

LEGISLATIVE COUNCIL
TOBACCO AMENDMENT BILL 2013

(Amendments and New Clauses to be proposed in Committee by Ms HARTLAND)

1. Clause 4, line 5, omit "definition" and insert "definitions".
2. Clause 4, after line 5 insert—
 "*designated outdoor smoking area* means an area designated under section 5EA;".
3. Clause 4, line 6, omit "*road*" and insert "*road*".

NEW CLAUSES

4. Insert the following New Clauses to follow clause 4—

'A Enclosed workplaces: offence by smoker

For section 5A(2)(c) of the **Tobacco Act 1987** substitute—

"(c) a designated outdoor smoking area;".

B Outdoor dining or drinking areas: offence by smoker

(1) For section 5C(1) of the **Tobacco Act 1987** substitute—

"(1) Subject to section 5EA, a person must not smoke in an outdoor dining or drinking area.

Penalty: 5 penalty units."

(2) Section 5C(4) of the **Tobacco Act 1987** is repealed.

C New sections 5EA, 5EB and 5EC inserted

After section 5E of the **Tobacco Act 1987** insert—

"5EA Designated outdoor smoking area

- (1) A person may smoke in a designated outdoor smoking area.
- (2) The occupier of a licensed premises may designate part of an outdoor dining or drinking area of the licensed premises as a designated outdoor smoking area by displaying a notice in accordance with subsection (3).
- (3) The notice referred to in subsection (2) must—
 - (a) be displayed in such a prominent position at the entrance to the designated outdoor smoking area as would reasonably identify the area of the premises as an area in which smoking is permitted; and
 - (b) state that the area is a designated outdoor smoking area; and

- (c) state that persons under 18 years of age are not permitted in the area; and
 - (d) state that a smoking management plan is available for inspection at any time; and
 - (e) include a diagram that sets out the limits of the area.
- (4) There may only be one designated outdoor smoking area at a licensed premises.
- (5) A designated outdoor smoking area must—
- (a) not exceed 50% of the outdoor area in which it is situated; and
 - (b) not be immediately adjacent to an entrance to an enclosed area of the premises; and
 - (c) have a buffer on its perimeter wherever it is adjacent to other parts of the outdoor area of the licensed premises ordinarily accessed by patrons; and
 - (d) have a single entrance that is no wider than 1 metre; and
 - (e) have no roof or have a partial roof that does not exceed 50% of the designated outdoor smoking area.
- (6) For the purposes of subsection (5)(c), a buffer is a wall that is—
- (a) opaque and impervious to smoke; and
 - (b) at least 2·1 metres high from the highest point of the floor surface.

5EB Obligations of occupier in relation to designated smoking outdoor area

- (1) The occupier of a licensed premises must not designate part of an outdoor dining or drinking area of the licensed premises to be a designated outdoor smoking area other than in accordance with section 5EA.

Penalty: 10 penalty units, in the case of a natural person;
 50 penalty units, in the case of a body corporate.

- (2) The occupier of a licensed premises at which there is a designated outdoor smoking area must ensure that—
- (a) no person under the age of 18 years enters the designated outdoor smoking area; and
 - (b) no food or drink is served in the designated outdoor smoking area; and

- (c) no food is brought into the designated outdoor smoking area; and
- (d) no entertainment is provided in the designated outdoor smoking area.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.

- (3) It is a defence to a prosecution under subsection (2) if the accused proves that the accused—
 - (a) was not aware, and could not reasonably be expected to have been aware, that—
 - (i) a person under the age of 18 years had entered the designated outdoor smoking area; or
 - (ii) food was brought into the designated outdoor smoking area; or
 - (b) requested a person under the age of 18 years to leave the designated smoking area; or
 - (c) requested a person possessing food in the designated smoking area to leave the designated smoking area.
- (4) For the purposes of subsection (2)(d), *entertainment* includes—
 - (a) still or moving images;
 - (b) gaming machines;
 - (c) sexually explicit entertainment within the meaning of section 3(1) of the **Liquor Control Reform Act 1998**;
 - (d) live or recorded music.

5EC Smoking management plan

- (1) The occupier of a licensed premises at which there is a designated outdoor smoking area must prepare a smoking management plan in accordance with subsection (2).

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate.
- (2) A smoking management plan must—
 - (a) include a diagram of the licensed premises that identifies—
 - (i) the designated outdoor smoking area; and
 - (ii) the outdoor dining or drinking area; and

- (iii) the notice referred to in section 5EA(2); and
 - (iv) the entrance to the designated outdoor smoking area; and
 - (v) any buffers referred to in section 5EA(5); and
 - (b) specify how exposure of persons in the licensed premises to smoke in areas other than the designated smoking area will be minimised; and
 - (c) specify the training given to staff at the licensed premises about the requirements of the Act and the smoking management plan; and
 - (d) specify any prescribed matters.
- (3) Upon request, the occupier of licensed premises at which there is a designated outdoor smoking area must make a smoking management plan available for inspection by—
- (a) an inspector;
 - (b) a member of staff at the licensed premises;
 - (c) a patron of the licensed premises.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate."

5. Clause 5, page 6, line 28, after "during" insert "the prohibited smoking period in relation to".
6. Clause 5, page 6, line 33, omit "event; or" and insert "event".
7. Clause 5, page 7, lines 1 to 3, omit all words and expressions on these lines.
8. Clause 5, page 8, after line 6 insert—

"prohibited smoking period" means—

- (a) in relation to an organised underage sporting event, the period commencing 30 minutes before the official start of the event and finishing 30 minutes after the official end of the event; and
- (b) in relation to a training or practice session to prepare for participation in an underage sporting event, the period commencing 30 minutes before the official start of the session and finishing 30 minutes after the official end of the session; and
- (c) in relation to a series of organised underage sporting events that are held at a sporting venue on the same day, the period commencing 30 minutes before the official start of the first event and finishing 30 minutes after the official end of the last event; and

(d) in relation to a series of training or practice sessions to prepare for participation in an organised underage sporting event that are held at a sporting venue on the same day, the period commencing 30 minutes before the official start of the first session and finishing 30 minutes after the official end of the last session;"

9. After the heading to clause 8 insert—

"(1) In the Schedule to the Principal Act, items 3, 4 and 5 are **repealed**."

10. Clause 8, line 10, before "In" insert "(2)".