



New South Wales

Tobacco Legislation Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Smoke-free Environment Act 2000* to extend the prohibition on smoking in enclosed public places so that from 7 January 2013 smoking will be prohibited in the following outdoor public places:
 - (i) within 10 metres of children's play equipment,
 - (ii) a swimming pool complex,
 - (iii) a spectator area at a sports ground or other recreational area being used for an organised sporting event,
 - (iv) public transport stops and stations (including ferry wharves and taxi ranks),
 - (v) within 4 metres of a pedestrian access point to a building (with effect from 6 July 2015 for licensed premises and restaurants under the *Liquor Act 2007*),
 - (vi) a commercial outdoor dining area (with effect from 6 July 2015),

- (vii) a place at a public hospital, health institution or health service designated as a smoke-free area by a by-law or regulation under the *Health Services Act 1997*,
- (viii) any other place prescribed by the regulations,
- (b) to limit the persons who are authorised to take proceedings for an offence under the *Smoke-free Environment Act 2000* to the Director-General of the Ministry of Health and persons authorised by the regulations,
- (c) to authorise the making of by-laws and regulations under the *Health Services Act 1997* to regulate or prohibit smoking at public hospitals, health institutions and health services under that Act and designate areas as smoke-free areas under the *Smoke-free Environment Act 2000*.

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 7 January 2013.

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

Schedule 1 [8] inserts new section 6A which prohibits smoking in the outdoor public places referred to in paragraph (a) of the Overview. The new section also contains exceptions for smoking while passing through some of the outdoor public places where smoking will be prohibited. The regulations will be able to prescribe other exceptions. **Schedule 1 [7]** defines *commercial outdoor dining area*. **Schedule 1 [1]–[6], [12], [14] and [15]** make consequential amendments. The Act already prohibits smoking in enclosed public places.

Schedule 1 [9] extends the existing offence that is committed by the occupier of an enclosed smoke-free area if a person smokes in the smoke-free area so that the offence will apply if a person smokes in a commercial outdoor dining area.

Schedule 1 [10] creates exceptions from the requirement for the display of signs in smoke-free areas so that signs will not be required in most of the outdoor public places in which smoking will be prohibited. The amendment also provides for the Director-General to enter into arrangements with government and local government agencies and bodies for the display of signs relating to smoking in the areas that are exempt from the compulsory signage requirements.

Schedule 1 [11] prevents the taking of criminal proceedings under the Act except by the Director-General or persons prescribed by the regulations.

Schedule 1 [13] extends the provision that protects the State from compensation claims in connection with the operation of the Act and previous amendments to the Act so that the protection will extend to amendments made by the Bill and any future amending Act.

Schedule 1 [16] and [17] make savings and transitional amendments. Transitional provisions defer the smoking ban in commercial outdoor dining areas, and within 4 metres of a pedestrian access point to licensed premises or a restaurant, until 6 July 2015.

Schedule 2 Amendment of Health Services Act 1997 No 154

Schedule 2 [1] and [2] extend the existing by-law making powers of local health districts and statutory health corporations to include by-laws regulating or prohibiting smoking at public hospitals, health institutions or health services under their control and designating areas as smoke-free areas under the *Smoke-free Environment Act 2000*.

Schedule 2 [3] authorises the making of regulations to regulate or prohibit smoking at public hospitals controlled by the Crown and designate areas as smoke-free areas under the *Smoke-free Environment Act 2000*.

Schedule 2 [4] provides for the making of savings and transitional regulations.

First print



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New South Wales

Tobacco Legislation Amendment Bill 2012

No. , 2012

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Tobacco Legislation Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on 7 January 2013.	5

Schedule 1	Amendment of Smoke-free Environment Act 2000 No 69	1
		2
[1] Long title		3
	Omit “enclosed”. Insert instead “certain”.	4
[2] Section 3 Object of Act		5
	Omit “enclosed”. Insert instead “certain”.	6
[3] Section 4 Definitions		7
	Insert in alphabetical order:	8
	<i>commercial outdoor dining area</i> has the meaning given in section 4A.	9
		10
[4] Section 4, definition of “enclosed public place”		11
	Omit the definition of <i>enclosed</i> . Insert instead:	12
	<i>enclosed public place</i> 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.	13
		14
		15
[5] Section 4, definition of “outdoor public place”		16
	Insert in alphabetical order:	17
	<i>outdoor public place</i> means a public place that is not an enclosed public place.	18
		19
[6] Section 4, definition of “smoke-free area”		20
	Omit the definition. Insert instead:	21
	<i>smoke-free area</i> means a smoke-free area under section 6 or 6A.	22
		23
[7] Section 4A		23
	Insert after section 4:	24
		25
4A Commercial outdoor dining areas		25
(1)	In this Act, <i>commercial outdoor dining area</i> means an outdoor public place that is:	26
		27
(a)	a seated dining area, or	28
(b)	within 4 metres of a seated dining area on premises that are licensed premises under the <i>Liquor Act 2007</i> or the premises of a restaurant as defined in that Act, or	29
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		31

(c)	within 10 metres of a place at a food fair where food is sold or supplied for consumption at the event, with a <i>food fair</i> 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.	1 2 3 4 5
(2)	A <i>seated dining area</i> 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.	6 7 8 9 10 11
(3)	An area is only a seated dining area when food is being consumed there or is available to be purchased and consumed there.	12 13
(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.	14 15 16
(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.	17 18 19 20
	Maximum penalty:	21
(a)	10 penalty units, in the case of a natural person, or	22
(b)	50 penalty units, in the case of a body corporate.	23
(6)	In this section, <i>food</i> does not include drink.	24
[8]	Sections 6 and 6A	25
	Omit section 6. Insert instead:	26
6	Smoke-free areas—enclosed public places	27
(1)	Every enclosed public place is a <i>smoke-free area</i> for the purposes of this Act.	28 29
(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).	30 31 32
(3)	An enclosed public place is not a smoke-free area if it is an exempt area (see section 11).	33 34

