exempt area. **Schedule 1 [1]–[3], [5], [6], [8] and [9]** make consequential amendments. The only areas that will be exempt areas after 1 January 2005 are certain parts of a club, hotel, nightclub or casino. These exemptions are to be phased out by 1 July 2007 except in relation to a casino private gaming area. It should be noted that the Principal Act regulates enclosed public places so it does not affect smoking in places such as beer gardens and residential accommodation in hotels.

Proposed section 11A sets out the temporary exemption that will apply in relation to a club, hotel, nightclub or casino on and after 1 January 2005 and before 1 July 2005. During that period, any bar rooms, gaming machine rooms and recreation rooms in a club, hotel, nightclub or casino may be set aside as exempt areas in which smoking will be permitted. However, smoking will not be permitted in any dining area, at any counter at which drinks or food are ordered or served, in one bar room (but only if there is more than one bar room), in one gaming machine room (but only if there is more than one gaming machine room) and 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).

Proposed section 11B sets out the temporary exemption that will apply in relation to a club, hotel, nightclub or casino on and after 1 July 2005 and before 1 July 2007. During that period, one room (being a bar room, gaming machine room or recreation room), or one part of such a room, in a club, hotel, nightclub or casino may be set aside as an exempt area in which smoking will be permitted. The exempt area when expressed as a percentage of the total area of all the rooms (being bar rooms, gaming machine rooms and recreation rooms) in the club, hotel, nightclub or casino, must not exceed 50% (on or after 1 July 2005 and before 1 July 2006) or 25% (on or after 1 July 2006 and before 1 July 2007). However, smoking will not be permitted in any dining area, toilet area, foyer, lobby, thoroughfare, dance floor or auditorium or at any counter at which drinks or food are ordered or served.

On and after 1 July 2007 smoking will not be permitted in any part of a club, hotel, nightclub or casino that is an enclosed public place (other than in a casino private gaming area). Smoking will be permitted in a casino private gaming area by proposed section 11 and this exemption is not affected by proposed clauses 11A and 11B. This exemption will continue after 1 July 2007. However, proposed section 11C requires this exemption to be reviewed regularly by the Minister to determine whether the exemption is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories. **Schedule 1 [13]** makes a consequential amendment to Schedule 1 to the Principal Act to reflect the removal of the exemptions on 1 July 2007.

Schedule 1 [7] makes it clear that any duty a person may have under the *Occupational Health and Safety Act 2000* is not affected by an exemption under Part 3 of the Principal Act.

Schedule 1 [10] inserts a new section 21A that makes it clear that compensation is not payable by or on behalf of the State arising directly or indirectly from the enactment or operation of the proposed Act or the Principal Act, or the exercise by any person of a function under the Principal Act or a failure to exercise any such function, or any statement or conduct relating to the regulation of smoking in enclosed public places.

Schedule 1 [11] permits regulations to be made for or with respect to 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 the Principal Act.

Schedule 1 [12] amends Schedule 1 to the Principal Act to make it clear that the Principal Act does not prohibit smoking in residential accommodation in a motel or hostel.

Schedule 1 [14] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the Principal Act.

Schedule 1 [15] omits a redundant Part from Schedule 2 to the Principal Act.

Schedule 2 Amendment of other Acts and regulation

Schedule 2.1 amends the *Liquor Act 1982* to permit a licensee or his or her employee to refuse to admit to, or turn out of, licensed premises any person who smokes while on any part of the licensed premises that is a smoke-free area.

Schedule 2.2 amends the *Registered Clubs Act 1976* to permit the secretary or an employee of a registered club to refuse to admit to, or turn out of, the premises of the club any person who smokes while on any part of the premises that is a smoke-free area.

Schedule 2.3 amends the *Smoke-free Environment Regulation 2000* as a consequence of the proposed removal of the concept of exempt premises from the Principal Act.

Smoke-free Environment Amendment Bill 2004

Explanatory note

Second print



New South Wales

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly,*



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.

EXAMINED

Chairman of Committees

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Smoke-free Environment Amendment Act 2004</i> .	3
2 Commencement	4
(1) This Act commences on 3 January 2005 except as otherwise provided by this section.	5 6
(2) Schedule 1 [13] commences on 2 July 2007.	7
3 Amendment of Smoke-free Environment Act 2000 No 69	8
The <i>Smoke-free Environment Act 2000</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts and regulation	11
Each Act and regulation specified in Schedule 2 is amended as set out in that Schedule.	12 13

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*.

