

South Australia

**Tobacco Products Regulation (Outdoor Eating  
Areas) Amendment Bill 2007**

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 (Outdoor Eating Areas) Amendment Act 2007*.

#### 5 **2—Commencement**

This Act will come into operation on 1 November 2007.

#### **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 section 46A**

After section 46 insert:

##### **46A—Smoking banned in outdoor eating areas**

- 15 (1) Subject to this section, smoking is banned in an outdoor eating area at any time during which food is being eaten, or is otherwise present, in the area.
- (2) If a person smokes in contravention of subsection (1), the person is guilty of an offence.  
Maximum penalty: \$200.  
20 Expiation fee: \$75.
- (3) It is not a defence to an offence against subsection (2) that the defendant was also eating at the time of the contravention.

- (4) If smoking occurs in an outdoor eating area in contravention of subsection (1), the occupier of the area is guilty of an offence.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.
- 5 (5) It is a defence to an offence against subsection (4) if the defendant proves—
- (a) that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred; and
- 10 (b) that—
- (i) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (ii) he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.
- 15 (6) The Minister may, by notice in writing, exempt a person or a class of persons from the operation of this section subject to such conditions as may be set out in the notice.
- 20 (7) The Minister may, by further notice in writing, vary or revoke an exemption under this section.
- (8) For the purposes of this section, a reference to **food** does not include a reference to—
- 25 (a) pre-packaged snack foods (including foods such as chips or confectionaries but not including more substantial foods such as pastries and sandwiches); or
- (b) food provided at no charge in licensed premises for consumption by all customers of the premises; or
- (c) drinks; or
- 30 (d) any other foods or classes of foods excluded by the regulations from the ambit of this subsection.
- (9) For the purposes of this section, it is not relevant whether food being eaten, or otherwise being present, in an outdoor eating area constitutes a genuine meal eaten by a person seated at a table.
- 35 (10) For the purposes of this section, it is not relevant whether food being eaten, or otherwise being present, in an outdoor eating area was served from a food service counter or food business in the area.
- (11) For the purposes of subsection (4), a reference to an **occupier** of an area includes, in the case of an area that is a shared area of a food court for the consumption of food, a reference to—
- 40 (a) the occupier of each food business in the food court; and
- (b) the lessor of the premises comprising the food court.

(12) For the purposes of this section, an area that comprises a single table setting located—

- (a) in an open space recreation area;
- (b) in a roadside rest area; or
- (c) in any other area prescribed by the regulations,

will be taken not to be an outdoor eating area.

(13) In this section—

***food business***, in relation to a food court, means the occupier of premises in the food court whose ordinary business is the sale of food by retail for consumption in a shared area for the consumption of such food;

***food court*** means a multi-unit premises in which multiple food businesses sell food and in relation to which a shared area for the consumption of such food is provided;

***food service counter*** means a fixed counter across which food is supplied directly to customers;

***licensed premises*** means premises that are the subject of a licence in force under the *Liquor Licensing Act 1997*;

***outdoor eating area***—an area is an outdoor eating area if—

- (a) the area is a public place, workplace or shared area (not being an enclosed public place, workplace or shared area); and
- (b) the area—
  - (i) in relation to a food court—is a shared area of a food court for the consumption of food; or
  - (ii) in any other case—is intended for use (whether or not exclusively) for the consumption of food.