6A Smoke-free areas—outdoor public places

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| | 1 |
| (1) An outdoor public place is a <i>smoke-free area</i> for the purposes of this Act if it is any of the following places (or part of any of those places): | 2
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4 |
| (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, | 5
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| (b) a swimming pool complex, | 8 |
| (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, | 9
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| (d) the platform of a passenger railway or light rail station, | 13 |
| (e) a ferry wharf, | 14 |
| (f) a light rail stop (with <i>light rail stop</i> to include any area where persons queue or gather when waiting at a light rail stop), | 15
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17 |
| (g) a bus stop (with <i>bus stop</i> to include any area where persons queue or gather when waiting at a bus stop), | 18
19 |
| (h) a taxi rank (with <i>taxi rank</i> to include any area where persons queue or gather when waiting at a taxi rank), | 20
21 |
| (i) a place that is within 4 metres of a pedestrian access point to a building (as provided by subsection (2)), | 22
23 |
| 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. | 24
25
26 |
| (j) a commercial outdoor dining area, | 27 |
| Note. A commercial outdoor dining area is not a smoke-free area until 6 July 2015. | 28
29 |
| (k) a place at a public hospital, health institution or health service under the <i>Health Services Act 1997</i> 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, | 30
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34 |
| (l) any other outdoor public place that is prescribed by the regulations as a smoke-free area. | 35
36 |

(2)	A <i>pedestrian access point</i> is an entrance to or exit from a building for use by pedestrians, but does not include:	1
		2
(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	3
		4
		5
(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	6
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		8
		9
		10
(c)	an emergency exit that is locked to entry.	11
(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.	12
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		17
(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.	18
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		20
[9]	Section 8 Occupier not to allow smoking in certain smoke-free areas	21
	Omit section 8 (1). Insert instead:	22
(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:	23
		24
		25
(a)	any enclosed public place,	26
(b)	a commercial outdoor dining area.	27
	Maximum penalty:	28
(a)	10 penalty units, in the case of a natural person, or	29
(b)	50 penalty units, in the case of a body corporate.	30
[10]	Section 9 Occupier to display signs	31
	Insert after section 9 (2):	32
(3)	The following outdoor public places are exempt from subsection (1):	33
		34
(a)	a place that is within 10 metres of children's play equipment,	35
		36

(b)	a sports ground or other recreational area, unless the regulations otherwise provide in a particular case or class of cases,	1 2 3
(c)	a light rail stop,	4
(d)	a bus stop,	5
(e)	a taxi rank,	6
(f)	a place that is a smoke-free area because it is within 4 metres of a pedestrian access point to a building.	7 8
(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.	9 10 11 12 13
[11]	Section 20 Proceedings for offences	14
	Insert at the end of the section:	15
(2)	Proceedings for an offence against this Act or the regulations may only be brought by:	16 17
(a)	the Director-General, or	18
(b)	a person or a member of a class of persons prescribed by the regulations for the purposes of this section.	19 20
	Note. Section 21 of the <i>Health Administration Act 1982</i> provides for the delegation of a function of the Director-General.	21 22
	Section 20A provides for inspectors to serve penalty notices.	23
[12]	Section 21 Act does not create right to smoke	24
	Omit “an enclosed public place”. Insert instead “a public place”.	25
[13]	Section 21A Compensation not payable	26
	Omit “the <i>Smoke-free Environment Amendment Act 2004</i> ” from section 21A (1) (a).	27 28
	Insert instead “any Act that amends this Act”.	29
[14]	Section 21A (1) (c)	30
	Omit “enclosed”.	31
[15]	Section 23 Regulations	32
	Omit “enclosed” from section 23 (2) (a) and (c) wherever occurring.	33

[16] Schedule 2 Savings, transitional and other provisions	1
Omit clause 1 (1). Insert instead:	2
(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.	3 4 5
[17] Schedule 2, Part 2	6
Insert as Part 2:	7
Part 2 Provisions consequent on enactment of Tobacco Legislation Amendment Act 2012	8 9
2 Commercial outdoor dining areas	10
A commercial outdoor dining area is not a smoke-free area until 6 July 2015.	11 12
3 Licensed premises and restaurants—pedestrian access points	13
A place that is within 4 metres of a pedestrian access point to a building that is licensed premises under the <i>Liquor Act 2007</i> 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).	14 15 16 17 18 19 20

Schedule 2	Amendment of Health Services Act 1997	1
	No 154	2
[1]	Section 39 Local health district may make by-laws	3
	Insert after section 39 (1) (c):	4
	(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 <i>Smoke-free Environment Act 2000</i> ,	5 6 7 8 9
[2]	Section 60 Statutory health corporation may make by-laws	10
	Insert after section 60 (1) (c):	11
	(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 <i>Smoke-free Environment Act 2000</i> ,	12 13 14 15 16
[3]	Section 140 Regulations	17
	Insert after section 140 (2) (n):	18
	(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 <i>Smoke-free Environment Act 2000</i> .	19 20 21 22 23 24
[4]	Schedule 7 Savings, transitional and other provisions	25
	Omit clause 1 (1). Insert instead:	26
	(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.	27 28 29