

**Legislative Council—No 14A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 13 March 2012

South Australia

**Tobacco Products Regulation (Further Restrictions) Amendment Bill 2011**

A BILL FOR

An Act to amend the *Tobacco Products Regulation Act 1997*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Tobacco Products Regulation (Further Restrictions) Amendment Act 2011*.

#### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### 10 Part 2—Amendment of *Tobacco Products Regulation Act 1997*

#### 4—Insertion of sections 49, 50 and 51

After section 48 insert:

##### 49—Smoking banned in certain public transport areas

- 15 (1) A person must not smoke in a prescribed public transport area.  
Maximum penalty: \$200.  
Expiation fee: \$75.
- (2) Without limiting any other provision of this Act, subsection (1) does not apply to a person smoking in a motor vehicle.
- 20 (3) For the purposes of this section, a person will be taken to be in a prescribed public transport area if any part of the person is within the prescribed public transport area.

(4) In proceedings for an offence against this section, an allegation in the complaint that a specified place is a prescribed public transport area will be accepted as proved in the absence of proof to the contrary.

(5) In this section—

*prescribed public transport area* means any part of a bus stop, tram stop, railway station, taxi rank, airport or similar place that is—

- (a) a public area; and
- (b) used, or is intended to be used, by passengers boarding or alighting from public transport; and
- (c) wholly or partly covered by a roof;

*public transport* includes—

- (a) a taxi service; and
- (b) a transport service provided by aircraft or vessel.

### **50—Smoking banned near certain playground equipment**

(1) A person in a public area must not smoke within 10 metres of any prescribed children's playground equipment.

Maximum penalty: \$200.

Expiation fee: \$75.

(2) Without limiting any other provision of this Act, subsection (1) does not apply to a person smoking in a motor vehicle.

(3) For the purposes of this section—

- (a) a person will be taken to be in a public area if any part of the person is within the public area; and
- (b) a person will be taken to be within 10 metres of prescribed children's playground equipment if any part of the person is within 10 metres of any part of the prescribed children's playground equipment.

(4) In proceedings for an offence against this section, an allegation in the complaint that—

- (a) specified equipment is children's playground equipment; or
- (b) specified children's playground equipment is prescribed children's playground equipment,

will be accepted as proved in the absence of proof to the contrary.

(5) In this section—

*prescribed children's playground equipment* means children's playground equipment (however described) that is located in a public area.

**51—Minister may ban smoking in public areas**

- (1) The Minister may, by notice in the Gazette, declare that smoking is banned in the public area or areas, and during the period (being a period not exceeding 3 days), specified in the notice.
- 5 (2) A notice under subsection (1)—
- (a) may be of general application or vary in its application in respect of each public area to which it applies; and
- (b) may exempt specified areas, specified circumstances or specified times from the operation of the subsection (4); and
- 10 (c) may be conditional or unconditional.
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).
- (4) A person who smokes in contravention of a notice under subsection (1) is guilty of an offence.
- 15 Maximum penalty: \$200.  
Expiation fee: \$75.
- (5) If a notice is made under subsection (1), signs setting out the effect of the notice must be erected in such numbers and in positions of such prominence that the signs are likely to be seen by persons within the public area or areas to which the notice relates (however, validity of a prosecution is not affected by non-compliance or insufficient compliance with this subsection).
- 20 (6) For the purposes of this section, a person will be taken to be in a particular area if any part of the person is within the area.

**52—Smoking banned in certain public areas—longer term bans**

- (1) The Governor may, by regulation, declare that smoking is banned in the public areas specified in the regulations for the purposes of this section.
- 30 (2) A person who smokes in a public area declared by the regulations to be a public area in which smoking is banned is guilty of an offence.
- Maximum penalty: \$200.  
Expiation fee: \$75.
- (3) The regulations under subsection (1)—
- 35 (a) may be of general application or vary in their application according to prescribed factors; and
- (b) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or other specified person or body; and
- 40 (c) may exempt specified areas, specified circumstances or specified times from the operation of subsection (2); and

(d) may be conditional or unconditional.

- (4) If smoking is banned in a public area pursuant to this section, signs setting out the effect of this section and the regulation must be erected in such numbers and in positions of such prominence that the signs are likely to be seen by persons within the public area (however, validity of a prosecution is not affected by non-compliance or insufficient compliance with this subsection).

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### **5—Insertion of section 83**

After section 82 insert:

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### **83—Expiation notices may be given to certain children**

Despite section 6 of the *Expiation of Offences Act 1996*, an expiation notice for an offence against this Act may be given to a child who has attained the age of 15 years.