

**HEALTH (SMOKING IN ENCLOSED PUBLIC PLACES)  
AMENDMENT BILL 2003**

**EXPLANATORY MEMORANDUM**

Policy of Bill and effect on current law

The Bill proposes to substitute the existing discretionary regime as to the circumstances in which smoking is permitted in an enclosed public place by an outright prohibition.

The existing law is Part IXB of the *Health Act 1911*. That Part was added by the *Health Amendment Act 1998*. The Bill amends Part IXB.

Clauses

Clause 1     Short title.

Clause 2     To allow a transition period between cessation of the current regime and the introduction of the non-discretionary prohibition, the Bill, on enactment, would not have effect until proclaimed by the Governor. If no such proclamation is made within 6 months of Royal Assent, the Act comes into operation 6 months after Royal Assent.

Clause 3     States the provisions in the *Health Act* that are being amended by the Bill.

Clause 4     Subclause (1) deletes words in the definition of “regulations” that are inconsistent with the requirements of the Bill that certain types of regulations must be made. At present, there is no obligation to make any regulations giving effect to Part IXB.

Subclause (2) adds 2 new sections to Part IXB which contain the nub of the Bill’s intent.

New section 289EA prohibits without exception smoking in an enclosed public place (defined in section 289E and not altered by this Bill) and makes it an offence for a person to smoke in an enclosed public place. To avoid any misunderstanding about the absolute nature of the prohibition, subsection (3) clarifies the situation by stating that the offence is committed despite no other person being present at the time and it is committed although the place is being used for a private function (eg, wedding reception). This reinforces the fact that the Bill’s prohibition applies to location rather than use.

Subsection (4) precludes a person using an absence of required signage as an excuse for breaching the prohibition. However, the subsection does allow such an absence to be raised as a mitigating factor when a court is considering the penalty to be imposed after conviction.

Subsection (5) exempts smoking by an actor or performer whose character is required to smoke in the course of a theatrical performance.

New section 289EB imposes a continuing obligation on the occupier, defined in subsection (4) so as to exclude a temporary occupant such as the person hiring premises for a wedding reception, to erect and maintain signs complying with regulations as to

size, wording, frequency and visibility that state that smoking is prohibited on the premises. An occupier who fails to erect and maintain the signs commits an offence unless the occupier satisfies the court that the circumstances were such that the signs could not reasonably have been erected or maintained.

Subclause (3) repeals section 289F which enables the making of regulations, and substitutes a new section that requires regulations to be made about signage and the conferral of enforcement powers on environmental health officers.

Subsection (2) allows other regulations to be made relating to the enforcement of sections 289EA and 289EB.

Subsection (3)-(5) allows a 12 month period from when the Act commences for occupiers to provide a dedicated smoking room (similar to those provided in some airports) which must be isolated from the remainder of the premises. Services must not be provided to the smoking room, eg food and drink.

Subsection (4) repeals a statement of policy as to the existing regulations that is made redundant by the Bill's outright prohibition.

- Clause 5      Increases the penalties that may be imposed for a repeat offender.
- Clause 6      Repeals the current regulations which are based on the discretionary regime and therefore inappropriate. The 6 month period allowed between Royal Assent and commencement is intended to allow for the drafting of the regulations giving effect to the outright prohibition.