<i>nightclub</i> means any premises that are the subject of a nightclub licence in force under the <i>Liquor Act 1982</i> .	1 2
<i>recreation room</i> means a room used substantially for the purposes of games or other recreational activities other than gaming machines.	3 4 5
<i>thoroughfare</i> means an area set aside as a thoroughfare but does not include an entrance to an exempt area.	6 7
(2) In this Part, any reference to an <i>area</i> or <i>room</i> does not include a reference to any area or room, or part of an area or room, that is not an enclosed public place.	8 9 10
11 Meaning of “exempt area”	11
In this Act, <i>exempt area</i> , 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:	12 13 14 15
(a) required to be designated as a smoke-free area under regulations referred to in section 12, or	16 17
(b) that is the subject of a declaration in force under section 13.	18
11A Temporary exemption for areas of a club, hotel, nightclub or casino from 3 January 2005 until 4 July 2005	19 20
(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.	21 22 23
(2) However, the following areas are not to be set aside as an exempt area or as part of an exempt area:	24 25
(a) any dining area,	26
(b) any counter at which drinks or food are ordered or served,	27
(c) one bar room, but only in premises where there is more than one bar room,	28 29
(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,	30 31 32
(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.	33 34 35 36

11B	Temporary exemption for areas of a club, hotel, nightclub or casino from 4 July 2005 until 2 July 2007	1
		2
(1)	In this section:	3
	<i>room</i> means bar room, gaming machine room or recreation room.	4
(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.	5
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(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:	8
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	(a) 50% on or after 4 July 2005 and before 3 July 2006, or	11
	(b) 25% on or after 3 July 2006 and before 2 July 2007.	12
(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.	13
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(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:	19
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	(a) a dining area, toilet area, foyer, lobby, thoroughfare, dance floor or auditorium,	23
		24
	(b) a counter at which drinks or food are ordered or served,	25
	(c) a casino private gaming area.	26
(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).	27
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11C	Review of casino private gaming area exemption	34
(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.	35
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(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.	1 2
(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.	3 4 5
[5]	Section 12 Premises containing exempt areas to comply with certain requirements	6 7
	Omit “exempt premises” wherever occurring.	8
	Insert instead “premises containing an exempt area”.	9
[6]	Section 12 (2) (c)	10
	Omit “parts of the premises”. Insert instead “areas”.	11
[7]	Section 12 (3)	12
	Insert after section 12 (2):	13
(3)	An exemption under this Part does not affect any duty a person may have under the <i>Occupational Health and Safety Act 2000</i> .	14 15
[8]	Section 13 Removal of exemption by Director-General	16
	Omit “premises cease to be exempt premises” from section 13 (1).	17
	Insert instead “area ceases to be an exempt area”.	18
[9]	Section 13 (1) (a) and (b)	19
	Insert “containing the exempt area” after “premises” wherever occurring.	20
[10]	Section 21A	21
	Insert after section 21:	22
	21A Compensation not payable	23
(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:	24 25 26
(a)	the enactment or operation of this Act or the <i>Smoke-free Environment Amendment Act 2004</i> ,	27 28
(b)	the exercise by any person of a function under this Act or a failure to exercise any such function,	29 30
(c)	any statement or conduct relating to the regulation of smoking in enclosed public places.	31 32

(2)	In this section:	1
	<i>compensation</i> includes damages or any other form of monetary compensation.	2
	<i>conduct</i> includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.	3
	<i>statement</i> includes a representation of any kind:	4
	(a) whether made verbally or in writing, and	5
	(b) whether negligent, false or misleading or otherwise.	6
	<i>the State</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes an officer, employee or agent of the Crown and an inspector appointed under section 14.	7
	<i>this Act</i> includes any regulation made under this Act or any declaration made by the Director-General under section 13.	8
[11]	Section 23 Regulations	9
	Insert after section 23 (2) (d):	10
	(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.	11
[12]	Schedule 1 Examples of places that are smoke-free if they are enclosed public places	12
	Omit the following:	13
	Common areas in hostels	14
	Common areas in motels	15
	Insert instead:	16
	Hostels (other than residential accommodation)	17
	Motels (other than residential accommodation)	18
[13]	Schedule 1	19
	Insert at the end of the Schedule:	20
	Casinos (other than a casino private gaming area or residential accommodation)	21
	Hotels (other than residential accommodation)	22
	Clubs (other than residential accommodation)	23
	Nightclubs	24

Smoke-free Environment Amendment Bill 2004

Schedule 1 Amendment of Smoke-free Environment Act 2000

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|-------------|--|---|
| [14] | Schedule 2 Savings, transitional and other provisions | 1 |
| | Insert at the end of clause 1 (1): | 2 |
| | <i>Smoke-free Environment Amendment Act 2004</i> | 3 |
| [15] | Schedule 2, Part 2 | 4 |
| | Omit the Part. | 5 |

Schedule 2	Amendment of other Acts and regulation	1
	(Section 4)	2
2.1	Liquor Act 1982 No 147	3
	Section 103 Exclusion of persons from licensed premises	4
	Insert after section 103 (1) (d):	5
	(d1) who smokes, within the meaning of the <i>Smoke-free Environment Act 2000</i> , while on any part of the licensed premises that is a smoke-free area within the meaning of that Act, or	6 7 8 9
2.2	Registered Clubs Act 1976 No 31	10
	Section 67A Removal of persons from premises of registered club	11
	Insert after section 67A (1) (d):	12
	(d1) who smokes, within the meaning of the <i>Smoke-free Environment Act 2000</i> , while on any part of the premises that is a smoke-free area within the meaning of that Act, or	13 14 15
2.3	Smoke-free Environment Regulation 2000	16
	Clause 6	17
	Omit the clause. Insert instead:	18
	6 Exempt areas—prescribed requirements	19
	The occupier of premises that contain an exempt area is required:	20
	(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	21 22 23
	(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.	24 25 26