

TASMANIA

PUBLIC HEALTH AMENDMENT BILL 2003

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PUBLIC HEALTH AMENDMENT BILL 2003

(Brought in by the Minister for Health and Human Services, the Honourable David Edward Llewellyn)

A BILL FOR

An Act to amend the *Public Health Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Public Health Amendment Act 2003*.

Commencement

2. This Act commences on 1 January 2005.

Principal Act

3. In this Act, the *Public Health Act 1997** is referred to as the Principal Act.

*No. 86 of 1997

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “bar area”:

“bar service area” means the area consisting of the following areas in a bar area:

- (a) that area which is behind the bar or cashier’s station and from which drinks are served to, or money is taken from, customers in the bar area;
- (b) that area consisting of the bar or cashier’s station and from which drinks are served to, or money is taken from, customers in the bar area;
- (c) that area where customers in the bar area order and collect drinks or pay at the cashier’s station, being an area of one metre extending outwards from the bar into the customer area (as measured at a right angle from any point of the bar);
- (b) by inserting the following definition after the definition of “multiple-use building”:

“nightclub or cabaret” has the meaning given by section 3A;

- (c) by inserting the following definition after the definition of “occupier”:

“outdoor dining area” means an area that is not enclosed and that contains tables or seating provided by the occupier of licensed premises, a restaurant, a cafe, a snack bar or a takeaway food shop for the use of its customers while consuming solid food;

- (d) by inserting the following definition after the definition of “smoke-free area”:

“solid food” means food other than confectionery and beverages;

- (e) by inserting the following definition after the definition of “specialist tobacconist premises”:

“takeaway food shop” means premises where solid food that is ready for immediate consumption is sold with the intention that the food will be consumed elsewhere than in those premises;

Section 3A inserted

5. After section 3 of the Principal Act, the following section is inserted in Part 1:

Meaning of “nightclub or cabaret”

3A. (1) In this Act, a bar area is a nightclub or cabaret if –

- (a) liquor is sold in that bar area ancillary to –
- (i) continuous entertainment provided live by artists present in person performing there; or
 - (ii) continuous entertainment provided by way of recorded music presented personally by a person employed or engaged to do so; or
 - (iii) the provision for the purposes of dancing of a dance area and continuous live music presented by artists present in person performing there or continuous recorded music presented either personally by a person employed or engaged to do so or by any other means; or
- (b) the Minister has determined under subsection (3) that it is a nightclub or cabaret.

(2) In this Act, a bar area is not a nightclub or cabaret if –

- (a) it is not a bar area described in subsection (1)(a); or
- (b) the Minister has determined under subsection (3) that it is not a nightclub or cabaret.

(3) The Minister, by written notice provided to the holder of a permit or licence under the *Liquor and Accommodation Act 1990*, may determine whether a bar area is or is not a nightclub or cabaret

as described in subsection (1)(a) if a dispute between the holder of the permit or licence and the Director arises as to whether or not the bar area is a nightclub or cabaret.

(4) This section does not prevent a bar area that is a nightclub or cabaret from being a bar area that is not a nightclub or cabaret during any periods when liquor is sold in the bar area otherwise than as ancillary to the provision of continuous entertainment or continuous music as specified in subsection (1)(a).

(5) For the purpose of determining whether or not entertainment or music is continuous, the following periods are not to be taken into account:

- (a) reasonable intervals between acts;
- (b) reasonable intervals between the performances of artists;
- (c) reasonable intervals between sets of recorded music;
- (d) a reasonable period when people are being admitted to the area prior to the commencement of the continuous entertainment or continuous music;
- (e) a reasonable period after the end of the continuous entertainment or continuous music when people are leaving the area.

Section 67B amended (Smoke-free areas)

6. Section 67B of the Principal Act is amended as follows:

- (a) by omitting paragraph (g) from subsection (1) and substituting the following paragraphs:
- (g) a bar service area;
 - (h) a nightclub or cabaret;
 - (i) in premises to which a permit or licence under the *Liquor and Accommodation Act 1990* relates and in which there are 2 or more bar areas (being bar areas that are not nightclubs or cabarets) –
 - (i) all those bar areas, other than one, at all times; and
 - (ii) that one bar area during any period during which solid food, other than snacks of a class specified in the guidelines, is available or consumed in the bar area;
 - (j) in premises to which a permit or licence under the *Liquor and Accommodation Act 1990* relates and in which there is only one bar area (being a bar area that is not a nightclub or cabaret) –
 - (i) the whole bar area during any period during which solid food, other than snacks of a class specified in the guidelines, is available or consumed in the bar area; and

- (ii) an area consisting of not less than 50% of the floor area of that bar area during any other period;
 - (k) a gaming area;
 - (l) in an outdoor dining area where tables are provided, an area consisting of not less than 50% of those tables, grouped together in one part of that dining area;
 - (m) in an outdoor dining area where no tables are provided, an area consisting of not less than 50% of the seating in that dining area, grouped together in one part of that dining area.
- (b) by omitting paragraphs (d) and (e) from subsection (2) and substituting the following paragraphs:
 - (d) in premises to which a permit or licence under the *Liquor and Accommodation Act 1990* relates and in which there are 2 or more bar areas (being bar areas that are not nightclubs or cabarets), one bar area during any period during which no solid food, other than snacks of a class specified in the guidelines, is available or consumed in the bar area;
 - (e) in premises to which a permit or licence under the *Liquor and Accommodation Act 1990* relates and in which there is only one bar

area (being a bar area that is not a nightclub or cabaret), an area consisting of not more than 50% of the floor area of that bar area during any period during which no solid food, other than snacks of a class specified in the guidelines, is available or consumed in the bar area;

- (f) in an outdoor dining area where tables are provided, an area consisting of not more than 50% of those tables, grouped together in one part of that dining area;
 - (g) in an outdoor dining area where no tables are provided, an area consisting of not more than 50% of the seating in that dining area, grouped together in one part of that dining area.
- (c) by inserting the following subsection after subsection (2):

(3) For the purposes of this section, the floor area of a bar area is to be calculated by excluding the bar service area and any gaming area that shares the enclosed space of the bar area.

Section 67E amended (Signs)

7. Section 67E(2) of the Principal Act is amended by omitting “or gaming area”.

Section 67F amended (Amenity of smoke-free areas)

8. Section 67F of the Principal Act is amended as follows:

- (a) by omitting “The” and substituting “(1) The”;
- (b) by inserting the following subsection:

(2) The occupier of an outdoor dining area must ensure that any smoke-free area in the outdoor dining area is not of inferior amenity to any area in the outdoor dining area in which smoking is permitted.

Penalty: Fine not exceeding –

- (a) in the case of a natural person, 10 penalty units; or
- (b) in the case of a body corporate, 50 penalty units.