

TASMANIA

PUBLIC HEALTH AMENDMENT BILL 2004

CONTENTS

PART 1 - PRELIMINARY

1. Short title
2. Commencement

PART 2 - PUBLIC HEALTH ACT 1997 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 3A inserted
 - 3A. Meaning of "nightclub or cabaret"
6. Section 67B amended (Smoke-free areas)
7. Section 67E amended (Signs)
8. Section 67F substituted
 - 67F. Amenity of smoke-free areas

PART 3 - PUBLIC HEALTH ACT 1997 FURTHER AMENDED

9. Principal Act
10. Section 3 amended (Interpretation)
11. Section 3A substituted
 - 3A. Meaning of "outdoor smoking area"
12. Section 67B amended (Smoke-free areas)

13. Section 67E amended (Signs)
14. Section 67F substituted
 - 67F. Amenity of smoke-free areas

PUBLIC HEALTH AMENDMENT BILL 2004

(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:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Public Health Amendment Act 2004*.

Commencement

2. (1) This Act, other than Part 3, commences on 1 January 2005.

(2) Part 3 commences on 1 January 2006.

PART 2 – PUBLIC HEALTH ACT 1997 AMENDED**Principal Act**

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

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 “multiple-use building”:

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

- (b) 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;

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

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

*No. 86 of 1997

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

“takeaway food shop” means premises where the primary function is the sale of solid food that is ready for immediate consumption 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 Licensing 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 from subsection (1)(g) “bar.” and substituting “bar;”;
- (b) by inserting the following paragraphs after paragraph (g) in subsection (1):
 - (h) a nightclub or cabaret;
 - (i) a gaming area;
 - (j) 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;
 - (k) 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.

- (c) by omitting paragraph (e) from subsection (2) and substituting the following paragraphs:
- (e) 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;
 - (f) 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.

Section 67E amended (Signs)

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

Section 67F substituted

8. Section 67F of the Principal Act is repealed and the following section is substituted:

Amenity of smoke-free areas

67F. (1) The operator of premises to which a permit or licence under the *Liquor Licensing Act 1990* relates must ensure that any smoke-free area in a bar area is not of inferior amenity to any bar area in the same premises 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.

(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.

**PART 3 – PUBLIC HEALTH ACT 1997 FURTHER
AMENDED**

Principal Act

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

Section 3 amended (Interpretation)

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

- (a) by omitting the definition of “bar area”;
- (b) by omitting the definition of “gaming area”;
- (c) by omitting the definition of “nightclub or cabaret”;
- (d) by inserting the following definition after the definition of “outdoor dining area”:

“outdoor smoking area” has the
meaning given by section 3A;

- (e) by inserting the following definition after the definition of “residential care facility”:

“roof” includes any structure or device,
whether fixed or movable, that
prevents or impedes upward
airflow;

*No. 86 of 1997

Section 3A substituted

11. Section 3A of the Principal Act is repealed and the following section is substituted:

Meaning of “outdoor smoking area”

3A. (1) In this Act, an area is an outdoor smoking area if –

- (a) it is provided for the use of customers who smoke by the occupier of premises to which a licence or permit under the *Liquor Licensing Act 1990* applies, being premises where the provision of beverages rather than food is the primary function; and
- (b) it is not serviced; and
- (c) it is an area that –
 - (i) does not have a roof; or
 - (ii) has a roof and a perimeter where not more than 50% of the perimeter consists of walls and windows (whether open or closed); or
 - (iii) is of a class determined by the Director by notice in the *Gazette* to be an open area; or
 - (iv) on the application of an occupier of premises to which a licence or permit under the *Liquor Licensing Act 1990* applies, has been determined by the Director by notice provided to that occupier to be an open area.

(2) For the purposes of subsection (1)(b) –

“**service**”, in relation to an area, includes the delivery of beverages and snacks or other food to customers in that area.

Section 67B amended (Smoke-free areas)

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

- (a) by omitting paragraphs (g), (h) and (i) from subsection (1);
- (b) by omitting paragraph (d) from subsection (2) and substituting the following paragraph:
 - (d) an outdoor smoking area;

Section 67E amended (Signs)

13. Section 67E of the Principal Act is amended by omitting subsection (2).

Section 67F substituted

14. Section 67F of the Principal Act is repealed and the following section is substituted:

Amenity of smoke-free areas

67F. 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.